
STATUTORY INSTRUMENTS

2023 No. 690

The Dee Estuary Conservancy
Harbour Revision (No. 2) Order 2023

PART 4

CONTROL OF WORKS AND DREDGING IN ESTUARY

Restriction of works and dredging

26.—(1) Subject to paragraph (4), no person other than the conservancy authority may in the estuary—

- (a) construct, alter, renew or extend any works; or
- (b) dredge,

unless that person is licensed to do so as provided in paragraph (2).

(2) The person mentioned in paragraph (1)—

- (a) must—
 - (i) in the case of works, have a works licence, and
 - (ii) in the case of dredging, have a dredging licence,
- (b) must comply with all the terms and conditions, if any, upon which the licence is granted, and
- (c) must carry out the works or dredging in accordance with plans, sections and particulars approved, as the case may be, under—
 - (i) article 28 (licensing of works), or
 - (ii) article 29 (licence to dredge).

(3) The conservancy authority may by notice require a person who contravenes this article, within a reasonable time specified in the notice—

- (a) to remove, abate or rectify any work, operation or omission to which the contravention relates, and
- (b) to restore the site of that work, operation or omission to its former condition, and

if the person fails to comply with the notice, the authority may carry out the works required to restore the site and may recover from that person the cost of so doing.

(4) Nothing in this article applies to—

- (a) any operations or works specifically authorised by any enactment;
- (b) any operations or works of a statutory undertaker; or
- (c) any routine maintenance works that in the opinion of the conservancy authority will have no detrimental impact on the safety of navigation in the estuary.

(5) Any person who, without reasonable excuse, contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Control of certain operations and works of statutory undertakers

27.—(1) This article applies to any operations or works in the estuary of a statutory undertaker on, under or over tidal waters or land below the level of high water, not being operations or works which are specifically authorised by an enactment.

(2) Subject to paragraph (3), a statutory undertaker must not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the conservancy authority and has supplied the authority with such particulars as it may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker must inform the conservancy authority of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies must be carried out in accordance with any directions which may from time to time be given by the conservancy authority to the statutory undertaker, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in consequence of the carrying out of the operations or works.

(5) Any person who, without reasonable excuse, contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

28.—(1) The conservancy authority may upon such terms and conditions as it thinks fit grant to any person a licence to construct, place, alter, renew or maintain works in the estuary on, under or over tidal waters or land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, placed, altered, renewed, or maintained.

(2) Application for a works licence must be made in writing to the conservancy authority and must—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable them to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the licence is granted.

(3) In granting a licence, the conservancy authority may require modifications to be made to the plans, sections and particulars submitted to it by the applicant.

(4) The conservancy authority may require an applicant for a works licence, on making the application for it, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(5) As a condition of the granting of a licence, the conservancy authority may require a licensee, being an applicant to whom a licence has been granted or the applicant's successor, where works are constructed pursuant to the licence, to pay a reasonable fee in respect of the authority's administrative expenses and overheads in supervising or inspecting, where necessary, the construction or maintenance of the works.

(6) If the conservancy authority decides to grant a works licence it must give notice of its decision to the applicant.

(7) Where the conservancy authority refuses to grant a works licence which has been applied for it must give reasons in writing for its refusal.

- (8) Where the conservancy authority—
- (a) grants a works licence upon terms or conditions, or
 - (b) requires any modification in the plans and particulars,

it must give reasons in writing for the terms and conditions imposed or the modifications required.

(9) If within three months from the date of making an application under paragraph (2) the conservancy authority does not notify to the applicant its decision whether to grant a works licence, it must be deemed to have refused the application.

(10) Articles 31 to 35 apply in relation to the holder of a works licence with respect to the works which are authorised by the licence as they do in relation to the conservancy authority with respect to tidal works, with the modification that for all references in those articles to the conservancy authority or authority, as the case may be, there are substituted references to the holder of the works licence.

(11) The grant of a licence under this article has effect for the purposes of article 26 (restriction of works and dredging) and confers no other authority for the carrying out of the operations covered by the licence.

(12) In the carrying out of any works or operations under a works licence, the holder of the licence must not—

- (a) interfere with, damage or otherwise injuriously affect, any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus,

without the consent of the statutory undertaker concerned.

Licence to dredge

29.—(1) The conservancy authority may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the estuary.

(2) Application for a dredging licence must be made in writing to the conservancy authority and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations in respect of which the application is made.

(3) In granting a licence, the conservancy authority may require modifications to be made to the plans, sections and particulars submitted to it by the applicant.

(4) Paragraphs (4) to (9) and (12) of article 28 (licensing of works) apply in relation to a dredging licence as they apply in relation to a works licence.

(5) The grant of a licence under this article has effect for the purpose of article 26 (restriction of works and dredging) and confers no other authority for the carrying out of the operations covered by the licence.

Appeals in respect of works or dredging licences

30.—(1) Where—

- (a) the conservancy authority has refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or
- (b) the conservancy authority—
 - (i) has granted a licence mentioned in sub-paragraph (a) upon terms or conditions, or
 - (ii) has required modifications to be made to the plans, sections or particulars submitted by the applicant, and

the applicant is aggrieved by the authority's decision as to such terms or conditions, or as to such modifications,

the applicant may appeal to the Secretary of State.

- (2) An appeal under paragraph (1) must be made within 28 days from—
- (a) the date on which the conservancy authority gives notice of its decision, or
 - (b) the date on which it is deemed—
 - (i) under article 28(9) in relation to a works licence, or
 - (ii) under articles 28(9) and 29(4) in relation to a licence to dredge,to have refused the application.

(3) An appeal under paragraph (1) must be made by notice in writing stating the grounds of the appeal.

(4) A person who appeals to the Secretary of State under this article must at the same time send a copy of the notice of appeal to the conservancy authority.

- (5) The conservancy authority—
- (a) must as soon as reasonably practicable, but not later than 28 days from receipt of the notice of appeal, provide all relevant documents to the Secretary of State,
 - (b) may submit to the Secretary of State its written observations on the appeal, and
 - (c) if it wishes to submit observations under sub-paragraph (b), must do so not later than 28 days from the receipt of the notice of appeal.

(6) Where an appeal has been made under this article the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including—

- (a) amendments to the terms and conditions to which the licence is subject, or
- (b) modifications of plans, sections or particulars.

(7) The conservancy authority must give effect to any decision given, or requirement made, by the Secretary of State under paragraph (6).

Lights on tidal works during construction

31.—(1) The conservancy authority must at or near a tidal work, during the whole time of the construction, extension, enlargement, alteration, replacement or re-laying in respect of such work—

- (a) exhibit every night from sunset to sunrise such lights, if any, and
- (b) take such other steps for the prevention of danger to navigation,

as the Secretary of State may from time to time direct.

(2) If the conservancy authority fails to comply with any direction given under paragraph (1), it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

32.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the conservancy authority must—

- (a) as soon as reasonably practicable notify Trinity House, and
- (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the conservancy authority fails—

- (a) to notify Trinity House as required by paragraph (1), or
- (b) to comply with any requirement of a direction given under paragraph (1),

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

Abatement of works abandoned or decayed

33.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the conservancy authority at its own expense either—

- (a) to repair and restore the work or any part of it, or
- (b) to remove the work and restore the site to its former condition,

in either case to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting—

- (a) partly of a tidal work, and
- (b) partly of works on or over land above the level of high water,

is abandoned or allowed to fall into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) is served upon the conservancy authority, it has failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by the Secretary of State in so doing is recoverable from the conservancy authority.

Survey of tidal works

34. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of—

- (a) a tidal work, or
- (b) the site upon which it is proposed to construct a tidal work,

and any expenditure incurred by the Secretary of State in relation to any such survey and examination is recoverable from the conservancy authority.

Permanent lights on tidal works

35.—(1) After the completion of a tidal work the conservancy authority must, at the outer extremity of that work—

- (a) exhibit every night from sunset to sunrise, such lights, if any, and
- (b) take such other steps, if any, for the prevention of danger to navigation,

as Trinity House may from time to time direct.

(2) If the conservancy authority fails to comply in any respect with a direction given under paragraph (1) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.