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STATUTORY INSTRUMENTS

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**2007 No. 608**

**The Ouseburn Barrage Order 2007**

**PART 5**

**OPERATION OF SCHEDULED WORKS ETC.**

*Navigation*

**Extinguishment of navigation rights etc. in upstream Ouseburn**

**35.**—(1) All rights of navigation over the upstream Ouseburn whether public or private and however arising shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the authorised works.

(2) Subject to paragraph (1), all public rights of navigation over the upstream Ouseburn are preserved and continue to be effective.

(3) The Council shall pay compensation to any person who suffers damage or loss by reason of the extinguishment of rights of navigation by virtue of paragraph (1) and any question as to the amount of compensation so paid shall be determined by the tribunal.

(4) In assessing any compensation payable under paragraph (3), the tribunal shall take account of—

- (a) the extent to which the rights mentioned in paragraph (1) have been exercised during the period of 20 years calculated retrospectively from the date of the first impoundment; and
- (b) the preservation of rights of navigation over the upstream Ouseburn for navigation by virtue of paragraph (2).

**Navigation etc. in vicinity of scheduled works**

**36.**—(1) In this article, “in the vicinity of the scheduled works” means on or in the area of water between—

- (a) a point 20 metres upstream (along the centre line of the navigable Ouseburn) from the northernmost point of the central pier of the scheduled works; and
- (b) a point 20 metres downstream (along the centre line of the navigable Ouseburn) from the southernmost point of the central pier of the scheduled works.

(2) Any person who, other than in an emergency or with some other reasonable cause—

- (a) moors a vessel to any part of the scheduled works without the consent of the Council, except for the purpose of passing through the lock gates or under the Low Level Bridge or waiting to do so;
- (b) allows any vessel to drift in the vicinity of the scheduled works, except for the purpose of passing through the lock gates or waiting to do so; or
- (c) moors a vessel in the vicinity of the scheduled works so as to cause an obstruction to the access to or egress from the lock gates,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Removal of vessels**

**37.**—(1) Whenever any vessel is sunk, stranded or abandoned in the Ouseburn lying within the limits of deviation, or without lawful authority left or moored in that part of the Ouseburn, the Council may, after giving (except in an emergency) not less than 21 days' written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise, remove, store or otherwise dispose of the vessel.

(2) Subject to article 43 (emergency powers and consents), the power in paragraph (1) shall not be exercisable by the Council if—

- (a) it is within the powers of the Port Authority to deal with the vessel and the Port Authority decide to do so; and
- (b) if the Council, having given not less than one month's notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.

(3) Where a vessel is left or moored adjoining riparian property the Council shall give not less than one month's notice to the owner or occupier of that property and such owner or occupier may make representations to the Council as to the proposed raising, removal, storage, or disposal of the vessel.

(4) Any notice given by the Council under paragraph (1) shall—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the Council may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and
- (c) indicate that there is a right to refer the matter to arbitration under article 38 (arbitration in respect of removal of vessels).

(5) The Council may recover from the owner of any such vessel all expenses reasonably incurred by the Council in respect of the raising, removal, storage or disposal of the vessel or in raising, removing, storing or disposing of any furniture, tackle and apparel of the vessel or any goods, chattels and effects raised or removed from the vessel.

(6) In any proceedings by the Council against a person served with a notice under paragraph (1) for the recovery of any expenses which the Council is entitled to recover from that person under paragraph (5), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 38.

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not within 6 weeks of its removal by the Council, proved to the Council's satisfaction to belong to any claimant, the vessel (together with any such furniture, tackle and apparel) shall vest in the Council.

(8) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Council that he was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the Council shall—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects on the vessel upon payment of the expenses referred to in paragraph (5); or
- (b) if the vessel and the furniture, tackle and apparel on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in

case such proceeds are insufficient to reimburse the Council those expenses the deficiency may be recovered from that person by the Council.

(9) In this article—

“owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring thereof; and

“vessel” includes any part of a vessel.

### **Arbitration in respect of removal of vessels**

**38.**—(1) Any person served with a notice by the Council under article 37(1) (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the Council disputing the notice and stating that—

(a) the vessel is not sunk, stranded or abandoned in the Ouseburn lying within the limits of deviation or without lawful authority left or moored in that part of the Ouseburn; or

(b) there has been some informality, defect or error in, or in connection with, the notice, and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(2) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator shall dismiss the dispute if he is satisfied that the informality, defect or error was not a material one.

(3) On the hearing of the dispute the arbitrator may confirm or set aside the notice.

### **Removal of obstructions other than vessels**

**39.**—(1) This article applies to anything, other than a vessel, causing an obstruction or impediment to the navigation or use of the Ouseburn lying within the limits of deviation (in this article and article 40 referred to as an “obstruction”) and which the owner of the obstruction, or the owner or occupier of the land, as the case may be, caused or knowingly permitted to become or remain an obstruction.

(2) Subject to paragraph (3), the Council may by written notice require the owner of an obstruction or, if he is not known, the owner or occupier of any land on which the obstruction is situated to mark, modify or remove the obstruction.

(3) Subject to article 43 (emergency powers and consents), the power in paragraph (2) shall not be exercisable—

(a) if it is within the powers of the Port Authority to deal with such obstruction and the Port Authority decide to do so; and

(b) if the Council, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.

(4) If the owner of the obstruction, or the owner or occupier of the land, fails to take any action specified by the Council in a notice pursuant to paragraph (2), the Council may take that action and recover the reasonable costs of doing so from that person.

(5) In any proceedings by the Council against any person required to modify, remove or mark an obstruction under paragraph (2) for the recovery of costs which the Council is entitled to recover under paragraph (4), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 40 (arbitration in respect of removal of obstructions other than vessels).

(6) Subject to paragraph (13), the Council may—

- (a) mark an obstruction; or
- (b) modify or remove it,

in such circumstances as it considers fit.

(7) Before exercising its powers under paragraph (6), the Council shall, if it is reasonably practicable to do so, give not less than 21 days' written notice of its intention to the owner or occupier of any land on which the obstruction is situated.

(8) If an obstruction removed by the Council under this article is so marked as to be readily identifiable as the property of any person, the Council shall within one month of its coming into the Council's custody give written notice, in accordance with paragraph (12), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall vest in the Council at the end of that period.

(9) If an obstruction removed by the Council under this article, which is not marked as described in paragraph (8), is not within 3 months of its coming into the custody of the Council proved to the Council's reasonable satisfaction to belong to any person, it shall vest in the Council.

(10) The Council may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (9) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that at the time it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance shall—

- (a) be paid to any person who, within 3 months from the time when the thing came into the custody of the Council, proves to the reasonable satisfaction of the Council that he was the owner of the thing at that time; or
- (b) if within the said period no person proves his ownership at that time, vest in the Council.

(11) If an obstruction removed by the Council under this article—

- (a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or
- (b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(12) A notice given under paragraph (8) shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Council and payment of the reasonable costs of the raising, removal and storage of the thing, possession may be retaken at the place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

(13) The Council shall not under the powers of this article remove, or require the removal of, or modify, or require the modification of, any obstruction specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act.

(14) In paragraph (1), reference to anything causing an obstruction or impediment to the navigation or use of the part of the Ouseburn lying within the limits of deviation is a reference to anything causing an obstruction or impediment to a vessel of a size customarily navigated or used on that part of the Ouseburn.

#### **Arbitration in respect of removal of obstructions other than vessels**

**40.**—(1) Any person required by the Council to modify, remove or mark an obstruction under article 39(2) (removal of obstructions other than vessels) may within 21 days of being so required

serve a counter-notice on the Council disputing the notice on any of the following grounds which are justified by the circumstances of the particular case—

- (a) that the thing required to be marked, removed or modified is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act;
- (b) that the thing required to be marked, removed or modified is an obstruction which has occurred naturally and that to require its marking, removal or modification is unreasonable;
- (c) where the requirement is to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the requirement is to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(2) Any person served with a notice under article 39(7) may within 21 days of service of the notice serve a counter-notice on the Council disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing the Council intends to mark, remove or modify is not an obstruction, or is specifically authorised by any enactment or by a works licence granted by the Port Authority under section 5 of the 1990 Act;
- (b) that the thing the Council intends to mark, remove or modify is an obstruction which has occurred naturally and that to mark, remove or modify it is unreasonable;
- (c) where the Council intends to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the Council intends to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction.

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(3) On the hearing of a dispute under this article the arbitrator may confirm, vary or set aside the requirement or the notice, as the case may be.

### **Removal of projections**

**41.—**(1) Without prejudice to article 39 (removal of obstructions other than vessels), the Council may by written notice require the owner or occupier of a projection which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels navigating or using the Ouseburn; or
- (b) a hindrance to the navigation or use of the Ouseburn,

to remedy its condition to the satisfaction of the Council within a period of time (being not less than one month) specified in the notice.

(2) Any notice served by the Council under this article shall—

- (a) specify the works or other operations required to be carried out;
- (b) have annexed to it a copy of this article and of article 42 (arbitration against notices under article 41); and
- (c) indicate that there is a right to refer the matter to arbitration under article 42.

(3) In serving a notice under this article the Council may impose such terms and conditions as it thinks fit as to how the works or other operations shall be carried out.

(4) If a person required by any notice served by the Council under paragraph (1) to execute works fails to execute the works required within the time specified in the notice, the Council may itself execute the works and recover the expenses reasonably incurred by it in so doing from that person.

(5) In proceedings by the Council against the person served with the notice for the recovery of any expenses which the Council is entitled to recover from that person under paragraph (4), it shall not be open to that person to raise any question which could have been raised on a referral to arbitration under article 42.

(6) In this article, “projection” means anything which projects over the Ouseburn lying within the limits of deviation and includes any tree, bush or other plant but does not include any such things authorised by or under statute or by a works licence under section 5 of the 1990 Act to be placed or constructed.

### **Arbitration against notices under article 41**

**42.**—(1) The following provisions of this article shall apply in relation to any notice served by the Council under article 41 (removal of projections).

(2) A person served with such a notice may, within 21 days of service of the notice, serve a counter-notice on the Council disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the notice is not justified by the terms of article 41;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the Council has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on the occupier of the projection in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served; and
- (f) where the work is work for the common benefit of the projection in question and another projection, that the owner or occupier of the other projection to be benefited, ought to contribute towards the expenses of executing any works required,

and any dispute under this article shall be determined in accordance with article 54 (arbitration).

(3) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator shall dismiss the dispute if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which a dispute under this article is brought include a ground specified in paragraph (2)(e) or (f), the appellant shall serve a copy of the counter-notice on each other person referred to, and in the case of any dispute may serve a copy of the counter-notice on any other person having an estate or interest in the structure or embankment in question.

(5) On the hearing of the dispute the arbitrator may confirm or set aside the notice and may make such award as he thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work, or as to the proportions in which any expenses which may become recoverable by the Council are to be borne by the appellant and such other person.

(6) In exercising its powers under paragraph (5), the arbitrator shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required; and

(b) in any case, to the degree of benefit to be derived by the different persons concerned.

**Emergency powers and consents**

**43.** The Council's powers under articles 37 (removal of vessels), 39 (removal of obstructions other than vessels) and 41 (removal of projections) may be exercised by the Council in an emergency without prior notice to the Port Authority provided that the Port Authority are informed of the action as soon as possible thereafter.