



# Agriculture (Miscellaneous War Provisions) Act 1940

## 1940 CHAPTER 14

### PART III

#### LAND DRAINAGE

#### 14 Drainage of outlying land

- (1) Where the War Agricultural Executive Committee for a county or county borough consider that any agricultural land within the county or borough, but not within any drainage district other than a catchment area, is capable of improvement by the execution of drainage works, they may request the Catchment Board for any catchment area wholly or partly within the county or borough to prepare and carry out a scheme for draining the land.
- (2) After receiving such a request as respects any land, the Catchment Board may prepare a scheme for draining the land, if they are of opinion—
  - (a) that the cost of preparing and carrying out the scheme will not exceed an amount equal to five pounds for each acre of the land; and
  - (b) that the value of the land for agricultural purposes will be increased in consequence of the carrying out of the scheme:

Provided that—

- (i) no scheme under this section shall provide for the drainage of land outside the catchment area of the Board except with the consent of the Catchment Board for the area in which the land is situated or, in a case where the land is not situated in a catchment area, the council of the county or county borough in which the land is situated; and
- (ii) no scheme under this section shall provide for the execution of works on or in connection with the main river of any catchment area.

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*Status: This is the original version (as it was originally enacted).*

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- (3) The provisions of the Fifth Schedule to this Act shall have effect with respect to the contents and approval by the Minister of a scheme under this section, (in that Schedule referred to as a " scheme "), and to the notices to be given in relation thereto.
- (4) Where a scheme prepared by a Catchment Board under this section has been approved by the Minister—
- (a) the Catchment Board may execute any works specified in the scheme, and for that purpose shall, whether or not the land comprised in the area of the scheme is comprised in the area of the Board, have all the powers which they have by virtue of the Land Drainage Act, 1930, in relation to the main river; and
  - (b) the owner of any land comprised in the area of the scheme shall be liable to pay to the Board, within one month after the date of a demand made in writing by the Board, the amount apportioned under the scheme to that land of the net cost of the scheme :

Provided that an owner by whom any amount is so payable may, by notice in writing served on the Board within the said one month, elect to pay the said amount, together with interest thereon from the said date, by such number of equal annual instalments, not exceeding five, as may be specified in the notice, so however that—

- (i) the first such instalment shall be payable within one year from the said date; and
  - (ii) the rate of interest shall, in default of agreement between the owner and the Board, be fixed by the Minister.
- (5) Any sum payable to a Catchment Board under the last foregoing subsection—
- (a) may be recovered by the Board summarily as a civil debt; and
  - (b) shall be a charge on the land in respect of which it is payable;

and the Board shall, for the purposes of enforcing any such charge, have the same powers and remedies under the Law of Property Act, 1925, and otherwise as they would have if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

- (6) Where, on the termination of the tenancy of a holding within the meaning of the Agricultural Holdings Act, 1923, in respect of which any sum has been paid or is payable to a Catchment Board by virtue of a scheme under this section, the landlord proves to the satisfaction of an arbitrator appointed under that Act that any works executed in pursuance of the scheme were rendered necessary by the neglect of the tenant to comply with any obligation relating to the maintenance or repair of a watercourse imposed on him by virtue of the contract of tenancy, the arbitrator shall award to the landlord compensation equal to so much of the net cost of the scheme as was attributable to the execution of those works:

Provided that, where any agreement is made between the landlord and the tenant of such a holding as aforesaid for the payment by the tenant of any contribution in respect of the sum paid or payable as aforesaid, that contribution shall be recoverable from the tenant in lieu of compensation under this subsection.

For the purpose of any arbitration under this subsection, a certificate by the Catchment Board that such part of the net cost of the scheme as may be specified in the certificate was attributable to the execution of works so specified shall be conclusive evidence of that fact.

- (7) The Minister may, out of moneys provided by Parliament, make towards expenditure incurred by Catchment Boards in preparing and carrying out schemes approved by him under this section grants of such amounts and subject to such conditions as may be approved by the Treasury.
- (8) Where the whole or any part of the area of a scheme prepared by a Catchment Board and approved by the Minister under this section is comprised in another catchment area, the Board shall be entitled to recover from the Catchment Board for the last mentioned area, in respect of their expenditure in preparing and carrying out the scheme so far as that expenditure is not met otherwise under this section, such sum as may be determined by agreement between those Boards or, in default of agreement, by the Minister.
- (9) For the purposes of this section—
  - (a) the expression " the area of the scheme " means, in relation to any scheme, the area of the land set out in the scheme as being the land to be drained in pursuance of the scheme; and
  - (b) the expression " net cost " means, in relation to any scheme, such expenditure as is certified by the Minister to have been incurred by a Catchment Board in preparing and carrying out the scheme less the amount of any grant made by the Minister towards that expenditure.
- (10) The provisions of this section shall have effect notwithstanding anything in any award made under any enactment.

## **15 Mole drainage**

- (1) Where a scheme for the drainage of any agricultural land by the process known as mole drainage—
  - (a) has been submitted by the owner or occupier of the land to the War Agricultural Executive Committee for the county or county borough in which the land is situated; and
  - (b) has been approved by that Committee for the purposes of this section;the Minister may, out of moneys provided by Parliament, make, towards expenditure incurred by any person in carrying out the scheme, grants of such amounts and subject to such conditions as the Treasury may approve.
- (2) In assessing the amount of any compensation payable to a tenant of agricultural land, whether under the Agricultural Holdings Act, 1923, or under custom or agreement, by reason of the improvement of the land by mole drainage works in respect of which a grant has been made under this section, the grant shall be taken into account as if it had been a benefit allowed to the tenant in consideration of his executing the improvement, and the compensation shall be reduced accordingly.

## **16 Powers over dams**

- (1) Where the Minister is satisfied by a drainage board that it is necessary or expedient so to do for the purpose of preventing or arresting injury to any agricultural land, he may authorise the board to repair, maintain, alter or remove any dam within the district of the board.

- (2) A drainage board shall be liable to make compensation to any person for any loss sustained by him by reason of the exercise by the board of any powers conferred on them under this section :

Provided that no compensation shall be payable in respect of any dam if the whole or any part thereof has been erected in contravention of any enactment.

- (3) If any question arises whether compensation is payable under this section or as to the amount of any such compensation, it shall, in default of agreement, be determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.
- (4) There shall be paid out of moneys provided by Parliament any increase attributable to the passing of this section in the grants that are authorised to be so paid by section fifty-five of the Land Drainage Act, 1930, or section fifteen of the Agriculture Act, 1937.

## 17 Control of sluices

- (1) Where a drainage board are of opinion that it is necessary or expedient so to do for the purpose of preventing or arresting injury to any agricultural land, they may, by notice in writing served on the occupier or person in control of any dam within their district, require him, during such times and in such manner as may be specified in the notice, to keep open or closed any sluice forming part of the dam:

Provided that—

- (a) no such notice shall require anything to be done before the expiration of forty-eight hours from the service of the notice unless it is stated in the notice that in the opinion of the board immediate action is necessary to meet an emergency;
  - (b) in exercising their powers under this section in relation to any sluice, the board shall have regard to any purpose for which the occupier or person in control of the dam or any other person interested in the water controlled by the sluice uses or desires to use the water so controlled and shall so exercise the said powers as to interfere as little as may be practicable with such user;
  - (c) a drainage board shall not exercise the powers conferred by this section in relation to any sluice which is vested in or controlled by a local authority or a navigation, harbour or conservancy authority or any undertakers authorised by or under any enactment to supply water or electricity; and
  - (d) a Catchment Board shall not exercise the powers conferred by this section in relation to any sluice which is vested in or controlled by an internal drainage board.
- (2) If any notice served by a drainage board as aforesaid with respect to any sluice is not complied with—
- (a) the person on whom it is served shall be guilty of an offence under this Part of this Act; and
  - (b) without prejudice to any prosecution for such an offence, the board may, after giving notice in writing to that person, take control of the sluice for such period as may be specified in the last mentioned notice; and
  - (c) if during that period any person operates the sluice without the authority of the board, he shall be guilty of an offence under this Part of this Act.
- (3) In this section the expression " sluice " means a mechanical appliance by means of which the flow of water is capable of being regulated.

## **18 Powers of entry**

- (1) Any person authorised in writing in that behalf by a drainage board may, on production of his authority if so required, enter upon any land within the district of the board—
  - (a) for the purpose of exercising in relation to agricultural land any powers conferred on them by or under the Land Drainage Act, 1930, or by or under this Part of this Act; or
  - (b) for the purpose of seeing whether a notice served in pursuance of any such power is being complied with.
- (2) Any person authorised in writing in that behalf by the Minister may, on production of his authority if so required, enter upon any land—
  - (a) for the purpose of seeing—
    - (i) whether it is expedient, for the purpose of draining agricultural land, to execute any works in respect of which the Minister is authorised, whether under this Part of this Act or any other enactment, to make a grant out of moneys provided by Parliament; or
    - (ii) whether any such works are being or have been properly executed; or
  - (b) for the purpose of exercising any power conferred on the Minister by this Part of this Act.

## **19 Powers of local authorities**

The council of any county or county borough shall, in relation to any area within the county or borough and .not within a drainage district, have all the powers conferred on drainage boards by the last three foregoing sections, and accordingly those sections shall have effect as if—

- (a) any reference therein to a drainage board included a reference to any such council; and
- (b) any reference therein to a district of a drainage board included a reference to so much of a county or county borough as is not comprised in a drainage district.

## **20 Extension of powers of Catchment Boards as respects maintenance of watercourses**

As respects any agricultural land within a catchment area but not within an internal drainage district, the powers conferred on the council of the county or county borough within which the land is situated by section thirty-five and subsection (2) of section fifty of the Land Drainage Act, 1930 (which enable the council to require a person in default to put a watercourse in proper order) shall, during the war period, be exercisable by the Catchment Board for that area as well as by that council.

## **21 Obstruction and penalties**

- (1) If any person obstructs or impedes any person in the exercise of any powers conferred on him by or under this Part of this Act, he shall be guilty of an offence under this Part of this Act.
- (2) Any person guilty of any offence under this Part of this Act shall be liable—
  - (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and such fine; or

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and such fine.

## **22 Interpretation, construction, citation and duration of Part III**

- (1) In this Part of this Act—
  - (a) the expression " agricultural land" has the meaning assigned to it by section twenty-nine of the Land Drainage Act, 1930, for the purposes of Part IV of that Act;
  - (b) the expression " dam " includes a lock, weir or other structure affecting the flow of water in any watercourse.
- (2) This Part of this Act shall be construed as one with the Land Drainage Act, 1930, and may be cited together with that Act as the Land Drainage Acts, 1930 and 1940.
- (3) The powers conferred on any person by this Part of this Act shall be in addition to and not in derogation of any powers conferred upon him by the Land Drainage Act, 1930.
- (4) No scheme shall be approved under this Part of this Act after the end of the war period, and the powers in relation to dams and sluices, and, the powers of entry, conferred by this Part of this Act shall not be exercised after the end of that period.