



# Land Drainage Act 1991

## 1991 CHAPTER 59

### PART III

#### POWERS TO MODIFY EXISTING OBLIGATIONS

#### **32 Variation of awards.**

- (1) Where any award made under any public or local Act contains any provision which in any manner affects or relates to the drainage of land, including any provision affecting the powers or duties of any drainage body or other person with respect to the drainage of land, the [<sup>F1</sup>Agency]—
  - (a) may submit to the appropriate Minister for confirmation a scheme for revoking, varying or amending that provision; and
  - (b) shall submit such a scheme if it is directed to do so by the appropriate Minister on an application under subsection (2) below.
- (2) An application may be made to the appropriate Minister for such a direction as is mentioned in subsection (1)(b) above by any person who is under any obligation imposed by the award or by any internal drainage board.
- (3) An application under subsection (2) above shall not be entertained unless—
  - (a) the applicant has requested the [<sup>F1</sup>Agency] to submit a scheme under this section; and
  - (b) the [<sup>F1</sup>Agency] has either refused to do so or failed to do so within six months or has submitted a scheme different from that which was requested.
- (4) A scheme under this section with respect to any award may—
  - (a) provide for commuting, on the basis on which the obligations to which section 33 below relates are to be commuted, the obligation of any person under the award to repair or maintain any drainage works;
  - (b) contain such incidental, consequential or supplemental provisions as are necessary or proper for the purposes of the scheme;
  - (c) be revoked or varied by a subsequent scheme under this section.

*Status: Point in time view as at 26/01/1998.*

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- (5) The appropriate Minister may by order made by statutory instrument confirm any scheme submitted to him under this section, either with or without modifications.
- (6) Schedule 3 to this Act shall apply with respect to an order confirming a scheme under this section.
- (7) An order confirming a scheme under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the appropriate Minister or other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne.
- (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.

#### Textual Amendments

**F1** Words in s. 32 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 191 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 33 Commutation of obligations.

- (1) Where—
  - (a) any person is under an obligation imposed on him by reason of tenure, custom, prescription or otherwise to do any work in connection with the drainage of land (whether by way of repairing banks or walls, maintaining watercourses or otherwise); and
  - (b) without prejudice to section 107(4) of the <sup>M1</sup>Water Resources Act 1991 (application of this section to main rivers), that work is otherwise than in connection with a main river,  
 the [<sup>F2</sup>Agency] or the drainage board for the internal drainage district where the work falls to be done may commute the obligation with the consent of the appropriate Minister.
- (2) Where the [<sup>F2</sup>Agency] or an internal drainage board propose to commute any obligation to which this section applies, the [<sup>F2</sup>Agency] or board shall give, in such manner as the appropriate Minister may direct, notice of—
  - (a) the proposal;
  - (b) the terms on which it is to be commuted; and
  - (c) the period within which objection to the proposal may be made.
- (3) If within one month of any notice being given under subsection (2) above the person on whom the obligation is imposed gives notice to the [<sup>F2</sup>Agency] or board of his objection to the proposal, the question whether the [<sup>F2</sup>Agency] or board shall proceed to commute the obligation shall be referred to the appropriate Minister.
- (4) The decision of the appropriate Minister on a reference under subsection (3) above shall be final.
- (5) Nothing in this section shall apply to any obligation imposed by section 25 above.
- (6) In this section and section 34 below “the appropriate Minister”—

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- (a) in relation to the [<sup>F2</sup>Agency], means either of the Ministers; and
- (b) in relation to an internal drainage board, means the relevant Minister.

#### Textual Amendments

**F2** Words in s. 33 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22, para. 191 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

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

**C1** Ss. 33 and 34 modified(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), ss. 107(4), 225(2).

#### Marginal Citations

**M1** 1991 c. 57.

### 34 Financial consequences of commutation.

- (1) Where any obligation is commuted under section 33 above, any person who would, but for the commutation, be entitled to any exemption in respect of drainage rates (either absolutely as being the person subject to the obligation or conditionally on performance of the obligation) shall be entitled absolutely to a like exemption.
- (2) The sum to be paid in respect of the commutation of any obligation under section 33 above shall be such sum as the [<sup>F3</sup>Agency] or internal drainage board in question may, in accordance with the provisions of subsection (4) below, by order determine; and the sum so determined shall—
  - (a) be payable by way either of a capital sum or of a terminable annuity for a period not exceeding thirty years, at the option of the owner;
  - (b) be charged on the land in respect of which the obligation existed; and
  - (c) have priority over any other incumbrances (whenever created) charged on that land by the owner thereof, other than charges (whenever created) under the <sup>M2</sup>Improvement of Land Act 1864.
- (3) Any capital sum or terminable annuity fixed under this section shall, notwithstanding any agreement to the contrary between the owner and any lessee of the land, be payable by the owner.
- (4) For the purpose of determining the sum to be paid in respect of the commutation of any obligation, the [<sup>F3</sup>Agency] or internal drainage board in question shall—
  - (a) ascertain the amount which, in the opinion of the [<sup>F3</sup>Agency] or, as the case may be, that board, fairly represents the probable average annual cost, taking one year with another, of carrying out and maintaining in a due state of efficiency the works which are required to be carried out and maintained by virtue of the obligation to be commuted; and
  - (b) fix the capital sum or terminable annuity to be paid in respect of the commutation accordingly.
- (5) In fixing any such capital sum or terminable annuity no account shall be taken of so much of the probable annual average cost as, in the opinion of the [<sup>F3</sup>Agency] or, as the case may be, the internal drainage board in question, is attributable to the fact that, by reason of—
  - (a) improvements effected since 1st January 1900 in the drainage of the land drained by a main river; or

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- (b) alterations effected since that date in the method of cultivation thereof, the volume of water which is discharged into a main river at any time is greater than it would have been if those improvements or alterations had not been effected.
- (6) If any person is aggrieved by any determination of the [F<sup>3</sup>Agency] or an internal drainage board under this section as regards the sum to be paid in respect of the commutation of any obligation, he may, at any time within three months after the date on which the [F<sup>3</sup>Agency] or board notify him of the determination, require the matter to be referred to the arbitration of a single arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) On any reference under subsection (6) above the arbitrator may either confirm, vary or set aside the determination of the [F<sup>3</sup>Agency] or internal drainage board in question, as he thinks proper.
- (8) An order under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the appropriate Minister or other persons in connection with the making or confirmation of the order are to be borne.
- (9) A record of any such charge as is mentioned in subsection (2) above shall be entered in a register to be kept for the purpose by an authorised officer of the [F<sup>3</sup>Agency] or internal drainage board; and a copy of any such record purporting to be certified by such an officer as a true copy shall be receivable in evidence in all legal proceedings.

#### Textual Amendments

**F3** Words in s. 34 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22, para. 191** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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

**C2** Ss. 33 and 34 modified(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), **ss. 107(4), 225(2)**.

#### Marginal Citations

**M2** 1864 c. 114.

### 35 Powers to vary navigation rights.

- (1) Subject to the following provisions of this section, where, on an application made to him for that purpose by the [F<sup>4</sup>Agency] and (except where the application is made in connection with a main river) the drainage boards for every internal drainage district within which any of the waters to which that application relates are situated—
- (a) it appears to either of the Ministers that a navigation authority is not exercising at all, or is not exercising to the necessary extent, the powers vested in it; and
  - (b) it appears to him desirable to do so with a view to securing the better drainage of any land,
- he may by order made by statutory instrument revoke, vary or amend the provisions of any local Act relating to navigation rights over any canal, river or navigable waters or to the powers and duties of the navigation authority with respect to any canal, river or navigable waters.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an order under this section may extinguish, vary or suspend, during such period as the

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Minister making the order may think proper, any such rights, powers or duties as are mentioned in that subsection.

- (3) The power of each of the Ministers to make an order under this section—
- (a) shall be exercisable only after consultation with [<sup>F5</sup>the Secretary of State for the Environment, Transport and the Regions]; and
  - (b) shall not be exercisable in relation to any waters within the ebb and flow of the tide at ordinary spring tides except with the consent of [<sup>F5</sup>that Secretary of State].
- (4) An order made under this section may contain such incidental, consequential or supplemental provisions as appear to the Minister making the order to be necessary or proper for the purposes of the order.
- (5) Schedule 3 to this Act shall apply with respect to an order under this section.

#### Textual Amendments

- F4** Words in s. 35 substituted (1.4.1996) by 1995 c. 25, S. 120(1), **Sch. 22**, para. 191 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F5** Words in s. 35(3)(a)(b) substituted (26.1.1998) by S.I.1997/2971, art. 6(1), **Sch. para. 22**

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