



# Land Drainage Act 1991

## 1991 CHAPTER 59

### PART II

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

##### *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 [<sup>F1</sup>appropriate 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 [<sup>F2</sup>appropriate 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—

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“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.

[<sup>F3</sup>(6) For the purposes of this section, “appropriate tribunal” means—

- (a) where either the land or the ditch is in England, the First-tier Tribunal; and
- (b) where either the land or the ditch is in Wales, the Agricultural Land Tribunal.]

#### Textual Amendments

- F1** Words in s. 28(1) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 213\(a\)](#) (with Sch. 3)
- F2** Words in s. 28(4) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 213\(a\)](#) (with Sch. 3)
- F3** S. 28(6) inserted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 213\(b\)](#) (with Sch. 3)

## 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

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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 [<sup>F4</sup>Upper Tribunal].
- (7) The services for which provision may be made under section 1 of the <sup>M1</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.

#### Textual Amendments

**F4** Words in s. 29(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 240** (with Sch. 5)

#### Marginal Citations

**M1** 1986 c. 49.

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

- (1) Where the drainage of any land requires—
- (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, the [<sup>F5</sup>appropriate 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.
- [<sup>F6</sup>(5) For the purposes of subsection (1), “appropriate tribunal” means—
- (a) where the land is in England, the First-tier Tribunal; and
  - (b) where the land is in Wales, the Agricultural Land Tribunal.]

#### Textual Amendments

**F5** Words in s. 30(1) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 214(a)** (with Sch. 3)

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**F6** S. 30(5) inserted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 214\(b\)](#) (with Sch. 3)

### 31 **Composition and incidental powers**<sup>F7</sup>....

- (1) The Lord Chancellor shall draw up for [<sup>F8</sup>the] 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.
- [<sup>F9</sup>(1A) Before drawing up, or revising, a panel under subsection (1), the Lord Chancellor must consult the Lord Chief Justice.]
- (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>M2</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 [<sup>F10</sup>appropriate tribunal (within the meaning of that section)] 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.
- [<sup>F11</sup>(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### Textual Amendments

- F7** Words in s. 31 heading omitted (1.7.2013) by virtue of [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 215\(a\)](#) (with Sch. 3)
- F8** Word in s. 31(1) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 215\(b\)](#) (with Sch. 3)
- F9** S. 31(1A) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 222\(2\)](#); [S.I. 2006/1014](#), art. 2(a), [Sch. 1 para. 11\(u\)](#)
- F10** Words in s. 31(4) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 215\(c\)](#) (with Sch. 3)
- F11** S. 31(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 222\(3\)](#); [S.I. 2006/1014](#), art. 2(a), [Sch. 1 para. 11\(u\)](#)

#### Marginal Citations

- M2** 1947 c. 48 .

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