



# Land Drainage Act 1991

## 1991 CHAPTER 59

### PART II

#### PROVISIONS FOR FACILITATING OR SECURING THE DRAINAGE OF LAND

##### *General powers*

#### **14 General drainage powers of boards and local authorities.**

- (1) Subject to section 11 above and subsection (4) and section 17 below—
- (a) every drainage board acting within the internal drainage district for which they are the drainage board; and
  - (b) every local authority acting either—
    - (i) for the purpose of carrying out works in pursuance of a scheme under section 18 below; or
    - (ii) so far as may be necessary for the purpose of preventing flooding or mitigating any damage caused by flooding in their area,
- shall have the powers specified in subsection (2) below.
- (2) The powers mentioned in subsection (1) above are the powers, otherwise than in connection with a main river or the banks of such a river—
- (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work;
  - (b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
  - (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land.

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- (3) Subject to section 11 above and subsection (4) and section 17 below, an internal drainage board or local authority that desire, otherwise than in connection with a main river or the banks of such a river, to carry out any drainage works for the benefit of their district or area in lands outside that district or area shall have the same powers for that purpose as are conferred by this Act on persons interested in land which is capable of being drained or improved and desiring to carry out drainage works for that purpose.
- (4) Nothing in this section—
  - (a) authorises any person to enter on the land of any person except for the purpose of maintaining existing works; or
  - (b) authorises a county council to exercise any power except in accordance with section 16 below.
- (5) Where injury is sustained by any person by reason of the exercise by a drainage board or local authority of any of their powers under this section, the board or authority shall be liable to make full compensation to the injured person.
- (6) In case of dispute, the amount of the compensation payable under subsection (5) above shall be determined by the Lands Tribunal.
- (7) Any expenses incurred by an internal drainage board under subsection (3) above shall be defrayed as if the expenses had been incurred in their district.

**Modifications etc. (not altering text)**

C1 S. 14 amended (5.11.1993) by 1993 c. 42, s.22.

**15 Disposal of spoil by boards and local authorities.**

- (1) Subject to subsections (2) and (3) and sections 16 and 17 below, an internal drainage board or local authority may—
  - (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any ordinary watercourse; and
  - (b) deposit any matter so removed on the banks of such a watercourse, or on such width of land adjoining such a watercourse as is sufficient to enable the matter to be removed and deposited by mechanical means in one operation.
- (2) The powers conferred on a local authority by this section shall not be exercisable except—
  - (a) for the purpose of carrying out works in pursuance of a scheme under section 18 below; or
  - (b) so far as may be necessary for the purpose of preventing flooding or mitigating any damage caused by flooding in their area.
- (3) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the <sup>MI</sup>Environmental Protection Act 1990.
- (4) Where injury is sustained by any person by reason of the exercise by an internal drainage board or local authority of their powers under subsection (1)(b) above—

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- (a) the board or authority may, if they think fit, pay to him such compensation as they may determine; and
  - (b) where the injury could have been avoided if those powers had been exercised with reasonable care, subsections (5) and (6) of section 14 above shall apply as if the injury had been sustained by reason of the exercise by the board or authority of their powers under that section.
- (5) An internal drainage board or local authority, on the one hand, and the council of any district or London borough, on the other, may enter into an agreement providing—
- (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
  - (b) for the payment by the board or authority to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.

**Modifications etc. (not altering text)**

**C2** S. 15 amended (5.11.1993) by 1993 c. 42, s.22.

**Marginal Citations**

**M1** 1990 c. 43.

**16 Exercise of local authority powers under sections 14 and 15.**

- (1) Subject to subsection (3) below, where the powers conferred by section 14 or 15 above on a non-metropolitan district council are not exercised by that council, they may be exercised by the county council—
- (a) at the request of the council of the district; or
  - (b) after not less than six weeks' notice given in writing by the county council to the district council.
- (2) Subject to subsection (3) below, where the powers conferred by section 14(1) above on a metropolitan district council or London borough council or the Common Council of the City of London are not exercised by that council, they may be exercised by the NRA—
- (a) at the request of the council; or
  - (b) after not less than six weeks' notice given in writing by the NRA to the council;
- and any expenses incurred by the NRA under subsection (3) above shall be recoverable from the council concerned by the NRA summarily as a civil debt.
- (3) Where the council to whom a notice has been given for the purposes of subsection (1) (b) or (2)(b) above—
- (a) appeal against the notice to the Secretary of State before it expires; and
  - (b) inform the county council or, as the case may be, the NRA of the appeal,
- the powers to which the notice relates shall not be exercised in pursuance of the notice by the county council or, as the case may be, the NRA unless it is confirmed by the Secretary of State.

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## **17 Supervision of local authority powers under sections 14 to 16.**

- (1) A local authority shall not carry out or maintain any drainage works authorised by sections 14 to 16 above in connection with any watercourse except with the consent of, and in accordance with any reasonable conditions imposed by, the NRA.
- (2) Before giving any consent or imposing any condition under subsection (1) above with respect to any drainage works in connection with a watercourse under the control of an internal drainage board the NRA shall consult with the internal drainage board.
- (3) A consent required under subsection (1) above—
  - (a) shall not be unreasonably withheld; and
  - (b) shall be deemed to have been given if it is neither given nor refused within two months after application for it is made.
- (4) Any question arising under this section whether the consent of the NRA is unreasonably withheld, or whether any condition imposed by the NRA is reasonable, shall be referred to and determined by the Ministers.
- (5) Subsection (1) above shall not apply to any work carried out in an emergency, but a local authority carrying out any work excepted by this subsection shall, as soon as practicable, inform the NRA in writing of the carrying out of the work and of the circumstances in which it was carried out.

## **18 Drainage of small areas.**

- (1) Where—
  - (a) the NRA is of the opinion that any land is capable of improvement by drainage works but that the constitution for that purpose of an internal drainage district would not be practicable; or
  - (b) a local authority other than a district council is of that opinion in relation to any land in their area,

the NRA or, as the case may be, that local authority may, in accordance with the provisions of a scheme made by it or them under this section, enter on the land and carry out such drainage works as appear to it or them desirable.
- (2) Schedule 4 to this Act shall have effect with respect to the making of a scheme under this section.
- (3) A scheme under this section must state—
  - (a) the works proposed to be carried out;
  - (b) the area to be improved by the works;
  - (c) the estimated expenses (including administrative expenses) of the carrying out of the works;
  - (d) the maximum amount to be recoverable by the NRA or local authority in respect of those expenses; and
  - (e) the manner in which the expenses of carrying out and maintaining the works are to be apportioned amongst the lands comprised in the area to be improved.
- (4) Subject to subsection (6) and (7) below, the amount stated in a scheme in pursuance of subsection (3)(c) above shall not exceed an amount equal to £50 for each hectare in the area to be improved.
- (5) The following expenses, that is to say-

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- (a) those incurred by the NRA or a local authority under this section in the carrying out of drainage works, to an amount not exceeding the amount stated in the scheme in pursuance of subsection (3)(d) above; and
  - (b) those incurred by the NRA or a local authority in maintaining works carried out by the NRA or, as the case may be, that authority under this section, shall, according to the apportionment provided for by the scheme, be recoverable by the NRA or that authority from the several owners of the lands to which the scheme relates.
- (6) Each of the Ministers shall have power to exempt a scheme from the limit imposed by subsection (4) above if it appears to him that the works proposed to be carried out are urgently required in the public interest.
- (7) Each of the Ministers shall have power by order made by statutory instrument from time to time to vary the limit imposed by subsection (4) above; but no such order shall have effect unless it is approved by a resolution of each House of Parliament.
- (8) A scheme made under this section shall be a local land charge.

## **19 Arrangements as to works etc. with navigation and conservancy authorities.**

- (1) Subject to subsections (2) and (3) below, an internal drainage board, with a view to improving the drainage of any land situated in their district, may enter into an arrangement with a navigation authority or conservancy authority for any of the following purposes, that is to say—
- (a) the transfer to the board of—
    - (i) the whole or any part of the undertaking of the navigation authority or conservancy authority or of any of the rights, powers, duties, liabilities and obligations of that authority; or
    - (ii) any property vested in that authority as such;
  - (b) the alteration or improvement by the board of any of the works of the navigation authority or conservancy authority;
  - (c) the making of payments by the board to the navigation authority or conservancy authority or by that authority to the board in respect of any matter for which provision is made by the arrangement.
- (2) An internal drainage board shall not enter into any arrangement under this section in relation to a main river or the banks of a main river or in relation to any drainage works in connection with a main river.
- (3) The exercise by an internal drainage board of their power to enter into an arrangement under this section shall require the approval of the relevant Minister and the Secretary of State.
- (4) Where an internal drainage board are intending to enter into an arrangement under this section, they shall publish a notice of their intention in such manner as may be directed by the relevant Minister.
- (5) Where an arrangement has been made under this section, an internal drainage board shall cause a notice under subsection (6) below to be published in the London Gazette in such form as may be prescribed by regulations made by the relevant Minister.
- (6) A notice under this subsection is a notice—
- (a) stating that the arrangement has been made; and

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- (b) specifying the place at which a copy of the arrangement may be inspected by persons interested.

## 20 Arrangements with other persons for carrying out drainage works.

- (1) Subject to subsection (3) below, an internal drainage board may, by agreement with any person and at that person's expense, carry out and maintain, whether within or outside their district, any drainage works which that person is entitled to carry out and maintain.
- (2) Any local authority other than the council of a non metropolitan district may, by agreement with any person and at that person's expense, carry out within the local authority's area any drainage works which that person is entitled to carry out.
- (3) The powers conferred on an internal drainage board by subsection (1) above shall not be exercisable in connection with a main river, the banks of such a river or any drainage works in connection with a main river.
- (4) The obligation of any person under this section to meet the expenses of any works shall be subject to section 59(6) below.

## 21 Enforcement of obligations to repair watercourses, bridges, etc.

- (1) This section applies to any obligation to which any person was subject, before the commencement of this Act, by reason of tenure, custom, prescription or otherwise, except an obligation under an enactment re-enacted in this Act or the <sup>M2</sup>Water Resources Act 1991.
- (2) If any person—
  - (a) is liable, by reason of any obligation to which this section applies, to do any work in relation to any watercourse, bridge or drainage work (whether by way of repair, maintenance or otherwise); and
  - (b) fails to do the work,
 the drainage board concerned may serve a notice on that person requiring him to do the necessary work with all reasonable and proper despatch.
- (3) Subject to section 107(2) of the Water Resources Act 1991, the powers conferred by this section shall not be exercisable in connection with a main river, the banks of such a river or any drainage works in connection with such a river.
- (4) If any person fails, within seven days, to comply with a notice served on him under subsection (2) above by the drainage board concerned, the board may do all such things as are necessary for that purpose.
- (5) Any expenses reasonably incurred, in the exercise of their powers under this section, by the drainage board concerned may be recovered from the person liable to repair.
- (6) Subject to section 8 above, references in this section to the drainage board concerned—
  - (a) in relation to any watercourse, bridge or drainage works in an internal drainage district, are references to the drainage board for that district; and
  - (b) in relation to any other watercourse, bridge or drainage works, are references to the NRA.

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#### Modifications etc. (not altering text)

C3 S. 21(3) excluded (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), ss. 107(2), 225(2)

#### Marginal Citations

M2 1991 c. 57.

## 22 Powers of Ministers to authorise landowners to carry out drainage works.

(1) Where—

- (a) any persons interested in any land are of the opinion that it is capable of improvement by drainage works; but
- (b) the works cannot be carried out by reason of the objection or disability of any person whose land would be entered upon, cut through or interfered with by or for the purposes of the works,

those persons may present an application to the appropriate Minister for an order under this section authorising them to carry out such drainage works as are expedient with a view to the improvement of the land.

(2) An application for an order under this section—

- (a) shall be in the prescribed form; and
- (b) shall contain particulars of the proposed works and the persons by whom they are to be carried out and such further particulars as the appropriate Minister may prescribe or require;

and the applicants shall give such security for expenses as may be required by the appropriate Minister.

(3) Notice of any application for an order under this section, of the place where it can be inspected and of the period within which objections to the proposed works may be made to the appropriate Minister shall be given in the prescribed manner—

- (a) to all persons not parties to the application whose lands are proposed to be entered upon, cut through or interfered with;
- (b) to the NRA; and
- (c) to any internal drainage board for any district within which all or any of the proposed works are to be carried out.

(4) If, where an application for an order under this section has been made—

- (a) an objection to the proposed works has been made to the appropriate Minister, within the prescribed period, by any person interested or in any way affected by the proposed works; and
- (b) that objection is not withdrawn,

the appropriate Minister shall forthwith cause a public inquiry to be held in the locality in which the proposed works are to be carried out.

(5) On an application for an order under this section, the appropriate Minister—

- (a) where either no objection has been made as mentioned in subsection (4) above or every such objection has been withdrawn; or
- (b) in any other case, after receiving the report of the inquiry under subsection (4) above,

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shall, in his discretion, either refuse to authorise the carrying out of the proposed works or by order authorise the carrying out of the works with or without alteration.

- (6) Subject to subsection (7) below, the persons authorised by an order under this section to carry out works shall have full power to carry out the works and to maintain them for ever thereafter.
- (7) Where an order under this section is made, every person interested in the land affected by the order (other than any person who is one of those authorised to carry out the works) shall be entitled to compensation for any injury suffered by him in respect of that interest by reason of the works; and, in case of a dispute as to the amount of the compensation payable, the amount shall be determined by the Lands Tribunal.
- (8) No order of the appropriate Minister under this section shall authorise any work whereby the streams, reservoirs or feeders supplying any ornamental waters will be cut through, diverted or interfered with otherwise than by agreement and with the consent of the persons to whom such ornamental waters belong.
- (9) In this section “the appropriate Minister”—
  - (a) in relation to England, means the Minister; and
  - (b) in relation to Wales, means the Secretary of State.

*Control of flow of watercourses etc.*

**<sup>F1</sup>23 Prohibition on obstructions etc. in watercourses**

- (1) No person shall—
  - (a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or
  - (b) erect any culvert that would be likely to affect the flow of any ordinary watercourse or alter any culvert in a manner that would be likely to affect any such flow,
 without the consent in writing of the drainage board concerned.
- (2) The drainage board concerned may require the payment of an application fee by a person who applies to them for their consent under this section; and the amount of that fee shall be £50 or such other sum as may be [<sup>F2</sup>prescribed].
- (3) Where an application is made to the drainage board concerned for their consent under this section—
  - (a) the consent is not to be unreasonably withheld; and
  - (b) if the board fail within two months after the relevant day to notify the applicant in writing of their determination with respect to the application, they shall be deemed to have consented.
- (4) In subsection (3) above “the relevant day”, in relation to an application for a consent under this section, means whichever is the later of—
  - (a) the day on which the application is made; and
  - (b) if at the time when the application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged.
- (5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, that question shall be referred to a single



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arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

- (6) Nothing in this section shall apply—
- (a) to any works under the control of a navigation authority, harbour authority or conservancy authority; or
  - (b) to any works carried out or maintained under or in pursuance of any Act or any order having the force of an Act.
- (7) The power of the Ministers to make an order under subsection (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F3</sup>(7A) In subsection (2) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]
- (8) Subject to section 8 above, references in this section and section 24 below to the drainage board concerned—
- (a) in relation to a watercourse in an internal drainage district, are references to the drainage board for that district; and
  - (b) in relation to any other watercourse, are references to the NRA.

#### Textual Amendments

- F1** S. 23 applied (21.09.1995) by 1994 c. xiii, s.40
- F2** Word in s. 23(2) substituted (21.9.1995) by 1995 c. 25, s. 120(1), Sch. 22, para. 192(1)(with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3
- F3** S. 23(7A) inserted (21.9.1995) by 1995 c. 25, s. 120(1), Sch. 22, para. 192(2)(with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3

## 24 Contraventions of prohibition on obstructions etc.

- (1) If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice.
- (2) The person upon whom a notice may be served under subsection (1) above is—
- (a) in a case where the person by whom the obstruction has been erected or raised or otherwise altered has, at the time when the notice is served, power to remove the obstruction, that person; and
  - (b) in any other case, any person having power to remove the obstruction.
- (3) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above he shall be guilty of an offence and liable, on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and

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- (b) if the contravention or failure is continued after conviction, to a further fine not exceeding £40 for every day on which the contravention or failure is so continued.
- (4) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above, the drainage board concerned may, without prejudice to any proceedings under subsection (3) above—
  - (a) take such action as may be necessary to remedy the effect of the contravention or failure; and
  - (b) recover the expenses reasonably incurred by them in doing so from the person in default.

## **25 Powers to require works for maintaining flow of watercourse.**

- (1) Subject to section 26 below, where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then, unless the condition is attributable to subsidence due to mining operations (including brine pumping), the drainage board or local authority concerned may, by notice served on a person falling within subsection (3) below, require that person to remedy that condition.
- (2) For the purposes of this section in its application in relation to any watercourse—
  - (a) the drainage board concerned is the drainage board for the internal drainage district in which the watercourse is situated; and
  - (b) the local authority concerned is the local authority for the area where the land as respects which the powers under this section are exercisable is situated;
 but references in this section to the drainage board concerned shall, in relation to a watercourse which is not in an internal drainage district, be construed as references to the NRA.
- (3) Subject to subsection (4) below, a notice under this section in relation to a watercourse may be served on—
  - (a) any person having control of the part of the watercourse where any impediment occurs; or
  - (b) any person owning or occupying land adjoining that part; or
  - (c) any person to whose act or default the condition of the watercourse mentioned in subsection (1) above is due.
- (4) No notice under this section requiring any person to carry out any work on land not owned or occupied by him shall be served without the consent of the owner and the occupier of the land, except in a case where it is not practicable, after reasonable inquiry, to ascertain the name and address of the owner or occupier.
- (5) A notice under this section shall indicate—
  - (a) the nature of the works to be carried out and the period within which they are to be carried out; and
  - (b) the right of appeal to a magistrates' court and the period within which such an appeal may be brought under section 27 below.
- (6) Subject to the right of appeal provided by section 27 below, if the person upon whom a notice is served under this section fails to carry out the works indicated by the notice within the period so indicated—

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- (a) the drainage board or local authority concerned may themselves carry out the works and recover from that person the expenses reasonably incurred by them in doing so; and
  - (b) without prejudice to their right to exercise that power, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) In proceedings by the drainage board or local authority concerned for the recovery of any expenses under subsection (6) above it shall not be open to the defendant to raise any question which he could not have raised on an appeal under section 27 below.
- (8) Nothing in this section shall affect the right of an owner or occupier to recover from the other, under the terms of any lease or other contract, the amount of any expenses incurred by him under this section or recovered from him by the drainage board or local authority concerned.

**Modifications etc. (not altering text)**

C4 S. 25 applied (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), ss. [107\(3\)](#), [225\(2\)](#)

## 26 Competing jurisdictions under section 25.

- (1) Before exercising their powers under section 25 above in relation to any watercourse or part of a watercourse a local authority shall, according to whether or not the watercourse or part is in an internal drainage district, notify either the drainage board for that district or the NRA.
- (2) Where a local authority have powers (otherwise than under section 25 above) for securing the appropriate flow of water in any watercourse under their jurisdiction, the powers conferred by section 25 above shall not be exercised by any body in relation to that watercourse except—
- (a) by agreement with the local authority; or
  - (b) where, after reasonable notice from that body, the local authority either fail to exercise their powers or exercise them improperly.
- (3) Where any watercourse is under the jurisdiction of a navigation authority, harbour authority, conservancy authority or board of conservators which are exercising their powers, section 25 above shall not apply to the watercourse except with the consent of that authority or board.
- (4) Nothing in this section shall apply in relation to section 25 above in its application to main rivers by virtue section 107(3) of the <sup>M3</sup>Water Resources Act 1991 (main river functions of NRA).

**Marginal Citations**

M3 [1991 c. 57](#).

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## 27 Appeals against notices under section 25.

- (1) A person served with a notice under section 25 above may, within twenty-one days from the date on which the notice is served on him, appeal to a magistrates' court on any of the following grounds, that is to say—
  - (a) that the notice or requirement is not justified by that section;
  - (b) that there has been some informality, defect or error in, or in connection with, the notice;
  - (c) that the body which served the notice has refused unreasonably to approve the carrying out of alternative works, or that the works required by the notice to be carried out are otherwise unreasonable in character or extent, or are unnecessary;
  - (d) that the period within which the works are to be carried out is not reasonably sufficient for the purpose;
  - (e) that the notice might lawfully have been served on another person and that it would have been equitable for it to have been so served;
  - (f) that some other person ought to contribute towards the expenses of carrying out any works required by the notice.
- (2) The procedure on an appeal under this section shall be by way of complaint for an order and in accordance with the <sup>M4</sup>Magistrates' Courts Act 1980.
- (3) For the purposes of the time limit for bringing an appeal under this section the making of the complaint shall be treated as the bringing of the appeal.
- (4) In so far as an appeal under this section is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (5) In the case of an appeal under this section, the appellant—
  - (a) may serve a copy of his notice of appeal on any person having an estate or interest in the part of the watercourse where the impediment occurs or land adjoining that part; and
  - (b) shall, where the grounds upon which the appeal under this section is brought include a ground specified in subsection (1)(e) or (f) above, serve a copy of his notice of appeal on each other person referred to.
- (6) On the hearing of an appeal under this section the court may make such order as it thinks fit—
  - (a) with respect to the person by whom any work is to be carried out and the contribution to be made by any other person towards the cost of the work; or
  - (b) as to the proportions in which any expenses which may become recoverable by the body which served the notice are to be borne by the appellant and such other person.
- (7) In exercising its powers under subsection (6) above the court shall have regard—
  - (a) as between an owner and an occupier, to the terms and conditions (whether contractual or statutory) of the tenancy and to the nature of the works required; and
  - (b) in any case, to the degree of benefit to be derived by the different persons concerned.

*Status: Point in time view as at 21/09/1995.*

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- (8) A person aggrieved by an order, determination or other decision of a magistrates' court under this section may appeal to the Crown Court.
- (9) Where upon an appeal under this section a court varies or reverses any decision of a body which has served a notice under section 25 above, it shall be the duty of that body to give effect to the order of the court.

#### Marginal Citations

M4 1980 c. 43.

### *Restoration and improvement of ditches*

## 28 Orders requiring the cleansing of ditches etc.

- (1) Where a ditch is in such a condition as—
  - (a) to cause injury to any land; or
  - (b) to prevent the improvement of the drainage of any land,
 the Agricultural Land Tribunal, on the application of the owner or occupier of the land, may if they think fit make an order requiring the person or persons named in the order to carry out such remedial work as may be specified in the order.
- (2) An order under this section with respect to a ditch may name—
  - (a) any person who is an owner or occupier of land through which the ditch passes or which abuts on the ditch; and
  - (b) any person who, though not such an owner or occupier, has a right to carry out the work specified in the order or any part of it.
- (3) Where an order under this section names more than one person it may either—
  - (a) require each of those persons to carry out a specified part of the work specified in the order; or
  - (b) subject to subsection (4) below, require all those persons jointly to carry out the whole of that work.
- (4) Where the Agricultural Land Tribunal make an order requiring persons jointly to carry out any work, the Tribunal, without prejudice to those persons' joint liability, may, if they think fit, specify in the order the proportions in which those persons are to contribute to the cost of doing so.
- (5) In this section—
 

“ditch” includes a culverted and a piped ditch but does not include a watercourse vested in, or under the control of, a drainage body; and

“remedial work”, in relation to a ditch, means work—

  - (a) for cleansing the ditch, removing from it any matter which impedes the flow of water or otherwise putting it in proper order; and
  - (b) for protecting it.

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## 29 Effect of order under section 28.

- (1) An order under section 28 above shall be sufficient authority for any person named in the order—
  - (a) to do the work specified in relation to him in the order; and
  - (b) so far as may be necessary for that purpose, to enter any land so specified.
- (2) Where at the end of three months, or such longer period as may be specified in the order, any work specified in an order under section 28 above has not been carried out, the appropriate Minister or any drainage body authorised by him, either generally or in a particular case, may—
  - (a) carry out the work;
  - (b) enter any land which it is necessary to enter for that purpose; and
  - (c) recover from any person named in the order the expenses reasonably incurred in carrying out under this subsection any work which ought to have been carried out by that person;

and those expenses may include any compensation payable in connection with the work under subsection (5) below.
- (3) A person entitled by virtue of this section to enter any land—
  - (a) may take with him such other persons and such equipment as may be necessary; and
  - (b) if the land is unoccupied, shall, on leaving it, leave it as effectually secured against trespassers as he found it.
- (4) Before entering any land under the powers conferred by virtue of this section the person entering it shall give not less than seven days' notice to the occupier of the land.
- (5) Where any person sustains any injury by reason of the exercise of any power conferred by virtue of this section then, unless the power was exercised in or for the purpose of the carrying out of any work which that person was required to carry out by an order under section 28 above, the person exercising the power shall be liable to make full compensation to the person sustaining the injury.
- (6) In the case of dispute the amount of the compensation payable under subsection (5) above shall be determined by the Lands Tribunal.
- (7) The services for which provision may be made under section 1 of the <sup>M5</sup>Agriculture Act 1986 (provision of agricultural goods and services) shall include such services to the owner or occupier of any land as may enable him to carry out any work which he is authorised to carry out in exercise of any power conferred by virtue of this section.
- (8) In this section “the appropriate Minister”—
  - (a) in relation to England, means the Minister; and
  - (b) in relation to Wales, means the Secretary of State.

### Marginal Citations

M5 1986 c. 49.

## 30 Authorisation of drainage works in connection with a ditch.

- (1) Where the drainage of any land requires—

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- (a) the carrying out of any work in connection with a ditch passing through other land;
  - (b) the replacement or construction of such a ditch; or
  - (c) the alteration or removal of any drainage work in connection with such a ditch,
- (2) the Agricultural Land Tribunal, on the application of the owner or occupier of the first-mentioned land, may if they think fit make an order under this section.
- (2) An order under this section is an order authorising the applicant for the order—
  - (a) for the purpose mentioned in subsection (1) above, to carry out such work as may be specified in the order; and
  - (b) so far as may be necessary for that purpose, to enter any land so specified.
- (3) Subsections (3) to (7) of section 29 above shall apply in relation to the powers conferred by virtue of an order under this section as they apply in relation to the powers conferred by virtue of that section.
- (4) In this section “ditch” has the same meaning as in section 28 above.

### **31 Composition and incidental powers of Agricultural Land Tribunal.**

- (1) The Lord Chancellor shall draw up for each Agricultural Land Tribunal, and from time to time revise, a panel of persons appearing to him to be experienced in matters relating to the drainage of land.
- (2) For each hearing by an Agricultural Land Tribunal of an application under section 28 or 30 above one of the members of the Tribunal shall, instead of being a person nominated in accordance with paragraph 16(1)(b) of Schedule 9 to the <sup>M6</sup>Agriculture Act 1947, be a person nominated by the chairman from the panel drawn up under this section.
- (3) Paragraph 16A of Schedule 9 to the Agriculture Act 1947 (which provides for the exercise of the power of making nominations if the chairman is prevented from doing so) shall apply to nominations under this section.
- (4) For the purpose of deciding any application under section 28 or 30 of this Act the Agricultural Land Tribunal may authorise any of its members or any other person to enter and inspect any land.
- (5) Subsections (3) to (6) of section 29 above shall apply in relation to the power conferred by virtue of subsection (4) above as they apply in relation to the powers conferred by virtue of that section.

#### **Marginal Citations**

**M6** 1947 c. 48 .

**Status:**

Point in time view as at 21/09/1995.

**Changes to legislation:**

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