
STATUTORY INSTRUMENTS

2012 No. 1867

The Ipswich Barrier Order 2012

PART 7

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

49.—(1) The Agency 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 Agency and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Agency 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 Agency 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) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Agency.

(4) The Agency must not under this article transfer or lease any rights conferred by article 42 (byelaws).

Commencement Information

I1 Art. 49 in force at 7.8.2012, see [art. 1](#)

Obstructing execution of Order

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

Commencement Information

I2 Art. 50 in force at 7.8.2012, see [art. 1](#)

Defence of due diligence

51.—(1) In proceedings for an offence under Part 3 (provisions relating to tidal works), it is a defence for the Agency 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 Agency must 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.

Commencement Information

I3 Art. 51 in force at 7.8.2012, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

52.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (summary proceedings by persons 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 may 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 Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works; and
- (b) 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(2).

(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),

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

Commencement Information

I4 Art. 52 in force at 7.8.2012, see [art. 1](#)

Certification of plans etc.

53. The Agency must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(1) 1990 c. 43.

(2) 1974 c. 40.

Commencement Information

I5 Art. 53 in force at 7.8.2012, see [art. 1](#)

Arbitration

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

Commencement Information

I6 Art. 54 in force at 7.8.2012, see [art. 1](#)

No double recovery

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

Commencement Information

I7 Art. 55 in force at 7.8.2012, see [art. 1](#)

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) 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(3) 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, that person's 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 the 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 is fulfilled where the recipient of the notice or other document 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 must provide such a copy as soon as reasonably practicable.
- (7) A person may revoke that person’s 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—
 - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article is not to 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.

Commencement Information

18 Art. 56 in force at 7.8.2012, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Ipswich Barrier Order 2012, PART 7.