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STATUTORY INSTRUMENTS

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**2006 No. 2310**

The Borough of Poole (Poole Harbour  
Opening Bridges) Order 2006

PART 1

PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Borough of Poole (Poole Harbour Opening Bridges) Order 2006 and shall come into force on 14th September 2006.

**Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 2003 Act” means the Communications Act 2003(7);

“the Application Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992;

“the authorised works” means the scheduled works and any other works authorised by this Order;

“the Back Water Channel” means the navigable channel between Holes Bay and Poole Harbour between reference points 401000E, 090200N and 400400E, 091350N;

“the Board” means Poole Harbour Bridges Operating Board;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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(1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) 1980 c. 66.  
(4) 1981 c. 66.  
(5) 1990 c. 8.  
(6) 1991 c. 22.  
(7) 2003 c. 21.

“the bridges” means the new bridge and the existing bridge or either of them where the context so requires;

“the Commissioners” means Poole Harbour Commissioners;

“the Council” means the Council of the Borough and County of the Town of Poole;

“the deposited plans” means the plans prepared pursuant to rule 12(1)(a) and (3) of the Applications Rules and certified by the Secretary of State as “the deposited plans” for the purposes of this Order;

“the deposited sections” means the sections certified by the Secretary of State as “the deposited sections” for the purposes of this Order;

“designated area” means the lands shown on the deposited plans and numbered 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 42 and 46 in the Borough of Poole;

“the existing bridge” means the existing opening bridge crossing the Back Water Channel and known as Poole Bridge;

“footpath”, “highway” and “highway authority” have the same meanings as in the 1980 Act;

“the harbour master” means the harbour master appointed by the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act as harbour master;

“the level of high water” means the level of mean high water springs;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“the limits of dredging” means the lines marked “limits of dredging” shown on the deposited plans;

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“mooring” means any buoy, pile, post, chain, pillar, pontoon, fixed rail or like apparatus or convenience provided or used for the mooring of vessels;

“the new bridge” means the works referred to in Schedule 1 to this Order;

“the Order limits” means any limits of deviation, any limits of dredging and any additional limits of land to be acquired or used which are shown on the deposited plans;

“scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is in, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond; and

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(8).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface and references to the subsoil of any land include references to any arch or other construction forming part of any such land.

(3) References in this Order to points identified by letters shall be construed as references to the points so marked on the deposited plans.

(4) References in this Order to reference points shall be construed as references to Ordnance Survey National Grid Reference points.

(5) All distances, directions, lengths and reference points stated in the description of the scheduled works or in any descriptions of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction, length, reference point and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

## PART 2 WORKS PROVISIONS

### *Principal powers*

#### **Power to construct etc. works**

3.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works may only be constructed in the lines and situations shown on the deposited plans within the limits of deviation and in accordance with the levels shown on the deposited sections.

(3) The Council may operate the new bridge and may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to install, or alter the position of, apparatus, including mains, sewers, drains and cables; and
- (b) works for the benefit or protection of premises affected by the scheduled works.

#### **Power to deviate**

4.—(1) In constructing or maintaining the scheduled works, the Council may, subject to paragraph (2), deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the deposited sections—

- (a) to any extent not exceeding 3 metres upwards as to any part of the scheduled works;
- (b) to any extent not exceeding 0.2 metre downwards as to the decking of the new bridge; and
- (c) to any extent downwards as to any other part of the scheduled works.

(2) In constructing the new bridge the Council shall provide headroom of not less than 2.5 metres above the level of high water over the central navigation channel.

#### **Power to make subsidiary works**

5.—(1) Subject to the provisions of this Order the Council may from time to time within the Order limits or on any land vested in the Council at the date of the making of this Order, construct and maintain, whether temporarily or permanently, all such works as may be requisite or expedient for

the purposes of, or for purposes ancillary to, the construction, maintenance and use of the scheduled works.

(2) Without prejudice to the generality of paragraph (1), the Council may within the lands delineated on the deposited plans and thereon numbered 39 in the Borough of Poole construct and maintain a control centre for the purposes of operating the new bridge.

(3) Without prejudice to the generality of paragraph (1) the Council may within the designated area, for the purposes of or in connection with the construction, operation or maintenance of the scheduled works—

- (a) construct, place, alter, relocate or replace any work, mooring or structure whether temporary or permanent;
- (b) use, appropriate and dispose of any materials obtained by it in carrying out any such operations;
- (c) remove or relocate any mooring; and
- (d) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the authorised works,

in such manner and to such extent as may appear to the Council to be necessary or convenient.

(4) Except in the case of emergency, the Council will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (3)(a) or (c) before the exercise of those powers.

(5) The Council shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph 3(a) and (c).

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation shall be determined under Part 1 of the 1961 Act.

#### **Power to dredge for purposes of authorised works, etc.**

6.—(1) The Council, for the purposes of constructing and maintaining the scheduled works, may within the limits of dredging from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the Back Water Channel.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council thinks fit.

(3) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

#### *Streets*

#### **Power to execute street works**

7.—(1) The Council may, for the purposes of the authorised works, enter upon so much of West Quay Road and Wilkins Way in the Borough of Poole, and may—

- (a) break up or open the surface of either street, or any sewer, drain or tunnel under those streets, or tunnel or bore under those streets;

- (b) place apparatus in those streets;
  - (c) maintain apparatus in those streets or change its position or remove it from those streets; and
  - (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).
- (2) This article is subject to paragraph 3 of Schedule 8 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Stopping up of streets and extinguishment of rights**

8.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up Wilkins Way in the Borough of Poole within the limits of deviation for the scheduled works.

- (2) Wilkins Way shall not be wholly or partly stopped up under this article unless either—
- (a) the scheduled works have been completed to the reasonable satisfaction of the street authority and are open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used Wilkins Way is first provided and thereafter maintained by the Council, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a).
- (3) Where Wilkins Way has been stopped up under this article—
- (a) all rights of way over or along that part of Wilkins Way so stopped up shall be extinguished; and
  - (b) the Council may appropriate and use for the purposes of the authorised works so much of the site of Wilkins Way as is bounded on both sides by land owned by the Council.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to paragraph 2 of Schedule 8 to this Order.

### **Temporary stopping up of streets**

9.—(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
  - (b) subject to paragraph (2), prevent all persons from passing along the street.
- (2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers conferred by this article in relation to Wilkins Way and West Quay Road in the Borough of Poole.
- (4) The Council shall not exercise the powers of this article—
- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
  - (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(6) The provisions of the 1991 Act referred to in paragraph (5) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of Councils to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

#### **Access to works**

**10.** The Council may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation shown on the deposited plans within the boundaries of the street in question, as the Council reasonably requires for the purposes of the authorised works and as may be approved by the highway authority but such approval shall not be unreasonably withheld.

#### **Construction and maintenance of new or altered streets**

**11.—(1)** Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

(4) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

#### **Agreements with street authorities**

**12.—(1)** A street authority and the Council may enter into agreements with respect to—

- (a) the construction of any new street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 7 (1).

- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### *Supplementary*

#### **Provisions relating to operation of bridges**

**13.**—(1) The Council shall open the bridges in accordance with the following provisions of this article for the purpose of facilitating navigation over the Back Water Channel.

(2) The bridges shall be opened by the Council on such occasions and for such period on each such occasion as may be specified in a programme which the Council shall determine from time to time in consultation with the Board.

(3) When determining the programme of openings required by paragraph (2) the Council shall allow for the reasonable requirements of vessels navigating, or seeking to navigate, over the Back Water Channel.

(4) Subject to paragraph (5), the Council shall also open the bridges on the date and at the time specified in a notice (whether written or not) given by the operator of any vessel over 40 metres in length which is to pass beneath the bridges, if that notice is given at least 24 hours before the day and time specified in that notice and in accordance with the requirements for giving such a notice specified in the arrangements published pursuant to paragraph (8).

(5) Where notice has been given pursuant to paragraph (4), the Council may delay the time at which the bridges are to be opened for up to half an hour after the time specified in that notice, if the Council is of the reasonable opinion that opening the bridges at the time specified in the notice would interfere unreasonably with the passage of vehicles, pedestrians, cyclists and other road users over the bridges and if the Council has on forming that opinion forthwith notified the operator of the vessel in question of the time at which the bridges will be opened.

(6) The requirement in paragraph (4) to give at least 24 hours' notice shall not apply where, in the case of an emergency, it is necessary for a vessel to navigate beneath the bridges; but in such a case the master of the vessel shall give such notice as is practicable and paragraph (5) shall not apply.

(7) Notwithstanding paragraph (4), the harbour master may at any time instruct the Council to open the bridges in stress of weather conditions, or in an emergency, or if in the reasonable opinion of the harbour master the opening of the bridges is required to preserve safe navigation within the Back Water Channel.

(8) The Council shall publish in notices displayed in a prominent position at each end of each of the bridges, and in such other positions as the Council deems advisable in order to attract the attention of those operating vessels and vehicles and of pedestrians, cyclists and other road users using the bridges, the arrangements made from time to time in relation to the opening of the bridges, including—

- (a) the procedure for opening the bridges in accordance with paragraphs (4) to (6); and
- (b) the address and telephone number of the person to whom the notice required by paragraph (4) is to be given.

#### **Drainage of authorised works**

**14.**—(1) The Council may use the Back Water Channel or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and

for those purposes may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with any sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(9)</sup>.

(3) The Council shall not discharge any water into any public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(4) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 89(1), (2), or (3) of the Water Resources Act 1991<sup>(10)</sup>.

(5) The Council shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where the authority has been given the opportunity to supervise the making of the opening.

(6) The Council shall take such steps as are reasonably practicable to secure that any water discharged into the Back Water Channel or any public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(7) In this article—

- (a) “authority” means either a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Protective works to buildings**

**15.**—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of the building, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Council may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and

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<sup>(9)</sup> 1991 c. 56.

<sup>(10)</sup> 1991 c. 57.



- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising a right—

- (a) under paragraph (1) to carry out protective works to a building;
- (b) under paragraph (3) to enter a building and land within its curtilage;
- (c) under paragraph (4)(a) to enter a building or land within its curtilage; or
- (d) under paragraph (4)(b) to enter land,

the Council shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 50.

(7) The Council shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the Council shall compensate the owners and occupiers of the buildings for any loss or damage sustained by them.

(9) Without prejudice to article 49, nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) “protective works”, in relation to a building means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

### **Power to survey and investigate land**

**16.—(1)** The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
  - (d) place on, leave on and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
  - (e) enter on the land included in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from land under paragraph (1) unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Council—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary to exercise any of the powers conferred by paragraph (1).
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the highway authority, but such consent shall not be unreasonably withheld.
- (5) The Council shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### **Temporary closing of the Back Water Channel in connection with works**

17.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close the Back Water Channel, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

- (2) In exercise of the powers conferred by paragraph (1)—
- (a) the Council shall execute such works or do such things as may be required to ensure that at any time no more of the Back Water Channel is closed than is reasonably necessary in all the circumstances; and
  - (b) should it be necessary at any time to close the whole of the Back Water Channel to navigation, the Council shall use its best endeavours to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the Back Water Channel.
- (3) Before exercising the power conferred by paragraph (1) the Council, after consulting the Commissioners, shall—
- (a) publish a notice of its intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Poole, with an interval between the dates of publication of not less than 6 clear days; and
  - (b) display notice of its intention in a conspicuous position adjacent to the Back Water Channel.
- (4) Each of the notices required by paragraph (3) shall—
- (a) state that the Council intends to execute the works or to do anything authorised by or under this Order (as the case may be) and for that purpose to close temporarily the Back Water Channel or such part of the Back Water Channel as is specified in the notice to navigation; and
  - (b) specify a date, which shall be a date not earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3)(a), and the duration of the closure.

## PART 3 ACQUISITION AND POSSESSION OF LAND

### *Powers of acquisition*

#### **Power to acquire land**

**18.**—(1) The Council may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works and not being land referred to in sub-paragraph (b); and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

and may use any land so acquired for those purposes or for any other purposes ancillary to the construction and maintenance of the authorised works.

(2) This article is subject to articles 21 and 23(8).

#### **Application of Part 1 of Compulsory Purchase Act 1965**

**19.**—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981<sup>(11)</sup> applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
  - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
  - (ii) in any other case, a reference to notice of 3 months.

#### **Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**20.**—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

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(11) 1981 c. 67.

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 18.

### **Power to acquire new rights**

**21.**—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 18 as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 3 to this Order), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in it.

(3) Schedule 3 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

**22.**—(1) The Council may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 18 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Subject to paragraph (3), where the Council acquires any part of the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent section 8 of the 1965 Act or article 26 from applying where the Council acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

### *Temporary possession of land*

#### **Temporary use of land for construction of works**

**23.**—(1) The Council may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 4 to this Order for the purposes specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of the land under this article the Council shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Council may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the works specified in relation to that land in column (3) of Schedule 4 to this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Council shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Council shall not be required to replace any building removed under this article.

(5) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 49, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the Council shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 21; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22.

(9) Where the Council takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article “building” includes structure or any other erection.

#### **Temporary use of land for maintenance of works**

**24.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the Council may—

- (a) enter upon and take temporary possession of any land within the limits of deviation and lying within 20 metres from that work if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the Council to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Council shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The Council may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Council shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 49, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the Council takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article—

- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use; and
- (b) “building” includes structure or any other erection.

### *Compensation*

#### **Disregard of certain interests and improvements**

**25.—**(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with the intention of obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### *Supplementary*

#### **Acquisition of part only of certain properties**

**26.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 19) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Council a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the Council agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Council is authorised to acquire compulsorily under this Order.

(8) If the Council agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and

(b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Council is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Council may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell part only of a house, building or factory or of land consisting of a house with a park or garden, the Council shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

### **Extinction or suspension of private rights of way**

**27.**—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the acquisition of the land by the Council, whether compulsorily or by agreement, or
- (b) on the entry on the land by the Council under section 11(1) of the 1965 Act, whichever is sooner.

(2) All private rights of way over land of which the Council takes temporary possession under this Order shall be suspended and unenforceable for as long as the Council remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act or paragraph 2 of Schedule 8 to this Order applies.

### **Use of subsoil**

**28.**—(1) The Council may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of paragraph (1)(a) and (b) of article 18 as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

(2) The Council shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(3) Paragraphs (1) and (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting onto, or abutting or lying under, the street.



### **Time limit for exercise of powers of acquisition**

**29.**—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 19; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 20.

(2) The powers conferred by article 23 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Council remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 4**

### **PROVISIONS RELATING TO TIDAL WORKS**

#### **Tidal works not to be executed without approval of Secretary of State**

**30.**—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the Council at its own expense to remove the tidal work and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Council, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice, or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

#### **Lights on tidal works**

**31.**—(1) The Council shall, at or near a tidal work during the whole time of the construction, alteration, replacement or relaying thereof, exhibit every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State or the Commissioners or, failing agreement between them, the Secretary of State shall from time to time direct.

(2) If the Council fails to comply with any requirement of a direction given under paragraph (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Provision against danger to navigation**

**32.**—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof the Council shall as soon as reasonably practicable notify Trinity House and the Commissioners and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to

navigation as Trinity House or the Commissioners or, failing agreement between them, as Trinity House may from time to time direct.

(2) If the Council fails to notify Trinity House and the Commissioners as required by paragraph (1) or to comply with any requirement of a direction under it, the Council shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Abatement of works abandoned or decayed**

**33.**—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or the Commissioners may by notice in writing require the Council at its own expense either to repair and restore the work or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as either of them thinks fit.

(2) Where—

- (a) a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay, and
- (b) that part of the work on or over land above the level of high water is in such a condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore,

the Secretary of State or the Commissioners may include that part of the work, or any portion thereof, in any notice under paragraph (1).

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Council, it has failed to comply with the requirements of the notice, the Secretary of State or the Commissioners may execute the work specified in the notice and any expenditure incurred by either of them in so doing shall be recoverable from the Council.

#### **Survey of tidal works**

**34.** If either of them deems it expedient, the Secretary of State or the Commissioners may at any time order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by either of them in relation to any such survey and examination shall be recoverable from the Council.

#### **Permanent lights on tidal works**

**35.**—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House or the Commissioners or, failing agreement between them, as Trinity House may from time to time direct.

(2) If the Council fails to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Obstruction of authorised works and misuse of new bridge**

**36.** Any person who without lawful authority or excuse—

- (a) obstructs another person from constructing any of the authorised works;
- (b) closes or opens the bridges; or
- (c) in any other way interferes with the bridges or their operation,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Removal of vessels**

**37.**—(1) If it appears to the Council necessary or convenient to do so for the purposes of the construction or maintenance of the authorised works, or to enable vessels to navigate through the Back Water Channel, it may, having first consulted the harbour master, remove from within the designated area, any vessel that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

either to another place within the designated area or to a place outside the designated area where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1) the Council shall—

- (a) publish a notice of its intention to do so in Lloyd’s List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Poole, with an interval between the dates of publication of not less than 6 clear days; and
- (b) display notice thereof in a conspicuous position adjacent to Back Water Channel.

(3) Each of the notices shall—

- (a) state the reason for requiring removal of any vessel from within that part of the designated area specified in the notice; and
- (b) specify a date, which shall be a date not earlier than one month after the last date on which a notice is published pursuant to paragraph (2)(a), by which all vessels must be removed from within that part of the designated area specified in the notice.

(4) If the owner or master of any vessel within the designated area does not remove that vessel from within the designated area before the date specified in accordance with paragraph (3)(b), the Council may, having first consulted the harbour master, cause that vessel to be removed.

(5) The Council may recover as a debt from the owner of any vessel removed pursuant to paragraph (4) all expenses incurred by the Council in respect of its removal.

### **Removal of obstructions**

**38.**—(1) If any obstruction is caused to the operation of opening or closing the bridges by any object being left on the bridges, the person in charge of the object shall remove it forthwith; and if he fails to do so the Council may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the object was put or left so as to become an obstruction to the operation of the bridges; or
- (b) any person who was the owner of the object at that time unless he shows that he was not, at that time, concerned in or aware of the object being so put or left.

(2) Paragraph (1) shall not apply to any obstruction to passage over any part of the bridges which forms part of a highway which shall be subject to proceedings under either section 137 or 149 of the 1980 Act.

## PART 5

### MISCELLANEOUS AND GENERAL

#### Power to make byelaws

**39.**—(1) The Council may make byelaws regulating the use and operation of the bridges and the conduct of all persons passing over the bridges or of all vessels passing through the opening spans thereof or otherwise navigating or mooring within the designated area.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may make provision—

- (a) with respect to interference with, or obstruction of, the operation of the bridges;
- (b) for prohibiting or restricting the placing or leaving of any object on any part of the bridges; and
- (c) for prohibiting the mooring of vessels alongside any part of the bridges or otherwise within such part of the designated area specified in any notice published and displayed by the Council in the manner specified in article 37(2).

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any byelaw made under this article may require the payment, on application for any consent, licence or other authorisation required by the byelaw, of such reasonable fees as the Council may determine.

(5) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972<sup>(12)</sup> (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Council under this article.

(6) The said section 236, in its application to any byelaws made under this article, shall be modified—

- (a) by the insertion at the end of subsection (4) of the words “and in Lloyd’s List or some other newspaper specialising in shipping news”; and
- (b) subject to paragraph (7), by the insertion in subsection (7) of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.

(7) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

- (a) it shall inform the Council and require it to take any steps which the confirming authority considers to be necessary for informing persons likely to be concerned with the modification; and
- (b) it shall not confirm the byelaws until such period has elapsed as it thinks reasonable for the consideration of, and comment upon, the proposed modification by the Council and by any other persons who have, or are likely to have, been informed of it.

(8) The confirming authority for the purposes of the said section 236 in its application to byelaws made under this article shall be the Secretary of State.

(9) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or

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(12) 1972 c. 70.

- (b) that he had a reasonable excuse for his act or failure to act.

### **Saving for Trinity House**

40. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

### **Protection of Poole Harbour Commissioners**

41. For the protection of Poole Harbour Commissioners, Schedule 5 shall have effect.

### **Further protection of Poole Harbour Commissioners and users of the Back Water Channel**

42. For the further protection of the Commissioners and users of the Back Water Channel, the scheme of arrangements specified in Schedule 6 to this Order shall be binding upon the Council and the Commissioners and effect shall be given thereto save that—

- (a) the terms of paragraphs 2 to 4 of Schedule 6 to this Order may, with the consent of the Secretary of State, be varied in writing between the Council and the Commissioners; and
- (b) the terms of paragraphs 5 to 13 of Schedule 6 to the Order may be varied in writing between the Council and the Commissioners.

### **For the protection of the Environment Agency**

43. For the protection of the Environment Agency, Schedule 7 to this Order shall have effect.

### **Statutory undertakers, etc.**

44. The provisions of Schedule 8 to this Order shall have effect.

### **Management arrangements**

45.—(1) The Council may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of the authorised works, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Council or by any other person.

(2) Any agreement under paragraph (1) may provide for the exercise by another person of the powers of the Council in respect of the authorised works.

(3) The Council may at any time lease the authorised works to another person on such terms and conditions as may be agreed.

(4) The exercise of the powers of the Council in respect of the authorised works by any person pursuant to any agreement under paragraph (1) shall be subject to the restrictions, liabilities and obligations applicable under this Order in relation to the exercise of those powers by the Council and in accordance with any restrictions, liabilities and obligations entered into by the Council in connection with this Order.

### **Repeals and revocations**

46.—(1) Upon the date of coming into effect of this Order, the enactments mentioned in columns (1) and (2) of Part 1 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

(2) Upon the date of coming into effect of byelaws made under section 236(7) of the Local Government Act 1972 as applied by article 39(5), the enactments regulating the operation of the existing bridge mentioned in columns (1) and (2) of Part 2 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

### **Certification of plans, etc.**

47. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections and plans referred to in this Order, and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

48.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) subject to paragraphs (5), (6), (7) and (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(13) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where, for the purposes of this Order, a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order he shall—

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(13) 1978 c. 30.

- (a) give notice in writing revoking any consent given by him for that purpose; and
  - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

**No double recovery**

**49.** Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

**Arbitration**

**50.** Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

*Ellis Harvey*  
Head of the Transport and Works Act Orders  
Unit,  
Department for Transport

24th August 2006