



# Land Drainage Act 1991

## 1991 CHAPTER 59

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Powers to acquire and dispose of land*

#### [<sup>F1</sup>61F Powers of internal drainage boards and local authorities to facilitate spray irrigation.

- (1) Any internal drainage board or local authority may, with the consent of the Agency, operate any drainage works under the control of the board or authority so as to manage the level of water in a watercourse for the purpose of facilitating spray irrigation.
- (2) Subsection (1) above is without prejudice to—
  - (a) the powers of an internal drainage board or local authority in relation to drainage; or
  - (b) any requirement—
    - (i) for any other consent of the Agency or any other person; or
    - (ii) for any licence, approval, authorisation or other permission or registration.]

#### Textual Amendments

- F1** S. 61F inserted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22, para. 193 (with ss. 7(6), 115, 117); S.I. 1995/186, art. 3

#### 62 Powers of internal drainage boards and local authorities to acquire land.

- (1) An internal drainage board may, for any purpose in connection with the performance of any of their functions—
  - (a) acquire land inside or outside their district by agreement; or

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- (b) if authorised by the relevant Minister, acquire any such land compulsorily.
- (2) The exercise of the powers conferred on local authorities by sections 14 to 17 above and section 66 below shall be included in the purposes for which the council of any district or London borough [<sup>F2</sup>or Welsh county or county borough] or the Common Council of the City of London may be authorised by the Secretary of State to purchase land compulsorily; and subsections (1) and (3) of section 16 above shall apply in relation to the powers conferred by this subsection as they apply in relation to the powers conferred by section 14 above.
- (3) The <sup>M1</sup>Acquisition of Land Act 1981 shall apply in relation to the compulsory acquisition of land in pursuance of subsection (1) or (2) above.
- (4) An internal drainage board may exercise the powers conferred by subsection (1) above so as to acquire interests in or rights over land by way of securing the creation of new interests or rights in their favour (as well as by acquiring interests or rights already in existence).
- (5) Where an internal drainage board exercise their powers under this section so as to acquire compulsorily an interest in or right over land by way of securing compulsorily the creation in their favour of a new interest or right—
- (a) the enactments relating to compensation for the compulsory purchase of land shall, in their application to such acquisition, have effect with the necessary modifications; and
- (b) the Acquisition of Land Act 1981 and the <sup>M2</sup>Compulsory Purchase Act 1965 shall, in their application to such compulsory acquisition, have effect with such modifications as may be prescribed.
- (6) Where an internal drainage board propose to acquire by agreement any land belonging to Her Majesty in right of the Duchy of Lancaster—
- (a) the Chancellor and Council of that Duchy may sell the land to the board; and
- (b) the land may be granted to them, and the proceeds of sale shall be paid and dealt with, as if the land had been sold under the authority of the <sup>M3</sup>Duchy of Lancaster Lands Act 1855.

#### Textual Amendments

**F2** Words inserted in s. 62(2) (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11, Pt. II, para. 4(10)**(with ss. 54(5) (7), 55(5)); **S.I. 1996/396, art.3**

#### Marginal Citations

**M1** 1981 c. 67.

**M2** 1965 c. 56.

**M3** 1855 c. 58.

## 63 Power of internal drainage boards to dispose of land.

- (1) Subject to the following provisions of this section, an internal drainage board may dispose of land held by them in any manner they wish.
- (2) Except with the consent of the relevant Minister, an internal drainage board shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

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- (3) Except with the consent of the relevant Minister, an internal drainage board shall not dispose under this section, otherwise than by way of a short tenancy, of land which has been acquired by them (whether before or after the commencement of this Act) either—
  - (a) compulsorily; or
  - (b) at a time when they were authorised to acquire it compulsorily, by agreement.
- (4) For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists of—
  - (a) the grant of a term not exceeding seven years; or
  - (b) the assignment of a term which at the date of the assignment has not more than seven years to run.

#### **64 Powers of entry for internal drainage boards and local authorities.**

- (1) Any person authorised by an internal drainage board or local authority, after producing (if so required) a duly authenticated document showing his authority, may at all reasonable times—
  - (a) enter any land for the purpose of exercising any functions of the board or, as the case may be, any functions under this Act of that authority;
  - (b) without prejudice to paragraph (a) above, enter and survey any land (including the interior of any mill through which water passes or in connection with which water is impounded) and take levels of the land and inspect the condition of any drainage work on it; and
  - (c) inspect and take copies of any Acts of Parliament, awards or other documents which—
    - (i) are in the possession of any internal drainage board, local authority or navigation authority;
    - (ii) relate to the drainage of land; and
    - (iii) confer any powers or impose any duties on that board or authority.
- (2) A person entitled under 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.
- (3) Except in an emergency, admission to any land shall not be demanded as of right under this section, unless notice of the intended entry—
  - (a) has been given to the occupier; and
  - (b) if the land is used for residential purposes or the demand is for admission with heavy equipment, has been given not less than seven days before the demand is made.
- (4) Where injury is sustained by any person by reason of the exercise by an internal 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.
- (5) In case of dispute, the amount of the compensation payable under subsection (4) above shall be determined by the Lands Tribunal.

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- (6) If any person intentionally obstructs or impedes any person exercising a power conferred by this section, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) This section shall not apply in relation to land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, in relation to land belonging to the Duchy of Cornwall or in relation to land belonging to a government department.
- (8) This section shall be without prejudice to any other enactment conferring powers of entry.

### *Subordinate legislation*

## **65 Land drainage regulations.**

- (1) Each of the Ministers shall have power to make regulations—
  - (a) for the purpose of prescribing anything which may be prescribed under this Act (other than under section 74 below); and
  - (b) generally for the purpose of carrying this Act into effect.
- (2) The power to make regulations under this section or any other provision of this Act shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **66 Powers to make byelaws.**

- (1) Subject to the following provisions of this section and to any other enactment contained in this Act or the <sup>M4</sup>Water Resources Act 1991, an internal drainage board or a local authority, except (subject to subsection (8) below) [<sup>F3</sup>an English county] council, may make such byelaws as they consider necessary for securing the efficient working of the drainage system in their district or area.
- (2) Without prejudice to the generality of subsection (1) above but subject as aforesaid, an internal drainage board or local authority, other than [<sup>F3</sup>an English county] council, may, in particular, make byelaws for any of the following purposes, that is to say—
  - (a) regulating the use and preventing the improper use of any watercourses, banks or works vested in them or under their control or for preserving any such watercourses, banks or works from damage or destruction;
  - (b) regulating the opening of sluices and flood gates in connection with any such works as are mentioned in paragraph (a) above;
  - (c) preventing the obstruction of any watercourse vested in them or under their control by the discharge into it of any liquid or solid matter or by reason of any such matter being allowed to flow or fall into it;
  - (d) compelling the persons having control of any watercourse vested in the board or local authority or under their control, or of any watercourse flowing into any such watercourse, to cut the vegetable growths in or on the bank of the watercourse and, when cut, to remove them.
- (3) The powers conferred by subsections (1) and (2) above—
  - (a) shall not be exercisable by an internal drainage board in connection with a main river, the banks of such a river or any drainage works in connection with such a river; and

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- (b) shall be exercisable by a local authority only so far as may be necessary for the purpose of preventing flooding or remedying or mitigating any damage caused by flooding.
- (4) No byelaw for any purpose specified in subsection (2)(a) above shall be valid if it would prevent reasonable facilities being afforded for enabling a watercourse to be used by stock for drinking purposes.
- (5) Byelaws made under this section shall not be valid until they are confirmed—
- (a) in the case of byelaws made by an internal drainage board, by the relevant Minister;
  - (b) in the case of byelaws made by a local authority, in relation to any area of England, by the Minister; and
  - (c) in the case of byelaws made by a local authority in relation to any area of Wales, by the Secretary of State.
- and Schedule 5 to this Act and section 236 of the <sup>M5</sup>Local Government Act 1972 (procedure for byelaws) shall have effect, respectively, in relation to byelaws made under this section by an internal drainage board and in relation to byelaws made under this section by a local authority.
- (6) If any person acts in contravention of, or fails to comply with, any byelaw made under this section 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
  - (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.
- (7) If any person acts in contravention of, or fails to comply with, any byelaw made under this section by an internal drainage board or local authority, the board or authority may, without prejudice to any proceedings under subsection (6) 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.
- (8) For the purposes of this section—
- (a) subsections (1) and (3) of section 16 above shall apply in relation to the powers conferred by this section as they apply in relation to the powers conferred by section 14 above; and
  - (b) section 17 above shall apply in relation to the carrying out by a local authority of any drainage works authorised by subsection (7) above as it applies in relation to the carrying out of any drainage works authorised by section 14(1) above;
- but nothing in this section shall authorise the carrying out of any works in connection with a main river.
- (9) Notwithstanding anything in this Act, no byelaw made by an internal drainage board or local authority under this section shall conflict with or interfere with the operation of any byelaw made by a navigation authority, harbour authority or conservancy authority.

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#### **Textual Amendments**

**F3** Words in s. 66(1)(2) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11, Pt. II, para. 4(11)** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, **art.3**

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

**C1** S. 66 amended (5.11.1993) by 1993 c. 42, **s. 22.**

#### **Marginal Citations**

**M4** 1991 c. 57.

**M5** 1972 c. 70.

### *Protective provisions*

#### **67 Protection for particular undertakings and savings in respect of works.**

- (1) Subject to subsection (2) below, Schedule 6 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities under this Act.
- (2) Schedule 6 to this Act shall not apply in relation to the carrying out of works under this Act by the <sup>F4</sup>Agency]; but sections 179 and 183 of, and Schedule 22 to, the <sup>M6</sup>Water Resources Act 1991 (protective provisions for flood defence works and for certain undertakings) shall apply in relation to the carrying out of works under this Act by the <sup>F4</sup>Agency] as they apply in relation to the carrying out of works by the <sup>F4</sup>Agency] under the flood defence provisions of that Act.
- (3) Nothing in this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the <sup>M7</sup>Ancient Monuments and Archaeological Areas Act 1979.
- (4) In the exercise of the powers conferred by this Act due regard shall be had to the interests of fisheries, including sea fisheries.
- (5) Nothing in this Act shall prejudice or affect the provisions of Part V of the <sup>M8</sup>Water Resources Act 1991 (fisheries functions of the <sup>F4</sup>Agency]) or of the <sup>M9</sup>Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by those provisions.
- (6) The reference in subsection (2) above to the flood defence provisions of the Water Resources Act 1991 shall have the same meaning as is given, by virtue of section 221(1) of that Act, to any such reference in that Act.
- (7) Without prejudice to paragraph 1 of Schedule 2 to the <sup>M10</sup>Water Consolidation (Consequential Provisions) Act 1991, any provisions for the protection of any authorities or persons contained in any local Act, so far as by virtue of section 114(2) of the <sup>M11</sup>Land Drainage Act 1976 (protection under local Acts) they applied immediately before the commencement of this Act in relation to the exercise by any internal drainage board or local authority of powers under any enactment re-enacted by this Act, shall apply to the like extent in relation to the exercise by that board or authority of powers under the corresponding provisions of this Act.

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- (8) Nothing in this Act shall affect any powers of an internal drainage board under any local Act so far as they existed immediately before the commencement of this Act.

#### Textual Amendments

- F4** Words in s. 67 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**

#### Marginal Citations

- M6** 1991 c. 57.  
**M7** 1979 c. 46.  
**M8** 1991 c. 57.  
**M9** 1975 c. 51.  
**M10** 1991 c. 60.  
**M11** 1976 c. 70.

### **68 Power of navigation authorities etc to divert sewers.**

- (1) Where any watercourses under the control of an internal drainage board pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—
- take up, divert or alter the level of those watercourses; and
  - do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.
- (2) If any question arises under this section between any internal drainage board and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to a single 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.
- (3) In this section “relevant authority” means any navigation authority, harbour authority or conservancy authority.

#### *Information provisions*

### **69 Power to hold inquiries for land drainage purposes etc.**

- (1) Each of the Ministers shall have power to cause such inquiries to be held as he considers necessary or desirable for the purposes of this Act.
- (2) Subject to subsection (3) below, the person appointed to hold any inquiry under subsection (1) above or otherwise under this Act may for the purposes of the inquiry—
- by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control relating to any matter in question at the inquiry; and
  - take evidence on oath and for that purpose administer oaths.

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- (3) No person shall be required, in obedience to a summons under this section, to attend to give evidence or to produce any documents, unless the necessary expenses of his attendance are paid or tendered to him; and nothing in this section shall empower a person holding an inquiry to require the production of the title, or of any instrument relating to the title, of any land which is not the property of a local authority.
- (4) Any person who—
- (a) refuses or deliberately fails to attend in obedience to a summons under this section, or to give evidence; or
  - (b) deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section,
- shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both.
- (5) Where either of the Ministers causes an inquiry to be held under this Act—
- (a) the costs incurred by him in relation to the inquiry shall be paid by such authority or party to the inquiry as he may direct; and
  - (b) the Minister in question may cause the amount of the costs so incurred to be certified;
- and any amount so certified and directed to be paid by any authority or person shall be recoverable from that authority or person by that Minister summarily as a civil debt.
- (6) Where either of the Ministers causes an inquiry to be held under this section—
- (a) he may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid; and
  - (b) every such order may be made a rule of the High Court on the application of any party named in the order.
- (7) Section 42 of the <sup>M12</sup>Housing and Planning Act 1986 (recovery of Minister's costs in connection with inquiries) shall apply where either of the Ministers is authorised by virtue of subsection (5) above to recover costs incurred by him in relation to an inquiry as it applies where a Minister is so authorised by virtue of an enactment specified in subsection (1) of that section.

#### Marginal Citations

**M12** 1986 c. 63.

## 70 Confidentiality of information obtained by [<sup>F5</sup>Agency] etc.

Section 204 of the <sup>M13</sup>Water Resources Act 1991 (confidentiality of information) shall have effect in relation to information obtained by virtue of the provisions of this Act so far as they relate to functions exercisable by or in relation to the [<sup>F5</sup>Agency] as it has effect in relation to the information obtained as mentioned in that section.

#### Textual Amendments

**F5** Word in s. 70 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**



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## Marginal Citations

M13 1991 c. 57.

## Construction of Act

### 71 Service of documents.

- (1) A notice required or authorised to be served under or by virtue of this Act by any person shall be in writing.
- (2) Any document required or authorised by virtue of this Act to be served on any person may be served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control of management of the partnership business.
- (3) For the purposes of this section and section 7 of the <sup>M14</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
  - (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (4) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (3) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (5) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—
  - (a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or
  - (b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

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- (6) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

**Marginal Citations**

M14 1978 c. 30.

**72 Interpretation.**

- (1) In this Act, unless the context otherwise requires—

[<sup>F6</sup>“the Agency” means the Environment Agency;]

“agricultural buildings” has the meaning provided by paragraphs 2 to 8 of Schedule 5 to the <sup>M15</sup>Local Government Finance Act 1988;

“agricultural land” has the meaning provided by paragraphs 2 and 4 to 8 of that Schedule;

“banks” means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land between the bank and low-watermark;

“chargeable property” means a hereditament comprising agricultural land or agricultural buildings in respect of which drainage rates may be assessed under Chapter II of Part IV of this Act;

“charging authority” has the same meaning as in the Local Government Finance Act 1988;

“conservancy authority” means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water and is not a navigation authority or a harbour authority within the meaning of [<sup>F7</sup>Chapter II of Part VI of the Merchant Shipping Act 1995];

[<sup>F8</sup>“drainage” includes—

- (a) defence against water (including sea water);
- (b) irrigation, other than spray irrigation;
- (c) warping; and
- (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;]

“drainage body” means the [<sup>F9</sup>Agency], an internal drainage board or any other body having power to make or maintain works for the drainage of land;

“financial year” means the twelve months ending with 31st March;

“harbour” and “harbour authority” have the same meanings as in the [<sup>F7</sup>Merchant Shipping Act 1995];

“land” includes water and any interests in land or water and any easement or right in, to or over land or water;

“local authority” means the council of a county, [<sup>F10</sup>county borough,]district or London borough or the Common Council of the City of London;

“main river” has the same meaning as in the <sup>M16</sup>Water Resources Act 1991;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Minister and the Secretary of State, and in relation to anything which falls to be done by the Ministers, means those Ministers acting jointly;

<sup>F11</sup> . . .

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“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“ordinary watercourse” means a watercourse that does not form part of a main river;

“prescribed” means prescribed by regulations under section 65 above;

“qualified authority”, in relation to an internal drainage district, means a charging authority for an area wholly or partly included in that district;

“qualified persons” shall be construed in accordance with subsection (2) below;

“the relevant Minister”—

- (a) in relation to internal drainage districts which are neither wholly nor partly in Wales or to the boards for such districts, means the Minister;
- (b) in relation to internal drainage districts which are partly in Wales or to the boards for such districts, means the Ministers; and
- (c) in relation to internal drainage districts which are wholly in Wales or to the boards for such districts, means the Secretary of State;

“watercourse” includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the <sup>M17</sup>Water Industry Act 1991) and passages, through which water flows.

(2) Subject to the provisions of paragraph 19 of Schedule 2 to the <sup>M18</sup>Water Consolidation (Consequential Provisions) Act 1991 (which makes provision with respect to qualification under this subsection by reference to drainage rates levied on land in respect of years beginning before 1993), where any provision of this Act refers, in relation to an internal drainage district, to the making of any appeal or petition by a sufficient number of qualified persons—

- (a) the persons who are qualified are the occupiers of any land in the district in respect of which a drainage rate is levied; and
- (b) subject to subsection (3) below, their number shall be sufficient if (but only if)—
  - (i) they are not less than forty; or
  - (ii) they are not less than one-fifth of the number of persons who are qualified to make the petition or appeal; or
  - (iii) the assessable value for the purposes of the last drainage rate levied in the district of all the land in respect of which they are qualified persons is not less than one-fifth of the assessable value of all the land in respect of which that rate was levied.

(3) In relation to a district divided into sub-districts the persons qualified to make a petition under section 39 above as being the occupiers of land in one of the sub-districts shall also be sufficient in any case where the condition in subsection (2)(b)(ii) or (iii) above would be satisfied if the sub-district were an internal drainage district.

(4) The references to the assessable value of any land in paragraph (b) of subsection (2) above are references to the amount which for the purposes of the drainage rate mentioned in that paragraph would be the annual value of the land.

(5) References in this Act to the carrying out of drainage works include references to the improvement of drainage works.

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- (6) Nothing in this Act shall operate to release any person from an obligation to which section 21 above applies; and the functions of the [<sup>F9</sup>Agency] or any internal drainage board as respects the doing of any work under this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.
- (7) Where by virtue of any provision of this Act any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.
- (8) This Act so far as it confers any powers on the [<sup>F9</sup>Agency] shall have effect subject to the provisions of the <sup>M19</sup>Water Resources Act 1991.
- (9) The powers conferred by this Act on the Common Council of the City of London shall be exercisable as respects that City.
- (10) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the <sup>M20</sup>Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act or the Water Resources Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.

#### Textual Amendments

- F6** Definition inserted in s. 72(1) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 194(1), (with ss. 7(6), 115, 117); **S.I. 1996/186**, **art. 3**
- F7** Words in s. 72(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13**, para. 9(b) (with s. 312(1))
- F8** Definition in s. 72(1) substituted (21.9.1995) by 1995 c. 25, **s. 100(2)**(with ss. 7(6), 115, 117); **S.I. 1995/1983**, **art. 3**
- F9** Words in s. 72 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**
- F10** Words inserted in s. 72(1) (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11**, Pt. II, para. 4(12) (with ss. 54(5) (7), 55(5)); **S.I. 1996/396**, **art. 3**
- F11** Definition repealed in s. 72(1) (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22**, para. 194(2) (with ss. 7(6), 115, 117); **S.I. 1996/186**, **art. 3**

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

- C2** S. 72(2)(3) modified (temp.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2** paras. 15(3), **19(1)**.
- C3** S. 72(2)(b)(iii) amended (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2** paras. 15(3), **19(2)**

#### Marginal Citations

- M15** 1988 c. 41.  
**M16** 1991 c. 57.  
**M17** 1991 c. 56.  
**M18** 1991 c. 60.  
**M19** 1991 c. 57.  
**M20** 1991 c. 60.

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### **73 Disputes as to whether works connected with main river.**

- (1) If any question arises under this Act—
  - (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work,the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.
- (2) Where any question is required under subsection (1) above to be referred to arbitration it shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between the parties; or
  - (b) in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.

#### *Other supplemental provisions*

### **74 Application to Crown.**

- (1) Subject as otherwise expressly provided in this Act, this Act shall apply to land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, to land belonging to the Duchy of Cornwall and to land belonging to a government department.
- (2) For the purposes of this Act the following shall be deemed to be the owner of land to which this section applies by virtue of this section, that is to say—
  - (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or the Secretary of State, according as the land is under the management of those Commissioners or the Secretary of State;
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; and
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints.
- (3) Notwithstanding subsection (1) above but subject to subsection (4) below, nothing in this Act shall—
  - (a) authorise the compulsory acquisition of any land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, or of any land belonging to the Duchy of Cornwall or a government department;
  - (b) operate as a grant—
    - (i) by or on behalf of Her Majesty as owner (whether in right of the Crown or of the Duchy of Lancaster) of any tidal lands; or
    - (ii) by or on behalf of the Duchy of Cornwall as owner of any such lands, of any estate or interest in or right over any of those lands or any part of them; or
  - (c) authorise any person to do any work on, over or under, or to use for any purpose, any tidal lands or any lands belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, to the Duchy of Cornwall, or to any government department, except—
    - (i) with the consent of the owner of the land or, in the case of tidal lands, of the owner of the land and of the Secretary of State; and

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- (ii) in accordance with the approved plans and sections and subject to the prescribed restrictions and conditions;
- or
- (d) confer any power of levying drainage rates in respect of tidal lands.
- (4) Nothing in subsection (3)(c) above shall apply to work done in maintaining existing works on tidal lands, or on land not in occupation of Her Majesty, the Duke of Cornwall or a government department.
- (5) Section 222 of the <sup>M21</sup>Water Resources Act 1991 (Crown application) shall have effect in relation to the provisions of this Act so far as they confer powers on the [<sup>F12</sup>Agency] as it applies in relation to the provisions of that Act.
- (6) In this section—
- “tidal lands” means lands below the high-water mark of ordinary spring tides but, for the purposes of subsection (3)(c) above, does not include any lands which are protected, by means of walls, embankments or otherwise, from the incursion of the tides; and
- “approved” and “prescribed” mean, respectively, approved and prescribed by the Secretary of State or, as the case may be, the owner of the lands, before the commencement of the work in question.

#### Textual Amendments

**F12** Words in s. 74 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)

**C4** S. 74 applied(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), **ss. 181(4)**, 225(2).

**C5** S. 74 applied(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), **ss. 222(6)(9)**, 225(2).

**C6** S. 74 applied (1.7.1997) by 1995 c. 25, s. 116, **Sch. 21**, Pt. I, para. 2(4), (substituting 1991 c. 57, s. 222)(with ss. 7(6), 115, 117); S. I. 1997/1626, **art. 2**

#### Marginal Citations

**M21** 1991 c. 57.

#### [<sup>F13</sup>75 Application to the Isles of Scilly.

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

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- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F13** S. 75 substituted (1.2.1996) by 1995 c. 25, s. 118(6)(with ss. 7(6), 115, 117); S.I. 1996/186, art. 2

**76 Short title, commencement and extent.**

- (1) This Act may be cited as the Land Drainage Act 1991.
- (2) This Act shall come into force on 1st December 1991.
- (3) This Act extends to England and Wales only.

**Status:**

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