
STATUTORY INSTRUMENTS

2017 No. 1329

The Boston Barrier Order 2017

PART 4

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

31.—(1) The Agency may acquire compulsorily so much of the land shown on the land plans as lying within the limits of deviation as may be required for the purposes of constructing, operating or maintaining the scheduled works and any other purposes that are ancillary to the scheduled works and may use any land so acquired for those purposes or for any other ancillary purposes.

(2) This article is subject to article 36 (new rights only to be acquired in certain lands) and article 38 (temporary possession of land for construction purposes).

Commencement Information

II Art. 31 in force at 2.1.2018, see [art. 1](#)

Application of Part 1 of the 1965 Act

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

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land)(2).

(4) In section 4A(1) (extension of time limit during challenge)(3)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)(4)”; and

(1) 1981 c. 67.

(2) Section 4 was substituted by section 182(1) of the Housing and Planning Act 2016 (c. 22).

(3) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(4) Section 22 was amended by Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Boston Barrier Order 2017*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(6) In Schedule 2A(5) (counter-notice requiring purchase of land not in notice to treat) after Part 3 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works), 38 (temporary possession of land for construction purposes) or 39 (temporary possession of land for maintenance of works) of the Boston Barrier Order 2017.”.

Commencement Information

I2 Art. 32 in force at 2.1.2018, see [art. 1](#)

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

33.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(6) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 5 (earliest date for execution of declaration)(7) and 5A (time limit for general vesting declaration)(8).

(4) In section 5B(1) (extension of time limit during challenge)(9)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 7 (constructive notice to treat), in subsection (1)(a)(10), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 32 (application of Part 1 of the 1965 Act).

(5) Schedule 2A was inserted by paragraph 3 of Part 1 to Schedule 17 of the Housing and Planning Act 2016 (c. 22).

(6) 1981 c. 66.

(7) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(8) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(9) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(10) Section 7(1) was substituted by Schedule 18 of the Housing and Planning Act 2016 (c. 22).

Commencement Information

I3 Art. 33 in force at 2.1.2018, see [art. 1](#)

Power to acquire new rights

34.—(1) The Agency may compulsorily acquire such easements or other rights over any land referred to in article 31 (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 (other provisions as to divided land) of the 1965 Act (as modified by Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights), where the Agency acquires a right over land under paragraph (1) the Agency cannot be required to acquire a greater interest in that land.

(3) Schedule 3 has 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 or article 36 (new rights only to be acquired under or in certain lands) of a right over land by the creation of a new right.

(4) Paragraph (5) applies to land to which this article applies and which is used for the relocation of any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

(5) In relation to the land to which this paragraph applies, the power to acquire or create easements or other rights under paragraph (1) is to be treated as also authorising the acquisition or creation by a statutory undertaker in any case where the Secretary of State gives consent in writing for that acquisition or creation.

(6) The reference in paragraph (5) to a “statutory undertaker” means a licence holder within the meaning of Part 1 of the Electricity Act 1989⁽¹¹⁾, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹²⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽¹³⁾, a sewerage undertaker, any local authority which is a relevant local authority for the purposes of section 97 (performance of sewerage undertaker’s functions by local authorities, etc.)⁽¹⁴⁾ of that Act and a public communications provider within the meaning of section 151 (interpretation of Chapter 1) of the Communications Act 2003⁽¹⁵⁾.

Commencement Information

I4 Art. 34 in force at 2.1.2018, see [art. 1](#)

Power to acquire subsoil only

35.—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of the land referred to in article 31 (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.

(11) 1989 c. 29.

(12) 1986 c. 44, as amended by section 76(2) of the Utilities Act 2000 (c. 27).

(13) 1991 c. 56, as amended by section 36(2) of the Water Act 2003 (c. 37).

(14) Section 97 was amended by Schedule 22 to the Localism Act 2011 (c. 20), Schedule 8 to the Housing and Regeneration Act 2008 (c. 17) and Schedule 15 to the Government of Wales Act 1998 (c. 38).

(15) 2003 c. 21.

(2) Where the Agency acquires any part of, or such rights in, the subsoil of land under paragraph (1) the Agency is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 32 (application of Part 1 of the 1965 Act)) from applying where the Agency acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Commencement Information

I5 Art. 35 in force at 2.1.2018, see [art. 1](#)

New rights only to be acquired in certain lands

36.—(1) This article applies to the land specified in Schedule 4 (acquisition of new rights only).

(2) In the case of the land specified in columns (1) and (2) of Schedule 4 (acquisition of new rights only), the Agency's power of compulsory acquisition under article 31 (power to acquire land) is limited to the acquisition of such easements or other new rights in the land as it may require for the purposes specified in relation to that land in column (3) of that Schedule.

(3) Where the Agency acquires easements or other new rights specified in Schedule 4 (acquisition of new rights only), article 34 (power to acquire new rights) applies to the same extent as it applies to the acquisition of a new right under that article.

(4) Nothing in this article precludes the Agency from exercising its powers under article 38 (temporary possession of land for construction purposes) in the case of land specified in Schedule 4 (acquisition of new rights only).

Commencement Information

I6 Art. 36 in force at 2.1.2018, see [art. 1](#)

Rights under or over streets

37.—(1) The Agency may enter upon and appropriate so much of the surface or subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the surface, subsoil or airspace for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Agency being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Agency acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Boston Barrier Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

Commencement Information

I7 Art. 37 in force at 2.1.2018, see [art. 1](#)

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Boston Barrier Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- [Order excluded in part by S.I. 2023/778 art. 41](#)