

TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

THE BOSTON BARRIER ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedule to the draft Boston Barrier Order, as required by Rule 10(2)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

The Order is promoted by the Environment Agency (“the Agency”) to permit the Agency to construct and operate a new tidal barrier with a moveable gate across the river Witham (also known in this location as the Haven) in Boston, Lincolnshire, together with a new building to enable operation of the barrier, new flood defence walls on both banks of the Haven, a replacement gate across the entrance to the existing Wet Dock and to execute ancillary works, including dredging of the river. The Order would permit the Agency to acquire, compulsorily or by agreement, land and rights in land and to use land.

The Order adopts relevant provisions from the Model Clauses for Railways contained in Schedule 1 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006/1954) (“the model clauses”) so far as these are relevant to a tidal barrier. Precedent for other provisions is found in the Ouseburn Barrage Order 2007 (S.I. 2007/168) (“the Ouseburn Order”), the Ipswich Barrier Order 2012 (S.I. 2012/1867) (“the Ipswich Barrier Order”) or, in some instances, other Orders. Occasionally, the Order departs from the model clauses and precedents or is adapted for the circumstances of the scheme. Where there is such a departure or adaptation, an explanation is provided below.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions.

Article 1 (*Citation and commencement*) provides for the commencement and citation of the Order.

Article 2 (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order.

Article 3 (*Application of 1991 Act*) provides for the application of various provisions of the New Roads and Street Works Act 1991 (c. 22) to the temporary stopping up of streets under powers conferred by the Order. Article 3(3) disapplies certain of the provisions of the New Roads and Street Works Act 1991 as they are restrictions and requirements that are inappropriate because they have the potential to affect the construction programme for the Boston Barrier.

PART 2

WORKS PROVISIONS

Part 2 of the Order contains provisions for and relating to the construction of the authorised works.

Article 4 (*Power to construct and maintain works*) would authorise the construction and maintenance of the principal works proposed (“the Scheduled Works”), which are described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. The main scheduled work provides for the

construction of a barrier across the mouth of the river Witham (also known in this location as The Haven), with a moveable gate, together with associated structures.

Paragraphs (3) and (4) of article 4 provide for the construction and maintenance of works necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works. In accordance with the model clauses, some of the ancillary works which will be required for the project are specified in paragraph (3). Some modifications have been made to the types of ancillary works identified in the model clauses, to reflect the nature of this particular project and the types of works which are likely to be necessary.

Paragraph (5) authorises the Agency to remove any temporary works constructed by it under the Order. Paragraph (6) provides that ancillary works may only be constructed within the Order limits. Paragraph (7) makes provision for the Agency to secure the consent of the street authority in relation to any works undertaken within a street outside the Order limits. Paragraph (8) makes provision for the accommodation of apparatus in any conduits provided. This article is based on provisions contained in article 3 of the Ipswich Barrier Order and article 3 of the Ouseburn Barrage Order 2007.

Article 5 (*Power to deviate*) provides for the limits within which the Agency can deviate in the construction of the proposed works. In addition to the model clauses, paragraph (3) specifies that the unobstructed opening between the walls of the barrier will be 25 metres in width. This provision is required to preserve navigation. In addition to the model clause, this provision would allow the Agency to modify the design of the scheduled works. This addition is considered necessary having regard to the detailed nature of the plans and sections and given that the final design will be governed by the associated planning permission granted for the scheme.

Article 6 (*Power to dredge etc.*) would provide the Agency, subject to the prior written consent of the harbour authority, with the authority to deepen, dredge and remove obstructions from the river bed, foreshore and banks for the purposes of constructing, operating or maintaining the scheduled works or facilitating the navigation of vessels. Provision is made for the payment of compensation. The Agency may use, appropriate, sell or dispose of anything removed (other than wreck). Article 6 is based on article 8 of the Ipswich Barrier Order and article 9 of the Ouseburn Order. A separate marine licence, pursuant to the Marine and Coastal Access Act 2009 will be sought from the Marine Management Organisation in relation to dredging works.

Article 7 (*Works and dredging etc. in the river*) makes further provision in relation to works in the river and is based on article 14 of the London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102).

Article 8 (*River not to be a reservoir*) provides that no part of the river as is impounded by the scheduled works would be taken as a reservoir for the purposes of the Reservoirs Act 1995 (c.21).

Article 9 (*Power to execute street works*) would confer authority on the Agency to interfere with and execute works in or under paths or streets within the limits of deviation for the purposes ancillary to the authorised works. This provision is based upon the model clauses but with a minor modification to recognise that the power would be exercised not for the purpose of the authorised works but, rather for purposes ancillary to those works, as is appropriate given the nature of the authorised works.

Article 10 (*Power to keep apparatus in streets*) would permit the Agency to place equipment and apparatus in streets for the purposes of or in connection with the intended works.

Article 11 (*Power to alter layout, etc., of streets*) would permit the Agency to alter the layout of any street within the Order limits, any street abutting the Order limits and any street which has a junction with such a street. This must be with the consent of the street authority (not to be unreasonably withheld).

Article 12 (*Temporary stopping up and diversion of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 2 (*Streets to be temporarily stopped up*), the Agency is obliged only to consult the relevant street authority. If the Agency wishes to temporarily stop up streets which are not specified in Schedule 2, it will need to obtain the consent of the relevant street authority, but such consent shall not be unreasonably withheld. Provision is made for compensation. In an extension to the model clauses, paragraph (2) also confers a power on the Agency to use any street stopped up under this article as a temporary working site. Such provision was included within article 9 of the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010/1721).

Article 13 (*Access to works*) confers on the Agency power (for the purposes of the authorised works) to form and lay out means of access, or improve existing means of access, within the Order limits at the points marked on the Order plans. Such power may be exercised without the approval of the highway authority. In respect of locations within the Order limits, but which are not marked on the Order plans, the Agency's exercise of powers to provide access or improve existing access must be approved by the highway authority, such approval not to be unreasonably withheld.

Article 14 (*Agreements with street authorities*) would authorise street authorities and the Agency to enter into agreements respecting works in or affecting streets.

Article 15 (*Use of private roads for construction*) which is not in the model clauses, is modelled on the provision in paragraph 3 of Schedule 5 to the Crossrail Act 2008 (c. 18). It authorises the temporary passage of persons or vehicles along private roads situated within Order limits for the purpose of, or in connection with, the construction of the authorised works without the necessity for the Agency to acquire an interest over that land. Provision is made for compensation.

Article 16 (*Agreements with owners of land and other for construction of works*) would authorise the Agency to enter into agreements with the harbour authority and other land owners or persons with interests in land for or in respect of the doing of anything which may be necessary in connection with the authorised works. Any such agreement may provide for the payment by the Agency of contributions towards the costs incurred or compensation for any injury or loss incurred by those parties.

Article 17 (*Temporary closing of river in connection with works*) would authorise the Agency to temporarily close the river within the limits of deviation to navigation during or for the purposes of executing the works. The Agency shall seek to minimise interference with navigation on the river so far as is reasonable practicable and the consent of the harbour authority (the Port of Boston Limited) must be obtained before access is precluded to the Wet Dock. Article 17 is based on the provisions of article 11 of the Ipswich Barrier Order and article 13 of the Ouseburn Order.

Article 18 (*Diversion of flow of water*) would authorise the Agency to divert the flow of water in the river. Again, this follows the provisions of article 12 of the Ipswich Barrier Order and article 14 of the Ouseburn Order.

Article 19 (*Power to take, pump, impound and discharge water*) would provide the Agency with powers to take, impound and use water from and discharge water into the river or to pump any water found into the river or any watercourse, public sewer or drain in connection with the authorised works. The Agency would also be authorised to lay down, take up or alter pipes, conduits or other works for this purpose.

Paragraph (3) contains provisions for the benefit of the owner of any public sewer or drain affected, whose consent must be obtained and who may impose reasonable terms and conditions on the grant of consent. Paragraphs (4) and (5) prohibit the discharge of certain specified matters in the exercise of the powers conferred by this article.

This article is derived from the provisions of article 13 of the Ipswich Barrier Order and article 15 of the Ouseburn Order.

Article 20 (*Water abstraction and impounding*) disappplies the requirement under section 24(1) of the Water Resources Act 1991 (c. 57) that anyone abstracting water from any course of supply must have a licence from the Agency. The disapplication of section 24(1) only applies where the abstraction is required for the purposes of, or in connection with, the construction of the authorised works. Paragraph 15 of Schedule 14 of the Crossrail Act 2008 (c. 18) and article 17 of the London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102) are precedent for this provision. Paragraph (2) disappplies the requirement under section 25 of the Water Resources Act 1991 (restrictions on impounding) to secure a licence for impounding works. The drafting follows that contained within paragraph 2 of Schedule 21 to the High Speed Rail (London – West Midlands) Bill. Paragraph (3) disappplies section 48A(1) of the Water Resources Act 1991 (civil remedies for loss or damage due to water abstraction) which would otherwise impose an absolute prohibition on abstracting water if it causes loss or damage to another person. Such a restriction could prevent or delay the construction of the authorised works. Paragraph (4) provides for the payment of compensation where loss or damage is caused. The effect of this disapplication is that the duty to avoid damage by water abstraction creates the possibility of compensation for damage, but not the possibility of a court injunction. Section 46 of the Crossrail Act 2008 and article 17 of the London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102) offer precedent for this provision.

Article 21 (*Protective works*) would enable the Agency, at its own expense, to carry out, from time to time, such protective works to any building lying within the Order limits as the Agency considers to be necessary or expedient. The model clause has been added to for clarification that monitoring equipment can be taken onto land in order to help to decide whether protective works are required and to make it clear that, if necessary, the right of entry onto land for the purposes of carrying out works can be an exclusive right requiring the occupants to leave temporarily, if the nature of the works makes this necessary.

Article 22 (*Planning permission*) modifies planning legislation to ensure that, once constructed, the barrier will enjoy permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).

Article 23 (*Power to survey and investigate land, etc.*) confers power on the Agency (upon notice to every owner and occupier) to survey and investigate land within the Order limits, and to make trial holes. It includes provision for payment of compensation. Approval for the making of trial holes (which may not be unreasonably withheld) is required, in the case of a carriageway or footway, from the highway authority, or in the case of a private street, from the street authority. A deemed consent provision, in paragraph (6), has been added to the model provision.

Article 24 (*Felling or lopping of trees*) would enable the Agency to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised works (or any apparatus used on the authorised works) or danger to persons using the authorised works.

PART 3

PROVISIONS RELATING TO TIDAL WORKS

Part 3 of the Order contains provisions relating to tidal works. The provisions follow those contained within articles 15 to 20 of the Ipswich Barrier Order.

Article 25 (*Tidal works not to be executed without approval of Secretary of State*) provides that, unless its construction has commenced within 5 years of the Order coming into force, no tidal works shall be executed except in accordance with plans and sections approved by the Secretary of State. A 5 year time period from the making of the Order has been inserted to remove the need to obtain the Secretary of State's consent. This approach follows that taken in article 15 of the Ipswich Barrier Order and is designed to avoid unnecessary duplication in seeking tidal works consents.

Article 26 (*Lights on tidal works during construction*) requires the Agency to light any tidal works from sunset to sunrise and to take such other steps for the prevention of danger to navigation as the Secretary of State may direct. Paragraph (2) makes it an offence for the Agency to fail to comply with any direction reasonably given.

Article 27 (*Provisions against danger to navigation*) requires the Agency to notify Trinity House and the harbour authority in the event of any injury to, or destruction or decay of a tidal work and to lay down buoys etc. or take such other steps as Trinity House and the harbour authority may direct. Paragraph (2) makes it an offence for the Agency to fail to comply with any direction reasonably given.

Article 28 (*Abatement of works abandoned or decayed*) provides for the Secretary of State or the harbour authority to require the Agency, by giving written notice, to repair, remove or restore etc. any abandoned or decayed tidal work. If the Agency fails to comply with the requirements of the notice, the Secretary of State or the harbour authority may execute the works and recover any associated expenditure from the Agency.

Article 29 (*Survey of tidal works*) makes provision for the Secretary of State or the harbour authority, at any time, to order a survey and examination of a tidal work or the proposed site of a tidal work and recover any associated expenditure from the Agency.

Article 30 (*Permanent lights on tidal works*) requires the Agency, after completion of any tidal works, to exhibit every night from sunrise to sunset such lights, if any, as Trinity House and the harbour authority may direct. Paragraph (2) makes it an offence for the Agency to fail to comply with any direction reasonably given.

PART 4

ACQUISITION AND POSSESSION OF LAND

Part 4 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of, or in connection with, the authorised works. It further provides for the payment of compensation.

Article 31 (*Power to acquire land*) would authorise the Agency to compulsorily acquire the land shown on the land plans deposited with the application so far as required for the purposes of the scheduled works, and to use any land so acquired for any other purposes ancillary to those works.

Article 32 (*Application of Part 1 of the 1965 Act*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56). An amendment has been made to this commonly employed provision to reflect changes to the Compulsory Purchase Act 1965 that have recently come into force pursuant to the Housing and Planning Act 2016 (c.22).

Article 33 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), which contains alternative vesting procedures for land subject to compulsory purchase powers, to the acquisition of land under the Order. The article is derived from the model clauses and takes into account that there is no conventional compulsory purchase order where powers are conferred by Transport and Works Order. An amendment has been made to this commonly employed provision to reflect changes to the Compulsory Purchase Act 1965 that have recently come into force pursuant to the Housing and Planning Act 2016 (c.22).

Article 34 (*Power to acquire new rights*) would permit the Agency to create and acquire easements and other new rights over land rather than the whole interest in any land. For this purpose, various enactments concerning compulsory acquisition and compensation would have effect as modified by Schedule 3 (*modification of compensation and compulsory purchase enactments for creation of new rights*) to the Order. The article is derived from the model clauses.

Article 35 (*Power to acquire subsoil only*) enables the Agency to acquire subsoil interests in land only. No further provision in relation to subsoil lying more than 9 metres beneath the surface needs to be made in this Order as no tunnels are involved.

Article 36 (*New rights only to be acquired in certain lands*) is not taken from the model clauses but is included in order to reduce blight. It provides that only easements and other rights may be acquired in the land specified in Schedule 4 (*acquisition of new rights only*) to the Order. The Agency is not seeking powers to acquire such land itself. This provision follows that contained within article 26 of the Ipswich Barrier Order.

Article 37 (*Rights under or over streets*) permits the Agency to use a street within the Order limits without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

Article 38 (*Temporary possession of land for construction purposes*) enables the Agency, in connection with the carrying out of the authorised works, to take temporary possession of (i) certain land listed in Schedule 5 (*land of which temporary possession may be taken*) to the Order and (ii) any other land included in the Order limits which it may acquire compulsorily, provided that it has not yet begun the compulsory acquisition process in relation to it. This second category of land is an addition to the model clauses but follows the approach adopted in a number of recent orders including the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072) and the London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102). It allows greater flexibility, for example, in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of some land is required.

The Agency would not be permitted to remain in possession of the land for a period of more than 2 years (not 1 year as in the model clauses) after the completion of the work as specified in that Schedule. The period of 2 years is necessary given the scale and extent of the works to be carried out and the time that will need to be taken to return the land back to its previous condition. Provision is made for the payment of compensation.

Article 39 (*Temporary possession of land for maintenance of works*) provides that the Agency may take temporary possession of land within the limits of land to be acquired or used if such possession is required for the purpose

of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work in the 5 years following the beginning of public use of the works. Temporary works can be constructed on the land as reasonably necessary. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Article 40 (*Disregard of certain interests and improvements*) provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

Article 41 (*Set-off for enhancement in value of retained land*) provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the tribunal shall set-off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

Article 42 (*Acquisition of part of certain properties*) would enable the Agency to acquire a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in the circumstances to require the whole to be taken, with disputes being determined by the Upper Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965 (c. 56).

Article 43 (*Extinction or suspension of private rights of way etc. over land*) provides for the extinction or suspension of private rights of way over land subject to compulsory acquisition or appropriation for the purposes of the Order. Such rights are suspended where the Agency takes temporary possession, until this is given up. Provision for notification and the payment of compensation is included.

Article 44 (*Time limit for exercise of powers of acquisition*) imposes a time limit of 5 years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land.

PART 5

OPERATION OF THE SCHEDULED WORKS

Part 5 makes provision for the operation of the scheduled works.

Article 45 (*Power to operate scheduled works*) would authorise the Agency to operate and use the scheduled works for such periods as it considers necessary. Amongst other things, the Agency may open or close the barrier and regulate water levels in the river by means of the scheduled works. Paragraph (2) states that the Agency shall exercise these powers so as to safeguard against flooding. Paragraph (3) identifies a number of additional circumstances which would enable the Agency to exercise its power to operate the proposed tidal barrier. Article 45 is derived from the provisions of article 34 of the Ipswich Barrier Order and article 33 of the Ouseburn Order, which have been modified to reflect the circumstances of this scheme.

Article 46 (*Misuse of scheduled works, etc.*) would make closing or opening the proposed tidal barrier or in any other way interfering with its operation without lawful authority or reasonable excuse a criminal offence. Article 46 finds precedent in article 35 of the Ipswich Barrier Order and article 34 of the Ouseburn Order.

Article 47 (*Navigation etc. in vicinity of barrier*) would make:

- mooring a vessel to any part of the proposed tidal barrier;
- allowing any vessel to drift in the vicinity of the proposed tidal barrier (except for the purpose of passing through the barrier); or
- mooring a vessel in the vicinity of the barrier so as to obstruct access or egress from the moveable gate or cause an obstruction to other vessels

without lawful authority or reasonable excuse a criminal offence. Article 47 is based on article 36 of the Ipswich Barrier Order and article 35 of the Ouseburn Order.

Article 48 (*Removal of vessels*) would provide the Agency with powers in respect of any vessel which is sunk, stranded or abandoned in the river lying within limits of deviation. The Agency may, after giving 21 days' written notice to the vessel owner, raise, remove, store or otherwise dispose of the vessel. The Agency need not give such notice in emergency cases. Where a vessel is moored or left adjoining riparian property the Agency must give one month's notice and allow the property owner the opportunity to make representations to the Agency. Paragraph (2) provides that this power is not exercisable should the harbour authority have authority to act and determine to do so.

Paragraph (4) makes provision as to the form of notice to be given by the Agency. Such notice must identify the vessel in question, specify a period of time during which the owner must take steps to remove the vessel, failing which the Agency may act, and indicate that there is a right to refer the matter to arbitration.

Paragraph (5) would enable the Agency to recover from the owner of a vessel all expenses reasonably incurred in respect of removal of a vessel. Paragraph (7) makes provision for any vessel removed and not proven to the Agency to belong to any claimant within a period of 6 weeks to vest in the Agency. Paragraph (8) states that if, within a period of 12 months from the date of the vessel's removal, a person satisfies the Agency of his or her ownership of the vessel, the Agency shall either return the vessel to that person or, if it has been sold, pay the proceeds of sale, after deducting expenses, to that person.

Article 48 is based on article 37 of the Ipswich Barrier Order and article 37 of the Ouseburn Order.

Article 49 (*Arbitration in respect of removal of vessels*) makes provision for a person served with a notice under article 48 (*removal of vessels*) to serve a counter notice upon the Agency within a period of 21 days disputing the notice and any such dispute shall be determined by arbitration pursuant to article 68 (*arbitration*). Paragraph (2) provides that the arbitrator shall dismiss any dispute to the extent that it is based on an informality, defect or error that is not material.

Article 50 (*Removal of obstructions other than vessels*) would provide the Agency with powers in respect of anything, other than a vessel, causing an obstruction or impediment to navigation or use of the river lying within the limits of deviation. The Agency may, by giving not less than 21 days' written notice to the owner of the obstruction or the land on which it is situated, require that owner to remove, mark or modify the obstruction. If the owner fails to take any action specified by the Agency, the Agency may take such action and recover the reasonable costs of doing so from the owner. Paragraph (2) provides that this power is not exercisable should the harbour authority have authority to act and determine to do so.

Article 51 (*Arbitration in respect of removal of obstructions other than vessels*) makes provision for a person served with a notice under article 51(2) (requiring that person to modify, remove or mark an obstruction) or under article 51(7) (informing them that the Agency intends to modify, remove or mark an obstruction) to serve a counter notice upon the Agency within a period of 21 days disputing the notice and specifies the grounds upon which each type of notice may be disputed. Any such dispute shall be determined by arbitration pursuant to article 68 (*arbitration*).

Article 52 (*Emergency powers and consents*) provides that the Agency may exercise powers under article 48 (*Removal of vessels*) and 50 (*Removal of obstructions other than vessels*) without giving prior notice to the harbour authority in an emergency.

Article 53 (*Byelaws*) finds precedent in article 42 of the Ipswich Barrier Order and article 44 of the Ouseburn Order and would provide the Agency, subject to the consent of the harbour authority, with the power to make byelaws in relation to the navigation and use of those parts of the river which fall within the limits of deviation and for its good management in connection with such navigation and use. Paragraph (2) specifies the purposes for which byelaws may be made.

PART 6

PROTECTIVE PROVISIONS

Part 6 of the Order contains protective provisions.

Article 54 (*Statutory undertakers, etc.*) introduces Schedule 6 (*statutory undertakers, etc.*) to the Order which contains specific safeguards for statutory undertakers.

Article 55 (*Protective provisions*) introduces Schedule 7 (*protection for electricity, gas, water and sewerage undertakers*) and Schedule 8 (*protection of Port of Boston*) to the Order each of which contain detailed protection for specific bodies.

Article 56 (*Saving for Trinity House*) provides that nothing in the Order shall prejudice or derogate from the powers, rights, privileges, jurisdiction or authority of Trinity House.

Article 57 (*Crown rights*) provides that nothing in the Order shall prejudicially affect any estate, right, power, privilege or exemption of the Crown. In particular, it specifies that nothing in the Order shall authorise the Agency to take, use, enter upon or interfere with Crown land without the consent of the Crown Estate Commissioners.

Article 58 (*Minerals*) provides that nothing in the Order shall affect the right of any person entitled to any mine or minerals.

PART 7

MISCELLANEOUS AND GENERAL

Part 7 of the Order contains a number of miscellaneous and general provisions.

Article 59 (*Temporary traffic regulation*) enables the Agency to make provision for traffic regulation during construction of the works. This provision is well precedented; see, for example, article 50 of The Nottingham Express Transit System Order 2009 (S.I. 2009/1300) and article 40 of The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102).

Article 60 (*Power of disposal, agreements for operation, etc.*) would confer powers for the sale, lease, charging and disposal of the authorised works. This article departs from the model clauses materially and has been amended to allow the Agency to make the kind of agreements that need to be made for the procurement of a project like the Boston Barrier. The article has precedent in article 44 of the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905) and article 41 of The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102). It contains an addition to these precedents, at paragraph (7), to prohibit the Agency from transferring its powers under article 53 (*Byelaws*). Paragraph (2) clarifies that it is not necessary for the Agency to secure the Secretary of State's consent for the transfer of Work Nos. 3A and 3B to the harbour authority.

Article 61 (*Obstructing execution of Order*) would make obstructing the construction of the authorised works or interfering with apparatus belonging to a person acting under the authority of the Agency a criminal offence.

Article 62 (*Defence of due diligence*) would provide the Agency with a defence against proceedings for an offence under Part 3 (Provisions relating to tidal works) in circumstances where it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. This provision mirrors article 51 of the Ipswich Barrier Order and article 52 of the Ouseburn Order.

Article 63 (*Application of landlord and tenant law*) would override the application of landlord and tenant law in so far as it may prejudice agreements for the leasing of the authorised works.

Article 64 (*Defence to proceedings in respect of statutory nuisance*) provides that no one shall be able to bring statutory nuisance proceedings under section 82(1) of the Environmental Protection Act 1990 (c. 43) in respect of noise if the noise is created in the course of carrying out the works authorised by this Order and which are unavoidable or works for which notice has been given under section 60, or consent been obtained under sections

61 or 65 of the Control of Pollution Act 1974 (c. 40). Such a provision is not in the model clauses but is common in other Orders (for example see article 52 of the Ipswich Barrier Order) and is necessary for projects of this type.

Article 65 (*Disclosure of confidential information*) makes it a criminal offence to disclose certain confidential information obtained upon entry to certain premises under article 22 (*Protective works*) or article 24 (*Power to survey and investigate land, etc.*) of the Order.

Article 66 (*Local legislation*) makes provision for the disapplication of certain local legislation and byelaws. It is based on article 47 of the National Grid (Hinkley Point C Connection Project) Development Consent Order 2016 (S.I. 2016/0049), made under the Planning Act 2008, with details of the local legislation and byelaws affected provided in Schedule 9 (*amendment of local legislation*) to the Order.

Article 67 (*Certification of plans etc.*) would require the Agency to submit copies of the book of reference, the sections, the land plan, the public rights of way plan and the works plans to the Secretary of State for certification as true copies, following the making of the Order.

Article 68 (*Arbitration*) makes provision for differences arising under any provision of the Order, other than those referred to the Upper Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.

Article 69 (*No double recovery*) makes provision to ensure that any compensation is not payable both under this Order and other compensation regimes for the same loss or damage.

Article 70 (*Service of notices*) makes provision as to the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served.

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