



Land Drainage (Scotland) Act 1930

1930 CHAPTER 20

An Act to make further provision for the drainage of agricultural land in Scotland
[15th April 1930.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Maintenance of banks and cleansing of channels of watercourses

- (1) Where the owner or occupier of any agricultural land is of opinion that such land is being injured or is in danger of being injured by reason of the failure of the owner or occupier of any other land to maintain or to join in maintaining the banks or to cleanse or scour or to join in cleansing or scouring the channel of any watercourse in or partly in or adjoining such last-mentioned land, it shall be lawful for the owner or occupier of such first-mentioned land to serve a notice on the owner of the land last-mentioned requiring him to maintain or to join in maintaining the banks or to cleanse or scour or to join in cleansing or scouring the channel of any such watercourse as the case may be.
- (2) Where a notice has been served in pursuance of the foregoing subsection and the requirements thereof have not been complied with within two months after the date of such service, it shall be lawful for the person serving the notice to apply to the sheriff for a warrant authorising him to cause the operations required in the notice to be carried out or to join with any other person in so doing.
- (3) On any such application the sheriff, if he thinks fit, may summon a person of skill and experience in matters relating to drainage to sit with him and act as assessor, or may remit to any such person to examine and report on any matter involved in such application or on any disputed question of fact arising therein.
- (4) If the sheriff is satisfied—
 - (a) that the land owned or occupied by the applicant is being or is in danger of being injured by such failure as aforesaid;

- (b) that the person on whom the notice has been served is unreasonably refusing or delaying to take such steps as may be necessary to remedy or prevent such injury; and
- (c) that the cost of carrying out any operations necessary to remedy or prevent such injury is such that it may reasonably be borne by the parties,

he may ordain the person upon whom the notice has been served to carry out such operations as the sheriff shall think necessary and that within such time as may be specified, and upon failure to implement such order the sheriff may grant a warrant authorising the carrying out of such operations, and the person authorised by such warrant shall have power to enter on the land where the operations are to be carried out, and to carry out the same. The sheriff, if he thinks fit, may, and on the application of any party, shall direct that any operations to be carried out under such an order or warrant as aforesaid shall be carried out under the supervision of a person of skill and experience in matters of drainage.

- (5) If on any such application the sheriff shall be of opinion that the land owned or occupied by the applicant is being or is in danger of being injured by such failure as aforesaid, but that the cost of carrying out any operations necessary to remedy or prevent such injury is such that it would be unreasonable to make an order under this section for the carrying out of such operations, he may direct that intimation of the application and of his decision thereon be made to the Department of Agriculture for Scotland (hereinafter referred to as the Department), and that any report submitted to him under subsection (3) of this section, and any plan, map, or other document produced in the application, be communicated to the Department.
- (6) On any such application the sheriff shall have power to direct that the costs of carrying out any operations in pursuance of an order or warrant granted under this section (including the remuneration of any person under whose supervision the operations are directed to be carried out) shall be borne by the parties in such proportions as he may think fit.
- (7) The Court of Session may by Act of Sederunt make rules with regard to the remuneration of persons acting as assessors or as reporters or supervising the carrying out of operations under an order or warrant in pursuance of the provisions of this Act, and the remuneration of any person acting as assessor or as reporter shall be treated as expenses in the application unless the sheriff otherwise directs.
- (8) Nothing in this section shall affect the right of an owner or occupier to recover from the other under the terms of any lease or other contract for the time being in force the amount of any expenses incurred by him or recovered from him under the foregoing provisions of this section.

2 Making of underground main drains

- (1) Where the owner or occupier of any agricultural land is of opinion that such land is being injured or is in danger of being injured through the refusal of the owner of any land to allow underground main drains to be formed through his land, it shall be lawful for the owner or occupier of such agricultural land to apply to the sheriff for a warrant authorising him to make such underground main drains through the land of such owner.
- (2) If the sheriff is satisfied that the land owned or occupied by the applicant is being or is in danger of being injured by such refusal as aforesaid, and that permission to make such underground main drains is being unreasonably withheld, he may after such

inquiry by remit or report, or otherwise, as he may think necessary, grant a warrant authorising the making of such underground main drains, and the person so authorised shall have power to enter on the land where the operations are to be carried out, and to carry out the same. The sheriff, if he thinks fit, may, and on the application of the person through whose land such underground main drains are proposed to be made, shall direct that any operations to be carried out under such warrant shall be carried out under the supervision of a person of skill and experience in matters of drainage.

- (3) Such warrant shall provide (i) for the payment by the person so authorised of compensation for any loss or damage caused to any other person by reason of the making of the underground main drains authorised by such warrant, the amount of such compensation, failing agreement, to be determined by the sheriff after such inquiry as aforesaid; and (ii) for the proper maintenance or renewal of the said drains in the future at the expense of the owner for the time being of the said agricultural land.
- (4) In any application to the sheriff under this or the immediately preceding section he shall have power to award expenses to or against any party to the application.

3 Schemes for drainage works

- (1) Where the Department are of opinion that any agricultural land is capable of improvement by drainage works, or that any land in a landward area is being or is in danger of being injured by flooding and that such injury can be remedied or prevented by the execution of drainage works either on such land or any other land, the Department 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 and may maintain such works.
- (2) Before executing any works under this section the Department shall prepare a draft scheme specifying—
 - (a) the works proposed to be executed;
 - (b) the area to be affected thereby;
 - (c) the estimated cost of carrying out the scheme, the amount to be recoverable by the Department in respect of such cost, and the manner in which that amount is to be apportioned among the lands comprised in the area;
 - (d) the estimated cost of maintaining the works proposed to be executed and the manner in which such estimated cost is to be apportioned among the lands comprised in the area;

and shall give to the owners and occupiers of the land comprised in the area, and to any navigation authority or other body or person appearing to the Department or claiming to be affected by the scheme, notice in the prescribed manner of the making of the draft scheme, and of the place where it can be inspected and of the time within which objections to the scheme may be presented to the Department.

In estimating the cost of carrying out the scheme for the purposes of this subsection the Department shall take into account the cost of the execution of the works and the compensation, if any, which may be expected to become payable in pursuance of this section.

- (3) In fixing the amount of the cost recoverable by the Department and in apportioning that amount or in apportioning the estimated cost of maintenance among the lands comprised in the area affected by the scheme, the Department shall have regard to the benefit expected to accrue to such lands by reason of the execution of the scheme, and

shall not apportion to any lands in respect of the estimated cost of carrying out the scheme and of maintaining the works an amount in excess of the estimated value of the benefit so expected to accrue to such lands, and in estimating the value of such benefit the Department shall take into account any probable increase in the value of the lands, any depreciation in the value of the lands which might be expected to occur if no such drainage works as are proposed in the scheme were undertaken, and any other benefit whether by way of relief from expenditure on drainage operations or in respect of damage by flooding or otherwise, which may accrue to the owner of the lands by reason of the execution of the works and shall also have regard to any expenditure incurred by such owner in respect of drainage works which are being carried out by such owner for the improvement of such lands or in respect of any contract or obligation entered into by such owner for the carrying out of such works.

- (4) The Department shall consider any objections which may have been duly made, and shall settle the scheme and shall serve copies thereof on the owners and occupiers of the lands comprised in the area affected by the scheme and on any authority or other body or person appearing to the Department or claiming to be affected by the scheme, and shall publish the same in such manner as may be prescribed with a view to bringing it to the notice of any other person who may be affected.
- (5) If the owner or occupier of any lands comprised in the area affected by a scheme within one month after the service on him in pursuance of the foregoing subsection of a copy of the scheme so requires, the amount to be apportioned to such lands in respect of the estimated cost of carrying out the scheme and of maintaining the works shall be determined by arbitration in accordance with the provisions hereinafter contained with regard to claims for compensation. In any such arbitration the arbiter shall have regard to the matters mentioned in subsection (3) of this section, and where the amount fixed by the arbiter differs from the amount specified in the scheme, the scheme shall be amended accordingly.
- (6) The cost incurred by the Department under this section in carrying out a scheme to an amount not exceeding the amount declared by the scheme to be the amount recoverable by them shall be recoverable by the Department from the several owners of the lands comprised in the area affected by the scheme according to the apportionment therein contained :

Provided that if any owner so requires in writing, the sum payable by him shall be recovered by means of a rate to which the following provisions shall apply :—

- (a) The rate shall be of such amount as will be sufficient to discharge the sum payable, together with interest thereon at the rate of five per centum per annum, in such period not exceeding thirty years as the Department may determine:
- (b) The rate shall be payable by the owner and the occupier in such proportions as may be fixed in any agreement made by the parties and confirmed by the Department or, failing such agreement, as the Department, having regard to the benefit derived from the works, the contract of tenancy, and all other circumstances of the case and after giving to the parties an opportunity of being heard may determine :
- (c) The proportion of any such rate allocated to the owner or to the occupier shall during the period for which it is made be levied on and recovered from the owner or the occupier for the time being of the lands by the rating authority in like manner in all respects as if it were a rate leviable by that authority, and shall be paid over by the rating authority to the Department, provided always that if any such lands shall be unoccupied at any time during the said

period the owner shall be liable during such time for the proportion of the rate allocated to the occupier as well as for the proportion allocated to the owner.

- (7) If any owner or occupier of lands comprised in the area affected by the scheme or any other person intimates to the Department, within one month after the service on him of a copy of the scheme in pursuance of subsection (4) of this section, or where such service has not been made on him within one month after the publication of the scheme in pursuance of the said subsection, a claim for compensation in respect of injury or damage which will be suffered by him in consequence of the execution or maintenance of the drainage works in accordance with the scheme, and if the Department does not admit such claim or agree upon the amount of compensation therefor with such owner, occupier, or person, the question shall be determined by a single arbiter nominated on the application of either party by any Lord Ordinary of the Court of Session.
- (8) Such number of persons as may be appointed for the purposes of this Act by the Reference Committee within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall form a panel of persons from whom any arbiter nominated in pursuance of the foregoing subsection shall be selected. Any application for the nomination of an arbiter shall be made by petition and any such petition may be in writing and need not be printed or boxed.
- (9) Every scheme made under this section shall so soon as all claims for compensation have been agreed on or determined, and if the Department propose to proceed with it, be laid before both Houses of Parliament, and if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such scheme is laid before it praying that the scheme may be annulled it shall be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new scheme.
- (10) When a scheme has been laid before Parliament in accordance with the foregoing subsection, and the period within which an address praying that the scheme may be annulled has expired and no such address has been presented, the Department may decide to proceed with the execution of the works in accordance with the scheme, and if they so decide shall intimate such decision to the persons on whom copies of the scheme shall have been served in pursuance of subsection (4) of this section, and any compensation agreed upon or determined in pursuance of the foregoing provisions of this section shall then become due.
- (11) Where a scheme becomes void in pursuance of subsection (9) of this section, or where the Department decide not to proceed with a scheme, they shall pay to any person such expense as he may reasonably have incurred in connection with the making of the scheme or with any claim by him to compensation, and the amount of such expense shall in default of agreement be determined in like manner as a claim to compensation under this section.
- (12) The cost incurred by the Department in maintaining drainage works executed in pursuance of a scheme under this section shall in so far as such cost does not exceed the estimated cost of maintenance specified in the scheme be recoverable by the Department from the owners of the lands comprised in the area affected by the scheme according to the apportionment therein contained, and any sum due by any such owner in respect of such cost shall, if the Department so decide, be levied on and recovered from such owner by the rating authority in like manner in all respects as if it were a rate leviable by that authority and shall be paid over by the rating authority to the Department.

- (13) If any lands comprised in an area affected by a scheme shall after the date when the scheme was settled be owned by two or more separate owners or be occupied by two or more separate occupiers, any sum payable by the owner or occupier of such lands under subsection (6) or subsection (12) of this section shall be divided among and payable by the separate owners or occupiers, as the case may be, in proportion to the gross annual value appearing in the valuation roll of the separate parts of such lands owned or occupied by them.
- (14) Where at any time within two years of the completion of the works in pursuance of a scheme a person intimates to the Department a claim for compensation in respect of damage or injury done to him in consequence of and directly attributable to the execution or the maintenance of the works, he shall be entitled to compensation for any such damage or injury which could not reasonably have been anticipated at the time the scheme was made, and any question as to such compensation shall be determined in default of agreement in accordance with the foregoing provisions of this section as to compensation.
- (15) In this section any reference to " lands " shall be deemed to include a reference to salmon fishings.

4 Powers of entry on land

Any person authorised in that behalf by the Department for the purpose of carrying their powers under this Act into effect, may on production, if so required, of his authority, enter on and inspect any land and take measurements and observations by such methods as the Department may deem necessary.

If any person prevents or obstructs the entry for the purpose aforesaid on any land of any person authorised under this section, or the taking of measurements or observations in accordance therewith, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

5 Expenses of Department of Agriculture

The expenses of the Department under this Act so far as not recovered in manner provided by this Act shall, to such an amount as the Treasury may sanction, be defrayed out of moneys provided by Parliament.

6 Service of notices, & c

Any notice or other document required or authorised by this Act to be served on any person may be served by delivery to that person or by post, and service on the known agent of any person shall be deemed to be service on that person.

7 Crown rights

Nothing in this Act shall affect prejudicially any estate, right, power, privilege, or exemption of the Crown, or authorise the apportionment of any part of the cost of carrying out a scheme to, or the recovery of any part of the cost of maintaining drainage works in respect of any land (including tidal lands below high-water mark of ordinary spring tides) belonging to His Majesty in right of his Crown or to any Government Department, and nothing in this Act shall authorise the use of or interference with any

land (including as aforesaid) belonging to His Majesty in right of His Crown, or to any Government Department, without the consent of His Majesty or the Government Department as the case may be.

8 Works below high-water mark

Nothing in this Act shall authorise the execution of any works on, over or under tidal lands below high-water mark of ordinary spring tides, or the using thereof for any purposes (including the deposit thereon of shingle, sand, clay or other matter), except in accordance with such plans and sections, and subject to such restrictions and regulations as, previous to such works being commenced, have been approved by the Board of Trade in writing.

9 Interpretation

In this Act unless the context otherwise requires :—

The expression " agricultural land " shall include any land used for agricultural or pastoral purposes or for the purpose of poultry farming or as a market garden, orchard, allotment, or allotment garden, and any woodlands or land used for the purpose of afforestation:

The expression " drainage works " shall include the cleansing, scouring, deepening, widening, straightening, or diverting of any watercourse or outfall for water, the removal of any obstruction, natural or artificial, in any watercourse, and the construction of any new watercourse or outfall for water; the construction, repair, raising, lowering, widening, strengthening, or altering, of any embankment, dam, sluice, weir, wall, groyne, or of any structure or erection for the purpose of defence against water; and any works for the prevention or abatement of injury or damage which might be caused by the carrying out of any of the aforesaid operations:

The expression " watercourse " shall include any river, stream, ditch, drain (whether open or closed), cut, culvert, dyke, or sluice:

The expression " rating authority " has the like meaning as in the Local Government (Scotland) Act, 1929 :

The expression " prescribed " means prescribed by the Secretary of State.

10 Repeal

The Land Drainage (Scotland) Act, 1847, is hereby repealed.

11 Extent, short title and duration

- (1) This Act shall extend to Scotland only and may be cited as the Land Drainage (Scotland) Act, 1930.
- (2) The powers of the Department to prepare and settle schemes shall, unless continued by Parliament, cease on the expiry of five years from the passing of this Act, but nothing in this subsection shall prejudice or affect any powers under or provisions regarding schemes settled within that period.