
Changes to legislation: There are currently no known outstanding effects for the Cardiff Bay Barrage Act 1993, SCHEDULE 7. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Section 21.

GROUNDWATER DAMAGE PROTECTION

Introductory

1 (1) In this Schedule—

“groundwater damage” means damage caused or probably caused by an alteration of groundwater levels occurring in consequence of the construction of the barrage,

“remedial work” means work for preventing or repairing groundwater damage, and

“survey”, in relation to a building, means a survey for the purpose of ascertaining whether the building has suffered or is likely to suffer groundwater damage and, insofar as may be necessary in connection with that, for ascertaining the general structural condition of the building.

(2) References in this Schedule to a building—

(a) include, where appropriate, references to a private sewer or a drain relating to a building, and

(b) do not include references to any building, or any part of a building, constructed after the commencement of construction of the barrage unless any construction work has previously been carried out;

and for the purposes of paragraph (b) above the digging of a trench for foundations or the laying of mains or pipes to foundations or such a trench shall be taken to be construction work.

[^{F1}(3) References in this Schedule to the City of Cardiff are as references to that local government area as it existed immediately before the passing of this Act.]

Textual Amendments

F1 Sch. 7 para. 1(3) added (E.W.)(1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 4(5)(a)

2 (1) In this Schedule “the protected property area” means the area bounded by the outer edge of the line shown coloured green on the protected property area map; and in this sub-paragraph “the protected property area map” means the map marked “Revised Protected Property Area Map” which was deposited in February 1992 in connection with the Cardiff Bay Barrage Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons.

(2) References in this Schedule to a building within the protected property area include references to—

(a) a building partly within that area, and

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- (b) any building specified, or of a description specified, in a direction given by the Secretary of State under this paragraph.
- 3 (1) Not later than twenty-eight days before the commencement of construction of the barrage the Development Corporation shall publish in one or more local newspapers circulating in the County of South Glamorgan notice of the date on which construction of the barrage is intended to commence and of the effect of this Schedule in general terms.
- (2) On the commencement of construction of the barrage the Development Corporation shall publish in one or more local newspapers circulating in the County of South Glamorgan notice of the date on which the construction commenced; and references in this Schedule to the commencement of construction of the barrage shall be construed as references to the date of which notice is published under this sub-paragraph.
- (3) On the commencement of impoundment of water by means of the barrage the Development Corporation shall—
- (a) publish in one or more local newspapers circulating in the ^{F2}[County of Cardiff and the County Borough of the Vale of Glamorgan],
- (b) give to the owners and occupiers of, or of any part of, a building which is within the City of Cardiff, the Community of Penarth or the Community of Llandough,
- notice of the date on which such impoundment commenced; and references in this Schedule to the commencement of impoundment shall be construed as references to the date of which notice is published and given under this sub-paragraph.

Textual Amendments

F2 Words in [Sch. 7 para. 3\(3\)\(a\)](#) substituted (E.W.) (1.4.1996) by [S.I. 1996/525, art. 3, Sch. Pt. I para. 4\(5\)\(b\)](#)

Surveys of buildings within protected property area

- 4 (1) The Development Corporation shall—
- (a) before the commencement of impoundment, and
- (b) during the period beginning two years, and ending three years, after the commencement of impoundment,
- arrange for a survey of every building within the protected property area.
- (2) The owner or occupier of, or of any part of, a building within the protected property area may during the period beginning three years, and ending twenty years, after the commencement of impoundment require the Development Corporation to arrange a survey of the building; but no more than one survey of a building may be required under this sub-paragraph.
- (3) The owner or occupier of, or of any part of, a building within the protected property area may at any time during the period beginning with, and ending twenty years after, the commencement of impoundment when he is able to show a justifiable concern that the building has suffered or is likely to suffer groundwater damage require the Development Corporation to arrange a survey of the building.

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Surveys of buildings not within protected property area

- 5
- (1) The owner or occupier of, or of any part of, a building which is not within the protected property area but is within the City of Cardiff, the Community of Penarth or the Community of Llandough may before the commencement of impoundment require the Development Corporation to arrange a survey of the building; but no more than one survey of a building may be required under this sub-paragraph.
 - (2) A person may not require a survey of a building under sub-paragraph (1) above after the end of the period of twelve months beginning with the commencement of construction of the barrage unless—
 - (a) he was not an owner or occupier of the building, or any part of the building, at any time during that period, and
 - (b) sufficient time remains to allow the Development Corporation to make all necessary arrangements for the survey to be carried out before the commencement of impoundment.
 - (3) Where a survey of a building has been carried out under sub-paragraph (1) above the owner or occupier of, or of any part of, the building may during the period beginning two years, and ending three years, after the commencement of impoundment require the Development Corporation to arrange a survey of the building; but no more than one survey of a building may be required under this sub-paragraph.
 - (4) Where surveys of a building have been carried out under sub-paragraphs (1) and (3) above the owner or occupier of, or of any part of, the building may —
 - (a) during the period beginning three years, and ending twenty years, after the commencement of impoundment require the Development Corporation to arrange a survey of the building unless a survey of the building has already been required under this paragraph, and
 - (b) at any time before the end of the period of twenty years beginning with the commencement of impoundment when he is able to show a justifiable concern that the building has suffered or is likely to suffer groundwater damage require the Development Corporation to arrange a survey of the building.
- 6
- The owner or occupier of, or of any part of, a building which is not within the City of Cardiff, the Community of Penarth or the Community of Llandough may at any time during the period beginning with, and ending twenty years after, the commencement of impoundment when he is able to show a justifiable concern that the building has suffered or is likely to suffer groundwater damage require the Development Corporation to arrange a survey of the building.

Surveys: notices, reports and disputes

- 7
- (1) To require a survey of a building under paragraph 4(2) or (3), 5 or 6 above the owner or occupier of, or of any part of, the building shall give to the Development Corporation written notice—
 - (a) containing details sufficient to identify the building and his interest in it or any part of it, and
 - (b) (in the case of a survey under paragraph 4(3), 5(4)(b) or 6) specifying the nature of the groundwater damage which he considers the building has suffered or is likely to suffer.

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- (2) Where a survey of a building is carried out under paragraph 4, 5, or 6 above the Development Corporation shall arrange for the owners and occupiers of, or of any part of, the building to be supplied with a copy of the survey report.
- (3) Any dispute as to whether or not a person has shown a justifiable concern that a building has suffered or is likely to suffer groundwater damage for the purposes of paragraph 4(3), 5(4)(b) or 6 above shall be determined in accordance with paragraph 25 below.

Survey costs

- 8 (1) A survey under paragraph 4 above and, subject to the following provisions of this paragraph, a survey under paragraph 5 or 6 above shall be carried out at the expense of the Development Corporation.
- (2) A notice requiring a survey under paragraph 5 or 6 above shall be accompanied by a payment of £40 in respect of the survey.
- (3) If a survey of a building under paragraph 5 or 6 above shows that the building has suffered, or is likely to suffer, groundwater damage the Development Corporation shall immediately return to the person requiring the survey—
 - (a) the payment made by him under sub-paragraph (2) above in respect of it, and
 - (b) (in the case of a survey under paragraph 5(3) or (4)) any payment made by him under that sub-paragraph in respect of any earlier survey of that building under paragraph 5(1), (3) or (4)(a) above (and not previously returned).
- (4) If a survey of a building under paragraph 6 above does not show that the building has suffered or is likely to suffer groundwater damage the Development Corporation may order the person requiring the survey to pay the full cost of the survey less the payment made by him under sub-paragraph (2) above in respect of it.
- (5) The power of the Development Corporation to require payment of the cost of a survey of a building under sub-paragraph (4) above shall not apply where—
 - (a) the whole, or substantially the whole, of it is occupied as one or more private dwellings, or
 - (b) it is unoccupied but either—
 - (i) when it was last occupied the whole, or substantially the whole, of it was so occupied, or
 - (ii) it is intended that the whole, or substantially the whole, of it should be so occupied.

Building deemed within protected property area following survey

- 9 (1) Subject to sub-paragraph (2) below, if at any time a survey under paragraph 5(3) or (4) above shows that the building has suffered or is likely to suffer groundwater damage, that building shall, for the purposes of this Schedule, be treated from the day when the survey report is received by the Development Corporation as if it were a building within the protected property area.
- (2) Where—
 - (a) the survey is under paragraph 5(4)(a) above, or
 - (b) the survey is under paragraph 5(4)(b) above and a survey of the building has previously been carried out under paragraph 5(4)(a) above,

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paragraph 4(2) above shall not apply in relation to the building by virtue of sub-paragraph (1) above.

Monitoring of buildings consequent on survey recommendation

- 10 (1) The report of any survey of a building under paragraph 4, 5 or 6 above may recommend the monitoring of the building at specified intervals.
- (2) If such a report so recommends the Development Corporation shall arrange for the building to be monitored as recommended by the report.
- (3) Where a building is monitored under sub-paragraph (2) above the Development Corporation shall arrange for the owners and occupiers of the building, or any part of the building, to be supplied with a copy of the report of the monitoring.

Review of groundwater

- 11 (1) The Development Corporation shall—
- (a) until the commencement of impoundment, keep under review groundwater levels within the protected property area,
 - (b) as from the commencement of impoundment, keep under review the effect of the impoundment of water by means of the barrage on groundwater levels within any area which may be affected by the impoundment,
 - (c) carry out any such investigations of buildings and other land (including any such searches or borings in land) as they consider appropriate for performing the duties imposed by paragraphs (a) and (b) above, and
 - (d) in the case of any building which the Development Corporation when performing either of those duties conclude has suffered or is likely to suffer groundwater damage, make such offers for the carrying out of remedial work as they consider appropriate.
- (2) The Development Corporation shall perform the duties imposed by paragraphs (a), (b) and (c) of sub-paragraph (1) above in accordance with such programmes as may be prepared from time to time in consultation with the council for [^{F3}any county or county borough] in which groundwater levels are to be kept under review; and if any such programme cannot be agreed between the Development Corporation and the council for the ^{F3}[county or county borough] in which it is to operate, the programme for the ^{F3}[county or county borough] shall be determined by arbitration.
- (3) The programme for a [^{F4}county or county borough] shall include details of the nature and location of apparatus used or to be used in the district in keeping groundwater levels under review; and the Development Corporation shall—
- (a) supply to the council for the district recorded information produced by the apparatus, and
 - (b) make copies of that information available for inspection and copying by members of the public,
- in accordance with the provisions included in the programme under sub-paragraph (4) below.
- (4) The programme shall specify—

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- (a) how much of the recorded information produced by the apparatus is to be supplied, and at what intervals, in pursuance of the duty imposed by paragraph (a) of sub-paragraph (3) above, and
- (b) arrangements for complying with the duty imposed by paragraph (b) of that sub-paragraph.

Textual Amendments

- F3** Words in Sch. 7 para. 11(2) substituted (E.W.)(1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 4(5)(c)
- F4** Words in Sch. 7 para. 11(3) substituted (E.W.)(1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 4(5)(d)

Right to remedial work indicated by survey or monitoring

- 12 (1) If—
- (a) the report of a survey of a building carried out under paragraph 4, 5 or 6 above shows that the building has suffered or is likely to suffer groundwater damage, or
 - (b) the report of monitoring of a building carried out under paragraph 10 above recommends the carrying out of remedial work to the building,
- the owner or occupier of, or of any part of, the building may, before the end of the period of six months beginning with the day on which he receives the report, require the Development Corporation to carry out remedial work to the building.
- (2) Where a person requires the Development Corporation to carry out remedial work to a building under sub-paragraph (1) above, the work may be carried out notwithstanding the withholding of consent by some other person who has an interest in, or in any part of, the building which would be required apart from this sub-paragraph.

Execution of remedial work

- 13 (1) On being required under paragraph 12 above to carry out remedial work the Development Corporation shall—
- (a) as soon as reasonably practicable, arrange for the execution of appropriate work at their expense,
 - (b) ensure that the work is commenced before the end of the period of six months beginning with the day on which they are so required, and
 - (c) be responsible for obtaining all necessary statutory consents and approvals in relation to the work.
- (2) If the Development Corporation fail to comply with sub-paragraph (1)(b) above, the person who required them to carry out the work may nominate a contractor (with the contractor's consent); and the Development Corporation shall make arrangements with the contractor for the execution of the work unless the Development Corporation—
- (a) have reasonable grounds for refusing to do so, and
 - (b) within twenty-eight days of receiving the nomination of the contractor, give the reasons for their refusal to the person who made the nomination.
- (3) Any dispute as to—

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- (a) whether the report of a survey of a building carried out under paragraph 4, 5 or 6 above shows that the building has suffered or is likely to suffer groundwater damage,
 - (b) whether the report of monitoring of a building carried out under paragraph 10 above recommends the carrying out of remedial work to the building,
 - (c) whether a requirement to carry out remedial work has been made to the Development Corporation,
 - (d) what constitutes appropriate work for the purposes of sub-paragraph (1) above, or
 - (e) whether the Development Corporation have reasonable grounds for refusing to make arrangements for the execution of work by a nominated contractor,
- shall be determined in accordance with paragraph 25 below.

Extension of survey period following remedial work

- 14 If work to a building is executed under paragraph 13 above, paragraphs 4 to 6 above shall have effect in relation to the building as if the references in them to the period ending twenty years after the commencement of impoundment were references to the period ending twenty years after the day on which the work is completed.

Right to compensation instead of remedial work

- 15 (1) Where a right to require the carrying out of remedial work to a building arises under paragraph 12 above as the result of a survey, a claim may be made for the Development Corporation to pay compensation instead of carrying out remedial work if—
- (a) the building is a building to which this paragraph applies,
 - (b) the survey report states that the building has already suffered groundwater damage, and
 - (c) no previous right to claim compensation has arisen under this paragraph in relation to the building.
- (2) This paragraph applies to a building if—
- (a) the whole, or substantially the whole, of it is occupied as one or more private dwellings, or
 - (b) it is unoccupied but either—
 - (i) when it was last occupied the whole, or substantially the whole, of it was so occupied, or
 - (ii) it is intended that the whole, or substantially the whole, of it should be so occupied.
- (3) The Development Corporation shall not be under any duty to pay compensation under this paragraph if they have reasonable grounds for believing that failure to carry out remedial work to a building will probably have an adverse effect on an adjoining building.
- (4) A claim under sub-paragraph (1) above may only be made by the person who has a relevant interest in the building or, if more than one person has such an interest, by all the persons who have such an interest acting together.
- (5) For the purposes of this paragraph a person has a relevant interest in a building if—

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- (a) he is entitled to dispose of the fee simple of the building or any part of it (whether in possession or in reversion),
 - (b) he holds, or is entitled to the rents and profits of, the building or any part of it under a lease or agreement granted or extended for a term of years certain of which not less than three years remains unexpired, or
 - (c) he is a person to whom sub-paragraph (6) below applies on the relevant day, unless he is a mortgagee not in possession.
- (6) This sub-paragraph applies to a person who—
- (a) is entitled under Part I of the ^{M1}Leasehold Reform Act 1967 to acquire the freehold or an extended lease of the building or any part of it and has given notice under that Act of his desire to have the freehold or an extended lease,
 - (b) is a qualifying tenant for the purposes of Chapter I of Part I of the ^{M2}Leasehold Reform, Housing and Urban Development Act 1993 of a flat contained in the building and is by virtue of his tenancy—
 - (i) a participating tenant in relation to a claim to exercise the right to collective enfranchisement under that Chapter, or
 - (ii) one of the participating tenants on whose behalf an acquisition by a nominee purchaser has been made in pursuance of such a claim, or
 - (c) is entitled under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 to acquire a new lease of a flat contained in the building and has given notice under that Chapter of his claim to exercise the right to acquire a new lease.
- (7) A claim under sub-paragraph (1) above—
- (a) shall be made in writing to the Development Corporation not later than the end of the period of six months beginning with the relevant day, and
 - (b) shall contain full details of the interest of the claimant (or of each of the claimants) together with details, so far as known, of the interest which any other person has in the building or any part of the building;
- and a claimant shall, on being required to do so by the Development Corporation, produce all necessary evidence of his interest.
- (8) In this paragraph and paragraphs 16 and 17 below “the relevant day”, in relation to a claim for compensation under this paragraph, means—
- (a) the day on which a copy of the survey report on which the claim is based is sent to the owners and occupiers of the building or any part of it, or
 - (b) if copies are sent to those persons on different days, the last day on which one is sent to any of them.

Marginal Citations

M1 1967 c. 88.

M2 1993 c. 28.

Measure of compensation instead of remedial work

- 16 (1) The measure of compensation payable under paragraph 15 above to a claimant shall be the depreciation in the value of his interest which has occurred in consequence of the groundwater damage suffered by the building.

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- (2) In assessing compensation under paragraph 15 above in relation to an interest—
- (a) its value shall be assessed in accordance with rules (2) and (4) of the rules set out in section 5 of the ^{M3}Land Compensation Act 1961,
 - (b) reference shall be had to prices current on the relevant day and to the nature of the interest and the condition of the building as at the day on which the claim is received by the Development Corporation,
 - (c) if the interest is subject to a mortgage or a contract of sale, or is subject to a contract for the grant of a tenancy made after the relevant day, it shall be valued as if not so subject,
 - (d) there shall be left out of account in assessing the value of the interest any part of the value attributable to any improvement or extension of the building or any related building if the extension, improvement or building had not been occupied or brought into use on the relevant day, and
 - (e) subsections (2) to (5) of section 5 of the ^{M4}Land Compensation Act 1973 shall apply.
- (3) Subsections (1)(b) and (c), (2) and (3) of section 10 of the Land Compensation Act 1973 shall apply for the purpose of determining the extent to which compensation is payable under this paragraph and the manner in which such compensation is to be applied, dealt with or treated.
- (4) If a dispute arises as to whether paragraph 15(3) above applies it shall be determined in accordance with paragraph 25 below; but, subject to that, any dispute arising under paragraph 15 above or this paragraph shall be referred to and determined by the [^{F5}Upper Tribunal].

Textual Amendments

- F5** Words in *Sch. 7 para. 16(4)* 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. 254** (with *Sch. 5*)

Marginal Citations

- M3** 1961 c. 33.
M4 1973 c. 26.

Effect of payment of compensation instead of remedial work

- 17 (1) If compensation is paid in relation to any building under paragraph 15 above, then (subject to sub-paragraph (5) below) no further right shall arise under this Schedule—
- (a) to require the carrying out of a survey of the building or any remedial work to it, or
 - (b) to claim the payment of compensation in relation to it;
- and the Development Corporation shall not be under any duty to undertake any further survey or monitoring of the building.
- (2) The reference in sub-paragraph (1)(b) above to the payment of compensation does not include the payment of compensation under paragraph 18 below.
- (3) If—
- (a) a notice requiring the carrying out of a survey of a building or the carrying out of remedial work to it, or

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- (b) a claim for the payment of compensation in relation to it, is received by the Development Corporation during a period when a claim for compensation under paragraph 15 above has been submitted in respect of the building and remains undetermined, consideration of it may be deferred by the Development Corporation pending the determination of the claim under paragraph 15 above.
- (4) Subject to sub-paragraph (5) below, if compensation is paid under that paragraph in relation to a building the Development Corporation shall not be under any duty to take any further action in relation to any notice or claim which has been deferred under sub-paragraph (3) above.
- (5) A claim for compensation in relation to a building under paragraph 19 below shall, following the payment of compensation in relation to the building under paragraph 15 above, be considered by the Development Corporation to the extent that it relates to damage or disturbance occurring before the relevant day.

Compensation etc. in respect of damage to gardens

- 18 (1) Where a garden belonging to a building to which this paragraph applies has suffered groundwater damage, any person who—
- (a) has a relevant interest in the building,
 - (b) is entitled to carry out work to remedy the damage, and
 - (c) proposes to carry out such work,
- may make a claim under this paragraph at any time before the end of the period of twenty years beginning with the commencement of impoundment.
- (2) This paragraph applies to a building if it is within the protected property area and—
- (a) the whole or any part of it is occupied as a private dwelling, or
 - (b) it is unoccupied but either—
 - (i) when it was last occupied the whole or any part of it was so occupied, or
 - (ii) it is intended that the whole or any part of it should be so occupied.
- (3) For the purposes of this paragraph a person has a relevant interest in a building if—
- (a) he is entitled to dispose of the fee simple of the building or any part of it (whether in possession or in reversion),
 - (b) he holds, or is entitled to the rents and profits of, the building or any part of it under a lease or agreement granted or extended for a term of years certain of which not less than three years remains unexpired, or
 - (c) he is a person to whom paragraph 15(6) above applies, unless he is a mortgagee not in possession.
- (4) A claim under this paragraph—
- (a) shall be made in writing to the Development Corporation,
 - (b) shall contain details of the work which the person proposes to carry out, and
 - (c) shall be accompanied by three estimates of the cost of carrying out the work.
- (5) On receipt of a claim under this paragraph, the Development Corporation shall consider whether the work which the person making the claim proposes to carry out is appropriate for remedying the damage.

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- (6) Subject to sub-paragraph (8) below, where the Development Corporation consider that the work is appropriate for that purpose—
- (a) if they consider that any of the estimates accompanying the claim is reasonable, they shall pay to the person making the claim compensation of the amount specified in the estimate (or any of the estimates) which they consider reasonable, and
 - (b) if they consider that none of those estimates is reasonable, they shall reject the claim.
- (7) Subject to sub-paragraph (8) below, where the Development Corporation do not consider that the work is appropriate for that purpose they shall—
- (a) reject the claim, or
 - (b) give to the person making the claim details of the work which they reasonably consider to be appropriate for that purpose, including the amount which they so consider to be the cost of carrying it out, and (if he agrees to carry it out) pay to him compensation of that amount.
- (8) The Development Corporation may (as an alternative to acting as mentioned in sub-paragraph (6) or (7) above)—
- (a) before the end of the period of six months beginning with the day on which the claim is received by them, carry out any work which they reasonably consider to be appropriate for wholly or partly remedying the damage, and
 - (b) if that work is not intended wholly to remedy the damage, pay to the person making the claim compensation of the amount which they reasonably consider to be the cost of carrying out such other work as they reasonably consider to be necessary to complete the remedying of the damage.
- (9) The Development Corporation shall not be required to pay any compensation under this paragraph until the work in question has been satisfactorily completed but they may, if they consider it appropriate to do so, make a payment of the whole or any part of the compensation at an earlier time.
- (10) Any dispute under this paragraph as to—
- (a) whether a garden has suffered groundwater damage,
 - (b) whether any work is appropriate for remedying groundwater damage,
 - (c) whether any estimate is reasonable,
 - (d) the amount of any compensation under sub-paragraph (7) or (8), or
 - (e) whether any work has been satisfactorily completed,
- shall be determined in accordance with paragraph 25 below.
- (11) The rejection of a claim under this paragraph, or the carrying out of work by the Development Corporation, shall not prevent the making of another such claim in respect of the same damage.

Other rights to compensation

- 19 (1) If any person having an interest in, or in any part of, a building or in any land suffers damage or disturbance in respect of the building or land in consequence of—
- (a) the carrying out of any remedial work under this Schedule, or
 - (b) any entry into the building or onto the land under this Schedule,
- compensation shall be payable by the Development Corporation.

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- (2) If any person having an interest in, or in any part of—
- (a) a building within the protected property area, or
 - (b) any other building in respect of which a right under paragraph 12 above to require the carrying out of remedial work has arisen,
- suffers damage or disturbance to any fixtures, fittings or personal property in the building before the end of the period of twenty years beginning with the commencement of impoundment by reason of an alteration of groundwater levels occurring in consequence of the construction of the barrage, compensation shall be payable by the Development Corporation.
- (3) If the internal dimensions of any room in a building are decreased to any material extent as a result of any remedial work carried out under this Schedule, compensation in respect of any consequent diminution in value of the interest of any owner of, or of any part of, the building shall be payable by the Development Corporation.
- (4) Any question of disputed compensation under this paragraph shall be determined in accordance with paragraph 25 below.

No double recovery

- 20 Compensation shall not be payable in respect of the same matter both under this Schedule and under any other enactment, any contract or any rule of law.

Powers of survey etc.

- 21 (1) A person duly authorised in writing by the Development Corporation may at any reasonable time—
- (a) enter any building for the purpose of carrying out a survey or monitoring of that or any other building under this Schedule,
 - (b) install in any building apparatus for use in connection with such a survey or monitoring, or
 - (c) remove such apparatus from any building.
- (2) A person acting under this paragraph shall, if so required, produce evidence of his authority to do so.
- (3) Such a person may take with him into the building such other persons and such apparatus as he considers necessary for the survey or monitoring.
- (4) Such a person shall, if the building is unoccupied or the occupiers are temporarily absent, leave it as effectively secured against trespassers as he found it.
- (5) Such a person shall not—
- (a) enter the building if it is occupied unless notice in writing has been given to the occupiers of the building, or any part of it, by the Development Corporation at least twenty-eight days beforehand, or
 - (b) install any apparatus in the building or remove any apparatus from it—
 - (i) unless notice in writing has been given to the owners and occupiers of the building, or any part of it, by the Development Corporation at least twenty-eight days beforehand, and
 - (ii) where the building, or any part of the building, is owned or occupied by statutory undertakers or [F6] a provider of a public electronic

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communications network] and a notice of objection has been served on the Development Corporation, unless the Secretary of State authorises him in writing to do so.

- (6) In sub-paragraph (5) above “notice of objection” means a notice in writing stating the objection of the statutory undertakers [^{F7} or provider] to the taking of the action of which notice has been given on the ground that it would be seriously detrimental to the carrying on of the statutory undertaking or the [^{F8} provision of the public electronic communications network].
- (7) A person exercising in relation to a building which, or part of which, is owned or occupied by statutory undertakers or [^{F9} a provider of a public electronic communications network] any of the powers conferred by sub-paragraph (1) above, and any person whom he has taken with him under sub-paragraph (3) above, shall comply with all reasonable conditions imposed by the statutory undertakers [^{F10} or provider].
- (8) Where on an application made by the Development Corporation to a magistrates’ court the court is satisfied that—
- (a) a building has suffered or is likely to suffer groundwater damage, and
 - (b) failure to carry out remedial work to it will probably have an adverse effect on an adjoining building,
- the court may make an order empowering the Development Corporation to enter the building in order to carry out the work within such period as may be fixed by the order (beginning not sooner than twenty-eight days after the making of the order).
- (9) If any person, after receiving notice of an order under sub-paragraph (8) above, prevents a person from duly implementing the order, a magistrates’ court may order him to permit to be done everything which is required in order to carry into effect the provisions of the order.

^{F11}(10)

Textual Amendments

- F6** Words in [Sch. 7 para. 21\(5\)\(b\)\(ii\)](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 126\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F7** Words in [Sch. 7 para. 21\(6\)](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 126\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F8** Words in [Sch. 7 para. 21\(6\)](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 126\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F9** Words in [Sch. 7 para. 21\(7\)](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 126\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F10** Words in [Sch. 7 para. 21\(7\)](#) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 126\(b\)](#) (with [Sch. 18](#)); [S.I.](#)

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2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F11 Sch. 7 para. 21(10) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

Offences

- 22 (1) If a person—
- (a) intentionally obstructs a person carrying out a survey or monitoring in accordance with paragraph 21(1) above,
 - (b) intentionally obstructs—
 - (i) a person exercising any of the powers conferred by paragraph 21(1) above, or
 - (ii) a person whom such a person has taken with him under paragraph 21(3) above doing anything in connection with the exercise of any such power, or
 - (c) without lawful authority or reasonable excuse removes or otherwise interferes with apparatus installed in any building in accordance with paragraph 21 above,
- he shall be guilty of an offence.
- (2) A person guilty of an offence under sub-paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person who fails to comply with an order under paragraph 21(9) above shall be guilty of an offence.
- (4) A person guilty of an offence under sub-paragraph (3) above shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (5) A person who discloses information which he has obtained by virtue of this Schedule and which relates to the affairs of any particular business shall be guilty of an offence unless he does so—
- (a) with the consent of the person for the time being carrying on the business, or
 - (b) in the exercise of functions under this Schedule.
- (6) A person guilty of an offence under sub-paragraph (5) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to imprisonment not exceeding two years or a fine or both.

Local land charges

- 23 (1) The status of any building as a building within the protected property area shall be a local land charge; and where—
- (a) a direction is given by the Secretary of State under paragraph 2(2)(b) above affecting any building, or
 - (b) paragraph 9 above applies in the case of any building,

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the Development Corporation shall notify the council of the [^{F12}county or county borough] in which the building is situated of the fact that the building is, by virtue of that provision, to be regarded as being within the protected property area.

- (2) If a survey of a building is carried out under paragraph 5(1) or (3) above, or if compensation in relation to a building is paid under paragraph 15 above, the Development Corporation shall deposit with the council of the [^{F12}county or county borough] in which that building is situated particulars of the survey or compensation, and those particulars shall be a local land charge.
- (3) For the purposes of the ^{M5}Local Land Charges Act 1975 the council of the [^{F12}county or county borough] shall be treated as the originating authority as respects any charge constituted by virtue of this paragraph.

Textual Amendments

F12 Words in Sch. 7, para. 23 substituted (E.W.)(1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 4(5)(d)

Marginal Citations

M5 1975 c. 76.

Appointment of surveyor

- 24 (1) The surveyor appointed by the Development Corporation to carry out any survey of a building under paragraph 4, 5 or 6 above shall be such person as may be agreed by the council of the [^{F13}county or county borough] in which the building to be surveyed is situated.
- (2) If a surveyor proposed to be appointed by the Development Corporation is not agreed by the [^{F14}district] council in question, the Development Corporation may refer the matter of the appointment of a surveyor for determination in accordance with paragraph 25 below.

Textual Amendments

F13 Words in Sch. 7 para. 24(1) substituted (E.W.) (1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 5(d)

F14 Word in Sch. 7 para. 24(2) omitted (E.W.)(1.4.1996) by virtue of S.I. 1996/525, art. 3, Sch. Pt. I para. 5(e)

Determination of disputes

- 25 (1) Where under any provision of this Schedule any dispute or difference is to be determined in accordance with this paragraph, the dispute or difference shall be referred to and settled by an appropriately qualified and experienced person appointed by agreement between the parties or, in default of agreement, on the application of either party (after giving to the other not less than one week's notice in writing) by or on behalf of the President of the Royal Institution of Chartered Surveyors.
- (2) Any person appointed in accordance with the provisions of sub-paragraph (1) above shall not act as an arbitrator and his decision shall be final and binding on the parties

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but before reaching a decision he shall give to the parties such opportunity of making representations as they may reasonably require.

- (3) All remuneration and expenses of any person appointed in accordance with the provisions of sub-paragraph (1) above shall be borne by the Development Corporation together with any costs incurred in respect of any such appointment by the Royal Institution of Chartered Surveyors.

Code of practice

- 26 (1) The Development Corporation shall publish and may from time to time revise a code of practice indicating the procedure which they intend to adopt in their implementation of the provisions of this Schedule including, in particular, the procedures for the carrying out of surveys and the preparation of survey reports under paragraphs 4 to 6 above and the return under paragraph 8(3) above of payments made in respect of surveys.

- [^{F15}(2) Before revising the code of practice referred to in sub-paragraph (1) above the Development Corporation shall submit a draft to the councils for the County of Cardiff and the County Borough of the Vale of Glamorgan and such other bodies as the Development Corporation consider appropriate; and before publishing the revisions the Development Corporation shall consider any observations made by any of those councils or any other body to whom a draft has been sent.]

Textual Amendments

F15 Sch. 7 para. 26(2) substituted (E.W.) (1.4.1996) by S.I. 1996/525, art. 3, Sch. Pt. I para. 5(f)

- 27 (1) The Secretary of State shall appoint a person to be known as the Independent Groundwater Complaints Administrator who shall, subject to sub-paragraph (2) below, consider complaints which are made to him concerning the exercise by the Development Corporation of any of the functions conferred or imposed on them by this Schedule.
- (2) The Administrator shall not consider a complaint which amounts to a dispute required to be determined in accordance with paragraph 25 above or to be referred to and determined by the [^{F16}Upper Tribunal].
- (3) The Administrator shall in the case of any complaint which is required to be considered by him either—
- (a) reject the complaint, or
 - (b) recommend to the Development Corporation steps which he considers should be taken by them with a view to resolving the matter complained of;
- and if the Development Corporation do not take the steps recommended he may issue a direction requiring them to take such steps as may be specified in it.
- (4) The Development Corporation shall—
- (a) furnish such information,
 - (b) disclose such documents,
 - (c) provide such technical or other assistance, and
 - (d) afford such facilities,

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as the Administrator may reasonably require for the purpose of exercising his functions.

- (5) The Administrator shall hold and vacate office in accordance with the terms of his appointment; and there shall—
- (a) be paid to him such remuneration as the Secretary of State may determine,
 - (b) be paid to or in respect of him such pension, allowances or gratuities, or be made to or in respect of him such payments towards the provision of a pension, as the Secretary of State may determine, and
 - (c) be paid to him appropriate travelling and other allowances.
- (6) Payments under this paragraph shall be made, and expenditure incurred under this paragraph by the Administrator shall be met, by the Development Corporation.

Textual Amendments

F16 Words in Sch. 7 para. 27(2) 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. 254** (with Sch. 5)

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