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STATUTORY INSTRUMENTS

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**2022 No. 299**

**The Bridgwater Tidal Barrier Order 2022**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

4.—(1) The Agency may—

- (a) construct and maintain the scheduled works;
- (b) break out and remove such structures that are contained within the Order limits as may be necessary or expedient for or in connection with the construction or maintenance of the scheduled works.

(2) Subject to article 5 (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) Subject to paragraph (5), the Agency 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—

- (a) works to erect and construct such offices and other buildings, yards, machinery, plant, apparatus, and other works, and conveniences as the Agency thinks fit;
- (b) works to construct, provide and maintain all such embankments, retaining walls, fencing, shafts, drainage works, culverts and other works as may be necessary or convenient;
- (c) works for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition, in whole or in part, of any building;
- (e) works to remove or alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) means of access, including footpaths;
- (h) the felling of trees;
- (i) earthworks required for the carrying out of the authorised works;
- (j) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (k) facilities and works for the benefit or protection of land or premises affected by the authorised works.

(4) Subject to paragraph (5) the Agency may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

- (5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—
- (a) within the Order limits; or
  - (b) within the boundaries of any street abutting the Order limits or which has a junction with such a street.
- (6) The Agency may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.
- (7) The powers conferred by this article may not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, such consent not to be unreasonably withheld.
- (8) If a street authority which receives an application for consent under paragraph (7) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted consent.
- (9) Where the Agency lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may—
- (a) provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation; and
  - (b) permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.
- (10) The authorised works may be constructed and maintained under powers conferred by this article regardless of anything contained in, or done under, Part 1 of the Commons Act 2006<sup>(1)</sup> (registration), or Schedule 2 to that Act (non-registration or mistaken registration under the 1965 Act).

### **Power to deviate**

- 5.—**(1) Subject to paragraph (3), in constructing or maintaining any of the scheduled works, the Agency may deviate—
- (a) laterally from the lines or situations shown on the works plans to any extent within the limits of deviation (if any) shown; and
  - (b) vertically from the levels shown on the sections to any extent upwards or downwards.
- (2) Without limiting the scope of paragraph (1), in constructing or maintaining the scheduled works the Agency may, within the limits mentioned in paragraph (1)—
- (a) deviate from their points of commencement and termination as shown on the Order plans, and
  - (b) deviate from the design shown on the Order plans.
- (3) The scheduled works must be constructed so that—
- (a) the unobstructed opening between the piers of the barrier, as shown on the Order plans, measures not less than 14 metres wide,
  - (b) when not in operational use, the minimum height of the base of a vertical lift gate measures not less than 9 metres AoD, and
  - (c) the minimum height of the base of the foot and cycle bridge measures not less than 9 metres AoD.
- (4) Nothing in article 4(3) (power to construct and maintain works) authorises the Agency to execute any works in contravention of the restrictions imposed by paragraph (3).

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(1) 2006 c. 26.

- (5) In paragraph (3), “AoD” means above ordinance datum.

*Works and operations in the river*

**Works and dredging etc. in the river**

6.—(1) Without affecting the other powers conferred by this Order or otherwise available to it, the Agency may within the river area for the purposes of or in connection with the construction, maintenance or operation of the authorised works, for the purpose of facilitating the navigation of vessels and any other ancillary purposes and despite any interference with any public or private rights—

- (a) alter, clean, dismantle, refurbish, remove, relocate or replace any work or structure,
- (b) carry out excavations and clearance, dredging, deepening, scouring, cleansing, dumping and pumping operations,
- (c) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of section 255(1) of the Merchant Shipping Act 1995<sup>(2)</sup> (interpretation)) obtained by it in carrying out any such operations,
- (d) remove or relocate any mooring,
- (e) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the construction of the authorised works,
- (f) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river, and
- (g) construct, place and maintain works and structures including piled fenders and protection piles,

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

(2) The power to dredge conferred by paragraph (1)(b) includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged area against siltation, scouring or collapse.

(3) Except in the case of an emergency, the Agency will use its reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by paragraph (1)(d) before the exercise of that power.

(4) All expenses incurred by the Agency in removing or relocating under paragraph (1)(d) any mooring created after the date of this Order are to be paid to the Agency by the owner of the mooring.

(5) A person may not without the consent in writing of the Agency (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, any work constructed or used in connection with the authorised works, or
- (b) remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised works.

(6) A person who without reasonable excuse contravenes paragraph (4), or fails to comply with any conditions attached to a consent given under that paragraph, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(2) 1995 c. 21.

### **River not to be a reservoir**

7.—(1) A body of water or any area or structure capable of storing water created by or in consequence of—

- (a) construction or operation of any of the scheduled works, or
- (b) overtopping of the downstream defences,

is not a reservoir for the purposes of section A1 of the Reservoirs Act 1975<sup>(3)</sup> (“large raised reservoir” England and Wales).

(2) In paragraph (1), “downstream defences” means Work Nos. 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 6A, 6B, 6C, 6D.

### *Streets and rights of way*

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

8. The Agency may, for the purposes of and to the extent necessary for the construction of the authorised works—

- (a) enter upon so much of any existing path or street as is within the Order limits and any street abutting the Order limits or which has a junction with such a street, and
- (b) break up or open the path or street, or any sewer, drain, or tunnel under it, or tunnel or bore under the path or street.

#### **Power to keep apparatus in streets**

9.—(1) The Agency may, for the purposes of the construction, maintenance or alteration of the authorised works, alter, move, remove, place and maintain in any street within the Order limits any work, equipment or apparatus including foundations, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989<sup>(4)</sup> (Interpretation etc. of Part 1); and
- (c) the reference to any work, equipment or apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

#### **Power to alter layout, etc., of streets**

10.—(1) The Agency may for the purposes of the authorised works alter the layout of or carry out any ancillary works in any street within the Order limits and the layout of any street abutting the Order limits or which has a junction with such a street, including (but not limited to)—

- (a) increasing the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) altering the level or increasing the width of any such kerb, footway, cycle track or verge;
- (c) reducing the width of the carriageway of the street;

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<sup>(3)</sup> 1975 c. 23. Section A1 was inserted by section 33 of the Flood and Water Management Act 2010 (c. 29).

<sup>(4)</sup> 1989 c. 29.

(d) carrying out works for the provision, removal, suspension or alteration of parking places, loading bays, bus lanes, bus stop clearway and bus laybys;

(e) executing any works to provide or improve sight lines required by the highway authority.

(2) The powers conferred by paragraph (1) in relation to any street abutting the Order limits or which has a junction with such a street must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) If a street authority which receives an application for consent under paragraph (2) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted consent.

### **Temporary stopping up and diversion of streets**

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

(a) divert the traffic from the street, and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Agency may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) The Agency must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the Agency may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 2 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) The Agency must not exercise the powers conferred by this article—

(a) in relation to any street specified in Schedule 2 (streets to be temporarily stopped up) without first consulting the street authority;

(b) in relation to any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

(7) If a street authority which receives an application for consent under paragraph (5)(b) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted consent.

### **Permanent stopping up and diversion of streets**

**12.**—(1) Subject to the provisions of this article, the Agency may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be permanently stopped up) to the extent specified in column (3) of that Schedule by reference to the letters and numbers shown on the public rights of way plans.

(2) No street specified in columns (1) and (2) of Schedule 3 may be wholly or partly stopped up under this article unless either—

(a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works mentioned in column (4) of Schedule 3, has been completed to the reasonable satisfaction of the street authority and is open for use, or

- (b) a temporary alternative route is first provided and then maintained by the Agency to the reasonable satisfaction of the street authority until completion of a new street in accordance with sub-paragraph (a).
- (3) Where a street has been stopped up under this article—
  - (a) all rights of way over or along it are extinguished, and
  - (b) the Agency may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by the Agency.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to paragraphs 5 and 6 of Schedule 9 (protection of electricity, gas, water and sewerage undertakers).

### **Access to works**

- 13.—**(1) The Agency may, for the purposes of the authorised works form and lay out—
- (a) means of access, or alter or improve existing means of access, in the locations marked with ‘A’ on the Order plans, and
  - (b) such other means of access or alter or improve existing means of access at such locations within the Order limits as the Agency reasonably requires for the purposes of the authorised works, as may be first approved by the highway authority, but such approval must not be unreasonably withheld.
- (2) If a highway authority which receives an application for approval under paragraph (1)(b) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted approval.

### **Agreements with street authorities**

- 14.—**(1) A street authority and the Agency may enter into agreements with respect to—
- (a) the strengthening or improvement of any street under the powers conferred by this Order;
  - (b) the maintenance of any street or of the structure of any bridge carrying a street within the vicinity of the authorised works;
  - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
  - (d) the execution in a street of any of the works referred to in article 8 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question, and
  - (b) contain such terms as to payment and such other matters as the parties consider appropriate.

### **Use of private roads for construction**

- 15.—**(1) The Agency may use any private road within the Order limits or any private road abutting the Order limits which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) The Agency must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

### *Supplementary powers and provisions*

#### **Agreements with owners of land and others for construction of works**

**16.**—(1) The Agency may enter into and carry into effect agreements or arrangements with the Harbour Authority and the owners of, or other persons interested in, any land—

- (a) in or through which any of the authorised works are or may be constructed, or
- (b) 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 limitation on the scope of paragraph (1), any such agreement may provide for—

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

#### **Temporary closing of river in connection with works**

**17.**—(1) Regardless of anything in any other enactment or in any rule of law, the Agency may temporarily close the river or any part of it within the Order limits, to navigation during or for the purposes of executing any works or doing anything authorised by or under this Order.

(2) In exercising the powers conferred by paragraph (1), the Agency must seek to minimise interference with navigation on the river so far as is reasonably practicable and consistent with the efficient and economical execution of the works.

(3) Subject to paragraph 10 of Schedule 10 (protection of Port of Bridgwater) neither the Agency nor the Harbour Authority is liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under paragraph (1).

#### **Diversion of flow of water**

**18.**—(1) The Agency 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 river system.

(2) In paragraph (1) “the river system” means the river, Wildmarsh Rhyne, Pim’s Pill Reach, Pippin’s Rhyne, Fenlyn’s Rhyne, Cannington Brook, South Moor Main Brook, River Yeo, Sowey River, River Isle, Witcombe Bottom Main Drain, the River Tone and the Bridgwater and Taunton Canal together with any unnamed drainage tributaries of these rivers.

#### **Power to take, pump, impound and discharge water**

**19.**—(1) The Agency may, in connection with the construction or maintenance of the works—

- (a) take, impound and use water from, and discharge water into, the river;

- (b) pump any water required by it from or into the river;
  - (c) pump any water found by it into the river or into any watercourse, public sewer, or drain.
- (2) For the purposes set out in paragraph (1), the Agency may—
- (a) lay down, take up and alter conduits, pipes and other works and conveniences;
  - (b) on any land within the Order Limits, make openings into, and connections with, the river, or any watercourse, public sewer or drain.
- (3) The Agency must 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.
- (4) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(5)</sup> (right to communicate with public sewers).
- (5) The Agency must not, in exercise of the powers conferred by paragraphs (1) and (2)—
- (a) discharge any water into any public sewer or drain except with the consent (which is not to be unreasonably withheld) of the person to whom it belongs and subject to such terms and conditions as that person 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 person to whom the sewer or drain belongs.
- (6) If a person who receives an application for consent or approval fails to notify the Agency of a decision within 28 days of receiving the application for consent under sub-paragraph (3)(a) or approval under sub-paragraph (5)(b) then that person is deemed to have granted consent or approval, as the case may be.
- (7) Nothing in this article obviates any requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(6)</sup> (requirement for an environmental permit).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Agency, a harbour authority, an internal drainage board, a local authority, or a joint planning board, and
  - (b) expressions used both in this article and in the Water Resources Act 1991<sup>(7)</sup> have the same meaning as in that Act, other than “public sewer or drain” or “watercourse”.
- (9) In paragraph (8), “internal drainage board” has the same meaning as in Part 1 of the Land Drainage Act 1991<sup>(8)</sup>.

### **Water abstraction and impounding**

**20.**—(1) The restriction imposed by section 24(1) of the Water Resources Act 1991<sup>(9)</sup> (restrictions on abstraction) does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

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(5) Section 106 was amended by sections 35(8) and 43(2) of the Competition and Services (Utilities) Act 1992 (c. 43), by section 99 of the Water Act 2003 (c. 37), and by paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(6) S.I. 2016/1154, to which there are amendments not relevant to this Order.

(7) 1991 c. 57.

(8) 1991 c. 59.

(9) Section 24(1) was amended by S.I. 1996/593, 2013/755 (W 90).



(2) Section 25 of the Water Resources Act 1991<sup>(10)</sup> (restrictions on impounding) does not apply in relation to anything done in the exercise of the powers conferred by this Order with respect to the authorised works.

(3) Section 48A(1) of the Water Resources Act 1991<sup>(11)</sup> (civil remedies for loss or damage due to water abstraction) does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(4) Where—

(a) the Agency causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order, and

(b) the circumstances are such that, but for paragraph (3), causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, the Agency must compensate the other person for the loss or damage.

(5) Compensation under paragraph (4) is to be assessed on the same basis as damages for the breach of the duty under section 48A(1) of the Water Resources Act 1991.

(6) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article.

(7) In this article, “abstraction” has the same meaning as in the Water Resources Act 1991.

### **Protective works**

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

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or

(b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purposes of determining how the powers under this article are to be exercised the Agency may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land monitoring apparatus.

(4) For the purposes of carrying out protective works under this article to a building the Agency may (subject to paragraphs (5) and (6)) with all necessary plant and equipment—

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

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

and in either case the Agency may take exclusive possession of the building and land if this is reasonably required for the purpose of carrying out the protective works.

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building;

(c) a right under paragraph (4)(a) to enter and take possession of a building or land, or

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<sup>(10)</sup> Section 25 was amended by section 2 of the Water Act 2003 (c. 37) and S.I. 2013/755 (W 90), 2015/664.

<sup>(11)</sup> Section 48A was inserted by section 24(1) of the Water Act 2003.

(d) a right under paragraph (4)(b) to enter and take possession of adjacent land, the Agency must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question as to whether it is necessary or expedient to carry out the protective works or to enter and take possession of the building or land to be referred to arbitration under article 68 (arbitration).

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

(8) The Agency must compensate the owners and occupiers of a building for any damage sustained by them where—

- (a) protective works are carried out under this article to the building, and
- (b) within the period of 5 years beginning with the latter of—
  - (i) the day on which those parts of the authorised works constructed within the vicinity of the building first open for use, or
  - (ii) the day on which completion of the protective works takes place,
 it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works.

(9) Without affecting article 69 (no double recovery), nothing in this article relieves the Agency from any liability to pay compensation under section 10(2) of the 1965 Act (further provision as to compensation for injurious affection).

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

(11) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works;
- (c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

### **Planning permission**

**22.** Any planning permission which is deemed by a direction given under section 90(2A) of the 1990 Act (**12**) (development with government authorisation) to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3) (a) of that Act (cases in which land is to be treated as operational land).

### **Power to survey and investigate land, etc.**

**23.—**(1) The Agency may for the purposes of this Order and in respect of land lying within the Order limits—

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(12) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

- (a) survey or investigate any such land;
  - (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Agency thinks fit on such land to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
  - (d) take steps to protect or remove any flora or fauna on such land where the flora or fauna may be affected by the carrying on of the authorised works;
  - (e) place on, leave on and remove from such land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (d);
  - (f) enter on such land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (e).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Agency—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so, and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make trial holes.
- (4) No trial holes are to be made under this article—
- (a) in a carriageway or footway without the consent of the highway authority;
  - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) If either a highway authority or a street authority which receives an application for consent under paragraph (4) fails to notify the Agency of its decision within 14 days of receiving the application, that authority is deemed to have granted consent.
- (6) The Agency must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Felling or lopping of trees**

- 24.**—(1) The Agency may fell or lop any trees or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—
- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works;
  - (b) from constituting a danger to persons using the authorised works.
- (2) In exercising the powers conferred by paragraph (1), the Agency—
- (a) must not cause unnecessary damage to any tree or shrub, and
  - (b) must pay compensation to any person for any loss or damage arising from the exercise of those powers.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (2)(b), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.