
STATUTORY INSTRUMENTS

2007 No. 608

The Ouseburn Barrage Order 2007

PART 7

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

50.—(1) The Council may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the Council and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Council and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Council shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

(4) Subject to paragraph (5), the Council shall not under this article transfer or lease any rights conferred by Part 5—

- (a) in so far as such rights relate to the Ouseburn lying within the limits of the Port Authority as defined in the Port of Tyne Reorganisation Scheme 1967(1), without the consent in writing of the Port Authority, such consent not to be unreasonably withheld; and
- (b) without informing the Environment Agency.

(5) The Council shall not under this article transfer or lease any rights conferred by article 44 (byelaws).

Obstructing execution of Order

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

Defence of due diligence

52.—(1) In proceedings for an offence under Part 3, it shall be a defence for the Council 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 Council 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.

Certification of plans etc.

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

Arbitration

54. Unless otherwise provided in this Order, any difference under any provision of this Order shall 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.

No double recovery

55. Compensation shall not be payable in respect of the same matter both under this Order and any other enactment, any contract or any rule of law.

Service of notices

56.—(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) subject to paragraphs (5), (6), (7) and (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 of the Interpretation Act 1978⁽²⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

(2) 1978 c. 30.

- (a) addressing it to him 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 shall be taken to be fulfilled where the recipient of the notice or other document has given his consent to the use of electronic transmission either in writing or by electronic transmission.
- (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 he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.
- (7) A person may revoke his consent to the use of electronic transmission 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 he shall—
- (a) give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
 - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.
- (10) In this article, “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but in electronic form.