



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.