STATUTORY INSTRUMENTS

1979 No. 696

LAND DRAINAGE

The Benfleet Creek (Barrier) and The Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) (Amendment) Order 1979

Made - - - -	19*th June* 1979
Coming into Operation	20*th June* 1979

ARRANGEMENT OF ARTICLES

1. Citation and commencement
2. Interpretation
3. Application of Act of 1965
4. Power to acquire lands
5. Power to acquire easements only
6. Construction of works
7. Power to deviate
8. Subsidiary powers to Water Authority
9. Temporary closing of creek in connection with works
10. Power to Water Authority to dredge
11. Removal of vessels
12. As to operation of barrier
13. Misuse of barrier, etc.
14. Byelaws of Port Authority
15. Cables, pipes or wires under or over tidal waters or tidal lands
16. Marking of tidal works in river
17. Survey of tidal works
18. Exemption from requirements as to works and dredging licences
19. Crown rights
20. Approval by Secretary of State to tidal works and deposit of spoil
21. For protection of Port Authority and river users
22. Saving for pollution prevention
23. Amendment of Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) Order 1976

Schedule.

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Trade, in exercise of their powers under sections 56 and 59 of the Thames Barrier and Flood Prevention Act 1972(a), and of all other powers enabling them in that behalf, hereby order as follows:—

Citation and commencement

1. This Order may be cited as the Benfleet Creek (Barrier) and the Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) (Amendment) Order 1979 and shall come into operation on 20th June 1979.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"the Act of 1965" means the Compulsory Purchase Act 1965(b);

"the Act of 1968" means the Port of London Act 1968(c);

"the barrier" means Work No. 1 or any part thereof and includes any other works, conveniences and other things connected therewith or incidental thereto provided under this Order;

"the barrier gates" means all or any of the movable flood gates forming part of Work No. 1;

"the creek" means that part of the river known as Benfleet Creek and includes the bed, banks and foreshore of that creek;

"the deposited plan" and "the deposited sections" mean the plan and sections prepared in triplicate signed by an Assistant Secretary in the Ministry of Agriculture, Fisheries and Food and marked "Plan and sections referred to in the Benfleet Creek (Barrier) and the Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) (Amendment) Order 1979", of which one set is deposited and available for inspection at the office of the Chief Executive of the Water Authority and one set each at the offices of the Minister and of the Secretary of State for Trade respectively;

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

"functions" includes powers and duties;

"land" or "lands" includes land covered by water and any interest in land and any easement or right in, to, over or under land;

"the Minister" means the Minister of Agriculture, Fisheries and Food and "the Ministers" means the Minister and the Secretary of State for Trade acting jointly;

"the Port Authority" means the Port of London Authority;

"the river" means the River Thames and includes—

(*a*) the Thames estuary and any tributary or other watercourse or any basin, bay, channel or creek the water in which ultimately flows into, or which is directly or indirectly connected with, the River Thames; and

(*b*) the bed, banks and foreshore of the River Thames, of the Thames estuary and of any such tributary, watercourse, basin, bay, channel or creek;

(a) 1972 c. xlv. (b) 1965 c. 56. (c) 1968 c. xxxii.

"scouring" includes disturbance or collapse of the foreshore or bed of the river;

"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 mean high-water springs;

"the tribunal" means the Lands Tribunal;

"vessel" means every description of vessel, whether 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(a);

"the Water Authority" means the Anglian Water Authority;

"watercourse" has the same meaning as in the Land Drainage Act 1976(b);

"the works" means Works Nos. 1 and 2 and any works, apparatus or conveniences (whether temporary or permanent) constructed, provided or installed by the Water Authority as part of, or in connection with, or for the purposes of, those works or either of them.

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

(3) Unless the subject or context otherwise requires, any reference in this Order to a work identified by a number shall be construed as a reference to the work of that number authorised by this Order.

(4) Unless the subject or context otherwise requires, references in this Order to any enactment shall be construed as references to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Order.

Application of Act of 1965

3.—(1) Part I of the Act of 1965, in so far as it is applicable for the purposes of this Order and is not inconsistent with the provisions thereof, shall apply to the compulsory purchase of land under this Order as it applies to a compulsory purchase to which the provisions of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946(c) apply and as if this Order were a compulsory purchase order under the said Act of 1946.

(2) The provisions of the Act of 1965, as so applied, shall have effect subject to the following exceptions and modifications:—

(*a*) at the end of section 4 there shall be added the following proviso:—

"Provided that such powers shall in relation to any of the land be deemed to have been exercised if before the expiration of the said three years notice to treat has been served in respect of that land";

(*b*) in subsection (1) of section 11 for the words "fourteen days" there shall be substituted the words "one month";

(*c*) in subsection (3) of section 11 for the words "not less than three nor more than fourteen days' notice" there shall be substituted the words "not less than seven days' notice in the case of the first entry and not less than twenty-four hours' notice in the case of a subsequent entry";

(a) 1968 c. 59. (b) 1976 c. 70. (c) 1946 c. 49.

(*d*) subsection (5) of section 24, section 27 and sub-paragraph (3) of paragraph 3 of Schedule 3 shall not apply.

Power to acquire lands

4. Subject to the provisions of this Order the Water Authority may purchase compulsorily such of the lands delineated on the deposited plan and shown on that plan as being within the limit of land to be acquired as they may require for the construction, maintenance and operation of the works or other purposes connected therewith, including (without prejudice to the generality of the foregoing) for the purpose of obtaining access thereto, obtaining materials for the construction thereof, depositing spoil or other material excavated during the construction thereof, or otherwise for the purposes of this Order or other purposes connected therewith.

Power to acquire easements only

5.—(1) The Water Authority may, instead of acquiring any land which they are authorised to acquire compulsorily under this Order, acquire compulsorily such easements and rights in, to, over or under the land as they may require for the purposes of or in connection with the exercise of any of their powers under this Order.

(2) Accordingly the Water Authority may give notice to treat in respect of any such easement or right describing the nature thereof; and the provisions of Part I of the Act of 1965 as applied for the purposes of this Order shall apply in relation to the acquisition of such easements and rights as if they were land within the meaning of the Act of 1965.

(3) Where the Water Authority have acquired an easement or right only in, to, over or under any land under this Article—

(*a*) they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land;

(*b*) the owner or occupier of the land for the time being shall, subject to the easement or right, have the same right to use the land as if this Article had not been enacted.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for an easement or right is given under this Article requires the Water Authority to acquire the land, the Water Authority shall not be entitled under this Article to acquire the easement or right unless the tribunal determines that the easement or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house; and, if the tribunal does not so determine, the Water Authority may acquire the land compulsorily notwithstanding that the period mentioned in section 4 of the Act of 1965 has expired, but not later than one year after the determination of the tribunal:

Provided that nothing in this paragraph shall apply to land forming part of a street.

(5) A notice to treat given under this Article shall be endorsed with notice of the effect of paragraph (4) of this Article.

Construction of works

6.—(1) Subject to the provisions of this Order, the Water Authority may, in the lines or situations and within the limits of deviation shown on the deposited

plan and according to the levels shown on the deposited sections, execute the works described in paragraph (2) of this Article, together with all necessary and proper works and conveniences connected therewith or incidental thereto.

(2) The works referred to in paragraph (1) of this Article are the following works in the County of Essex—

Work No. 1. A flood barrier across the creek in the district of Castle Point incorporating piers, gate support beams, movable flood gates, sills and access bridges with flanking embankments, commencing on the north side of the creek at reference point TQ 78101 85681 and terminating on the south side thereof at reference point TQ 78052 85574;

Work No. 2. An embankment across saltings on the south side of the creek commencing at the termination of Work No. 1 and terminating on the existing sea wall at reference point TQ 78155 85355.

(3) Notwithstanding anything to the contrary in this Order or shown on the deposited plan or the deposited sections, but without prejudice to the provisions of the next following Article the Water Authority may, if they think fit, subject to the approval of the Ministers execute the whole or any part of the works within the limits of deviation shown on the deposited plan in accordance with dimensions and descriptions other than the dimensions and descriptions shown on the deposited plan and the deposited sections or set out in the last foregoing paragraph.

(4) Without prejudice to the provisions of the last foregoing paragraph, the Water Authority may maintain and may from time to time alter, extend, enlarge, replace, repair or renew—

(*a*) the works, or any part thereof, within the limits of deviation; or

(*b*) any other works, conveniences or other things, provided by or belonging to them in connection with the works;

or may remove all or any of the works or any part of a work.

(5) The construction of all tidal works shall when commenced be proceeded with and completed as soon as practicable.

Power to deviate

7.—(1) In the execution of the works, or any part thereof, the Water Authority may deviate from the lines or situations thereof shown on the deposited plan to any extent within the limits of deviation shown on that plan, and may deviate vertically from the levels shown on the deposited sections to any extent upwards or downwards:

Provided that notwithstanding anything in this Article the barrier shall be so constructed that there are three openings across the navigable channel each with an unobstructed width between piers of not less than 12·20 metres and with a headroom of not less than 1·72 metres above mean high-water springs.

(2) Nothing in paragraph (3) or paragraph (4) of the last foregoing Article shall authorise the Water Authority to construct the barrier in contravention of the restrictions imposed by the proviso to the foregoing paragraph of this Article.

Subsidiary powers to Water Authority

8.—(1) Subject to the provisions of this Order and within the limits of deviation shown on the deposited plan or on any land acquired by the Water

Authority under the powers of this Order the Water Authority, in connection with and for the purposes of the works, may—

(*a*) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, bridges and footpaths;

(*b*) make, provide and maintain all necessary or convenient buildings, walls, banks, embankments, borrow pits, quays, slipways, pavings, hards, moorings, boat-hoists, rollers and other facilities for transporting boats, fish ladders or passes or other apparatus for facilitating the passage of fish, piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, towing paths, footpaths, and landscaping works and all such mains, pipes, cables, wires, machinery, works and appliances as may be required;

(*c*) dispose of spoil or other material excavated in the execution of the works;

(*d*) execute any works for the protection of any adjoining lands or buildings;

(*e*) remove, alter, divert or stop up any watercourse (except the creek) or sewer (not being a watercourse), the Water Authority providing a proper substitute before interrupting the flow of water or sewage in any such watercourse or sewer;

(*f*) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, sludge, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928(**a**)).

(2) In the exercise of the powers conferred by this Article, the Water Authority shall cause as little detriment and inconvenience to any person as circumstances admit.

Temporary closing of creek in connection with works

9.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, but without prejudice to any requirement imposed on the Water Authority under the provisions of this Order, the Water Authority may, in executing or doing in, on, under or over the creek any works or things authorised by or under the foregoing provisions of this Order, close the creek or any part thereof to navigation:

Provided that the Water Authority shall so execute or do such works or things as to ensure that at any time no more of the creek is so closed than is reasonably necessary in all the circumstances and, if it becomes necessary to close the creek completely to navigation, the Water Authority shall use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the creek.

(2) Without prejudice to the provisions of Article 3 (Application of Act of 1965) or paragraph (8) of Article 21 (For protection of Port Authority and river users) of this Order neither the Water Authority nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the creek under the foregoing paragraph.

(**a**) 1928 c. 32.

Power to Water Authority to dredge

10.—(1) Subject to the provisions of this Order, the Water Authority may from time to time—

(*a*) both during and after the construction of the works deepen, dredge and improve, and remove obstructions from, the bed, foreshore and banks of the creek for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the works; and

(*b*) when the navigation of vessels in the creek is impeded or obstructed by siltation or scouring caused by or substantially attributable to the construction, existence, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the works dredge and remove silt from the bed, foreshore and banks of the creek or, as the case may be, make good the scouring which has occurred therein.

(2) As early as is reasonably practicable, and in any event not less than 14 days, before any exercise of their powers under the foregoing provisions of this Article within a distance of 50 metres of any subaqueous cable belonging to or used by the Post Office, the Water Authority shall give notice in writing to the Post Office of such intended exercise stating the position and depth of the proposed dredging:

Provided that this paragraph shall not apply in relation to any such subaqueous cable unless the Post Office have supplied the Water Authority with a plan showing the position in which the cable is laid.

Removal of vessels

11.—(1) Where any vessel is sunk, stranded or abandoned in any part of the creek within 150 metres of the barrier or without lawful authority left or moored in any such part, the Water Authority, after consultation with the Port Authority, and unless the Port Authority inform the Water Authority that they will proceed forthwith to take all reasonable steps to secure the prompt removal of the vessel in pursuance of the provisions of section 120 (Power to raise and remove vessels sunk, etc.) of the Act of 1968, may take all such action as may be necessary to remove the vessel.

(2) The Water Authority may recover from the owner of any vessel removed by them under the foregoing paragraph all expenses reasonably incurred by them in respect of the removal and storage of the vessel and of any furniture and tackle thereof or any cargo, goods, chattels and effects removed therefrom.

(3) If any such vessel be not within six weeks of its removal by the Water Authority proved to their satisfaction to belong to any claimant it shall together with any furniture, tackle, cargo, goods, chattels and effects thereupon vest in the Water Authority:

Provided that if within six months of its removal by the Water Authority a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Water Authority that he is the owner thereof then they shall, if the vessel is unsold, permit the owner to retake it with any furniture, tackle, cargo, goods, chattels and effects thereupon upon payment of the expenses referred to in paragraph (2) of this Article and of any expenses incurred by the Port Authority in respect of the vessel or its cargo or anything else associated with the vessel and referred to in subsection (2) of the said section 120 of the Act of 1968 or, if the vessel, furniture, tackle, cargo, goods, chattels and effects thereupon have been sold, the Water Authority shall pay to such owner the

amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds shall be insufficient to reimburse the Water Authority and the Port Authority such expenses the deficiency may be recovered by the Water Authority or (as the case may be) the Port Authority as a simple contract debt.

(4) (*a*) Except where there is, in the Water Authority's opinion, an emergency, paragraph (1) of this Article shall not authorise the removal of any vessel by the Water Authority unless the Water Authority have given to the owner of the vessel not less than forty-eight hours' notice of their intention to remove the vessel, and if before the notice expires the Water Authority receive from the owner a counter-notice in writing that he desires to remove the vessel himself he shall be at liberty to do so and the Water Authority shall not take any action to remove the vessel themselves until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the removal thereof with reasonable diligence and in compliance with any directions given to him by the Water Authority for the protection of the barrier or by the Port Authority for the prevention of interference with navigation.

(*b*) If the owner of a vessel to whom notice is to be given under this Article is not known to the Water Authority or if his place of business or abode is not known to the Water Authority or is outside the United Kingdom, the notice may be given by affixing it to the vessel in a conspicuous position.

(5) In this Article "owner" in relation to any vessel sunk, stranded, abandoned, left or moored as aforesaid means the owner of the vessel at the time of the sinking, stranding, abandonment, leaving or mooring thereof.

As to operation of barrier

12.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Water Authority may use and operate the barrier and, in particular, the barrier gates may be closed by the Water Authority at any time and for such periods as they consider necessary or desirable—

(*a*) when it appears to the Water Authority that there is reason to believe that unless the barrier gates are closed floods or inundations may be caused by the overflow of the creek upstream of the barrier or in any other case of emergency;

(*b*) for the purpose of enabling experiments to be carried out for or in connection with the development of the most effective use of the barrier for defence against floods or inundations;

(*c*) for the purpose of testing the barrier;

(*d*) for the purpose of exercising and instructing staff in the operation and control of the barrier;

(*e*) for the purpose of maintaining, extending, enlarging, altering, replacing, repairing or renewing the barrier, on such occasions as may be reasonably necessary, or for the purpose of removing the barrier,

and for no other purpose and may be so closed notwithstanding that the creek or any part thereof will thereby be closed to navigation and that the passage of vessels in the creek may thereby be obstructed, delayed or interfered with, and neither the Water Authority nor the Port Authority shall, as a result of such closure, be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of such obstruction, delay or interference.

(2) In and for the purpose of determining in any case when or at what state of the tide, and for how long, the barrier gates are to be closed, and when or at what state of the tide they are to be re-opened after any such closure, the Water Authority shall, subject to the provisions of sub-paragraph (*a*) of the foregoing paragraph, use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the creek.

(3) (*a*) The barrier gates shall not be closed for any of the purposes mentioned in sub-paragraphs (*b*) to (*e*) of paragraph (1) of this Article without the consent of the Port Authority except that such consent shall not be required when the barrier gates are closed at low tide if the operation of closing the barrier gates is not commenced until ninety minutes before the predicted time for low tide and the operation of opening the barrier gates is completed not later than ninety minutes after low tide:

For the purpose of this sub-paragraph "predicted time" means the time predicted for Southend-on-Sea in the edition of the Handbook of Tide Tables published by the Port Authority which is for the time being in force or, if that handbook is no longer published, in any other official publication giving the times of low and high tides predicted for Southend-on-Sea.

(*b*) A consent of the Port Authority which is required under sub-paragraph (*a*) of this paragraph shall not be unreasonably withheld and may be given subject to reasonable terms and conditions; any question as to whether the consent is unreasonably withheld or whether or not any terms or conditions are unreasonable shall in default of agreement be referred to and determined by the Ministers after affording to the Port Authority and the Water Authority an opportunity of appearing before and being heard by a person appointed for that purpose.

(4) (*a*) The Water Authority shall give to the Director of the Marine Operations of the Port Authority the required notice of their intention to close the barrier gates and of their intention to re-open them after such closure.

(*b*) The required notice shall be—

(i) in the case of a closure under sub-paragraph (*a*) of paragraph (1) of this Article such notice as is reasonably practicable but the notice need not be in writing;

(ii) in the case of a closure under sub-paragraphs (*b*) to (*e*) of the said paragraph (1) not requiring the consent of the Port Authority, notice given not less than 24 hours before the closure operation commences and such notice need not be in writing; and

(iii) in the case of a closure under the said sub-paragraphs (*b*) to (*e*) requiring the consent of the Port Authority, notice given not less than 28 days before the closure operation commences and such notice shall be in writing.

(*c*) The Port Authority shall be under a duty to take such steps to regulate the movement of vessels using the river as they may consider necessary or desirable in the light of the required notice.

Misuse of barrier, etc.

13. Any person who without lawful authority or excuse—

(*a*) closes or opens, or attempts to close or open, the barrier gates; or

(*b*) in any other way interferes, or attempts to interfere, with the barrier 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 one hundred pounds, or on conviction on indictment to a term of imprisonment not exceeding six months or to a fine or both.

Byelaws of Port Authority

14. The powers of the Port Authority under section 162 (Thames byelaws) of the Act of 1968 shall be deemed to include a power to make byelaws, after consultation with the Water Authority and the Corporation of Trinity House of Deptford Strond, for or in connection with the management, regulation, direction and control of vessels passing or waiting to pass through the barrier:

Provided that for the purposes of byelaws made by virtue of this Article the confirming authority under the said section 162 shall be the Secretary of State for Trade.

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

15. Notwithstanding anything in this Order any cables, pipes or wires to be laid or placed by the Water Authority under the powers contained in this Order (other than those laid or placed within or attached to the structure of the barrier) under or over any tidal waters or tidal lands below the level of mean high-water springs shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Secretary of State for Trade, after consultation with the Port Authority, may require.

Marking of tidal works in river

16.—(1) The Water Authority shall—

(*a*) at or near every tidal work exhibit such lights and lay down such buoys and take such other steps for preventing danger to navigation as the Port Authority may from time to time reasonably direct;

(*b*) in the case of injury to, or destruction or decay of, a tidal work or any part thereof immediately notify the Port Authority and the Port Authority may thereupon give to the Water Authority reasonable directions as to the steps to be taken for preventing danger to navigation.

(2) If the Water Authority fail to comply with any provision of or direction given under this Article they shall be liable on summary conviction to a fine not exceeding one hundred pounds or on conviction on indictment to a fine.

Survey of tidal works

17. The Secretary of State for Trade may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Water Authority as a simple contract debt.

Exemption from requirements as to works and dredging licences

18. The works shall for the purposes of subsection (7) of section 66 (Licensing of Works) of the Act of 1968, and any dredging or other operations carried out under Article 10 (Power to Water Authority to dredge) of this Order shall for the purposes of subsection (6) of section 73 (Licensing of dredging etc.) of that Act, be deemed to have been constructed or carried out, as the case may be,

in the exercise by the Water Authority of their functions under the Land Drainage Act 1976.

Crown rights

19.—(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 authorises the Water Authority to take, use or in any manner interfere with any land or hereditaments or any rights of whatsoever description—

(*a*) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose; or

(*b*) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Section 115 of the Land Drainage Act 1976 shall not apply to this Order.

Approval by Secretary of State to tidal works and deposit of spoil

20.—(1) Section 76 (Works to be approved by Board of Trade) of the Act of 1968, except paragraph (*b*) of subsection (1) thereof, shall apply in relation to a tidal work as if it were, or were to be, a work placed or constructed on the bed of the river under the direction or licence of the Port Authority.

(2) No spoil or other material excavated during the construction of the works or dredged in the exercise of the powers of Article 10 (Power to Water Authority to dredge) of this Order shall be deposited in any place below the level of mean high-water springs otherwise than in such a position and subject to such conditions and restrictions as may be fixed by the Secretary of State for Trade.

For the protection of Port Authority and river users

21. For the protection of the Port Authority and users of the river the following provisions shall, unless otherwise agreed in writing between the Water Authority and the Port Authority, apply and have effect:—

(1) In this Article, except where the context otherwise requires—

"controlled access" means access to the barrier on the terms that a person to whom access is afforded shall comply with any requirements which may be notified to him for the purposes of ensuring that there is no interference with safe and proper working at the barrier or at any other tidal work;

"plans" means 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 Water Authority'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 river and, where applicable, such relevant hydraulic information obtained from models as may be available to the Water Authority and is not already in the possession of the Port Authority.

(2) Not later than twenty-eight days before—

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

(ii) exercising any of the powers of Article 10 (Power to Water Authority to dredge) of this Order,

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

Provided that any such modifications or conditions as aforesaid shall be notified by the Port Authority to the Water Authority within twenty-eight days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

(3) For the purpose of securing that traffic in, and the flow or regime of, the river shall not be interfered with more than is reasonably necessary tidal works shall be maintained to the reasonable satisfaction of the Port Authority.

(4) The Water Authority shall, upon completion of any part of a tidal work, remove as soon as is practicable any temporary works and materials for temporary works carried out or placed only for the purposes of that part of the tidal work, and shall make good the site thereof to the reasonable satisfaction of the Port Authority.

(5) The Water Authority shall at all reasonable times, upon receipt on each occasion of not less than forty-eight hours' written notice, afford to any duly authorised representative of the Port Authority controlled access, without payment or charge, to the barrier or to any other tidal work for the purposes of inspection and survey in connection with the exercise of the Port Authority's functions and shall provide reasonable facilities therefor.

(6) Except so far as may be unavoidable in the construction of the works, the Water Authority shall not, without the consent of the Port Authority under the hand of their Secretary or harbour master (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the river any gravel, soil or other materials (including in particular any spoil or material excavated, whether or not from the river, in the carrying out of the works).

(7) (*a*) Any pile, stump or other obstruction which becomes exposed in consequence of a tidal work (other than a pile, stump or other obstruction situated on the site of any permanent works) shall be removed from the river by the Water Authority or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the river as the Port Authority may reasonably direct;

(*b*) If the Water Authority fail to remove from the river, or to cut off as aforesaid, any such pile, stump or other obstruction within twenty-eight days after receipt of written notice from the Port Authority requiring its removal or cutting off the Port Authority may carry out the removal or cutting off and recover the costs of so doing from the Water Authority.

(8) (*a*) The Water Authority shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may be occasioned to or reasonably incurred by the Port Authority by reason of any negli-

gent or wilful act or omission of the Water Authority or of any officer, servant or agent of the Water Authority in relation to the exercise or purported exercise of any of their functions under this Order;

(*b*) The fact that any act or thing may have been done by the Water Authority or any officer, servant or agent of the Water Authority under this Order in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority or in a manner approved by the Port Authority or under their supervision or the supervision of their duly authorised representative shall not excuse the Water Authority from any liability under the provisions of this paragraph, and the Water Authority shall effectively indemnify and hold harmless the Port Authority from and against all claims and demands arising out of or in connection with any act or thing which may have been done as aforesaid;

(*c*) Nothing in this paragraph shall impose any liability on the Water Authority with respect to costs, charges, damages or expenses so far as they may be attributable to any negligent or wilful act or omission of the Port Authority, their servants or agents;

(*d*) The Port Authority shall give to the Water Authority reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Water Authority.

(9) Without prejudice to the provisions of Article 16 (Marking of tidal works in river) of this Order, the Water Authority shall provide at the barrier, or afford reasonable facilities thereat for the Port Authority to provide, navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction and use of the works, and the Water Authority shall repay to the Port Authority the costs reasonably incurred by the Port Authority in connection therewith or in connection with any surveillance, co-ordination and regulation of river traffic which becomes reasonably necessary by reason of the construction of a tidal work or of the exercise or prospective exercise by the Water Authority of their powers to close the creek or any part thereof to navigation under Article 9 (Temporary closing of creek in connection with works) of this Order or to close the barrier gates under Article 12 (As to operation of barrier) of this Order.

(10) On completion of the construction of the works the Water Authority shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and cross-sections on scales of not less than 1 in 100 showing the situation and levels of the works.

(11) (*a*) Before the construction of the works is commenced the Port Authority in conjunction with the Water Authority will carry out a survey of such parts of the river as are relevant for the purpose of establishing the condition of the river at that time.

(*b*) The Water Authority will pay to the Port Authority such reasonable costs incurred by the Port Authority in carrying out—

(i) the survey under sub-paragraph (*a*) of this paragraph; and

(ii) any surveys of the river required after the construction of any tidal work has been completed and before the expiration of the period of ten years referred to in paragraph (12)(*b*) of this Article which relates to that tidal work to ascertain the effect of that work on the river,

as would not otherwise have been incurred.

(*c*) The Port Authority will make available to the Water Authority the results of the surveys carried out under this paragraph.

(12) (*a*) If it is agreed between the Water Authority 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 by the Port Authority to arbitration in the same manner as is provided for under sub-paragraph (*c*) of this paragraph that—

(i) any part of the river has silted up or has been subjected to scouring; and

(ii) such silting up or scouring is silting up or scouring to which the provisions of this paragraph apply; and

(iii) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such silting up or scouring should be removed or, as the case may be, made good,

the Water Authority shall pay to the Port Authority (in the manner set out in sub-paragraph (*c*) of this paragraph) any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the silting up, or in making good the scouring, in so far as it is attributable to a tidal work;

(*b*) The provisions of this paragraph shall apply in relation to any silting up or scouring of the river which is wholly or partly attributable to Works Nos. 1 and 2 and any other tidal work executed in connection therewith or incidental thereto or to any other tidal work which may affect materially traffic in or the flow or regime of the river carried out under paragraph (4) of Article 6 (Construction of works) of this Order, during the period of the execution of those works and thereafter for a period of ten years from the relevant date and shall then cease to apply in relation to any silting up or scouring which is wholly or partly attributable to the tidal work in question.

In this paragraph "the relevant date" means, in relation to—

(i) Works Nos. 1 and 2 and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Water Authority that Works Nos. 1 and 2 are completed and the barrier gates are capable of being closed; and

(ii) any other tidal work (not being a tidal work to which sub-paragraph (i) of this definition applies), the date on which it is so certified that the tidal work is completed.

(*c*) The Water Authority shall, if so required by the Port Authority, make payments to the Port Authority on account of any sum required to be paid in pursuance of sub-paragraph (*a*) of this paragraph, being payments of such amounts and made at such times as may be agreed between the Water Authority and the Port Authority, or in default of agreement as may be determined by an arbitrator to be appointed by agreement between the parties (or in default of agreement by the President of the Institution of Civil Engineers on the application of either party after giving notice to the other) to be reasonable for meeting so much of the current cost to the Port Authority in dredging the river or causing the river to be dredged, or in making good or in causing to be made good scouring to which the river has been subjected, as is required to be paid as aforesaid.

(13) (*a*) If a tidal work is abandoned or suffered to fall into decay, the Port Authority may by notice in writing require the Water Authority at their own expense to exercise the option either of repairing and restoring the work or any part thereof, or of removing the work and restoring the site thereof to its

former condition, to such an extent and within such limits as the Port Authority may reasonably require;

(*b*) Where a work consisting partly of a tidal work and partly of works on land above the level of mean high-water springs is abandoned or suffered to fall into decay and that part of the work on land above the level of mean high-water springs is in such 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 Port Authority may include that part of the work, or any portion thereof, in any notice under this paragraph;

(*c*) If on the expiration of such reasonable period as may be specified in a notice served under this paragraph upon the Water Authority they have failed to comply with the requirements of the notice, the Port Authority may themselves exercise the option and execute the appropriate works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Water Authority as a simple contract debt.

(14) Any consent given by the Port Authority under this Order and any conditions attached to that consent shall have effect also as a consent or conditions attached thereto (as the case may be) given by the Port Authority under section 112 of the Land Drainage Act 1976.

(15) 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 alter or diminish any power, authority or jurisdiction vested in the Port Authority at the commencement of this Order.

(16) Any question or difference arising between the Water Authority and the Port Authority under this Article, other than a question or difference arising under paragraph (12) of this Article or to which the provisions of the Land Compensation Act 1961(**a**), the Act of 1965 or the Land Compensation Act 1973(**b**) apply, or as to the meaning or construction of this Article, may be referred by either of the parties (after giving notice in writing to the other of them) for determination by the Ministers and their decision shall be final.

Saving for pollution prevention

22. Nothing in this Order shall authorise the Water Authority to discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise or shall affect the operation of the provisions of the Rivers (Prevention of Pollution) Acts 1951 to 1961(**c**), the Prevention of Oil Pollution Act 1971(**d**) or the Control of Pollution Act 1974(**e**).

Amendment of Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) Order 1976

23. The provisions of the Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) Order 1976(**f**) referred to in columns (1) and (2) of the Schedule to this Order shall have effect subject to the amendments specified in column (3) of that Schedule.

(**a**) 1961 c. 33.
(**b**) 1973 c. 26.
(**c**) 1951 c. 64; 1960 c. 54; 1961 c. 50.
(**d**) 1971 c. 60.
(**e**) 1974 c. 40.
(**f**) S.I. 1976/1991.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 15th June 1979.

(L.S.)

Peter Walker,
Minister of Agriculture, Fisheries and Food.

19th June 1979.

Norman Tebbit,
Parliamentary Under Secretary of State,
Department of Trade.

SCHEDULE

AMENDMENT OF HADLEIGH RAY, EASTHAVEN, LEIGH AND VANGE CREEKS (TIDAL DEFENCES) ORDER 1976

Article (1)	Marginal note (2)	Amendment (3)
2	Interpretation	In paragraph (1)— In the definition of "the barriers", there shall be inserted before the word "the" where it secondly occurs the word "and"; the words "and the Hadleigh Ray barrier (Work No. 3)" shall be omitted and for the word "any" there shall be substituted the word "either". In the definition of "the barrier gates" the words "and, in relation to the Hadleigh Ray barrier, includes the movable gates support beam" shall be omitted. In the definition of "the creeks", the words "Hadleigh Ray, Leigh Creek" shall be omitted and for the word "any" there shall be substituted the word "either". The definition of "the dams" shall be omitted. In the definition of "the works", for the reference to Works Nos. 1, 2, 3, 4 and 5 there shall be substituted a reference to Works Nos. 1 and 2. In paragraph (3), for the words "any of the barriers or to either of the dams" there shall be substituted the words "either of the barriers" and the words "or dam" shall be omitted.
6	Construction of works	In paragraph (2), the descriptions of Works Nos. 3, 4 and 5 shall be omitted, and paragraph (6) shall be omitted.
7	Power to deviate	In paragraph (1), the proviso (*b*) shall be omitted, and in paragraph (2), the words "the Hadleigh Ray barrier" shall be omitted.
9	Temporary closing of creek in connection with works.	For the words "any of" in the three places where they occur there shall be substituted the words "either of".
10	Power to Water Authority to dredge	For the words "any of" in both places where they occur there shall be substituted the words "either of".

Article (1)	Marginal note (2)	Amendment (3)
11	Removal of vessels	In paragraph (1)(*a*), the words "Hadleigh Ray, Leigh Creek" shall be omitted. Paragraph (1)(*b*) shall be omitted. In paragraph (4)(*a*), for the words "any of the barriers or either of the dams (as the case may be)" there shall be substituted the words "either of the barriers". In paragraph (5), in sub-paragraph (*a*) of the definition of "the prescribed area" the words "and Hadleigh Ray" and "and Work No. 3 respectively" shall be omitted and sub-paragraph (*b*) of the said definition shall be omitted.
12	As to operation of barriers	In paragraphs (1) and (2), the words "Hadleigh Ray" shall be omitted.
15	Cables, pipes or wires under or over tidal waters or tidal lands	For the words "any of the barriers or either of the dams" there shall be substituted the words "either of the barriers".
18	Opening of sluices	The whole Article shall be omitted.
19	Part of Leigh Creek to cease to be within jurisdiction of Port Authority	The whole Article shall be omitted.
23	For protection of Port Authority and river users	In paragraph (9), for the words "any of the creeks" there shall be substituted the words "either of the creeks" and for the words "all or any" there shall be substituted the words "both or either". In paragraph (12)(*b*), the words "(other than the part between the dams)" shall be omitted; for the words "any of the barriers or either of the dams" there shall be substituted the words "either of the barriers"; and in the definition of "the relevant date" for the words "any of the barriers" there shall be substituted the words "either of the barriers" and the words "either of the dams and" and "dam or" shall be omitted.
24	For protection of Southend-on-Sea Borough Council	The whole Article shall be omitted.
25	Provisions applicable to Articles 23 and 24	The whole Article shall be omitted.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, made under Sections 56 and 59 of the Thames Barrier and Flood Prevention Act 1972, empowers the Anglian Water Authority to construct a flood barrier with movable gates across Benfleet Creek and to execute ancillary works. The Order amends the provisions of the Hadleigh Ray, Easthaven, Leigh and Vange Creeks (Tidal Defences) Order 1976 by the substitution of the Benfleet Barrier for the proposed barrier at Hadleigh Ray and the dams across Leigh Creek.

The Order empowers the Authority to acquire the requisite land and rights, to temporarily close Benfleet Creek or part thereof to navigation during the execution of any work and specifies the conditions and purposes of barrier closure. The Order provides safeguards covering the operation of the barrier, the regulation of vessels passing or waiting to pass through the barrier, the prevention of danger to navigation and the protection of the Port of London Authority and river users. The Order makes unauthorised operation or attempted operation of the barrier or interference with it an offence.

Copies of the plan and sections mentioned in this Order are available for inspection during office hours at the offices of the Chief Executive of the Anglian Water Authority, Diploma House, Grammar School Walk, Huntingdon PE18 6NZ, at the offices of the Ministry of Agriculture, Fisheries and Food, Great Westminster House, Horseferry Road, London SW1P 2AE and at the offices of the Secretary of State for Trade, Tavis House, 1-6 Tavistock Square, London WC1.