
STATUTORY INSTRUMENTS

2005 No. 120

The Merseytram (Liverpool City Centre to Kirkby) Order 2005

PART 7

MISCELLANEOUS AND GENERAL

Street and market traders

71.—(1) Where Merseytravel considers that the carrying on within any part of a street within the Order limits by the holder of a public markets licence, a street trader's licence or a street trading consent, of the trading permitted by that licence or consent, would prevent or seriously impede the construction or maintenance of the authorised works or the safe operation of the authorised street tramway, Merseytravel may—

- (a) revoke that licence or consent, as the case may be, if it only permits trading in a street in which the tram system is or is to be laid or in any street having a junction with such a street; or
- (b) with the consent of the Council, vary the principal or the subsidiary terms of that licence or the conditions of that consent, as the case may be.

(2) The principal or subsidiary terms of a street trader's licence or the conditions of a street trading consent may be varied by Merseytravel under paragraph (1) so that the licence or consent, as the case may be, permits trading in a street which is beyond a street in which the tram system is or is to be laid or any street having a junction with such a street.

(3) Merseytravel shall serve written notice of any such revocation or variation on the licence-holder or the holder of the consent in question not less than 28 days before the revocation or variation is to take effect.

(4) Where Merseytravel revokes a street trader's licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of—

- (a) any fee paid for the grant or renewal of the licence; or
- (b) any charges recoverable by them under paragraph 9(6) of Schedule 4 to the 1982 Act.

(5) Where Merseytravel revokes a public markets licence or a street trading consent under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence or consent.

(6) No legal proceedings whatever may be taken against the Council in relation to any consent given under paragraph (1)(b) except where the Council or any employee, contractor or agent of the Council has acted negligently in giving that consent.

(7) Merseytravel shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1) and in assessing the amount of any such compensation there shall be taken into account any money paid to that person pursuant to paragraph (4) or (5).

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(9) In this article—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982⁽¹⁾;

“the Council” means Liverpool City Council in relation to its area and Knowsley Metropolitan Borough Council in relation to its area, and in each case includes the Council’s employees, agents and contractors;

“public markets licence” means a licence to trade at any street market granted to any person by the Council pursuant to its rights under any Royal Charter or enactment;

“street trading consent” means a consent to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act; and

“street trader’s licence” means a licence to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act or any other enactment.

Disclosure of confidential information

72. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 22 or article 25; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

73.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁾ (summary proceedings by person aggrieved by statutory nuisance) 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) no order shall 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 Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽³⁾; or
- (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) 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); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded);

shall not apply where the consent relates to the use of premises by Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(1) 1982 c. 30.
(2) 1990 c. 43.
(3) 1974 c. 40.

(3) The provisions of this article are without prejudice to any rule of common law having similar effect.

Certification of plans, etc.

74. Merseytravel shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans and the traffic regulation order plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the works and land plans and the traffic regulation order 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.

Service of notices

75.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(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(4) 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—

- (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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

77. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

(4) 1978 c. 30.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
