

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for  
the Land Drainage (Scotland) Act 1958. (See end of Document for details)*

## SCHEDULES

### FIRST SCHEDULE

Sections 1, 12, 13.

#### PROCEDURE FOR MAKING IMPROVEMENT ORDERS AND ORDERS VARYING OR REVOKING IMPROVEMENT ORDERS AND AS TO THE VALIDITY OF ORDERS

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

**C1** Sch. 1 restricted (1.8.1999) by S.S.I. 1999/1, reg. 57

### PART I

#### *Procedure for making improvement orders*

- 1 Before making an improvement order the Secretary of State shall prepare a draft order and shall—
- (a) *serve on*—
    - (i) every owner and every occupier of land situated in the proposed improvement area, and
    - (ii) every owner and every occupier of land (other than land so situated) on which the execution of drainage or protective works is proposed to be authorised or required by the order, and
    - (iii) any local authority or other statutory body which in the opinion of the Secretary of State may be affected by the making of the order,a copy of the draft order together with a notice stating that such owner, occupier, authority or body may, within twenty-eight days of the service of the notice, object in such manner as may be specified in the notice to the making of the order or to any provision contained therein; and
  - (b) in two successive weeks publish in one or more newspapers circulating in the locality in which the proposed improvement area is situated a notice stating that the draft order has been prepared, describing the said area, specifying the land on which the execution of drainage or protective works is proposed to be authorised or required by the order, naming a place within the locality where a copy of the draft order and of any maps, plans or specifications referred to therein may be inspected at all reasonable hours, and stating that any person may, within twenty-eight days of the first publication of such notice, object in such manner as may be specified in the notice to the making of the order or to any provision contained therein.

In this Schedule—

“local authority” means any <sup>F1</sup>[<sup>F2</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

“statutory body” means any body exercising functions conferred on it by or under any enactment.

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### Textual Amendments

- F1** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 27 Pt. II para. 133](#)
- F2** Words substituted in Sch. 1 para. 1 (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para.48](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)

- 2 If no objection is duly made under the foregoing paragraph or if all objections so made are withdrawn, the Secretary of State may, subject to the provisions of paragraph 4 of this Schedule, proceed with the draft order with or without modifications.
- 3 If any objection duly made as aforesaid is not withdrawn, the Secretary of State shall, before deciding whether to proceed with the draft order, cause a public local inquiry to be held, and after considering the objection and the report of the person who held the inquiry may, if he thinks fit and subject to the provisions of the next following paragraph, proceed with the draft order with or without modifications.
- 4 Where the Secretary of State proposes to make any modification in the draft order by virtue either of paragraph 2 of this Schedule or of the last foregoing paragraph he shall, before deciding to proceed with the draft order as so modified, serve on each of the persons referred to in sub-paragraph (a) of paragraph 1 of this Schedule and on any other person who in his opinion may be affected by such modification a notice specifying the modification and stating that such person may, within fourteen days of the service of the notice, make representations in writing concerning the modification to the Secretary of State, and the Secretary of State shall consider any representations so made before he decides whether to proceed with the draft order as so modified.
- 5 Where the Secretary of State decides to proceed with a draft order, he shall serve on every owner of agricultural land situated in the proposed improvement area a notice stating that he proposes to make the order on the expiry of twenty-eight days from the service of such notice and requesting that such owner shall, within the said period, inform the Secretary of State in writing in a registered letter addressed to the Secretary of State whether he agrees with the proposal to make the order or objects to such proposal, and the Secretary of State shall, if he has modified the draft order under paragraph 2 or 3 of this Schedule, serve a copy of the draft order as so modified along with any notice under this paragraph.
- 6 On the expiry of the period of twenty-eight days referred to in the last foregoing paragraph the Secretary of State shall make the order if and only if—
- (a) every owner on whom a notice has been served under that paragraph has informed the Secretary of State in compliance with the request contained in such notice that he agrees with the proposal to make the order; or
  - (b) a majority of such owners have informed the Secretary of State in compliance with the said request that they agree with such proposal and—
    - (i) the owners who have so informed the Secretary of State will, if the order is made, be together liable thereunder to bear more than one half of the cost of improvement, and
    - (ii) the estimated cost of improvement specified in the draft order does not exceed an amount equal to [<sup>F3</sup>[<sup>F4</sup>three hundred and twenty-five pounds] for each hectare] of agricultural land situated in the proposed improvement area.

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### Textual Amendments

**F3** Words substituted by S.I. 1977/2007, reg. 2, Sch. 1

**F4** Words substituted by S.I. 1978/1154, art. 3

7 Where any owner on whom a notice has been served under paragraph 5 of this Schedule fails to comply with the request contained in such notice, he shall for the purposes of the last foregoing paragraph be deemed to have informed the Secretary of State in compliance with the said request that he agrees with the proposal to make the order.

8 The Secretary of State may, if it appears to him that the figure of twenty pounds specified in sub-paragraph (b) of paragraph 6 of this Schedule ought to be altered, by order amend that paragraph by substituting for the said figure such higher or lower figure as may be specified in the order.

An order made under this paragraph may be varied or revoked by a subsequent order made thereunder, and the power to make orders under this paragraph shall be exercisable by statutory instrument and no such order shall be made unless a draft thereof has been laid before Parliament and has been approved by a resolution of each House of Parliament.

## PART II

### *Procedure for making orders varying or revoking improvement orders*

9 Before making an order varying or revoking an improvement order the Secretary of State shall prepare a draft order and shall—

(a) serve on—

- (i) every owner and every occupier of land situated in the improvement area to which the improvement order relates, and
- (ii) every owner and every occupier of land (other than land so situated) on which the execution of drainage or protective works is authorised or required by the improvement order, and
- (iii) any local authority or other statutory body which in the opinion of the Secretary of State may be affected by the making of the order varying or revoking the improvement order, and
- (iv) every other person who in the opinion of the Secretary of State may be affected by the order varying or revoking the improvement order,

a copy of the draft order together with a notice stating that such owner, occupier, authority, body or other person may, within twenty-eight days of the service of the notice, object in such manner as may be specified in the notice to the making of the order or to any provision contained therein; and

(b) in two successive weeks publish in one or more newspapers circulating in the locality in which the said improvement area is situated a notice stating the general effect of the draft order, naming a place within the locality where a copy of the draft order and of any maps, plans or specifications referred to therein may be inspected at all reasonable hours, and stating that any person may, within twenty-eight days of the first publication of

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such notice, object in such manner as may be specified in the notice to the making of the order or to any provision contained therein.

- 10 If no objection is duly made under the foregoing paragraph or if all objections so made are withdrawn, the Secretary of State may, subject to the provisions of paragraph 12 of this Schedule, make the order with or without modifications.
- 11 If any objection duly made as aforesaid is not withdrawn, the Secretary of State shall, before deciding whether to make the order, cause a public local inquiry to be held, and after considering the objection and the report of the person who held the inquiry may, if he thinks fit and subject to the provisions of the next following paragraph, make the order with or without modifications.
- 12 Where the Secretary of State proposes to make any modification in the draft order by virtue either of paragraph 10 of this Schedule or of the last foregoing paragraph he shall, before deciding to make the order as so modified, serve on each of the persons referred to in sub-paragraph (a) of paragraph 9 of this Schedule and on any other person who in his opinion may be affected by such modification a notice specifying the modification and stating that such person may, within fourteen days of the service of the notice, make representations in writing concerning the modification to the Secretary of State, and the Secretary of State shall consider any representations so made before he decides whether to make the order as so modified.

### PART III

#### *General procedural provisions*

- 13 Notwithstanding anything in paragraph 3 or 11 of this Schedule, the Secretary of State may require any person who has made an objection to state in writing the grounds thereof, and may disregard the objection for the purposes of this Schedule if he is satisfied that the objection is frivolous or is concerned exclusively with matters relating to the payment of compensation.
- 14 The provisions of [<sup>F5</sup>subsections (2) to (8) of section two hundred and ten of the <sup>M1</sup>Local Government (Scotland) Act 1973], (which relate to the holding of local inquiries) shall apply in relation to a public local inquiry held under paragraph 3 or 11 of this Schedule as they apply in relation to local inquiries held under the said [<sup>F5</sup>section two hundred and ten].

#### **Textual Amendments**

**F5** Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 237\(2\)](#)

#### **Marginal Citations**

**M1** [1973 c. 65.](#)

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## PART IV

### *Provisions as to the validity of improvement orders and of orders varying or revoking improvement orders*

- 15 On making an improvement order or an order varying or revoking an improvement order the Secretary of State shall forthwith—
- (a) serve on every person on whom a notice was required to be served under sub-paragraph (a) of paragraph 1 or paragraph 4 or, as the case may be, sub-paragraph (a) of paragraph 9 or paragraph 12 of this Schedule a notice stating that the order has been made; and
  - (b) publish in one or more newspapers circulating in the locality in which the improvement area to which the improvement order relates is situated a notice stating that the order has been made and naming a place within the locality where a copy of the order and of any maps, plans or specifications referred to therein may be inspected at all reasonable hours; and
  - (c) cause the order to be recorded in the Register of Sasines.
- 16 If any person aggrieved by an improvement order or by an order varying or revoking an improvement order desires to question its validity on the ground that it is not within the powers of this Act or that any requirement of this Act has not been complied with, he may within six weeks from the date of the first publication of the notice referred to in sub-paragraph (b) of the last foregoing paragraph make an application for the purpose to the Court of Session, and if any such application is duly made the Court, if satisfied that the order is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Act, may quash the order either generally or in so far as it affects any property of the applicant; but except as aforesaid the order shall not at any time be questioned in any proceedings whatsoever.

## SECOND SCHEDULE

### PROVISIONS WHICH MAY BE INCORPORATED IN IMPROVEMENT ORDERS

#### *Definitions.*

- 1 In this Schedule, unless the context otherwise requires,—
- “the Act” means the Land Drainage (Scotland) Act 1958;
  - “the order” means the improvement order with which any of the provisions of this Schedule are incorporated, with or without modifications, and includes those provisions as so incorporated;
  - “the works” means the drainage and protective works authorised or required to be executed by the order;
- and other expressions have respectively the same meanings as in the Act.

#### *Permissible limits of deviation.*

- 2 In the construction of the works the authorised persons may deviate laterally from the lines and may deviate vertically from the levels to any extent not exceeding the limits

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of lateral and vertical deviation respectively shown on the plans and specifications referred to in the order.

*Temporary works.*

- 3 In addition to executing the works the authorised persons may, in, on or over any land situated within the limits of lateral deviation shown on the plans and specifications referred to in the order or any land shown on the said plans which, being situated outwith those limits, is required for the purpose, construct, lay or erect and maintain any temporary works, that is to say, any coffer dams, flumes, diversion channels, culverts, engines, pumps, plant, machinery, roads, fences, stores, offices or other buildings, or any other works or things required for the purposes of or connected with the works;  
 Provided that any electrical works or apparatus constructed, laid or erected under this paragraph shall be so constructed, laid or erected, and so maintained and used, as to prevent interference with any [<sup>F6</sup>electronic communications apparatus kept installed for the purposes of an electronic communications code network or with the service provided by any such network.]

**Textual Amendments**

- F6** Words in Sch. 2 para. 3 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 2\(2\)](#)

*Powers of entry.*

- 4 (1) The authorised persons, or any person to whom they have given authority in that behalf, shall for the purpose of executing or maintaining the works or of executing any temporary works have power at all reasonable times to enter on any land situated within the limits of lateral deviation shown on the plans and specifications referred to in the order or any land shown on the said plans which, being situated outwith those limits, is required for the purpose of executing any temporary works, and for the purpose of obtaining access to any such land may enter on any land in the ownership of a person who owns land situated in the improvement area or on any of whose land the execution of drainage or protective works is authorised or required by the order.
- (2) Any power of entry under the foregoing sub-paragraph shall include power to authorise the entry or passage of such persons, vehicles, plant, machinery, supplies or materials as may be necessary, and to authorise the carrying out of work for the purpose of facilitating their passage.
- (3) Any person entitled to enter upon any land by virtue of any right of entry under this paragraph shall, if so required, produce evidence of his authority before entering on such land and shall not demand admission as of right unless fourteen days' notice of the intended entry has been given to the occupier.

*Power to cut bushes and scrub and to take down fences.*

- 5 The authorised persons may, for the purpose of executing or maintaining the works or of executing any temporary works, cut and lay aside, or cut and use for the foresaid purposes, any bushes or scrub timber growing on land situated within the limits of lateral deviation shown on the plans and specifications referred to in the order or

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on any land shown on the said plans which, being situated outwith those limits, is required for the purpose of executing any temporary works, and may take down and lay aside any fences on such land, take down any dykes thereon, cut and grub out any hedges thereon and generally clear and level such land and remove any obstructions.

*Fencing of land, etc.*

- 6 The authorised persons shall, so far as is necessary for the protection of any persons or animals, fence any land on which the works or any temporary works are being executed, and shall take such measures as may be practicable to prevent stock from straying in consequence of the discharge by them of any of their functions under the order.

*Disposal of spoil.*

- 7 Except as otherwise provided under the order, the authorised persons may dispose of excavated spoil, so far as not required for the purpose of executing the works or any temporary works, by constructing spoil banks along the natural banks of any watercourse situated within the limits of lateral deviation shown on the plans and specifications referred to in the order, or by spreading the spoil on the land adjacent to the natural banks of any such watercourse, or by carrying the spoil away for disposal at a tip or for sale.

*Penalty for obstructing authorised persons in exercise of powers.*

- 8 If any person obstructs the authorised persons in the discharge of any of their functions under the order, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [F7level 1 on the standard scale] in the case of a first conviction and [F7level 1 on the standard scale] in the case of a second or any subsequent conviction.

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**Textual Amendments**

**F7** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G**

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