
STATUTORY INSTRUMENTS

1995 No. 519

The Barking Barrage Order 1995

PART X

MISCELLANEOUS AND GENERAL

Management arrangements

76.—(1) The Borough may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of all or part of the authorised works, lands, facilities, functions and activities comprising the undertaking of the Borough, including the upstream river as authorised by or established under, or in connection with, this Order, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Borough or by any other person.

(2) Any agreement under paragraph (1) may provide (inter alia) for the exercise of the powers of the Borough in respect of the undertaking authorised by this Order or any part or parts thereof.

(3) The Borough may at any time lease any part of the undertaking authorised by this Order on such terms and conditions as may be agreed.

(4) The exercise of the powers of any enactment by any person in pursuance of any agreement under paragraph (1) or any lease under paragraph (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Borough and in accordance with any restrictions, liabilities and obligations entered into by the Borough in connection with this Order.

(5) The Borough shall not enter into any agreement or lease under this article—

- (a) without the consent of the Secretary of State; or
- (b) relating to Part IV or V, in so far as such agreement or lease relates to the upstream river within the limits of the Port Authority as defined in the Act of 1968, without the consent of the Port Authority, such consent not to be unreasonably withheld; or
- (c) relating to Part IV or V, without informing the River Authority.

Transfer of functions

77.—(1) At any time after the making of this Order the Borough may propose the transfer to any person of all or any part of the undertaking authorised by this Order or all or any of the functions conferred on the Borough by this Order. The proposal for any such transfer shall be made to the Secretary of State.

(2) The Secretary of State shall consider the Borough's proposal and may consent thereto with or without conditions or may refuse the proposal.

(3) Prior to his determination of the proposal the Secretary of State may require the Borough to consult any interested party, in addition to the requirements of paragraph (5), and to undertake any necessary publicity or other reasonable steps.

(4) Should the Secretary of State give his consent under paragraph (2), then thereafter, the person to whom the undertaking or part thereof or any functions are so transferred shall in relation thereto have and may exercise all or any of the powers conferred upon the Borough by this Order, to the extent that they are still subsisting and capable of taking effect, and shall be subject to all the restrictions, liabilities, duties and obligations to which the Borough is subject under this Order or which have been entered into by the Borough in connection with this Order in so far as they relate to the undertaking or part thereof or to the functions so transferred.

(5) The Borough shall not make a proposal under this article—

- (a) transferring all or any part of the undertaking authorised by this Order or any of its functions under this Order to the Port Authority without the consent of the Port Authority as transferee; or
- (b) transferring any part of its undertaking relating to Parts II, IV and V of this Order or any of its functions under the said parts to any person other than the River Authority without the consent of the River Authority.

Obstructing execution of Order

78. A person who intentionally obstructs any person acting in the execution of this Order or without reasonable excuse pulls up any peg or stake driven into the ground for the purposes of setting out the line, level or site of any works authorised by this Order or otherwise intentionally or recklessly interferes with equipment or materials used in the construction of those works, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

79.—(1) In proceedings for an offence under the provisions of this Order mentioned in paragraph (2) it shall be a defence for the Borough to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The provisions referred to in paragraph (1) are the following—

- article 18; and
- article 20.

(3) 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 Borough shall 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.

Arbitration

80.—(1) Unless otherwise provided in this Order and subject to paragraphs (2) and (3), any unresolved differences arising between the Borough and the River Authority, the Port Authority, the Port Health Authority, Redbridge, Thames Water, the Railway Undertaker or any other interested person shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be nominated by the Secretary of State on the application of either party after notice in writing to the other.

(2) Paragraph (1) shall apply subject to article 74(5) and provided that, in respect of matters arising from Part VII, any arbitrator (subject to paragraph (3)) shall be nominated by the Minister of Agriculture, Fisheries and Food.

(3) Where an unresolved difference arises between the Borough and the River Authority, Port Authority, the Port Health Authority, Redbridge, Thames Water, the Railway Undertaker or any other interested person in respect of the meaning or construction of any part of this Order, the same shall be referred to legal Counsel acting as arbitrator to be agreed between the parties or, in default of such agreement, to be appointed by the Chairman for the time being of the Bar Council for England and Wales on the application of either party after notice in writing to the other.