



# Local Government (Miscellaneous Provisions) Act 1976

## 1976 CHAPTER 57

### PART I

#### GENERAL

##### *Dangerous trees and excavations*

#### **23 Power of local authorities to deal with dangerous trees.**

- (1) Where a district council, a London borough council or the Common Council—
- (a) receives from a person appearing to the council to be an owner or occupier of any land in the area of the council on which a tree is situated a notice requesting the council to make the tree safe; and
  - (b) considers that the tree is in such a condition that there is imminent danger of its causing damage to persons or property,
- the council may take such steps on the land, whether by felling the tree or otherwise, as it thinks are appropriate for the purpose of making the tree safe and may recover the expenses reasonably incurred in doing so from the person who gave the notice.
- (2) Where such a council—
- (a) receives from a person appearing to the council to be an owner or occupier of land a notice requesting the council to make safe a tree on other land which is in its area and which appears to the council not to be owned or occupied by that person; and
  - (b) considers that the tree is in such a condition that it is likely to cause damage to persons or property on the first-mentioned land; and
  - (c) knows the name and address of no person appearing to the council to be an owner or occupier of the other land and either—
    - (i) has made reasonable but unsuccessful enquiries for the purpose of ascertaining the name and address of such a person, or

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- (ii) considers that in view of the imminence of the danger of such damage from the tree the delay involved in making enquiries or further enquiries about the name and address of such a person is unwarranted, the council may take such steps on the other land as are mentioned in the preceding subsection and may recover the expenses reasonably incurred in doing so from any person who was an owner or occupier of the other land when the council took those steps.
- (3) Where such a council—
- (a) receives from a person appearing to the council to be an owner or occupier of land a notice requesting the council to make safe a tree on other land which is in its area and which appears to the council not to be owned or occupied by that person; and
  - (b) considers that the tree is in such condition that it is likely to cause damage to persons or property on the first-mentioned land; and
  - (c) knows the name and address of a person appearing to the council to be an owner or occupier of the other land,
- the council may serve on such a person as is mentioned in paragraph (c) of this subsection a notice requiring him to take on the other land, within a reasonable period specified in the notice (which must not expire before the expiration of 21 days beginning with the date of service of the notice), such steps for making the tree safe as are so specified.
- (4) Where it appears to such a council that a tree on land in the area of the council which is not owned or occupied by the council is in such a condition that it is likely to cause damage to persons or property on other land in that area which is owned or occupied by the council, subsection (2) (except paragraph (b)) of this section, or as the case may require subsection (3) (except paragraph (b)) of this section, shall apply as if the other land were occupied by another person and he had duly given notice to the council in pursuance of that subsection in respect of the tree.
- (5) A person on whom a notice is served by a council in pursuance of subsection (3) of this section may, within 21 days beginning with the date of service of the notice, appeal to the county court against the notice on one or more of the following grounds, namely—
- (a) that he is neither an owner nor an occupier of the land on which the tree is situated;
  - (b) that the tree is not in such condition as is mentioned in paragraph (b) of that subsection;
  - (c) that less expensive steps than those specified in the notice would suffice for the purpose of making the tree safe;
  - (d) that it would have been fairer to serve the notice on another person who is an owner or occupier of the land aforesaid;
- and any other person who is an owner or occupier of the land to which the notice relates may within the period aforesaid appeal to the county court against the notice on one or both of the grounds mentioned in paragraphs (b) and (c) of this subsection.
- (6) Subsections (2) to (6) of section 21 of this Act shall apply to an appeal in pursuance of the preceding subsection as they apply to an appeal in pursuance of subsection (1) of that section as if for the references in subsections (2) and (3) of that section to paragraph (b) of subsection (1) of that section there were substituted references to paragraph (d) of the preceding subsection, for the references in subsections (3) and (5) of that section to the relevant place there were substituted references to the land

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on which the tree is situated and for the reference in subsection (4) of that section to section 20 of this Act and the reference in subsection (6) of that section to section 20(1) (a) of this Act there were substituted a reference to subsection (3) of this section.

- (7) If a person on whom a notice is served by a council in pursuance of subsection (3) of this section fails to comply with the notice, the council may take the steps specified in the notice and recover from that person the expenses reasonably incurred in doing so.

## **24 Provisions supplementary to s. 23.**

- (1) A person authorised in writing in that behalf by such a council as is mentioned in subsection (1) of the preceding section may enter on any land for the purpose of—

- (a) determining whether the council should take steps in pursuance of subsection (2) or (7) or serve a notice in pursuance of subsection (3) of that section in respect of a tree on the land; or
- (b) exercising on behalf of the council a power conferred on the council by subsection (2) or (7) of that section in respect of a tree on the land.

- (2) A person authorised to enter on any land in pursuance of the preceding subsection—

- (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
- (b) may take with him on to the land such other persons and such equipment as are necessary for achieving the purpose for which he was authorised to enter on the land;
- (c) shall, if the land is unoccupied when he enters or the occupier is then temporarily absent, leave the land as effectually secured against trespassers as he found it.

- (3) If a person—

- (a) wilfully obstructs another person in the exercise of a power conferred on the other person by subsection (1) or (2)(b) of this section; or
- (b) while another person is on land in pursuance of the said subsection (1) or (2)(b), wilfully obstructs the other person in doing things connected with the purpose for which the other person is authorised to be on the land,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F1</sup>level 3 on the standard scale].

- (4) If a person interested in any land suffers damage by reason of—

- (a) the exercise of the power to enter on the land which is conferred by virtue of subsection (1)(a) of this section; or
- (b) the exercise on the land, in connection with the exercise of the power mentioned in the preceding paragraph, of the power conferred by subsection (2)(b) of this section; or
- (c) a failure to perform the duty imposed by subsection (2)(c) of this section in respect of the land,

he shall be entitled to recover compensation for the damage from the local authority which authorised the entry in question.

- (5) Any dispute as to a person's entitlement to compensation in pursuance of the preceding subsection or as to the amount of the compensation shall be determined by the Land Tribunal, and sections 2(2) to (5) and 4 of the <sup>M1</sup>Land Compensation Act 1961 (which relate to the conduct of certain proceedings before the Tribunal and costs) shall with

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the necessary modifications apply in relation to the determination by the Tribunal of such a dispute.

- (6) Where a council is entitled by virtue of the preceding section to recover any expenses from a person, the council shall also be entitled to recover from him interest on the amount of the expenses or on such portion of it as is for the time being unpaid, at [<sup>F2</sup>such reasonable rate as the council may determine], from the date on which the council served notice on him demanding payment of the expenses.

#### Textual Amendments

- F1** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**
- F2** Words substituted by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 81:1, 2\)](#), s. 1(6), **Sch. 6 para. 21**

#### Marginal Citations

- M1** [1961 c. 33.](#)

## 25 Power of certain councils with respect to dangerous excavations.

- (1) Where a district council, a London borough council or the Common Council—
- (a) considers that an excavation made at any time by some person on land in the area of the council is accessible to the public from a highway or a place of public resort and, by reason of its being unenclosed or inadequately enclosed, is a danger to the public; and
  - (b) knows the name and address of no person appearing to the council to be an owner or occupier of the land on which it appears to the council that works to remove the danger should be carried out and either—
    - (i) has made reasonable but unsuccessful enquiries for the purpose of ascertaining the name and address of such a person, or
    - (ii) considers that in view of the imminence of the danger the delay involved in making enquiries or further enquiries about the name and address of such a person is unwarranted,

the council may carry out on the land mentioned in paragraph (b) of this subsection such works as appear to the council to be necessary for the purpose of removing the danger.

- (2) Where such a council—
- (a) considers that an excavation made at any time by some person on land in the area of the council is as mentioned in paragraph (a) of the preceding subsection; and
  - (b) knows the name and address of a person appearing to the council to be an owner or occupier of the land on which it appears to the council that works to remove the danger in question should be carried out,

the council may serve on an owner or occupier of the land a notice specifying the excavation and stating that the council proposes to carry out, for the purpose of removing the danger in question, such works as are specified in the notice at such places on the land as are so specified.

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- (3) If any person having an interest in or a right over land in respect of which a notice is served in pursuance of the preceding subsection objects to the notice on one or more of the following grounds, namely—
- (a) that the excavation is not a danger to the public; or
  - (b) that works other than some or all of those specified in the notice are appropriate for the purpose of removing the danger; or
  - (c) that places other than some or all of those so specified are appropriate as the site of works for removing the danger,
- he may, during the period of 21 days beginning with the date on which the notice was served, appeal to the county court against the notice.
- (4) On such an appeal the court shall either quash the notice or dismiss the appeal or, where a ground of the appeal is the ground specified in paragraph (b) or (c) of the preceding subsection, modify the notice so that it refers only to works or, as the case may be, places which the appellant agrees or the appellants agree are appropriate for the purpose of removing the danger; but the notice shall not be modified by the court so as to refer to a place on land of which no appellant is an owner or occupier.
- (5) If no appeal in pursuance of subsection (3) of this section is made against a notice within the period mentioned in that subsection or if on such an appeal the appeal is dismissed or the notice is modified as mentioned in the preceding subsection, the council which served the notice may, at any time after the expiration of that period or, as the case may be, after the appeal is dismissed or the notice is modified, carry out the works specified in the notice at the places so specified.
- (6) It shall be the duty of a council by which works have been carried out in pursuance of this section to maintain and repair the works except—
- (a) so far as they consist of the filling in of the excavation in question;
  - (b) after the works have been removed in pursuance of the following subsection;
  - (c) in a case where the council has agreed with a person who is for the time being an owner or occupier of the land on which the works are situated that he shall maintain and repair the works and he has performed his obligations under the agreement.
- (7) Where it appears to a council by which works have been carried out in pursuance of this section that if the works were removed the excavation in question would not be a danger to the public, then—
- (a) the council may remove the works; and
  - (b) it shall be the duty of the council to remove the works, except so far as they consist of the filling in of the excavation in question, if it is requested to do so by a person having an interest in or a right over the land on which the works are situated.
- (8) Without prejudice to the powers conferred by section 137 of the <sup>M2</sup>Local Government Act 1972 (which authorises a local authority to incur expenditure which it considers is in the interests of its area or inhabitants of its area), a district council, a London borough council or the Common Council may pay to any person the whole or part of the expenses incurred by him in carrying out works for preventing or removing danger to the public from an excavation made at any time by some person on land in the area of the authority, whether or not the person who incurred the expenses had a duty to carry out any such works.

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### Marginal Citations

M2 1972 c. 70.

## 26 Provisions supplementary to s. 25.

- (1) A person authorised in writing in that behalf by such a council as is mentioned in subsection (1) of the preceding section may enter on any land in the area of the council for the purpose of—
  - (a) ascertaining whether the land is suitable as the site of works which the council may carry out or for which the council may serve a notice in pursuance of that section; or
  - (b) carrying out, maintaining, repairing or removing in pursuance of that section any works on behalf of the council; or
  - (c) ascertaining whether any works carried out by the council in pursuance of that section should be or have been maintained, repaired or removed.
- (2) A person authorised by a council to enter on land in pursuance of the preceding subsection—
  - (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
  - (b) may take with him on to the land such other persons and such equipment as are necessary for achieving the purpose for which he was authorised to enter on the land;
  - (c) shall, if the land is unoccupied when he enters or the occupier is then temporarily absent, leave the land as effectually secured against trespassers as he found it.
- (3) If a person having an interest in or a right over any land suffers damage in consequence of the carrying out, maintaining, repairing or removing of works by a council in pursuance of the preceding section or the exercise by a person authorised by a council of a power conferred by subsection (1) or (2)(b) of this section or a failure of such a person to perform the duty imposed by subsection (2)(c) of this section, the person who suffers the damage shall, subject to the following subsection, be entitled to recover compensation for the damage from the council; and subsection (5) of section 24 of this Act shall have effect for the purposes of this subsection as if for the reference to subsection (4) of that section there were substituted a reference to this subsection.
- (4) No compensation shall be payable by virtue of the preceding subsection, to any person having an interest in the site of the excavation in question, in respect of damage attributable to the presence of permanent works on any land other than damage attributable to interference with an easement or profit.
- (5) If a person—
  - (a) wilfully obstructs another person in the exercise of a power conferred on the other person by subsection (1) or (2)(b) of this section; or
  - (b) while another person is on land in pursuance of the said subsection (2)(b) wilfully obstructs him in doing things connected with the works in question; or
  - (c) without the agreement of the council by which works have been carried out in pursuance of the preceding section, removes or otherwise interferes with the works,

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he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F3</sup>level 3 on the standard scale].

(6) Nothing in the preceding section or the preceding provisions of this section applies to an excavation—

- (a) on operational land of statutory undertakers; or
- (b) on land of [<sup>F4</sup>the Coal Authority] of such a description as the Secretary of State may specify by regulations made by statutory instrument;

and the definition of “operational land” in [<sup>F5</sup>section 263 of the Town and Country Planning Act 1990] shall apply for the purposes of paragraph (a) of this subsection as if in that section “statutory undertakers” had the same meaning as in that paragraph and “undertaking” had a corresponding meaning.

#### Textual Amendments

- F3** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46
- F4** Words in s. 26(6)(b) substituted (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 9 para. 18(2) (with s. 40(1)); 1994/2553, art. 2
- F5** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, Sch. 2 para. 35(3)

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

- C1** S. 26 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), Sch. 7 para. 2(1)(xxxiii)
- C2** S. 26 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(1)(xxx), Sch. 17 paras. 33, 35(1)
- C3** S. 26 extended (1.3.1996) by 1995 c. 45, s. 16(1), Sch. 4 para. 2(1)(xxiv); S.I. 1996/218, art. 2

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