

2007 No. 608

TRANSPORT AND WORKS, ENGLAND

The Ouseburn Barrage Order 2007

Made - - - - - 26th February 2007

Coming into force - - - 19th March 2007



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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000^(a) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992^(b) (“the 1992 Act”) for an Order under sections 3(1)(b) and 5 of the 1992 Act.

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals.

The Secretary of State is satisfied that the provision of an alternative right of way for the street mentioned in Schedule 3 (street to be stopped up for which no substitute is to be provided) to this Order is not required.

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964^(c).

Notice of the Secretary of State’s determination was published in the London Gazette on 6th February 2007.

^(a) S.I. 2000/2190.

^(b) 1992 c. 42.

^(c) 1964 c. 40.

Accordingly, the Secretary of State in exercise of the powers conferred by sections 3(1)(b) and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13 and 15 to 17 of Schedule 1 to, the 1992 Act and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992(a) makes the following Order:—

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Ouseburn Barrage Order 2007 and shall come into force on 19th March 2007.

Interpretation

2.—(1) In this Order—

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

“the 1990 Act” means the Port of Tyne Act 1990(c);

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

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

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

“the book of reference” means the book of reference prepared in accordance with rule 12(7) of the Applications Rules and certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes structure or any other erection or any part of a building, structure or erection;

“the Council” means the Council of the City of Newcastle upon Tyne;

“enactment” means any enactment, whether public, general or local and includes any order, byelaw, rule, regulation, direction, scheme or other instrument having effect by virtue of an enactment;

“the Glasshouse Bridge” means the bridge over the Ouseburn carrying the A186 City Road (which is also known as Glasshouse Bridge) from National Grid reference point 426351, 564198 in the west to its junction with Walker Road at National Grid reference point 426501, 564199 in the east;

“highway” and “highway authority” have the same meanings as in the Highways Act 1980(e);

“the land plan” means the plan prepared in accordance with rule 12(5) of the Applications Rules and certified by the Secretary of State as the land plan for the purposes of this Order;

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

“the limits of deviation” means the lateral limits of deviation for the scheduled works shown on the works plans and the land plan;

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

“the lock gates” means all or any of the movable gates or the movable gates support beam forming part of the scheduled works;

“the Low Level Bridge” means the bridge over the Ouseburn which is part of the unclassified highway known as Quayside from National Grid reference point 426435, 564163 in the west to National Grid reference point 426457, 564152 in the east;

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

“Northumbrian Water” means Northumbrian Water Limited;

(a) S.I. 1992/3230 as amended by S.I. 1997/2906.

(b) 1965 c. 56.

(c) 1990 c. xxxi.

(d) 1991 c. 22.

(e) 1980 c. 66.

“the Ouseburn” means the Ouseburn from its confluence with the River Tyne at National Grid reference point 426469 564068 to the Ouseburn Culvert at National Grid reference point 426168 564695, and includes the bed, banks and foreshore of the Ouseburn;

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(a);

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

“the Port Authority” means the Port of Tyne Authority;

“the Port Health Authority” means the Tyne Port Health Authority;

“the River Tyne” means the River Tyne and its tributaries, but excludes the Ouseburn;

“the scheduled works” means the works specified in Schedule 1 (description of the scheduled works) or any part of them;

“scouring” includes disturbance or collapse of the foreshore or bed of the Ouseburn;

“the sections” means the sections prepared in accordance with rule 12(3) of the Applications Rules and certified by the Secretary of State as the sections for the purposes of this Order;

“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, on, 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;

“upstream Ouseburn” means that part of the Ouseburn lying between an imaginary line drawn across the upstream face of the Low Level Bridge and the Ouseburn Culvert at reference point 426168 564695;

“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(c);

“watercourse” includes all rivers, streams, ditches, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain but does not include the River Tyne; and

“the works plans” means the plans prepared in accordance with rule 12(1)(a) of the Applications Rules and certified by the Secretary of State as the works plans for the purpose of this Order.

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

(3) With the exception of the level of the crest of the weir as provided in article 4(2)(d), all directions, distances and reference points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after such direction, distance and reference point.

(4) 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 cellar, basement, vault, arch or other construction forming part of any such land.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct works and survey

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

(a) 1981 c. 67.

(b) 1990 c. 8.

(c) 1968 c. 59.

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) The Council may, within the limits of deviation, carry out and maintain such works for the benefit or protection of maritime traffic as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(4) Subject to paragraph (5), the Council 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 alter the position of apparatus, including mains, sewers, drains and cables;
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (c) works for the benefit or protection of premises affected by the scheduled works; and
- (d) monitoring and surveying the Ouseburn.

(5) Without prejudice to the generality of paragraph (4), within the limits of deviation or on any land to be acquired or used by the Council for the purposes of this Order the Council may, for the purposes of, and for purposes ancillary to, the construction or maintenance of the authorised works—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, river walls, bridges and footpaths;
- (b) make, provide and maintain all necessary or convenient—
 - (i) buildings, walls, banks, embankments, slipways, pavings, yards, moorings;
 - (ii) rollers and other facilities for transporting boats; and
 - (iii) piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, paths, mains, pipes, cables, wires, machinery works and appliances.

(6) Section 9 of the Salmon and Freshwater Fisheries Act 1975(a) shall not apply to the construction of the authorised works or to the alteration thereof.

(7) On the completion of any part of the works authorised by this article the Council shall remove all temporary works placed by it in exercise of the powers conferred by this article.

Power to deviate

4.—(1) Subject to paragraph (3), in constructing or maintaining any of the scheduled works the Council may deviate laterally from the lines or situations shown on the works plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the sections to any extent upwards or downwards.

(2) The scheduled works shall be so constructed that—

- (a) the unobstructed opening between the walls of the lock, as shown on the works plans and sections, is not less than 5 metres wide;
- (b) the headroom for vessels passing through the lock is not less than 5 metres above the crest level of the weir as specified in sub-paragraph (d);
- (c) the sills at each end of the lock are set at 1.5 metres below Ordnance Datum (Newlyn) or at such other level as may be agreed between the Council and the Port Authority to be the level of the bed of the Ouseburn at that point immediately before the construction of the scheduled works is commenced;
- (d) the level of the crest of the weir, as shown on the works plans and sections, is set at 2.6 metres above Ordnance Datum (Newlyn) with a tolerance of plus or minus 10 millimetres;
- (e) the width of the crest of the weir, as shown on the works plans, is not less than 5 metres; and
- (f) they shall not interfere with the structure of the Glasshouse Bridge.

(a) 1975 c. 51.

(3) Nothing in paragraph (4) or paragraph (5) of article 3 (power to construct works and survey) shall authorise the Council to execute any works in contravention of the restrictions imposed by paragraph (2) of this article.

Streets

Power to execute street works

5.—(1) The Council may, for purposes ancillary to the authorised works, enter upon so much of any of the streets specified in columns (1) and (2) of Schedule 2 (streets subject to street works and to be temporarily stopped up) as is within the limits of land to be acquired or used and may—

- (a) break up or open the street, or any sewer, drain, or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets and extinguishment of rights

6.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 3 (street to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(2) Where a street has been stopped up under this article, all rights of way over or along the street so stopped up shall be extinguished.

(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 Land Compensation Act 1961(a).

(4) This article is subject to paragraph 2 of Schedule 5 (provisions relating to statutory undertakers etc.).

Temporary stopping up of streets

7.—(1) The Council may, during and for the purpose of carrying out the authorised works, temporarily stop up, alter or divert any street specified in columns (1) and (2) of Schedule 2 (streets subject to street works and to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule and may for any reasonable time—

- (a) divert the traffic from the street;
- (b) subject to paragraph (2), prevent all persons from passing along the street; and
- (c) use the stopped up parts of the street as a temporary working site.

(2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the power conferred by this article if there would otherwise be no such access.

(3) The Council shall not exercise the powers conferred by this article in relation to any street specified as mentioned in paragraph (1) without first consulting the street authority.

(4) Any person who suffers loss by the 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 Land Compensation Act 1961.

(5) This article is subject to paragraph 2 of Schedule 5 (provisions relating to statutory undertakers etc.).

(a) 1961 c. 33.

Application of the 1991 Act

8.—(1) The provisions of the 1991 Act mentioned in paragraph (2) 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 Order 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.

- (2) The provisions of the 1991 Act referred to in paragraph (1) 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 undertakers 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.

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Supplementary powers and provisions

Power to dredge etc.

9.—(1) The Council may deepen, dredge and remove obstructions from the bed, foreshore and banks of, the Ouseburn—

- (a) for the purposes of the construction, operation or maintenance, of the scheduled works; or
- (b) for the purpose of facilitating the navigation of vessels; or
- (c) for the purpose of ensuring the water level upstream of the scheduled works is always higher than the level of the bed of the Ouseburn.

(2) The powers conferred by this article shall only be exercisable with the prior written consent of the Port Authority, such consent not to be unreasonably withheld.

(3) The Council shall pay compensation to all persons for any damage sustained by them by reason of the exercise by the Council of its powers under paragraph (1)(a) and the amount of the compensation to be paid, where not agreed, shall be determined by the tribunal.

(4) The Council may use, appropriate or sell or otherwise dispose of anything (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995(a)) removed in exercise of the power conferred in paragraph (1).

Cables, pipes or wires under or over tidal water or tidal lands

10. Notwithstanding anything in this Order, any cables, pipes or wires to be laid or placed by the Council pursuant to this Order (other than those laid or placed within or attached to the structure of the scheduled works) under or over any tidal waters or tidal lands below the level of high water shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Port Authority and the Environment Agency may require.

Ouseburn not to be a reservoir

11. Notwithstanding the provisions of subsection (2) of section 1 of the Reservoirs Act 1975(b), no part of the Ouseburn as is impounded by the scheduled works shall, by virtue of the retention of water by means of the scheduled works, be taken to be a reservoir for the purposes of that Act.

(a) 1995 c. 21.

(b) 1975 c. 23.

Agreements with owners of land and others for construction of works

12.—(1) The Council may enter into and carry into effect agreements or arrangements with the Port Authority, the Environment Agency and the owners of, or other persons interested in, any land in or through which any of the authorised works are or may be constructed, or the drainage of which may be affected by the construction of any of the authorised works, for or with respect to the doing of anything which may be necessary in order to carry out, or in consequence of, the authorised works.

(2) Without prejudice to the generality of paragraph (1), any such agreement may provide for—

- (a) the payment by the Council of, or the making of contributions by it towards, the cost incurred, or to be incurred, by the Port Authority, the Environment Agency and any such owners or other persons in or in connection with the doing of any such thing; or
- (b) the payment by the Council of compensation for any injury suffered or loss incurred by the Port Authority, the Environment Agency and any such owners or other persons by reason or in consequence of the execution by the Council of the authorised works, or entry upon land.

Temporary closing of Ouseburn in connection with works

13.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close the Ouseburn between the Low Level Bridge and the Ouseburn Culvert, or any part thereof, to navigation during or for the purposes of executing any works or doing anything authorised by or under this Order.

(2) The Council shall not exercise the powers conferred by paragraph (1) without the consent of the Port Authority (such consent not to be unreasonably withheld) and, in the exercise of those powers—

- (a) the Council shall so execute or do such works or things as to ensure that at any time no more of the Ouseburn is so closed than is reasonably necessary in all the circumstances; and
- (b) if it becomes necessary to close the Ouseburn completely to navigation, the Council shall use its best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the Ouseburn and that the minimum interference is caused to persons who may be using or intending to use the Ouseburn for the purposes of trade or business.

(3) Neither the Council nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person (save as provided in Part 1 of Schedule 6 (provisions for the protection of the Port Authority)) as a result, directly or indirectly, of any closure of the Ouseburn under paragraph (1).

(4) In the case of an emergency, the Council's powers under paragraph (1) may be exercised by the Council without the consent of the Port Authority provided that the Port Authority are informed of the action as soon as possible.

Diversion of flow of water

14. The Council may by means of the authorised works divert, intercept, stop up or otherwise interfere with the waters of, or the flow of water in, the Ouseburn.

Power to take, pump, impound and discharge water

15.—(1) The Council may take, impound and use water from, and discharge water into, the Ouseburn, and may pump any water required by it from or into the Ouseburn or pump any water found by it into the Ouseburn or into any watercourse, public sewer, or drain in connection with the construction or maintenance of the authorised works and for those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and may, on any land within the limits of deviation, make openings into, and connections with, the Ouseburn, or any watercourse, public 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^(a).

(3) The Council shall not, in exercise of the powers conferred by this article—

- (a) discharge any water into any public sewer or drain except with the consent (which shall not be unreasonably withheld) of the authority to which it belongs and subject to such terms and conditions as the said authority may reasonably impose;
- (b) make any opening into any public sewer or drain except in accordance with plans reasonably approved by and under the superintendence (if provided) of the authority to which the sewer or drain belongs; or
- (c) discharge any water into the Ouseburn or any other watercourse except with the consent (which shall not be unreasonably withheld) of the Port Authority or the authority to which it belongs and subject to such terms and conditions as the Port Authority may reasonably impose.

(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 85(1), (2) or (3) of the Water Resources Act 1991^(b).

(5) The Council shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain in exercise of 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.

(6) In the exercise of its powers conferred by this Order the Council shall not except with the consent of Northumbrian Water (which may be given subject to such terms and conditions as Northumbrian Water may reasonably impose) move, alter or break into any public sewer, lateral drain or disposal main which is at that time vested in Northumbrian Water and shown on the sewer map maintained by Northumbrian Water in accordance with section 199 of the Water Industry Act 1991.

(7) In this article—

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

Deposits in Ouseburn

16. Except so far as may be unavoidable in the construction of the authorised works, or in the exercise of the powers conferred by article 9 (power to dredge etc.) or article 15(1) (power to take, pump, impound and discharge water), the Council shall not, without the consent of the Environment Agency and Port Authority (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the Ouseburn any gravel, soil or other materials in the carrying out of the authorised works.

PART 3

PROVISIONS RELATING TO TIDAL WORKS

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

17.—(1) A tidal work shall not be constructed, altered or replaced 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 or any part thereof and restore the site thereof to its former

(a) 1991 c. 56.

(b) 1991 c. 57.

condition; and if, on the expiration of a period of 30 days from the date on which the notice is served, 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, or part of it, 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 during construction

18.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration or replacement 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 shall from time to time direct.

(2) If the Council fails to comply with any requirement of a direction reasonably 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.

Provisions against danger to navigation

19.—(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 shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Council fails to notify Trinity House 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

20.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Council at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State 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 may include that part of the work, or any portion thereof, in any notice under paragraph (1).

(3) If, on the expiration of a period of 30 days from the date on which a notice under this article is served, the Council has failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

Survey of tidal works

21. If he deems it expedient, the Secretary of State 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 tidal work, and any expenditure reasonably incurred by him in relation to any such survey and examination shall be recoverable from the Council.

Permanent lights on tidal works

22.—(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 may from time to time direct.

(2) If the Council fails to comply in any respect with a direction reasonably 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.

PART 4 ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

23. The Council may acquire compulsorily so much of the land shown on the land plan as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the scheduled works and may use any land so acquired for those purposes or for any other purposes that are ancillary to the scheduled works.

Application of Part 1 of Compulsory Purchase Act 1965

24.—(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(a) applies; and

(a) 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.

Vesting declarations

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(b) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), 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 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—

(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 in reversion; or

(a) 1981 c. 67.

(b) 1981 c. 66.

(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 23 (power to acquire land).

Power to acquire new rights

26.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in article 23 (power to acquire land) as may be required for any purpose for which that land may be acquired under that article, 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 4 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in that land.

(3) Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) 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

27.—(1) The Council may compulsorily acquire so much of the subsoil of the land referred to in article 23 (power to acquire land) 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) 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 article 30 (acquisition of part of certain properties) from applying where the Council acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Temporary possession of land

Temporary use of land for maintenance of works

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

(a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of 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 by the tribunal under Part 1 of the Land Compensation Act 1961.

(8) Without prejudice to article 55 (no double recovery), 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) of this article.

(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) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article, "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.

Compensation

Disregard of certain interests and improvements

29.—(1) In assessing the compensation 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 that person 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 of certain properties

30.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 24 (application of Part 1 of Compulsory Purchase Act 1965)) 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 manufactory 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 the 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 the 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 determine 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 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 only part of a house, building or manufactory 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 etc. over land

31.—(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 date of 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 owned by the Council which, being within the limits of land to be acquired or used shown on the land plan, are required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the Council.

(3) All private rights 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.

(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 Land Compensation Act 1961.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the planning Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 5 (provisions relating to statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

32. 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 24 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (vesting declarations).

PART 5

OPERATION OF SCHEDULED WORKS ETC.

Power to operate scheduled works

33.—(1) The Council may operate the scheduled works and among other things may—

- (a) open or close the lock gates; and
- (b) regulate the water level in so much of the Ouseburn as is impounded by the scheduled works.

(2) The power contained in paragraph (1) shall be exercised so as to safeguard and improve the environment and amenities of the Ouseburn.

(3) Paragraph (2) shall not prevent the exercise of the power contained in paragraph (1) in order—

- (a) to prevent or alleviate any emergency;
- (b) to release flood water;
- (c) to ascertain the safest and most effective ways of using the scheduled works, to test its working or to train staff in its operation;
- (d) to facilitate the construction, maintenance or re-laying of any works in or beside the upstream Ouseburn; or
- (e) to secure and maintain satisfactory navigation in the vicinity of the scheduled works and the upstream Ouseburn.

(4) When operating the scheduled works the Council shall have regard to—

- (a) the safety of vessels in, or passing to or from, the upstream Ouseburn or on the Ouseburn downstream of the scheduled works;
- (b) the requirements of vessels in, or passing to or from, the upstream Ouseburn (including the need to have freedom of access to moorings and berths in the upstream Ouseburn);
- (c) the desirability of developing and conserving flora and fauna in the upstream Ouseburn; and
- (d) any reasonable request of—
 - (i) the Port Authority or other navigation authority for the Ouseburn for the time being for or in connection with their functions;
 - (ii) the police or other emergency services;

- (iii) the Port Health Authority;
 - (iv) the Environment Agency; and
 - (v) Northumbrian Water.
- (5) The Council shall operate the scheduled works in accordance with—
- (a) any reasonable request of the Environment Agency or Northumbrian Water in order—
 - (i) to protect the quality of water in the Ouseburn;
 - (ii) to protect fish in the Ouseburn;
 - (iii) to prevent backflow into the sewerage system; or
 - (iv) to enable Northumbrian Water to undertake maintenance to the sewerage system;
 - (b) any reasonable requirement of the Port Authority as to the general programme for the operation of the scheduled works in order to secure satisfactory navigation in the Ouseburn.
- (6) Subject to paragraph (7), notice of a request under paragraph (5)(a)—
- (a) shall be given in writing by a duly authorised officer of the Environment Agency or as the case may be of Northumbrian Water; and
 - (b) shall be given as long as possible, but in any case not less than 24 hours, before the request is to be complied with.
- (7)(a) In an emergency, upon receipt of a request from either the Environment Agency or the Port Authority to operate the scheduled works, the Council shall as soon as practicable operate the scheduled works in accordance with such request.
- (b) A request made pursuant to sub-paragraph (a) may be given orally by a duly authorised officer of the Environment Agency or the Port Authority but if so given it shall be confirmed in writing as soon as practicable thereafter.
- (8) The Council shall consult Natural England to seek their view as to ways in which the scheduled works may be operated so as to develop and conserve flora and fauna in the upstream Ouseburn.
- (9) The Council shall give to the Environment Agency and the Port Authority as much notice as is reasonably practicable in the circumstances of its intention to operate both lock gates simultaneously for the following purposes—
- (a) enabling experiments to be carried out for or in connection with the development of the most effective use of the scheduled works;
 - (b) testing the scheduled works;
 - (c) exercising and instructing staff in the operation and control of the scheduled works;
 - (d) maintaining, the scheduled works, on such occasions as may be reasonably necessary, or removing the scheduled works;
 - (e) enabling statutory undertakers to place or maintain, apparatus in, on, under or over the Ouseburn;
 - (f) removing any debris or deposit of silt which may accumulate in the Ouseburn;
 - (g) combating an emergency (including one where a request has been made under paragraph (7)); or
 - (h) enabling riparian owners and others so entitled to repair walls and carry out other works in the upstream Ouseburn.
- (10) The Port Authority shall have regard to any notice given under paragraph (9) in exercising its powers to regulate the movement of vessels on the Ouseburn.
- (11) Subject as otherwise expressly provided in this Order, no liability shall arise in respect of any costs, damages, losses or expenses incurred by any person as a direct or indirect result of—
- (a) any obstruction to, delay of, or other interference with the passage of vessels; or
 - (b) any change in the level of water in the upstream Ouseburn,
- occasioned by the operation of the scheduled works unless the costs, damages, losses or expenses are incurred by reason of negligence in its operation.

Misuse of scheduled works, etc.

34. Any person who without lawful authority or reasonable excuse—

- (a) closes or opens the lock gates; or
- (b) in any other way interferes with the scheduled works or the operation thereof,

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

Navigation

Extinguishment of navigation rights etc. in upstream Ouseburn

35.—(1) All rights of navigation over the upstream Ouseburn whether public or private and however arising shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the authorised works.

(2) Subject to paragraph (1), all public rights of navigation over the upstream Ouseburn are preserved and continue to be effective.

(3) The Council shall pay compensation to any person who suffers damage or loss by reason of the extinguishment of rights of navigation by virtue of paragraph (1) and any question as to the amount of compensation so paid shall be determined by the tribunal.

(4) In assessing any compensation payable under paragraph (3), the tribunal shall take account of—

- (a) the extent to which the rights mentioned in paragraph (1) have been exercised during the period of 20 years calculated retrospectively from the date of the first impoundment; and
- (b) the preservation of rights of navigation over the upstream Ouseburn for navigation by virtue of paragraph (2).

Navigation etc. in vicinity of scheduled works

36.—(1) In this article, “in the vicinity of the scheduled works” means on or in the area of water between—

- (a) a point 20 metres upstream (along the centre line of the navigable Ouseburn) from the northernmost point of the central pier of the scheduled works; and
- (b) a point 20 metres downstream (along the centre line of the navigable Ouseburn) from the southernmost point of the central pier of the scheduled works.

(2) Any person who, other than in an emergency or with some other reasonable cause—

- (a) moors a vessel to any part of the scheduled works without the consent of the Council, except for the purpose of passing through the lock gates or under the Low Level Bridge or waiting to do so;
- (b) allows any vessel to drift in the vicinity of the scheduled works, except for the purpose of passing through the lock gates or waiting to do so; or
- (c) moors a vessel in the vicinity of the scheduled works so as to cause an obstruction to the access to or egress from the lock gates,

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) Whenever any vessel is sunk, stranded or abandoned in the Ouseburn lying within the limits of deviation, or without lawful authority left or moored in that part of the Ouseburn, the Council may, after giving (except in an emergency) not less than 21 days’ written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise, remove, store or otherwise dispose of the vessel.

(2) Subject to article 43 (emergency powers and consents), the power in paragraph (1) shall not be exercisable by the Council if—

- (a) it is within the powers of the Port Authority to deal with the vessel and the Port Authority decide to do so; and

(b) if the Council, having given not less than one month's notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.

(3) Where a vessel is left or moored adjoining riparian property the Council shall give not less than one month's notice to the owner or occupier of that property and such owner or occupier may make representations to the Council as to the proposed raising, removal, storage, or disposal of the vessel.

(4) Any notice given by the Council under paragraph (1) shall—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the Council may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and
- (c) indicate that there is a right to refer the matter to arbitration under article 38 (arbitration in respect of removal of vessels).

(5) The Council may recover from the owner of any such vessel all expenses reasonably incurred by the Council in respect of the raising, removal, storage or disposal of the vessel or in raising, removing, storing or disposing of any furniture, tackle and apparel of the vessel or any goods, chattels and effects raised or removed from the vessel.

(6) In any proceedings by the Council against a person served with a notice under paragraph (1) for the recovery of any expenses which the Council is entitled to recover from that person under paragraph (5), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 38.

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not within 6 weeks of its removal by the Council, proved to the Council's satisfaction to belong to any claimant, the vessel (together with any such furniture, tackle and apparel) shall vest in the Council.

(8) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Council that he was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the Council shall—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects on the vessel upon payment of the expenses referred to in paragraph (5); or
- (b) if the vessel and the furniture, tackle and apparel on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds are insufficient to reimburse the Council those expenses the deficiency may be recovered from that person by the Council.

(9) In this article—

“owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring thereof; and

“vessel” includes any part of a vessel.

Arbitration in respect of removal of vessels

38.—(1) Any person served with a notice by the Council under article 37(1) (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the Council disputing the notice and stating that—

- (a) the vessel is not sunk, stranded or abandoned in the Ouseburn lying within the limits of deviation or without lawful authority left or moored in that part of the Ouseburn; or
- (b) there has been some informality, defect or error in, or in connection with, the notice, and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(2) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator shall dismiss the dispute if he is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the dispute the arbitrator may confirm or set aside the notice.

Removal of obstructions other than vessels

39.—(1) This article applies to anything, other than a vessel, causing an obstruction or impediment to the navigation or use of the Ouseburn lying within the limits of deviation (in this article and article 40 referred to as an “obstruction”) and which the owner of the obstruction, or the owner or occupier of the land, as the case may be, caused or knowingly permitted to become or remain an obstruction.

(2) Subject to paragraph (3), the Council may by written notice require the owner of an obstruction or, if he is not known, the owner or occupier of any land on which the obstruction is situated to mark, modify or remove the obstruction.

(3) Subject to article 43 (emergency powers and consents), the power in paragraph (2) shall not be exercisable—

- (a) if it is within the powers of the Port Authority to deal with such obstruction and the Port Authority decide to do so; and
- (b) if the Council, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.

(4) If the owner of the obstruction, or the owner or occupier of the land, fails to take any action specified by the Council in a notice pursuant to paragraph (2), the Council may take that action and recover the reasonable costs of doing so from that person.

(5) In any proceedings by the Council against any person required to modify, remove or mark an obstruction under paragraph (2) for the recovery of costs which the Council is entitled to recover under paragraph (4), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 40 (arbitration in respect of removal of obstructions other than vessels).

(6) Subject to paragraph (13), the Council may—

- (a) mark an obstruction; or
- (b) modify or remove it,

in such circumstances as it considers fit.

(7) Before exercising its powers under paragraph (6), the Council shall, if it is reasonably practicable to do so, give not less than 21 days’ written notice of its intention to the owner or occupier of any land on which the obstruction is situated.

(8) If an obstruction removed by the Council under this article is so marked as to be readily identifiable as the property of any person, the Council shall within one month of its coming into the Council’s custody give written notice, in accordance with paragraph (12), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall vest in the Council at the end of that period.

(9) If an obstruction removed by the Council under this article, which is not marked as described in paragraph (8), is not within 3 months of its coming into the custody of the Council proved to the Council’s reasonable satisfaction to belong to any person, it shall vest in the Council.

(10) The Council may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (9) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that at the time it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance shall—

- (a) be paid to any person who, within 3 months from the time when the thing came into the custody of the Council, proves to the reasonable satisfaction of the Council that he was the owner of the thing at that time; or
- (b) if within the said period no person proves his ownership at that time, vest in the Council.

(11) If an obstruction removed by the Council under this article—

- (a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or
- (b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(12) A notice given under paragraph (8) shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Council and payment of the reasonable costs of the raising, removal and storage of the thing, possession may be retaken at the place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

(13) The Council shall not under the powers of this article remove, or require the removal of, or modify, or require the modification of, any obstruction specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act.

(14) In paragraph (1), reference to anything causing an obstruction or impediment to the navigation or use of the part of the Ouseburn lying within the limits of deviation is a reference to anything causing an obstruction or impediment to a vessel of a size customarily navigated or used on that part of the Ouseburn.

Arbitration in respect of removal of obstructions other than vessels

40.—(1) Any person required by the Council to modify, remove or mark an obstruction under article 39(2) (removal of obstructions other than vessels) may within 21 days of being so required serve a counter-notice on the Council disputing the notice on any of the following grounds which are justified by the circumstances of the particular case—

- (a) that the thing required to be marked, removed or modified is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act;
- (b) that the thing required to be marked, removed or modified is an obstruction which has occurred naturally and that to require its marking, removal or modification is unreasonable;
- (c) where the requirement is to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the requirement is to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(2) Any person served with a notice under article 39(7) may within 21 days of service of the notice serve a counter-notice on the Council disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing the Council intends to mark, remove or modify is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act;
- (b) that the thing the Council intends to mark, remove or modify is an obstruction which has occurred naturally and that to mark, remove or modify it is unreasonable;
- (c) where the Council intends to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the Council intends to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction.

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(3) On the hearing of a dispute under this article the arbitrator may confirm, vary or set aside the requirement or the notice, as the case may be.

Removal of projections

41.—(1) Without prejudice to article 39 (removal of obstructions other than vessels), the Council may by written notice require the owner or occupier of a projection which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels navigating or using the Ouseburn; or
- (b) a hindrance to the navigation or use of the Ouseburn,

to remedy its condition to the satisfaction of the Council within a period of time (being not less than one month) specified in the notice.

(2) Any notice served by the Council under this article shall—

- (a) specify the works or other operations required to be carried out;
- (b) have annexed to it a copy of this article and of article 42 (arbitration against notices under article 41); and
- (c) indicate that there is a right to refer the matter to arbitration under article 42.

(3) In serving a notice under this article the Council may impose such terms and conditions as it thinks fit as to how the works or other operations shall be carried out.

(4) If a person required by any notice served by the Council under paragraph (1) to execute works fails to execute the works required within the time specified in the notice, the Council may itself execute the works and recover the expenses reasonably incurred by it in so doing from that person.

(5) In proceedings by the Council against the person served with the notice for the recovery of any expenses which the Council is entitled to recover from that person under paragraph (4), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 42.

(6) In this article, “projection” means anything which projects over the Ouseburn lying within the limits of deviation and includes any tree, bush or other plant but does not include any such things authorised by or under statute or by a works licence under section 5 of the 1990 Act to be placed or constructed.

Arbitration against notices under article 41

42.—(1) The following provisions of this article shall apply in relation to any notice served by the Council under article 41 (removal of projections).

(2) A person served with such a notice may, within 21 days of service of the notice, serve a counter-notice on the Council disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the notice is not justified by the terms of article 41;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the Council has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on the occupier of the projection in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served; and
- (f) where the work is work for the common benefit of the projection in question and another projection, that the owner or occupier of the other projection to be benefited, ought to contribute towards the expenses of executing any works required,

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(3) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator shall dismiss the dispute if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which a dispute under this article is brought include a ground specified in paragraph (2)(e) or (f), the appellant shall serve a copy of the counter-notice on each other person referred to, and in the case of any dispute may serve a copy of the counter-notice on any other person having an estate or interest in the structure or embankment in question.

(5) On the hearing of the dispute the arbitrator may confirm or set aside the notice and may make such award as he thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work, or as to the proportions in which any expenses which may become recoverable by the Council are to be borne by the appellant and such other person.

(6) In exercising its powers under paragraph (5), the arbitrator shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required; and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

Emergency powers and consents

43. The Council's powers under articles 37 (removal of vessels), 39 (removal of obstructions other than vessels) and 41 (removal of projections) may be exercised by the Council in an emergency without prior notice to the Port Authority provided that the Port Authority are informed of the action as soon as possible thereafter.

Byelaws

Byelaws

44.—(1) In addition to its powers to make byelaws under any other enactment, the Council may make byelaws in relation to the navigation and use of those parts of the Ouseburn which fall within the limits of deviation, and for its good management in connection with such navigation and use.

(2) In particular, byelaws under paragraph (1) may be made for all or any of the following purposes—

- (a) for prohibiting or regulating recreational activities;
- (b) for regulating navigation and for the prevention of obstruction to navigation;
- (c) for regulating the speed and movement of vessels;
- (d) for securing the safety of vessels and persons using the scheduled works and of their property, and any property situated within the limits of deviation;
- (e) for regulating the passage of vessels, or any class of vessels, through the lock gates or over or through other structures, works or apparatus, either generally or in circumstances prescribed by the byelaws; or
- (f) for preventing swimming.

(3) The Council shall not make any byelaws under this article without the consent of the Environment Agency, the Port Authority and the Port Health Authority.

(4) The Environment Agency and the Port Health Authority shall not withhold their consent to the making of any byelaw except on the ground that it conflicts with or duplicates a byelaw of that authority; and any unresolved question whether there is any such conflict or duplication shall be determined in accordance with article 54 (arbitration).

(5) Nothing in any byelaw made under this article shall apply to anything done by the Port Authority in the exercise of any of their statutory functions and the byelaws of the Port Authority shall be unaffected by any byelaw made under this article.

(6) In making any byelaws under this article the Council shall take into account matters relating to public safety and any reasonable requirements of the Environment Agency, the Port Authority and the Port Health Authority.

(7) Byelaws 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.

(8) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972(a) (which relates to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Council under this article.

(9) In its application to byelaws made under this article by the Council, section 236 of the Local Government Act 1972 shall have effect as if in subsection (7), after the word “confirm” where it first occurs, the words “with or without modification” were inserted.

(10) The confirming authority for the purposes of section 236 of the Local Government Act 1972 in its application to byelaws made under this article shall be the Secretary of State.

(11) The Secretary of State may charge the Council a reasonable fee for the purpose of defraying any administrative expenses incurred by him in respect of byelaws made under this article which are submitted to him for confirmation.

(12) Where in relation to any byelaws submitted to him for confirmation the Secretary of State proposes to make a modification which appears to him to be substantial he shall inform the Council and require it to take any steps he considers necessary for informing persons likely to be concerned with the modification and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

PART 6 PROTECTIVE PROVISIONS

Protection of certain persons

45. The provisions of Schedule 5 (provisions relating to statutory undertakers etc.) and Schedule 6 (protection of certain persons) shall have effect.

Saving for Trinity House

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

Crown rights

47.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Council or any other person to take, use, enter upon or in any manner interfere with any land or hereditament or any rights of whatsoever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners.

(2) Consent under this article may be given unconditionally or subject to such terms or conditions as shall be considered necessary or appropriate.

Minerals

48. Nothing in this Order shall affect the rights of any person entitled to any mine or minerals of any description whatsoever under a street or other land in, on, or adjacent to which the authorised works are constructed to work the mine or get the minerals but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of any damage to the authorised works resulting from the exercise of any such rights.

Access to scheduled works

49. The Council shall at all reasonable times, upon receipt on each occasion of not less than 48 hours' written notice, afford to any duly authorised representative of the Port Authority or the Environment Agency or the Port Health Authority access without payment or charge to the scheduled works or to a tidal work for the purposes of inspection and survey of the scheduled

(a) 1972 c. 70.

works or a tidal work in connection with the exercise of the Port Authority's or the Environment Agency's or the Port Health Authority's functions and shall provide reasonable facilities for those purposes.

PART 7

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

50.—(1) The Council may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the Council and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Council and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Council shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

(4) Subject to paragraph (5), the Council shall not under this article transfer or lease any rights conferred by Part 5—

- (a) in so far as such rights relate to the Ouseburn lying within the limits of the Port Authority as defined in the Port of Tyne Reorganisation Scheme 1967(a), without the consent in writing of the Port Authority, such consent not to be unreasonably withheld; and
- (b) without informing the Environment Agency.

(5) The Council shall not under this article transfer or lease any rights conferred by article 44 (byelaws).

Obstructing execution of Order

51. Any person who, without reasonable excuse, obstructs any person acting under the authority of the Council in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

52.—(1) In proceedings for an offence under Part 3, it shall be a defence for the Council to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information as was then in its possession, identifying or assisting in the identification of, that other person.

(a) S.I. 1968/942.

Certification of plans etc.

53. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plan and the works plans to the Secretary of State for certification that they are true copies of, respectively, 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.

Arbitration

54. Unless otherwise provided in this Order, any difference under any provision of this Order 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

No double recovery

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

Service of notices

56.—(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(a) 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 a 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 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).

(a) 1978 c. 30.

(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—

- (a) give notice in writing or by electronic transmission 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.

(10) In this article, “electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but in electronic form.

Signed by authority of the Secretary of State

26th February 2007

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

SCHEDULES

SCHEDULE 1

Article 1

DESCRIPTION OF THE SCHEDULED WORKS

In the City of Newcastle upon Tyne a barrage across the Ouseburn incorporating a lock with moveable lock gates, a weir (with an adjacent bridge to the central pier), an eel pass, boat mooring facilities and associated structures to be situated under the Glasshouse Bridge.

SCHEDULE 2

Articles 5 and 7

STREETS SUBJECT TO STREET WORKS AND TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works and to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
City of Newcastle upon Tyne	Unnamed area of footpath situated to the west of Maling Street and adjacent to the east of the eastern bank of the Ouseburn (excluding the highway carried over Glasshouse Bridge).	Between points ST1 and ST2
City of Newcastle upon Tyne	Part of Maling Street (excluding its eastern footway and the highway carried over Glasshouse Bridge).	Between points ST3 and ST4
City of Newcastle upon Tyne	Part of the highway carried over Glasshouse Bridge (excluding any highway below the Glasshouse Bridge).	Between points ST5 and ST6
City of Newcastle upon Tyne	Part of the highway carried across the Low Level Bridge.	Between points ST7 and ST8

SCHEDULE 3

Article 6

STREET TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
City of Newcastle upon Tyne	Unnamed area of footpath situated to west of Maling Street and to the east of the eastern bank of the Ouseburn (excluding the highway carried over Glasshouse Bridge).	Between points NSF1 and NSF2

**MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE
ENACTMENTS FOR CREATION OF NEW RIGHTS**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44 (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) in subsection (1), for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) in subsection (1), for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation), there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land), there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (‘the relevant land’)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (‘the tribunal’); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

(a) 1973 c. 26.

the Ouseburn Barrage Order 2007(a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraph 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 5

Article 45

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the planning Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the Council under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the planning Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the planning Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(a) S.I. 2007/608.

(4) Sub-paragraph (3) shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the planning Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(b).

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 6 (stopping up of streets and extinguishment of rights) any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 6 (stopping up of streets and extinguishment of rights) any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Council, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(3) Subject to the following provisions of this paragraph, the Council shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(a) 2003 c. 21.

(b) 1980 c. 66.

(7) In this paragraph —

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications provider as defined in paragraph 1(6).

SCHEDULE 6

Article 45

PROTECTION OF CERTAIN PERSONS

PART 1

PROVISIONS FOR THE PROTECTION OF THE PORT AUTHORITY

Interpretation

1.—(1) For the protection of the Port Authority, the provisions in this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Port Authority, have effect.

(2) In this Part—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement and relaying and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the Ouseburn or other structure of whatever nature;

“plans” includes arrangements, sections, descriptions, outline design and construction drawings and such specifications and other appropriate documents (including so far as is reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Port Authority an understanding of the Council’s intentions in connection with constructional operations which will or may have a significant effect on navigation in, or the flow or regime of, the Ouseburn and, where applicable such relevant hydraulic information about the Ouseburn, including that obtained from models, as may be available to the Council and is not already in the possession of the Port Authority; and

“protective works” means such works by the Council, at their own expense, as may be specified by the Port Authority for the protection of traffic in, or the flow or regime of, the Ouseburn.

(3) With the exception of any duty owed by the Port Authority to the Council which is expressly provided for in this Part, nothing in this Order shall be construed as imposing upon the Port Authority either directly or indirectly, any duty or liability to which the Port Authority would not otherwise be subject and which is enforceable by proceedings before any court.

(4) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Port Authority or harbour master or alter or diminish any power, authority or jurisdiction vested in the Port Authority on the date that this Order comes into force.

Works in the upstream Ouseburn

2.—(1) Not later than 28 days before—

(a) starting to carry out any tidal works; or

(b) exercising any of the powers of article 9 (power to dredge etc.),

the Council shall submit to the Port Authority plans thereof and such further particulars as may be available to the Council and as the Port Authority may reasonably require and in carrying out such works or in exercising such powers, the Council shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal works) required by the Port Authority, including protective works.

(2) Any modifications or conditions referred to in sub-paragraph (1) shall be notified by the Port Authority to the Council within 28 days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

Removal of temporary works

3. After the purpose of any temporary works has been accomplished, or after a reasonable period of notice in writing from the Port Authority requiring it so to do, the Council shall with all reasonable dispatch, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Council and, in the event of its failing so to do within a reasonable period after receiving such notice, the Port Authority may remove the same and charge the Council with the reasonable expense of so doing, which expense the Council shall repay to the Port Authority.

Facilities for navigation

4.—(1) The Council shall pay to the Port Authority the reasonable costs incurred by the Port Authority of such alterations to the marking and lighting of the navigational channel of the Ouseburn as may be necessary during or in consequence of the construction of a tidal work.

(2) The Council shall afford to the Port Authority such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

Details to be submitted to Port Authority

5. On completion of the construction of the scheduled works the Council shall supply to the Port Authority a plan on a scale of not less than 1 to 2500 and sections and cross-sections on a scale of not less than 1 to 100 showing the situation and levels of those works at that time.

Survey of the bed of the Ouseburn

6.—(1) Before the construction of the scheduled works is commenced, the Port Authority in conjunction with the Council shall carry out a survey of such parts of the Ouseburn as are relevant for the purpose of establishing the condition of the Ouseburn at that time.

(2) The Port Authority will make available to the Council, at reasonable charge, the results of the survey carried out under this paragraph.

Remedy in case of accumulation or erosion

7.—(1) If, during the construction of a tidal work or within 10 years after the relevant date it is agreed between the Council and the Port Authority after taking into account any relevant data or circumstances, or in default of agreement it is determined in pursuance of a reference to arbitration by the Council or the Port Authority under article 54 (arbitration), that—

- (a) any part of the Ouseburn has been subjected to accumulation or erosion;
- (b) such accumulation or erosion is as a consequence (whether in whole or in part) of the construction of the tidal works; and
- (c) for the safety of navigation or in the interests of persons using the Ouseburn or for the protection of works in the Ouseburn, such accumulation or erosion should be removed or, as the case may be, made good,

the Council, if so requested by the Port Authority before, or within the period of 10 years after, the relevant date, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) and, if it refuses or fails so to do, the Port Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the Council.

(2) Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in sub-paragraph (1) and be remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Council during that period of 10 years and at any time thereafter, save that the Council's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction.

(3) For the purpose of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to sub-paragraph 8(1)(a) or (b) establish that any accumulation or erosion mentioned in sub-paragraph (1) or (2) would have been caused in any event by factors other than the construction of the tidal work, the Council shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

(5) For the purposes of sub-paragraph (1), “the relevant date” means, in relation to the scheduled works and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Council that the scheduled works are substantially complete and the lock gates are capable of being closed.

(6) The Council and the Port Authority shall consult the Environment Agency in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 13.

Further protection for the Port Authority

8.—(1) Without prejudice to the other provisions of this Part, the Council shall be responsible for, and make good to the Port Authority, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of the Port Authority) which may reasonably be incurred by or occasioned to the Port Authority by reason of—

- (a) the inspection of any of the tidal works by the Port Authority or their duly authorised representative;
- (b) the survey, inspection, testing and sampling of the Ouseburn by the Port Authority—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as the Port Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the Council is liable to remedy under this Part; and
 - (ii) where the Port Authority have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (c) the construction of any of the tidal works or the failure of any of the tidal works or the undertaking by the Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such construction or failure; and
- (d) any act or omission of the Council or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

(2) Without prejudice to the generality of sub-paragraph (1), the Council shall indemnify the Port Authority from and against all claims and demands arising out of, or in connection with, such construction, failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph shall impose any liability on the Council to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) and (2) are attributable to negligence on the part of the Port Authority or of any person in their employ or of their contractors or agents.

(4) The Port Authority shall give to the Council notice of any claim or demand in relation to which the Council may be liable under this Part and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Council.

Liability of the Council

9. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any conditions or restrictions prescribed by the Port Authority or in accordance with plans submitted to the Port Authority or to their satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him shall not relieve the Council from any liability under the provisions of this Part.

PART 2

PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Interpretation

10.—(1) For the protection of the Environment Agency the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Environment Agency, have effect.

(2) In this Part—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or banks of the Ouseburn or the River Tyne;
 “the fishery” means any waters containing fish and fish in, or migrating to or from, the River Tyne or the Ouseburn and the spawn, habitat or food of such fish;
 “plans” includes sections, drawings, specifications and method statements;
 “specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (iii) cause obstruction to the free passage of fish or damage to any fishery; or
- (iv) affect the conservation, distribution or use of water resources; and

“watercourse” shall include all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

Approval of plans

11.—(1) Before beginning to construct any specified work, the Council shall submit to the Environment Agency plans of the work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Without prejudice to sub-paragraph (1) above, the Council shall secure and provide the Environment Agency with all necessary hydraulic and other information necessary to identify and quantify potential effects of construction, maintenance and operation of any specified work upon flood defence and such information shall be accompanied by an assessment of the likely effects and of any remedial measures necessary to address them.

(3) No specified work shall be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 19.

(4) Any approval of the Environment Agency required under this Part—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing (and in the case of a refusal accompanied by a statement of the grounds for refusal) within 2 months of the submission of plans for approval; and
- (c) may be given subject to such reasonable requirements as the Environment Agency may impose in the discharge of its environmental and recreational duties for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution.

Conditions relating to works

12.—(1) Without prejudice to the generality of sub-paragraph 11(4), the requirements which the Environment Agency may impose under that sub-paragraph include—

- (a) conditions as to the time and the manner in which any work or operation is to be carried out;
- (b) conditions requiring the Council at its own expense—
 - (i) to provide or maintain means of access for the Environment Agency;
 - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;
 - (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction or following the completion of the specified works; and
 - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

(2) Any specified work, and all protective works required by the Environment Agency under sub-paragraph (1)(b)(ii), shall be constructed—

- (a) within such period (if any) as the Environment Agency may specify at the time of approval or upon an application by the Council thereafter (such approval not to be unreasonably withheld);
- (b) in accordance with plans approved or deemed to have been approved or settled under this Part; and
- (c) to the reasonable satisfaction of the Environment Agency,

and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(3) The Council shall give to the Environment Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(4) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part, the Environment Agency may by notice in writing require the Council, at the Council's own expense, to comply with the requirements of this Part or (if the Council so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent as the Environment Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the Council, it has failed to begin taking steps to comply with the requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Council.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Environment Agency shall not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

Accumulation and erosion

13.—(1) If, during the construction of any specified work, or within 10 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow in the Ouseburn or the River Tyne which adversely affects flood flows or drainage, which is reasonably attributable to the construction, maintenance or operation of such work, the Council shall, if so required by the Environment Agency before, or within the period of 10 years after, such completion and to the extent that it is so attributable, remedy such accumulation or erosion or the effects of such alteration to tidal flow in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, the Environment Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the Council.

(2) Should any accumulation or erosion or effect of an alteration to tidal flow arise which adversely affects flood flows or drainage in consequence of such construction, maintenance or operation within the said period of 10 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion or effect of an alteration of tidal flow shall, from time to time and to the extent that any accumulation or erosion or effect of an alteration of tidal flow adversely affects flood flows or drainage and is reasonably attributable to the construction, maintenance or operation of any specified work, be so remedied by the Council during the said period of 10 years and at any time thereafter, save that the Council's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or effect of alteration of tidal flow a period of 10 years elapses without any further accumulation or erosion or effect of alteration of tidal flow.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may reasonably be required by the Environment Agency;
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and protective measures as may be reasonably required by the Environment Agency; and
- (c) in the case of the effects of alteration of tidal flow, the remedy shall be the carrying out of such works and measures as may be reasonably required by the Environment Agency in order to avoid a recurrence of such effects.

(4) To the extent that the Council establishes by surveys, inspections, tests or sampling that such accumulation or erosion or effect of alteration of tidal flow would have been caused in any event by factors other than the construction, maintenance or operation of a specified work the Council shall not be liable to remedy such accumulation or erosion or effect of alteration of tidal flow.

(5) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (4) the Council shall not unreasonably delay the execution of any remedial action required under sub-paragraphs (1) or (2).

(6) The impoundment or release of water by means of the scheduled works shall not of themselves be an effect of alteration of tidal flow for the purposes of this paragraph.

(7) The Council and the Environment Agency shall consult the Port Authority in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 7.

Repair of specified works

14.—(1) Before commencing the construction of a specified work the Council shall procure at its expense in liaison with and to the reasonable satisfaction of the Environment Agency a survey of any drainage work liable to be affected by that specified work.

(2) The Council shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land owned by the Council or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(3) The obligation imposed on the Council under sub-paragraph (2) does not apply where the Environment Agency or another person is liable to maintain any such drainage work and is not precluded from doing so by the exercise by the Council of the powers conferred by this Order.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the Council at the Council's own expense to repair and restore the drainage work, or any part thereof, or (if the Council so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the drainage work and restore the site to its former condition, to such extent and within such limits as the Environment Agency reasonably requires.

(5) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (4) on the Council, the Council has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Council.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Environment Agency shall not, except in a case of an emergency, exercise the powers of sub-paragraph (5) until the dispute has been finally determined.

15. If by reason of any specified work or by reason of the failure of any such work or of the Council to maintain it, the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the Council to the reasonable satisfaction of the Environment Agency and if the Council fails to do so within such reasonable period as the Environment Agency may require by notice in writing to the Council, the Environment Agency may make good the same and recover from the Council any expenditure reasonably incurred by it in so doing.

Protection of fishery

16.—(1) Without prejudice to the other provisions of this Part, the Council shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of such work,

damage is caused to the fishery, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the Council requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the Council any expenditure reasonably incurred by it in so doing.

(4) In any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment Agency may take such steps as are reasonable for the purpose, and may recover from the Council the reasonable cost of so doing provided that a notice specifying those steps is served on the Council as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

Indemnities

17.—(1) The Council shall indemnify the Environment Agency in respect of all reasonable and proper costs incurred, charges paid and expenses met by the Environment Agency—

- (a) in the examination or approval of plans under this Part; or
- (b) in the inspection of the construction of the specified works or any protective works required by the Environment Agency under this Part.

(2) Without prejudice to the other provisions of this Part, the Council shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Environment Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Council, its contractors, agents, workmen or servants whilst engaged upon any such work.

(3) The Environment Agency shall give to the Council reasonable notice of any such claim or demand and no compromise or settlement thereof shall be made without the agreement of the Council which agreement shall not be unreasonably withheld.

(4) Prior to incurring any expense which it may seek to recover under this paragraph, the Environment Agency shall, except in a case of urgency, serve notice on the Council informing it of the Environment Agency's intentions and requiring it within such time as the Environment Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Environment Agency to incur such costs.

(5) Nothing in this part of this schedule shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the negligent act or omission of the Environment Agency, its officers, servants or, if not the Council, its contractors or agents.

Deemed consents

18. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991(a) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Part with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, consent or an approval under that section.

Disputes

19. Any dispute arising between the Council and the Environment Agency under this Part shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs.

PART 3

PROVISIONS FOR THE PROTECTION OF NORTHUMBRIAN WATER

Outfall surveys and remedial works

20. For the protection of Northumbrian Water the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and Northumbrian Water, have effect.

21.—(1) In this Part—

“outfall survey” means a survey conducted by the Council or Northumbrian Water of—

- (a) the level of siltation within the outlet into the Ouseburn of a relevant outfall;
- (b) the level of siltation at the points on the bed of the Ouseburn to be agreed between the Council and Northumbrian Water in the vicinity of any relevant outfall; and
- (c) the condition of the relevant outfall; and

“relevant outfall” means a sewerage outfall system into the Ouseburn identified by Northumbrian Water as requiring survey on account of existing or likely siltation.

(2) Prior to the commencement of the scheduled works, the Council shall ask Northumbrian Water to identify relevant outfalls which, following reasonable agreement by the Council, shall be made subject to an outfall survey by the Council.

(3) The Council shall consult Northumbrian Water as to the method and timing of any outfall survey and the Council shall provide a copy of the survey results to Northumbrian Water within 28 days of the survey being completed.

(a) 1991 c. 57.

(4)(a) The Council shall monitor the level of the bed of the Ouseburn in the vicinity of each relevant outfall in accordance with a survey timetable agreed or required by Northumbrian Water and shall provide Northumbrian Water with the results of such monitoring;

(b) Should the results of such monitoring reveal siltation in the vicinity of any relevant outfall Northumbrian Water may require an outfall survey of such outfall.

(5) Should any relevant outfall or the bed of the Ouseburn in the vicinity of such outfall be subject to siltation to a significantly greater depth than identified in any outfall survey undertaken in accordance with sub-paragraph (2), to the extent that the performance of the outfall is significantly prejudiced and provided that the siltation is largely or completely due to the construction or operation of the scheduled works, then Northumbrian Water may either require the Council to clear the area concerned or undertake the work itself.

(6) The cost of any work done in accordance with sub-paragraph (5) shall be borne by the Council to the extent that the siltation requiring clearance has been caused by the construction or operation of the scheduled works but otherwise the said cost shall be borne by Northumbrian Water and should the said work be required partly on account of the scheduled works and partly by other causes the costs of such work shall be apportioned between the Council and Northumbrian Water.

Indemnity

22.—(1) The Council shall be responsible for and make good to Northumbrian Water all reasonable costs, charges, damages and expenses which may be caused to or incurred by Northumbrian Water by reason of the construction or operation of the scheduled works.

(2) The Council shall indemnify Northumbrian Water from and against all claims arising out of or in connection with the construction or operation of the scheduled works.

(3) Northumbrian Water shall give to the Council reasonable notice of any such claim or demand referred to in sub-paragraph (2) and no settlement or compromise thereof shall be made without the prior consent of the Council.

PART 4

PROVISIONS FOR THE PROTECTION OF THE PORT HEALTH AUTHORITY

23. Nothing in this Order shall prejudice, alter, affect or interfere with the functions, rights, liabilities, jurisdiction or authority of the Port Health Authority.

24. Not later than 28 days before—

(a) starting to carry out any tidal work; or

(b) exercising any of the powers conferred by article 9 (power to dredge etc.),

the Council shall submit to the Port Health Authority plans thereof and such further particulars as may be available to the Council and as the Port Health Authority may reasonably require in respect of carrying out such works or in exercising such powers.

PART 5

PROVISIONS FOR THE PROTECTION OF THOSE WITH AN INTEREST IN NAVIGATION IN THE OUSEBURN OR THE ENVIRONMENT AND AMENITIES OF THE OUSEBURN

25. The Council shall, prior to the commencement of the scheduled works, establish a consultative body to be known as the Ouseburn River Users Committee which the Council shall, except where it is not reasonably practicable to do so, consult on all matters substantially affecting the operation of the scheduled works, the navigation in the Ouseburn, and the environment and amenities of the Ouseburn.

26. The consultative body may meet at such times as it may decide, and shall meet during its first 5 years not less than twice a year, and subsequently not less than once a year.

27. The Council shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the consultative body whether or not the consultative body has been consulted by the Council on the matter, recommendation or representation so referred or made.

28. If the Council determines not to follow any advice or recommendation given to it by the consultative body, it shall give to the consultative body reasons for not doing so.

29. The consultative body established pursuant to this article shall consist of a person appointed by the Royal Yachting Association and such other persons appointed by the Council as the Council shall from time to time consider appropriate.

30. Subject to paragraph 29, appointments to the consultative body established under this Part shall be made by the Council in accordance with a scheme prepared by them for that purpose and the scheme

shall provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in, or representing persons or bodies with an interest in—

- (a) the navigation in the Ouseburn; or
- (b) the environment and amenities of the Ouseburn.

31. The Council shall provide reasonable accommodation for the meetings of the consultative body on not less than 6 occasions in any 12 month period during its first 5 years and subsequently on not less than 4 occasions in any 12 month period if so required by the consultative body and shall provide reasonable secretarial services for the consultative body.

32. The consultative body may determine its own quorum and procedure and shall appoint a chairman.

33. An individual member of the consultative body may, on giving notice in writing to the chairman of that body, send a substitute to any meeting of the consultative body.

34. A member of the consultative body shall hold office for the period of 3 years from the date of his appointment and at the end of his period shall be eligible for reappointment.

35. A member of the consultative body may resign his office at any time by notice in writing given to the chairman of the body who shall send a copy of the notice to the Council.

36. This Part shall cease to have effect in the event that the scheduled works are removed from the Ouseburn.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under section 3(1)(b) of the Transport and Works Act 1992, empowers the Council of the City of Newcastle upon Tyne to construct a tidal barrage with moveable lock gates across the Ouseburn and to execute ancillary works, including dredging of the upstream Ouseburn. The Order confers the necessary powers on the Council, including powers to acquire the requisite land and rights by agreement or compulsorily.

A copy of the deposited plans, the deposited sections and the book of reference referred to in this Order may be inspected at the offices of the Council of the City of Newcastle upon Tyne, Customer Services Centre, Civic Centre, Barras Bridge, Newcastle upon Tyne, NE99 1FR.

2007 No. 608

TRANSPORT AND WORKS, ENGLAND

The Ouseburn Barrage Order 2007

