



Flood Prevention (Scotland) Act 1961

1961 CHAPTER 41

Flood Prevention Operations

1 Purposes for which powers of local authorities under Act are exercisable

- (1) For the purpose of preventing or mitigating the flooding of land in their area, not being agricultural land, any council to whom this section applies may, so far as they think fit and subject to the provisions of this Act, exercise all or any of the powers specified in subsection (1) of the next following section.
- (2) This section applies to all town councils and county councils; and in this Act any reference to a local authority is a reference to a council to whom this section applies, and " area " in relation to a local authority means, in the case of a town council, the burgh and, in the case of a county council, the county exclusive of any burgh situated therein.

2 Powers of local authorities

- (1) The powers referred to in subsection (1) of the foregoing section are powers to carry out operations of the following descriptions—
 - (a) the cleansing, repairing and otherwise maintaining in a due state of efficiency of—
 - (i) any watercourse;
 - (ii) any barrier, embankment or other work for defence against flooding;
 - (iii) any apparatus ancillary to any such work or to any watercourse;
 - (b) the management or operation of any work or apparatus mentioned in the foregoing paragraph ;
 - (c) the improvement, alteration or reinstatement of any watercourse or of any work or apparatus mentioned in paragraph (a) of this subsection;
 - (d) the removal of any work or apparatus mentioned in the said paragraph (a);
 - (e) the construction or provision of any new watercourse or any new work or apparatus mentioned in the said paragraph (a);

- (f) the reinstatement of land damaged by operations carried out by virtue of this Act, and the execution of works for the protection of land against damage likely to be caused by such operations.
- (2) In this Act the expression "watercourse" includes—
- (a) the bed and banks of any river, stream or burn (whether for the time being carrying water or not), and
 - (b) any ditch, drain, cut, canal, culvert, sluice or passage carrying or designed to carry water, together with the walls, pipes or other works containing or intended to contain the same,
- except that it does not include any sewer or water-main; and in the foregoing subsection "cleansing" in relation to a watercourse means the removal from the watercourse of mud, silt, debris or other obstructive matter in the ordinary course of good maintenance.
- (3) References in this Act to flood prevention operations are references to operations of any of the descriptions set out in subsection (1) of this section, and references in this Act to maintenance and management operations are references to operations of any of the descriptions set out in paragraphs (a) and (b) of that subsection.

3 Supplementary provisions as to powers of local authorities

- (1) The powers conferred on a local authority by the two foregoing sections shall, subject to the provisions of this Act, be exercisable—
- (a) as well on land outwith the area of the local authority as on land within that area ;
 - (b) notwithstanding that an incidental result of the exercise is that flooding of land other than such land as is specified in subsection (1) of section one of this Act is prevented or mitigated.
- (2) In relation to a watercourse—
- (a) the power to carry out operations of the description specified in paragraph (a) of subsection (1) of the last foregoing section shall (without prejudice to the generality of that paragraph) include power to carry away, and where the watercourse is an open watercourse to deposit on the banks thereof, any mud, gravel or other material removed from the watercourse in the maintenance thereof, and to cut and lay aside or remove any bush or scrub timber growing on the banks of the watercourse ; and
 - (b) the power to carry out operations of the description specified in paragraph (c) of the said subsection (1) shall (without prejudice to the generality of that paragraph) include power to remove any dam or other work situated, or any tree growing, in, on, over or under the watercourse.
- (3) Nothing in the foregoing provisions of this Act shall authorise the carrying out of any operations by a local authority in contravention of any enactment, and in particular in contravention of—
- (a) the Ancient Monuments Acts, 1913 to 1953, or of section twenty-seven of the Town and Country Planning (Scotland) Act, 1947 (which relates to building preservation orders) or section twenty-eight of that Act (which relates to buildings of special architectural or historic interest);
 - (b) section thirty-four of the Coast Protection Act, 1949 (which provides for the restriction of works detrimental to navigation);

- (c) section twenty-two of the Rivers (Prevention of Pollution) (Scotland) Act, 1951 (which prohibits the use of streams for the disposal of polluting matter, etc.) or section twenty-four of that Act (which, among other things, relates to circumstances in which cut vegetation may not be allowed to remain in a stream); or
 - (d) any enactment prohibiting the carrying out of development not authorised by planning permission granted or deemed to have been granted under Part II of the Town and Country Planning (Scotland) Act, 1947.
- (4) Nothing in the foregoing provisions of this Act relating to maintenance and management operations shall authorise the carrying out by a local authority of any such operations so as to affect injuriously any works or property belonging to, or the carrying on of their statutory undertaking by, any statutory undertakers, except with the consent in writing of the statutory undertakers:

Provided that consent for the purposes of this subsection shall not be required if it is withheld unreasonably, and any question whether any such consent has been withheld unreasonably shall be referred to and determined by the Secretary of State.

4 Flood prevention schemes

- (1) No flood prevention operations other than maintenance and management operations shall be carried out by or on behalf of a local authority by virtue of the powers conferred on them by the foregoing provisions of this Act otherwise than in accordance with a scheme (in this Act referred to as a " flood prevention scheme ") made by the local authority, and confirmed by the Secretary of State, under this section.
- (2) A flood prevention scheme shall describe, by reference to maps, plans and specifications, the flood prevention operations proposed to be carried out and the land which would be affected by them; shall include an estimate of the cost of those operations ; and shall specify any land on which the local authority require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations; and, where in connection with any such operations it is intended that operations for the diversion of a sewer or a watermain shall be carried out by a sewerage or water authority (whether a different authority from the local authority or not), the scheme shall also specify those last-mentioned operations.
- (3) For the purpose of providing for powers of entry on land to carry out flood prevention operations, for penalising persons who obstruct the carrying out of such operations and for the other matters mentioned in the First Schedule to this Act, a flood prevention scheme may incorporate (subject to such modifications, if any, as may be specified in the scheme) all or any of the provisions set out in that Schedule, and any of those provisions so incorporated shall have effect for the purposes of the operations to which the scheme relates:

Provided that, in relation to any provision of the said Schedule so incorporated, a flood prevention scheme shall not specify as aforesaid any modification which increases any penalty or places any person other than the local authority making the scheme in a worse position than he would be in if the provision were incorporated in the scheme without modification.

- (4) A local authority, before making a flood prevention scheme relating to operations on land in the area of another local authority, shall consult with that other local authority.

- (5) The provisions of the Second Schedule to this Act shall have effect with regard to the confirmation, coming into operation and validity of a flood prevention scheme.

5 Combinations of local authorities

- (1) In exercising their powers under this Act a local authority may combine with any other local authority, or with two or more other local authorities, for the purpose of carrying out any flood prevention operations intended to benefit land in their area along with land in the other area or areas concerned, and that on such terms and conditions as may be agreed between the local authorities.
- (2) Subsections (2) to (4) of section one hundred and nineteen of the Local Government (Scotland) Act, 1947 (which relates to voluntary combinations of local authorities) shall apply in relation to any such combination as is mentioned in the foregoing subsection as they apply in relation to the combinations mentioned in subsection (1) of the said section one hundred and nineteen, and in the said subsections (2) to (4) as so applying any reference to a function of a local authority shall be construed as including a reference to any power or duty of the local authority so far as relating to the flood prevention operations with which the combination is concerned.
- (3) In relation to a case where local authorities have combined under this section, any reference in this Act to a local authority shall (unless the context otherwise requires) be construed as including a reference to the combination of local authorities, and "area" shall be construed accordingly.

Prevention of obstruction of watercourses, etc.

6 Byelaws

- (1) Subject to the provisions of this section, a local authority may, for the purpose of preventing the obstruction of any particular watercourse in their area so as to be likely to cause the flooding of land, other than agricultural land, whether in their area or not, make byelaws regulating or prohibiting the deposit of rubbish or other material in or near the watercourse.
- (2) Any person who contravenes any byelaw made by virtue of the foregoing subsection shall be liable on summary conviction to a fine not exceeding fifty pounds in the case of a first conviction, or one hundred pounds in the case of a second or any subsequent conviction.
- (3) The confirming authority in relation to any byelaws made under this section shall be the Secretary of State.

Supplementary

7 Acquisition of land

A local authority may be authorised by the Secretary of State to acquire by compulsory purchase any land (whether in their area or not) which they require for the exercise of their powers under this Act, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, shall apply in relation to any such compulsory purchase as if this Act had been in force immediately before the commencement of that Act.

8 Powers of entry on land

- (1) Subject to the provisions of this section, any person authorised by a local authority shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter on any land (whether in the area of the local authority or not)—
 - (a) for the purpose of determining whether, and if so in what manner, any power conferred on the local authority by this Act is to be exercised, or whether any provision of this Act or any notice given by the local authority under this Act is being or has been complied with, or
 - (b) for the purpose of exercising any power conferred on the local authority by this Act, other than a power exercisable in accordance with a flood prevention scheme (but without prejudice to any provisions as to entry incorporated in any such scheme by virtue of this Act).
- (2) Admission to any land shall not be demanded as of right under this section unless fourteen days notice of the intended entry has been given to the occupier of the land.
- (3) If on application made to him the sheriff is satisfied—
 - (a) that admission to any land on which any person is entitled to enter under this section has been refused to that person or that refusal is apprehended, or that the land is unoccupied, or that the case is one of urgency, or that an application for admission will defeat the object of the entry,
 - (b) that there is reasonable ground for entry on the land for the purpose for which entry is required, and
 - (c) either that notice of the intention to make the application has been given to the occupier or that it is equitable in the circumstances to dispense with such notice,the sheriff may by warrant under his hand authorise that person to enter on the land; and any warrant so issued shall be expressed to remain in force for such period only as the sheriff, having regard to all the circumstances of the case, shall fix.
- (4) If any person wilfully obstructs any other person exercising a right conferred by this section to enter, or do anything, on any land he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds in the case of a first conviction or twenty pounds in the case of a second or any subsequent conviction.

9 Provision and obtaining of information

- (1) For the purpose of enabling them to exercise any of their powers under this Act a local authority may require the owner or occupier of any land (whether in their area or not) to state in writing the nature of his own interest in that land and the name and address of any other person known to him as having an interest therein.
- (2) If any person fails to comply with a requirement of a local authority under this section, or in answer to any such requirement recklessly makes any statement which is false or misleading in a material particular, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds in the case of a first conviction or twenty pounds in the case of a second or any subsequent conviction.

10 Unjustified disclosure of information

If any person discloses any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Act or in connection with the execution thereof, he shall, unless the disclosure is made—

- (a) with the consent of the person carrying on that under taking, or
- (b) in connection with the execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,

be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both.

11 Compensation

- (1) Where on a claim being made under this section it is shown that (after taking into account the effect of any operations that may have been carried out by the local authority under paragraph (f) of subsection (1) of section two of this Act) the value of an interest of any person in land has been depreciated, or that any person has suffered damage by being disturbed in his enjoyment of land, in consequence of the carrying out of any flood prevention operations, the local authority by whom, or on whose behalf, the operations were carried out shall pay to the person whose interest has been depreciated or who has suffered the damage compensation equal to the amount of the depreciation or damage:

Provided that a person shall not be entitled to compensation under this subsection unless the act or omission causing the depreciation or disturbance would have been actionable at his instance if it had been done or omitted otherwise than in the exercise of statutory powers.

- (2) A claim for compensation under this section shall be made by serving on the local authority a notice in writing stating the grounds of the claim and the amount claimed.
- (3) A local authority shall not be required to entertain a claim for compensation under this section unless it has been made before the expiration of two years from the depreciation becoming apparent or, as the case may be, the first occurrence of the disturbance, or ten years from the completion of the flood prevention operations, whichever is the earlier.
- (4) Subject to the next following subsection, any question as to the right of a claimant to recover compensation under this section, or as to the amount of the compensation recoverable, shall, in default of agreement, be referred to, and determined by, the Lands Tribunal for Scotland.
- (5) Until sections one to three of the Lands Tribunal Act, 1949 (which relate to the establishment of the Lands Tribunal for Scotland) come into force as respects Scotland the last foregoing subsection shall have effect as if for the reference therein to the said Tribunal there were substituted a reference to an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919; and sections three, five and six of the said Act of 1919 shall apply, subject to any necessary modifications, in (relation to the determination of any question under the last foregoing subsection as modified by this subsection.

12 Contributions to and by local authorities

- (1) A local authority may make contributions towards expenditure incurred—
 - (a) by any other person in the carrying out of operations which could properly have been carried out by the local authority under this Act, or
 - (b) by a sewerage or water authority in carrying out, or paying compensation in respect of, any operations for the diversion of a sewer or, as the case may be, a water main, being operations connected with the improvement or alteration of a watercourse and specified in a flood prevention scheme made by that local authority.
- (2) Where a local authority are a sewerage or water authority and as such incur expenditure in carrying out, or paying compensation in respect of, any operations such as are specified in paragraph (b) of the foregoing subsection in relation to a flood prevention scheme made by themselves, they may appropriate to the accounts of their sewerage, or, as the case may be, water, undertaking such sum as they think fit in respect of that expenditure; and any such appropriation shall be deemed to be a contribution under this section towards the expenditure.
- (3) A local authority may receive from any other person contributions towards the expenditure by the local authority in exercising their powers under this Act.

13 Financial provisions

- (1) In respect of expenditure incurred by a local authority in carrying out flood prevention operations in accordance with a flood prevention scheme, or in the payment in respect thereof of compensation under section eleven of this Act, or in making approved contributions under section twelve of this Act, there shall be paid out of moneys provided by Parliament such sums as the Secretary of State may with the consent of the Treasury direct:

Provided that—

 - (i) any payments under this subsection shall be subject to such conditions, and shall be paid at such times, as the Secretary of State may with the consent of the Treasury determine; and
 - (ii) no payments shall be made under this subsection in respect of expenditure incurred in the carrying out of any flood prevention operations which are maintenance and management operations, or in payment of compensation in respect of such operations.
- (2) There shall be paid out of moneys provided by Parliament—
 - (a) any administrative expenses incurred by the Secretary of State in consequence of the passing of this Act; and
 - (b) any increase attributable to the provisions of this Act in the sums payable under any other enactment out of moneys so provided.
- (3) In this section " approved ", in relation to any contribution, means approved for the purposes of this section by the Secretary of State.

14 Crown rights

- (1) In relation to any Crown land nothing in this Act, or in any scheme made under this Act, shall (except so far as the appropriate authority consents) affect prejudicially any estate, right, power, privilege or exemption of the Crown.
- (2) In this section the expression " Crown land " means land an interest in which belongs to Her Majesty in right of the Crown, or belongs to a government department or is held in trust for Her Majesty for the purposes of a government department ; and the expression " appropriate authority " means—
 - (a) in relation to land an interest in which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of that interest;
 - (b) in relation to land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department;

and, if any question arises as to the authority which is the appropriate authority in relation to any such land, the question shall be determined by the Treasury.

15 Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively—
 - " agricultural land " has the same meaning as in section eighty-six of the Agriculture (Scotland) Act, 1948, and includes any dwelling-house or other building occupied for the purpose of farming any land;
 - " burgh " has the same meaning as in the Local Government (Scotland) Act, 1947;
 - " flood prevention operations " has the meaning assigned to it by section two of this Act;
 - " interest ", in relation to any land, includes any estate in or right over the land ;
 - " local authority " and " area " in relation to a local authority have (subject to subsection (3) of section five of this Act) the meanings assigned to them by section one of this Act;
 - " maintenance and management operations " has the meaning assigned to it by section two of this Act;
 - " sewer " means any sewer provided, constructed or maintained under any provision of the Public Health (Scotland) Act, 1897, or of the Burgh Police (Scotland) Acts, 1892 to 1903, or under any corresponding provision of a local enactment ;
 - " statutory undertakers " and " statutory undertaking " have the same meanings as in the Town and Country Planning (Scotland) Act, 1947;
 - " watercourse " has the meaning assigned to it by subsection (2) of section two of this Act;
 - " water-main " means any water-main provided, constructed or maintained under any provision of the Water (Scotland) Acts, 1946 and 1949, or any corresponding provision of a local enactment.

- (2) References in this Act to the mitigation of flooding shall, except where the context otherwise requires, be construed as including references to the draining of flood water left by flooding.
- (3) References in this Act to land shall, except where the context otherwise requires, be construed as including references to salmon fishings.
- (4) References in this Act to a watercourse shall, except where the context otherwise requires, be construed as including references to a part of a watercourse.
- (5) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended or modified by or under any other enactment.
- (6) For the purposes of this Act the service of any notice, scheme or other document on any person, body or association may (without prejudice to any other method of service) be effected by sending it to him, or, in the case of a body or association, to the secretary or other similar officer thereof, by post at his usual or last known residence, place of business or office.

16 Short title, commencement and extent

- (1) This Act may be cited as the Flood Prevention (Scotland) Act, 1961.
- (2) This Act shall come into operation at the expiration of the period of one month beginning with the day on which it is passed.
- (3) This Act shall extend to Scotland only.