



Land Drainage (Scotland) Act 1930

1930 CHAPTER 20

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.