
STATUTORY INSTRUMENTS

2011 No. 41

The River Mersey (Mersey Gateway Bridge) Order 2011

PART 6

MISCELLANEOUS AND GENERAL

Planning permission and supplementary matters

47.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(1) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(2), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(3) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Power to lop trees overhanging the authorised works

48.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(1) S.I. 1969/17.
(2) S.I. 1975/148.
(3) S.I. 1999/1892.

Disapplication of the Commons Act 2006

49. No land within the limits of land to be acquired or used may be the subject of an application under section 15 (registration of greens) of, or paragraphs 2 to 4 of Schedule 2 (non-registration or mistaken registration under the 1965 Act) to, the Commons Act 2006⁽⁴⁾.

Proceedings in respect of statutory nuisance

50.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽⁵⁾ (summary proceedings by person aggrieved by statutory nuisances) 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 the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised 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 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽⁶⁾; or
 - (b) that the nuisance is a consequence of the construction, maintenance or use of the authorised works 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 the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

Saving for Trinity House and protection of navigation

51.—(1) Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

- (2) Schedule 8 (protection of navigation) shall have effect.

Removal of vessels

52.—(1) If it appears to the undertaker necessary or convenient to do so for the purposes of the construction or maintenance of the authorised works it may remove from within the new crossing area any vessel or structure that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

either to another place within the new crossing area or to a place outside the new crossing area where it may without injury to the vessel be moored or laid.

(4) 2006 c. 26.

(5) 1990 c. 43.

(6) 1974 c. 40.

- (2) Before exercising the powers conferred by paragraph (1) the undertaker shall—
- (a) publish a notice of its intention to do so in Lloyd’s List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Halton, with an interval between the dates of publication of not less than 6 clear days; and
 - (b) display notice of this in a conspicuous position adjacent to that part of the new crossing area in which a vessel to which paragraph (1) applies is located.
- (3) Each of the notices shall—
- (a) state the reason for requiring removal of any vessel from within that part of the new crossing area specified in the notice; and
 - (b) specify a date, which shall be a date not earlier than one month after the last date on which a notice is published pursuant to sub-paragraph (2)(a), by which all vessels must be removed from within that part of the new crossing area specified in the notice.
- (4) If the owner or master of any vessel within the new crossing area does not remove that vessel from within the new crossing area before the date specified in accordance with sub-paragraph (3) (b), the undertaker may, having first consulted the relevant navigation authority, cause that vessel to be removed.
- (5) The undertaker may recover as a debt from the owner of any vessel removed pursuant to paragraph (4) all expenses incurred by the undertaker in respect of its removal.

Obstruction of construction of authorised works

- 53.** Any person who, without reasonable excuse—
- (a) obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any authorised work; or
 - (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

Disclosure of confidential information

- 54.** A person who—
- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 15 (protective works to buildings) or article 16 (power to survey and investigate land); and
 - (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and 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 that person’s performance of a duty in connection with the purposes for which that person was authorised to enter the land.

Statutory undertakers, etc.

55. The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) shall have effect.

Protective provisions

- 56.** The provisions of Schedule 10 (protective provisions) shall have effect.

Disapplication of provisions relating to the conservation of the River Mersey

57. The provisions of the Act passed in the fifth and sixth years of the reign of Queen Victoria (1842) titled “An Act for better preserving the navigation of the River Mersey”(7) shall not apply in relation to the construction of any authorised works in the River Mersey.

Disapplication of certain provisions of the Manchester Ship Canal Acts and Orders

58. The charges over the land, property or undertaking of the Manchester Ship Canal Company imposed pursuant to the Manchester Ship Canal Acts and Orders 1885-1996 shall not apply to any land, or interest in land transferred, leased or granted to the undertaker by the Manchester Ship Canal Company whether that transfer is by agreement or pursuant to Part 3.

Certification of plans, etc.

59. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the works plans, the land plans, the rights of way plans, the open space and exchange land plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections, works plans, land plans, rights of way plans, the open space and exchange land 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

60.—(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) with the consent of the recipient and subject to paragraphs (6) to (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(8) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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

(7) 1842 c. cx.

(8) 1978 c. 30.

recipient of the notice or other document to be transmitted has given 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 the recipient 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) Any consent to the use of electronic transmission given by a person may be revoked by that person 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—

(a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person 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.

No double recovery

61. 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.

Arbitration

62. Any difference under any provision of this Order, unless otherwise provided for, 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.