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STATUTORY INSTRUMENTS

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**2017 No. 1329**

**The Boston Barrier Order 2017**

**PART 7**

**MISCELLANEOUS AND GENERAL**

**Temporary traffic regulation**

**58.**—(1) Subject to the provisions of this article, the Agency may, so far as is necessary or expedient for the purposes of or in connection with construction of the authorised works—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Agency.

(2) The powers conferred by paragraph (1) may only be exercised after the Agency has—

- (a) consulted the chief officer of police, the traffic authority and such other persons as it considers necessary and appropriate;
- (b) taken into consideration any representations made to it by any such persons consulted; and
- (c) obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld or delayed).

(3) The Agency must not exercise the powers conferred by this article in relation to any road unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 7 days of its receipt of notice of the Agency's intention, specify in writing.

(4) Any prohibition, suspension or other provision made by the Agency under paragraph (1) has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places)<sup>(1)</sup> of the 1984 Act,

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(1) Section 32 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and by paragraph 39 of Schedule 8 to the New Roads and Street Works Act 1991 (c. 22).

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Agency from time to time by subsequent exercise of the powers conferred by paragraph (1).

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) The powers conferred on the Agency by this article with respect to any road have effect subject to any agreement entered into by the Agency with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

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#### Commencement Information

**I1** Art. 58 in force at 2.1.2018, see [art. 1](#)

#### Power of disposal, agreements for operation, etc.

**59.**—(1) Subject to paragraph 2, the Agency may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection with them.

(2) Nothing in paragraph (1) requires the Agency to secure the consent of the Secretary of State before transferring ownership of any structures comprised within Work Nos. 3A and 3B to the Harbour Authority.

(3) Without limitation on the scope of paragraph (1), the Agency may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary to, or consequential on those matters and the defraying of, or the making of contributions towards, the costs of those matters by the Agency or any other person.

(4) Any agreement under paragraph (3) may provide, amongst other things, for the exercise of the powers of the Agency in respect of the authorised works or any part of them and for the transfer to any person of the authorised works or any part of them together with the rights and obligations of the Agency in relation to them.

(5) Where an agreement has been made by virtue of paragraph (3) references in this Order to the Agency include references to the transferee or the lessee.

(6) The exercise of the powers conferred by any enactment by any person further to any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (3), is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Agency.

(7) The Agency must not under this article sell, lease, charge or otherwise dispose of, any rights conferred by article 52 (byelaws).

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#### Commencement Information

**I2** Art. 59 in force at 2.1.2018, see [art. 1](#)

## Obstructing execution of Order

**60.** Any person who, without reasonable excuse, obstructs any person acting under the authority of the Agency 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 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Commencement Information

**I3** Art. 60 in force at 2.1.2018, see [art. 1](#)

## Defence of due diligence

**61.—(1)** In proceedings for an offence under Part 3 (provisions relating to tidal works), it is a defence for the Agency 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 Agency must 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.

### Commencement Information

**I4** Art. 61 in force at 2.1.2018, see [art. 1](#)

## Application of landlord and tenant law

**62.—(1)** This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate those works, and any agreements entered into by the Agency with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### Commencement Information

**I5** Art. 62 in force at 2.1.2018, see [art. 1](#)

## Defence to proceedings in respect of statutory nuisance

**63.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(2) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance)(3) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites)(4) of the Control of Pollution Act 1974(5); or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works.

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### Commencement Information

**I6** Art. 63 in force at 2.1.2018, see [art. 1](#)

## Disclosure of confidential information

**64.** A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 21 (protective works) or article 23 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

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### Commencement Information

**I7** Art. 64 in force at 2.1.2018, see [art. 1](#)

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- (2) [1990 c. 43](#). Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act [1993 \(c. 40\)](#) and paragraph 6 of Schedule 17 to the Environment Act [1995 \(c. 25\)](#).
  - (3) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act [2005 \(c. 16\)](#) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act [2008 \(asp. 5\)](#).
  - (4) Section 61 was amended by Schedule 7 to the Building Act [1984 \(c. 55\)](#), paragraph 15(3) of Schedule 15 to the Environmental Protection Act [1990 \(c. 43\)](#), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act [2003 \(asp. 8\)](#).
  - (5) [1974 c. 40](#).

## Local legislation

**65.**—(1) The following do not apply to the extent that they are inconsistent with a provision of, or a power conferred by, this Order—

- (a) any provision of the local enactments specified in Part 1 of Schedule 9 (amendment of local legislation);
- (b) any byelaws or other provisions made under any of those enactments; and
- (c) the local byelaws specified in Part 2 of that Schedule.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and to the extent that (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the Agency in writing that anything done or proposed to be done by the Agency by virtue of this Order would amount to a contravention of a statutory provision of local application, the Agency must as soon as reasonably practicable, and, at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the Agency agrees that the action taken or proposed to does or would contravene the provision of local application;
- (b) if the Agency does agree, the grounds (if any) on which the Agency believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

### Commencement Information

**18** Art. 65 in force at 2.1.2018, see [art. 1](#)

## Certification of plans etc.

**66.** The Agency must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans, the public rights of way plan and the works plan to the Secretary of State for certification that they are respectively true copies of the book of reference, sections and plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### Commencement Information

**19** Art. 66 in force at 2.1.2018, see [art. 1](#)

## Arbitration

**67.** Unless otherwise provided in this Order, any difference under any provision of this Order is to 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.

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**Commencement Information**

**I10** Art. 67 in force at 2.1.2018, see [art. 1](#)

**No double recovery**

**68.** Compensation is not payable in respect of the same matter both under this Order and any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

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**Commencement Information**

**I11** Art. 68 in force at 2.1.2018, see [art. 1](#)

**Service of notices**

**69.—(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) with the consent of the recipient and subject to paragraphs (6) to (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 (references to service by post) of the Interpretation Act 1978<sup>(6)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, that person's 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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 is fulfilled where the recipient of the notice or other document has given consent to the use of electronic transmission either in writing or by electronic transmission.

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(6) 1978 c. 30.

(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 the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

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**Commencement Information**

**I12** Art. 69 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](#)