
STATUTORY INSTRUMENTS

2017 No. 1329

The Boston Barrier Order 2017

PART 4

ACQUISITION AND POSSESSION OF LAND

Temporary possession of land

Temporary possession of land for construction purposes

38.—(1) Subject to paragraph (2), the Agency may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (3) of that Schedule; and
 - (ii) any other land within Order limits in respect of which no notice of entry has been served under section 11 (powers of entry)(1) of the 1965 Act (other than in connection with the acquisition of new rights only) or no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(2);
- (b) remove any buildings, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any scheduled works in relation to that land and any other works that are required.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article the Agency must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Agency may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken), after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (3) of that Schedule; or
- (b) in the case of any other land within Order limits, after the end of the period of 2 years beginning with the date of completion of the works for which temporary possession of the land was taken unless the Agency has, before the end of that period, served a notice

(1) Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22), Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(2) Section 4 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22).

of entry under section 11(3) of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Agency must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Agency is not required to replace a building removed under this article or restore land on which any permanent works have been constructed under paragraph (1)(d).

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

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

(7) Without affecting article 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) 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).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to land referred to in sub-paragraph (1)(a)(i) except that the Agency is not precluded from—

- (a) acquiring new rights over any part of that land under article 34 (power to acquire new rights) or article 36 (new rights only to be acquired in certain lands); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 35 (power to acquire subsoil only).

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

(10) Section 13 (refusal to give possession to acquiring authority)(4) of the 1965 Act applies to the temporary possession 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 32(1) (application of Part 1 of the 1965 Act).

Commencement Information

II Art. 38 in force at 2.1.2018, see [art. 1](#)

Temporary possession of land for maintenance of works

39.—(1) Subject to paragraphs (2) and (3), at any time during the maintenance period relating to any of the scheduled works, the Agency may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; 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) does not authorise the Agency to take temporary possession of—

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- (3) Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to the Housing and Planning Act 2016 (c. 22), section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (4) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (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 Agency must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Agency 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 Agency must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Agency must 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, is to be determined under Part 1 of the 1961 Act.
- (8) Without affecting article 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(5) (further provision as to compensation for injurious affection) 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 Agency takes possession of land under this article, the Agency is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary possession 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 32(1) (application of Part 1 of the 1965 Act).
- (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.

Commencement Information

12 Art. 39 in force at 2.1.2018, see [art. 1](#)

(5) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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](#)