



# Land Drainage Act 1961

## 1961 CHAPTER 48

### PART II

#### MISCELLANEOUS PROVISIONS AS TO LAND DRAINAGE AND DRAINAGE BOARDS

##### *Amendments of Act of 1930*

#### **17 Contribution by local authority in respect of liabilities transferred to river board**

Where, under a scheme made by a river board under paragraph (a) of subsection (1) of section four of the Act of 1930, liabilities incurred in connection with drainage works are transferred from the council of a county, county borough or county district to the river board, the river board may require the council to make to them contributions towards the discharge of the liabilities; and if the amount of those contributions is not agreed between the board and the council it shall be determined by a single arbitrator agreed on by them or, in default of such agreement, by the Minister and the Minister of Housing and Local Government acting jointly.

#### **18 Performance by river board of functions of internal drainage board**

- (1) A scheme under paragraph (b) of subsection (1) of section four of the Act of 1930 which makes provision for the constitution of a new internal drainage district may provide for the river board submitting the scheme to be constituted the drainage board of that district and for conferring on it in relation to that district the powers and duties of an internal drainage board; and any expenses incurred by the river board as the drainage board of such a district shall be defrayed under and in accordance with the powers so conferred and not in any other manner.
- (2) Where, whether by virtue of subsection (1) of this section or of an order under section eleven of the Act of 1930, a river board are the drainage board of an internal drainage district and a petition for constituting an internal drainage board for that district is made to the river board by a sufficient number of qualified persons or by a qualified authority, the Minister may by order constitute an internal drainage board for that

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district and transfer to it the property and liabilities of the river board so far as vested in or incurred by them in their capacity as the drainage board for that district.

- (3) The provisions of the Act of 1930 shall apply in relation to an order under subsection (2) of this section as they apply in relation to an order under section eleven of that Act.
- (4) On receiving such a petition as is mentioned in subsection (2) of this section the river board shall send a copy of it to the Minister and they shall inform the Minister, within six months of the date on which the petition is received, whether in their opinion an order under that subsection ought to be made.
- (5) Before making an order under subsection (2) of this section the Minister shall consider the views expressed by the river board in accordance with subsection (4) of this section.
- (6) (a) The Minister shall by regulations provide for the payment by a river board, subject to such exceptions or conditions as may be specified in the regulations, of compensation to any officer or servant of that board who suffers loss of employment or loss or diminution of emoluments which is attributable to an order made under subsection (2) of this section or anything done in pursuance of any such order.
  - (b) Different regulations may be made under this subsection in relation to different classes of persons.
  - (c) Regulations made under this subsection may include provision as to the manner in which and the persons to whom any claim for compensation by virtue of this subsection is to be made, and for the determination of all questions arising under the regulations.
  - (d) Regulations made under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **19 Sea defence works**

- (1) The power of a river board to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water shall be exercisable anywhere in the river board area, irrespective of whether they are works in connection with the main river ; and for the purposes of this subsection the river board area shall be deemed to extend beyond the low-water mark.
- (2) The power of a river board under section forty-seven of the Act of 1930 to make byelaws for securing the efficient working of the drainage system in their area shall include power to make such byelaws as the board consider necessary for securing the proper defence against sea water or tidal water of any part of the river board area.

## **20 Variation of awards**

- (1) The power of a river board under section eight of the Act of 1930 to submit to the Minister for confirmation a scheme for revoking, varying or amending any provisions affecting or relating to land drainage contained in an award made under a public or local Act shall be exercised if the Minister, on an application under this section, so requires.
- (2) An application under this section may be made by any person who is under any obligation imposed by the award or by any drainage authority.

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- (3) An application under this section shall not be entertained unless the applicant has requested the river board to submit such a scheme as aforesaid and either the river board have refused to do so or failed to do so within six months or have submitted a scheme different from that so requested.

## **21 Allocation of revenue of river board in lieu of contributions under s.21 of Act of 1930**

- (1) Where (whether by virtue of section eleven of the Act of 1930 or of section eighteen of this Act) a river board are the drainage board of an internal drainage district, they may by resolution specify an amount as corresponding to the amount of any contribution which, if the river board were not the drainage board of that district, the river board would require from or make to that drainage board under subsection (1) or subsection (3) of section twenty-one of the Act of 1930; and to the extent of any amount so specified—

- (a) the expenses incurred by the river board as such shall be defrayed out of sums received by it as the drainage board of that district: or
- (b) the expenses incurred by the river board as the drainage board of that district shall be defrayed out of their other revenue ;

according as the amount is specified in the resolution as corresponding to a contribution under the said subsection (1) or as corresponding to a contribution under the said subsection (3).

- (2) A river board shall publish any resolution under this section in one or more newspapers circulating in the internal drainage district.
- (3) Where—
- (a) a sufficient number of qualified persons; or
  - (b) the council of any county or county borough wholly or partly within the river board area;

are aggrieved by a resolution of a river board under this section or the amount specified in such a resolution (whether on the ground that it is too small or too large), or the failure of a river board to pass such a resolution, they may appeal to the Minister and the Minister may, after considering any objections made to him, make such an order in the matter as he thinks just, and any such order shall be deemed to be an order under the said section twenty-one.

- (4) An appeal under this section (other than an appeal on the ground that the river board have failed to pass a resolution under this section) must be made within six weeks after the date on which the river board have published the resolution in respect of which it is made.

## **22 Drainage rates-basis of assessment**

—(1) The following provisions of this section shall have effect with respect to any drainage rate made for a period beginning after the end of March, nineteen hundred and sixty-three.

- (2) Subsection (4) of section twenty-four of the Act of 1930 (which provides for the assessment of drainage rates on the annual value of agricultural land and one-third of the annual value of other land) shall have effect as if paragraph (a) thereof referred to

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agricultural buildings (as defined in subsection (2) of section two of the Rating and Valuation (Apportionment) Act, 1928) as well as to agricultural land.

(3) Where a drainage board have demanded a drainage rate in respect of any land the annual value of which for the purposes of the drainage rate has been ascertained in accordance with the Drainage Rates Act, 1958, then, if—

- (a) the land is, forms part of, or comprises land whose annual value for the purposes of income tax under Schedule A has been ascertained by reference to any rent fixed by an agreement commencing after the end of March, nineteen hundred and forty-six; and
- (b) the owner and occupier or either of them, by notice in writing served on the board within twenty-eight days of the date on which the demand is made or such further time as the drainage board may allow, claim that the annual value of the land for the purposes of the drainage rate shall be determined by the board under this subsection;

the annual value of the land for the purposes of the drainage rate and any subsequent drainage rate shall be such value as may be determined by the board, having regard to the annual values of comparable land in their district, other than those ascertained as mentioned in paragraph (a) of this subsection ; and subsection (3) of section twenty-nine of the Act of 1930 (which provides for an appeal against a determination under subsection (2) of that section) shall extend to any determination made under this subsection.

(4) Subsection (4) of section twenty-four of the Act of 1930 and the Drainage Rates Act, 1958, shall not apply in the case of land for which a rateable value is shown in the valuation list for the time being in force; but in the case of any such land—

- (a) the value on which any drainage rate is assessed shall be one-third of the rateable value so shown; and
- (b) the amount per pound at which a drainage rate is so assessed shall be determined in accordance with section twenty-three of this Act.

(5) Where, after an assessment to a drainage rate has been made in respect of any land in accordance with subsection (4) of this section, the rateable value shown in the valuation list for that land is altered and the alteration has effect for the whole of the period for which the rate is made, the rate shall be amended accordingly, and the amendment shall have effect from the beginning of that period and shall be treated for the purposes of the Act of 1930 as an amendment made in pursuance of section twenty-eight of that Act.

(6) Subsection (6) of section twenty-four of the Act of 1930 (which provides for differential rating) shall have effect as if the references to the amount per pound of annual value included references to the amount per pound of the value specified in paragraph (a) of subsection (4) of this section ; and any order under the said subsection (6) determining the relative amount per pound of one only of those values shall have effect as if it made also corresponding provision with respect to the other.

(7) References in this section to the rateable value of any land shall be construed, where that value differs from the net annual value, as referring to the net annual value.

(8) The reference in section twenty-eight of the Act of 1930 (which relates to amendments in a rate) to the provisions of Part IV of that Act shall be construed as including a reference to the provisions of this section.

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## **23 Drainage rates-determination of relative poundage**

- (1) The amount per pound mentioned in paragraph (b) of subsection (4) of section twenty-two of this Act shall be determined, as nearly as may be, by applying the fraction arrived at in accordance with the following provisions of this section (in this section referred to as the relative fraction) to the amount per pound (of annual value) at which the drainage rate is assessed under subsection (4) of section twenty-four of the Act of 1930.
- (2) The relative fraction shall be stated in the notice of the rate given under section twenty-seven of the Act of 1930, and  
  
the notice shall be conclusive evidence that the fraction stated in it has been calculated in accordance with this section.
- (3) The relative fraction shall be arrived at by dividing—
  - (a) the aggregate of the annual values of the relevant hereditaments in the internal drainage district; by
  - (b) the aggregate of the rateable values of those hereditaments.
- (4) For the purposes of this section—
  - (a) the rateable value of any hereditament shall be taken to be the value which, at the date on which the drainage rate is made, is shown as its rateable value in the valuation list in force for the period for which the drainage rate is made ;
  - (b) the annual value of any hereditament shall be taken to be its annual value as last stated before the said date in any assessment under Schedule A signed and allowed under section thirty-five of the Income Tax Act, 1952, or under that section as applied by the Fifth Schedule to that Act (apportioned where the hereditament forms part only of any land assessed under Schedule A).
- (5) An internal drainage board may from time to time require the surveyors of taxes for their district to furnish to them, on payment at such rate as the Treasury may determine, such particulars of assessments as may be required to enable the board to calculate the relative fraction.
- (6) In this section " relevant hereditament ", in relation to any drainage rate, means land for which a rateable value is shown in the valuation list in force for the period for which the rate is made and which is or forms part of land assessed to income tax under Schedule A ; and references in this section to the rateable value of any hereditament shall be construed, where that value differs from the net annual value, as referring to the net annual value.

## **24 Drainage rates-fractions of a pound**

Where the value on which a drainage rate is assessed would, apart from this section, include a fraction of a pound, the fraction shall, if greater than ten shillings, be treated as one pound and shall in any other case be disregarded.

## **25 Payments by rating authorities in lieu of drainage rates**

- (1) The following provisions of this section shall have effect in substitution for section twenty-five of the Act of 1930.

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- (2) The rating authority for any area wholly or partly included in an internal drainage district and the drainage board of that district may agree that, so long as the agreement is in force.—
  - (a) no drainage rate made by the drainage board shall be levied on occupiers or owners of rateable hereditaments within the area of the rating authority ; but
  - (b) the rating authority shall pay to the drainage board, in respect of every drainage rate which by virtue of the agreement cannot be levied on those owners or occupiers, a sum equal to the estimated aggregate of the amounts which, but for the agreement, could be so levied, less such amount, if any, as maybe specified in the agreement.
- (3) Where part only of the area of the rating authority is included in the internal drainage district the authority may, if they think fit, treat the amount of any payment made by them under the agreement as chargeable separately on that part and levy that amount as an additional item of the general rate accordingly; and in any case where part but not the whole of a parish is so included, the whole of the parish may for the purposes of this subsection be treated either as so included or as not so included.
- (4) Any agreement under this section may, unless the drainage board is a river board, provide for amending the constitution of the board (notwithstanding anything in any scheme or order) so as to enable the rating authority to appoint members of the board; but
  - (a) any member appointed by virtue of the agreement shall cease to be a member when the agreement ceases to be in force; and
  - (b) the number of members appointed by virtue of such agreements shall not exceed two-fifths of the number of all the members of the board.
- (5) The drainage board and the rating authority making an agreement under this section shall, within one month of making it, publish in one or more newspapers circulating in the area affected a notice stating its effect and shall make copies of the agreement available for inspection at their offices; and the drainage board shall send a copy of the agreement to the Minister.
- (6) In this section " rateable hereditament" means a hereditament included in the valuation list for the time being in force.

## 26 Differential drainage rates

- (1) In subsection (6) of section twenty-four of the Act of 1930 (which enables the drainage board of an internal drainage district by order to divide their district into sub-districts for the purpose of levying differential rates and to determine the relative amounts of rates in the respective sub-districts) for the words " and determine " there shall be substituted the words
 

“and any such order may determine”.
- (2) Where an order made by a drainage board under the said subsection (6) is in force and the order does not determine the relative amounts of rates in the respective sub-districts, subsection (2) of the said section twenty-four shall have effect, in relation to a drainage rate made by the board for any of the sub-districts, as if it defined—
  - (a) an owner's drainage rate as a rate raised for the purpose of defraying expenses incurred in connection with new works in the sub-district or the improvement of existing works in the sub-district and a proportionate part of the charges in

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- respect of contributions by the board under section twenty-one of the Act of 1930 or, as the case may be, of amounts specified under section twenty-one of this Act as corresponding to such contributions ; and
- (b) an occupier's drainage rate as a rate raised for the purpose of defraying the expenses of maintaining any works in the sub-district and a proportionate part of any expenses or charges incurred by the board which are not directly attributable to the maintenance of particular works and are not such expenses or charges as are mentioned in paragraph (a) of this subsection.
- (3) Where a petition for the making, variation or revocation of an order under the said subsection (6) is made to a drainage board by a sufficient number of qualified persons or by a qualified authority, the drainage board shall, subject to subsection (6) of this section, consider the petition and, if so directed under subsection (4) of this section, shall make, vary or revoke the order either in accordance with the petition or in accordance with the petition as modified by the direction.
- (4) A direction under this section may be given by the Minister, if the drainage board is a river board, and, in any other case, by the river board in whose area the drainage district is comprised; but where a drainage board object to a direction given by the river board the direction shall have no effect unless confirmed (with or without modifications) by the Minister.
- (5) Subject to subsection (6) of this section, where such a petition as is mentioned in subsection (3) of this section is received by a drainage board the drainage board shall inform the river board (or if the drainage board is a river board, the Minister) and shall publish in one or more newspapers circulating in the internal drainage district a notice that the petition has been received, that the making, variation or revocation of an order under subsection (6) of the said section twenty-four will be considered, and that representations may be made to the board within a time (which shall not be less than thirty days) stated in the notice.
- (6) This section does not require a drainage board to consider any petition or publish any notice of a petition—
- (a) if it has received a petition under this section within the period of ten years immediately preceding the making of the first-mentioned petition ; or
- (b) if it has, within that period, by an order made under the said section twenty-four, divided its district into sub-districts or varied or abolished any sub-district; or
- (c) if the petition is frivolous in the opinion of the river board or, where the drainage board is the river board, in the opinion of the Minister.
- (7) After considering such a petition as is mentioned in subsection (3) of this section, and not later than six months after it was received, the drainage board shall inform the river board or, as the case may be, the Minister whether they propose to make, vary or revoke such an order as aforesaid and, if they propose to make or vary such an order, of the terms of the order or variation they propose to make.

## **27 Exemption from drainage rates**

- (1) Where the owner or occupier of any hereditament in an internal drainage district requests the drainage board of the district to make or amend an order under subsection (7) of section twenty-four of the Act of 1930 so as to exempt from drainage rates the portion of the district in which the hereditament is situated the drainage board shall consider the request and, if so directed under this section, shall comply with it.

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- (2) Where such a request is refused by the drainage board the person making it may appeal to the river board (or, if the drainage board is a river board, to the Minister) and the river board or, as the case may be, the Minister may direct the drainage board to make or amend the order as requested.
- (3) Where such a request is neither refused nor complied with within three months after it is made, it shall be deemed to have been refused.

## **28 Removal of obstruction from watercourses**

- (1) The provisions of subsections (2) to (6) of this section shall have effect in substitution for subsections (1) to (9) of section thirty-five of the Act of 1930; and references in that Act to that section shall be construed accordingly.
- (2) Where any watercourse in the area or district of a drainage board is in such a condition that the proper flow of water is impeded, then, unless the condition is attributable to subsidence due to mining operations (including brine pumping), the drainage board concerned may by notice require the person on whom the notice is served to remedy that condition.
- (3) For the purposes of subsection (2) of this section the drainage board concerned shall be—
  - (a) in relation to a watercourse in an internal drainage district, other than a watercourse forming part of the main river, the internal drainage board ;
  - (b) in relation to any other watercourse, the river board.
- (4) A notice under this section may be served on—
  - (a) any person having control of the part of the watercourse where the impediment occurs ; or
  - (b) any person owning or occupying land adjoining that part; or
  - (c) any person to whose act or default the said condition " is due;

but no such notice requiring any person to carry out any work on land not owned or occupied by him shall be served without the consent of the owner and the occupier of the land, except in a case where it is not practicable, after reasonable inquiry, to ascertain the name and address of the owner or occupier.
- (5) Subsections (2) to (7) of section two hundred and ninety of the Public Health Act, 1936 (which provide for appeals against, and the enforcement of, certain notices under that Act) shall apply to any notice served under this section as they apply to such notices as are mentioned in subsection (1) of that section, but subject to the following modifications, that is to say.—
  - (a) for references to the local authority there shall be substituted references to the drainage board ;
  - (b) for paragraphs (e) and (f) of subsection (3) there shall be substituted the following paragraphs:—
    - “(e) that the notice might lawfully have been served on another person and that it would have been equitable for it to have been so served;
    - (f) that some other person ought to contribute towards the expenses of executing any works required by the notice”;
  - (c) in subsection (6) the words from " and to a further fine " to the end of the subsection shall be omitted.



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- (6) Sections three hundred to three hundred and two of the Public Health Act, 1936 (which contain supplementary provisions relating to appeals under the said section two hundred and ninety) shall, with the necessary modifications, apply to appeals brought by virtue of subsection (5) of this section.
- (7) In subsection (12) of section thirty-five of the Act of 1930 (which restricts the application of that section in the case of watercourses under the jurisdiction of certain authorities) after the words " conservancy authority " there shall be inserted the words "harbour authority".

## 29 Spoil

For subsection (1) of section thirty-eight of the Act of 1930 there shall be substituted the following:—

- “(1) A drainage board may, without making payment therefor, appropriate and dispose of any matter removed in the course of the execution of any work for widening, deepening or dredging any watercourse.
- (1a) A drainage board may deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is specified in the next following subsection, unless the matter so deposited would constitute a statutory nuisance within the meaning of Part III of the Public Health Act, 1936.
- (1b) The said width is such as is sufficient to enable the said matter to be removed and deposited by mechanical means in one operation.
- (1c) Where injury is sustained by any person by reason of the exercise by a drainage board of their powers under subsection (1a) of this section, the drainage board may, if they think fit, pay to him such compensation as they may determine; and if the injury could have been avoided if those powers had been exercised with reasonable care, subsection (3) of section thirty-four of this Act shall apply as if the injury had been sustained by reason of the exercise by the board of their powers under that section.”

## 30 Schemes for drainage of small areas

- (1) The following provisions of this section shall have effect in substitution for section fifty-two of the Act of 1930.
- (2) Where an authority to which this section applies are of opinion that any land in their area is capable of improvement by drainage works, but that the constitution for that purpose of an internal drainage district would not be practicable, the authority may, in accordance with the provisions of a scheme made under this section, enter on the land and execute such drainage works as appear to them desirable.
- (3) The authorities to whom this section applies are the councils of counties or county boroughs and river boards.
- (4) A scheme under this section must state—
- (a) the works proposed to be executed ;
  - (b) the area to be improved by the works ;

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- (c) the estimated expenses (including administrative expenses) of the execution of the works, which shall not, subject to subsection (11) of this section, exceed an amount equal to twenty pounds for each acre in the area to be improved ;
  - (d) the maximum amount to be recoverable by the authority making the scheme in respect of those expenses; and
  - (e) the manner in which the expenses of executing and maintaining the works are to be apportioned amongst the lands comprised in the area.
- (5) Before making a scheme under this section an authority other than a river board shall consult the river board.
- (6) Before making a scheme under this section an authority shall give to the owners and occupiers of land within the area to which the scheme relates, and to any other persons appearing to them affected by the scheme, notice in such manner as the Minister may by regulations made by statutory instrument prescribe of their intention of making the scheme and of the place where a draft thereof can be inspected and of the time (which shall not be less than thirty days) within which objections to the scheme may be made to the authority.
- (7) Where any objections to a scheme are duly made and are not withdrawn the authority intending to make the scheme shall send a copy of the draft scheme, together with copies of the objections, to the Minister, and the scheme shall not be made unless the draft is confirmed by the Minister, with or without modifications; and before confirming the draft the Minister shall either cause a public inquiry to be held or give the authority and the persons by whom the objections are made an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.
- (8) An authority making a scheme under this section shall send copies thereof to the owners and occupiers of land in the area to which it relates and, if that authority is a river board, they shall also notify the council of any county or county borough in which any of that land is situated; and any such scheme made by or notified to any such council shall be registered in the register of local land charges by the proper officer of the council in such manner as may be prescribed by rules made under section fifteen of the Land Charges Act, 1925.
- (9) The council of a county or county borough shall, in relation to any works executed in pursuance of a scheme under this section, have all the powers of a drainage board under the Act of 1930, exercisable subject to the same restrictions as are imposed by that Act on the exercise of those powers by such boards.
- (10) Any expenses incurred by an authority under this section in the execution of drainage works, to an amount not exceeding the amount stated in the scheme in pursuance of paragraph (d) of subsection (4) of this section, and any expenses incurred by an authority in maintaining works executed under this section, shall be recoverable by the authority from the several owners of the lands to which the scheme relates according to the apportionment provided for by the scheme.
- (11) The Minister may exempt a scheme from the limit imposed by paragraph (c) of subsection (4) of this section if it appears to him that the works proposed to be executed are urgently required in the public interest, and he may by order made by statutory instrument from time to time vary that limit, but no such order shall have effect unless it is approved by a resolution of each House of Parliament.

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### **31 Restriction on erection of structures in, over or under watercourses**

- (1) The following provisions of this section shall have effect in substitution for section sixty-four of the Act of 1930.
- (2) No person shall erect any structure in, over or under a watercourse which is part of the main river except with the consent of and in accordance with plans and sections approved by the river board; and no person shall, without the consent of the river board, carry out any work of alteration or repair on any structure in, over or under such a watercourse if the work is likely to affect the flow of water in the watercourse or to impede any drainage work.
- (3) No person shall erect or alter any structure designed to contain or divert the floodwaters of any part of the main river except with the consent of and in accordance with plans and sections approved by the river board.
- (4) A consent or approval required under this section shall not be unreasonably withheld ; and—
  - (a) any such consent may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out; and
  - (b) any such consent or approval shall, if neither given nor refused within two months after application therefor is made, be deemed to have been given.
- (5) If any person executes any work in contravention of this section the river board may remove, alter, or pull down the work and recover from that person the expenses incurred in doing so.
- (6) If any question arises under this section whether any consent or approval is unreasonably withheld or whether any condition imposed is reasonable the question shall—
  - (a) if the parties agree to arbitration, be referred to a single arbitrator agreed between the parties or, in default of agreement, appointed by the President of the Institution of Civil Engineers;
  - (b) if the parties do not agree to arbitration, be referred to and determined by the Minister and the Minister of Transport acting jointly.
- (7) Subsection (2) of this section shall not apply—
  - (a) to any work executed under section fifteen or one hundred and nineteen of the Public Health Act, 1936, or section nineteen or twenty of the Third Schedule to the Water Act, 1945 (which relate to the provision of sewers and water mains); or
  - (b) to any work executed in an emergency ;but a person executing any work excepted by paragraph (b) of this subsection shall as soon as practicable inform the river board in writing of the execution and of the circumstances in which it was executed.
- (8) Nothing in this section shall be taken to affect any enactment requiring the consent of any government department for the erection of a bridge or any powers exercisable by any government department in relation to a bridge.
- (9) Nothing in subsection (1) of this section or in subsection (4) of section sixty-one of the Act of 1930 (which contains certain savings) shall be taken to exclude the application of this section to any work executed by persons carrying on an undertaking to which that section applies.

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**32 Minor amendments of Act of 1930**

The Act of 1930 shall have effect subject to the amendments specified in Part I of the First Schedule to this Act.