



# Land Drainage Act 1976

## 1976 CHAPTER 70

### PART VI

#### MISCELLANEOUS AND GENERAL

#### **105 Provisions relating to London**

Schedule 5 to this Act, which contains provisions relating to London, shall have effect.

#### **106 Power of navigation authorities etc. to divert sewers**

- (1) Where any watercourses under the control of a drainage authority pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any navigation, harbour or conservancy authority, the latter authority may at their own expense, and on substituting for those watercourses other equally effective watercourses, take up, divert or alter the level of those watercourses and do all such matters and things as may be necessary in connection with the works authorised to be done by them as aforesaid.
- (2) If any question arises under this section between any drainage authority and any navigation, harbour or conservancy authority as to whether any watercourses substituted or proposed to be substituted by the latter authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to a single arbitrator to be agreed between the parties or failing such agreement to be appointed by the President of the Institution of Civil Engineers on the application of either party.

#### **107 Power to invest money on security of drainage rates**

Where the owner of any land comprised within any internal drainage district is authorised to invest money on real security, he shall, unless the instrument authorising the investment provides to the contrary, have power to invest money on a first mortgage of the drainage rates leviable by the drainage board for that district.

## **108 Service of notices**

A notice required or authorised to be served under or by virtue of this Act by any person shall be in writing and may be served by registered post or the recorded delivery service or by delivery to or at the residence of the person to whom it is addressed or, where addressed to the owner or occupier of premises, by delivery of the notice or a copy of it to some person on the premises or, if there is no person on the premises to whom the notice or copy can be delivered, by fixing the notice or the copy of it on some conspicuous part of the premises.

## **109 Regulations and orders**

- (1) Any power to make regulations under this Act, and any power of the Minister or the Secretary of State, or the Minister and the Secretary of State acting jointly, to make orders under this Act, other than orders under section 51(2)(a), 84, 86, 88(4) or 93, shall be exercisable by statutory instrument.
- (2) Any regulations under this Act, other than regulations for the purposes of section 53(3), and any order under section 49 above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power to make an order under section 2, 3, 27, 49, 51, 62 or 68 above, or under paragraph 1 of Schedule 5 to this Act shall include power to make an order varying or revoking any order previously made in exercise of the power.
- (4) An order under section 62 above shall be subject to special parliamentary procedure and an order under section 11, 12, 13, 25, 27, 50 or 88(1) above, shall be subject to special parliamentary procedure if opposed.
- (5) The provisions of Schedule 3 to this Act shall have effect as follows:—
  - (a) the whole Schedule shall apply (subject as provided by paragraph 15 thereof) with respect to any such order as is mentioned in subsection (4) above, other than an order under section 62 ;
  - (b) paragraphs 1 to 4 and 9 to 14 thereof shall apply with respect to any order under section 10 above ;
  - (c) paragraphs 5 to 8 thereof shall apply with respect to any order under section 88(1) above, but so that references in those paragraphs to the Minister are construed as references to the Secretary of State.
- (6) An order under section 10, 11, 12, 13, 25, 26 or 50 above may contain provisions with respect to the persons by whom the expenses or any of the expenses incurred by the Minister or other persons in connection with the making or confirmation of the order (including, in the case of an order confirming a scheme, expenses incurred in connection with the making of the scheme) are to be borne or the rates upon which they are to be charged.

## **110 Expenses of local authorities**

- (1) Any amount due to a water authority from a county council under sections 45 to 47 above shall be defrayed in one or other of the following ways according as the council, having regard to the benefit, if any, derived by various areas, think just and equitable, that is to say—
  - (a) as general expenses ;

- (b) as special expenses chargeable on such part or parts of the county within the water authority area as the council think fit;
  - (c) by apportioning it between, and charging it on, such parts of the water authority area, and in such proportions, as the council think fit,
- and by the issue of precepts accordingly to rating authorities.
- (2) Any amount due to a water authority from the council of a London borough under sections 45 to 47 above shall be defrayed as the council, having regard to the benefit, if any, derived by various areas, think just and equitable as general expenses or as special expenses chargeable on such part or parts of the borough within the water authority area as the council think fit.
  - (3) The expenses of the council of a county or London borough under this Act, except in so far as they are by virtue of subsection (1) or (2) above or any other provision of this Act otherwise defrayed, shall be defrayed as general expenses or, if and so far as the council think fit, as special expenses charged on such parts of the county or, as the case may be, borough as the council think fit.
  - (4) The expenses of the Greater London Council under this Act shall be special expenses chargeable on the London boroughs falling wholly or partly within the London excluded area and on the City and the Inner Temple and the Middle Temple, and where part only of a London borough falls within that area those expenses shall be chargeable only on that part of the borough.
  - (5) Where any expenses of the Greater London Council under this Act are by virtue of subsection (4) above chargeable on part of a London borough, any payments made by the council of that borough for meeting precepts for defraying expenses incurred by some other body of persons in the discharge of the like functions with respect to another part of the borough shall be chargeable only on that other part of the borough or such part thereof as the council of that borough shall determine (in like manner as under subsection (2) above).
  - (6) Subsections (4) and (5) above shall have effect subject to section 67 of the London Government Act 1963.

## **111 Protection of ancient monuments**

Nothing in this Act shall authorise any person to execute any works or do anything in contravention of the provisions of the Ancient Monuments Acts 1913 to 1972.

## **112 Protection of nationalised undertakings etc.**

- (1) Nothing in this Act or any order made under it shall authorise any person, except with the consent of the undertakers (which may be given subject to reasonable conditions but shall not be unreasonably withheld), to do any work which, whether directly or indirectly, interferes or will interfere with, or with the use of, the works or any property which is vested in or under the control of the persons carrying on any undertaking to which this section applies, in their capacity as such, in such manner as to affect injuriously those works or that property or the carrying on of the undertaking.
- (2) The undertakings to which this section applies are the following:—
  - (a) the undertakings of the British Airports Authority, the British Gas Corporation, the Civil Aviation Authority, any Electricity Board, the National Coal Board and the Post Office;

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- (b) undertakings for the supply of water to any place;
  - (c) the undertakings of navigation, harbour or conservancy authorities;
  - (d) public utility undertakings carried on by local authorities under any Act or under any order having the force of an Act.
- (3) Nothing in this Act shall authorise any person except with the consent of (as the case may require) the British Railways Board, the London Transport Executive or the railway company (which may be given subject to reasonable conditions but shall not be unreasonably withheld), to interfere with any railway bridge or any other work connected with a railway or the structure, use or maintenance of a railway or the traffic on it.
- (4) If any question arises under this section whether anything done or proposed to be done interferes or will interfere as aforesaid, or whether any consent is being unreasonably withheld or whether any condition subject to which any consent was given was reasonable that question shall be referred to a single arbitrator to be agreed between the parties or failing such agreement to be appointed by the President of the Institution of Civil Engineers on the application of either party.
- (5) Without prejudice to the provisions of this Act with respect to the transfer to drainage authorities of the powers and duties of navigation authorities and with respect to the power of the Minister to vary navigation rights, and subject to section 29(8) above, nothing in this Act or any order made under it shall prejudice the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by the persons carrying on any undertaking to which this section applies.

### **113 Protection of fisheries**

- (1) Nothing in this Act shall prejudice or affect the provisions of the Salmon and Freshwater Fisheries Act 1975 or any rights, powers or duties conferred or imposed thereby.
- (2) In the exercise of the powers conferred by this Act due regard shall be had to the interests of fisheries (including sea fisheries).

### **114 Effect of Act on local Acts etc.**

- (1) Nothing in this Act shall affect the powers exercisable by any drainage authority or local authority under any local Act, as they existed immediately before the commencement of this Act.
- (2) Provisions for the protection of any authorities or persons contained in any local Act shall, so far as they applied immediately before the commencement of this Act in relation to the exercise by any drainage authority or local authority of powers under any enactment re-enacted by this Act, apply to the like extent in relation to the exercise by that authority of powers under the corresponding provision of this Act.
- (3) Where the boundaries of an internal drainage district are altered under this Act, all powers exercisable under any local Act by the internal drainage board of the district with respect to land included in it shall, except so far as the scheme or order effecting the alteration otherwise provides, be exercisable with respect to land added to the district by the scheme or order.

## 115 Application to Crown

- (1) Subject as otherwise expressly provided in this Act, this Act shall apply to land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, to land belonging to the Duchy of Cornwall and to land belonging to a government department, and as respects—
- (a) land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or the Secretary of State, according as the land is under the management of those Commissioners or the Secretary of State,
  - (b) land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy,
  - (c) land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints,
- shall for the purposes of this Act be deemed to be the owner of the land.
- (2) Notwithstanding subsection (1) above, nothing in this Act shall—
- (a) authorise the compulsory acquisition of any land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, or of any land belonging to the Duchy of Cornwall or a government department;
  - (b) operate as a grant by or on behalf of Her Majesty as owner, whether in right of the Crown or in right of the Duchy of Lancaster, of any tidal lands or by or on behalf of the Duchy of Cornwall as owner of any such lands, of any estate or interest in or right over any of those lands or any part of them; or
  - (c) authorise any person to do any work on, over, or under, or to use for any purpose, any tidal lands or any lands belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, to the Duchy of Cornwall, or to any government department, except—
    - (i) with the consent of the owner of the land ; and
    - (ii) in the case of tidal lands, with the consent also of the Secretary of State ; and
    - (iii) in any case otherwise than in accordance with the approved plans and sections and subject to the prescribed restrictions and conditions ;so, however, that nothing in this paragraph shall apply to work done in maintaining existing works on tidal lands, or on land not in the occupation of Her Majesty, the Duke of Cornwall, or a government department; or
  - (d) confer any power of levying drainage rates or drainage charges in respect of tidal lands.
- (3) In this section—
- " tidal lands " means lands below the high-water mark of ordinary spring tides, but for the purposes of subsection (2)(c) above does not include any lands which by means of walls, embankments, or otherwise are protected from the incursion of the tides ; and
- " approved " and " prescribed " mean respectively approved and prescribed by the Secretary of State or the owner of the lands, as the case may be, before the commencement of the work in question.

## 116 Interpretation

- (1) In this Act, unless the context otherwise requires—

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" agricultural land " means any land used as arable, meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one quarter of an acre used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act 1922, but does not include land occupied together with a house as a park, gardens (other than as aforesaid), pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse ;

" banks " means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land between the bank and low-watermark;

" the City " means the City of London ;

" the Common Council " means the Common Council of the City of London;

" conservancy authority " has the same meaning as in the Merchant Shipping Act 1894 ;

" constituent council ", in relation to a water authority's regional land drainage committee, has the meaning provided by section 2(6) above and, in relation to a local land drainage committee, has the meaning provided by section 5(8) above ;

" drainage " includes defence against water (including sea water), irrigation, other than spray irrigation, and warping;

" drainage authority " has the meaning provided by section 17(7) above;

" drainage body " means a drainage authority or any other body having power to make or maintain works for the drainage of land ;

" harbour " and " harbour authority " have the same respective meanings as in the Merchant Shipping Act 1894;

" land " includes water and any interests in land or water and any easement or right in, to, or over land or water;

" land drainage " means the drainage of land and the provision of flood warning systems, and " land drainage functions " shall be construed accordingly ;

" local authority " means any of the following, namely, the council of a county, district or London borough, the Common Council of the City of London, and the Greater London Council;

" local land drainage committee " has the meaning provided by section 4(1) above ;

" local land drainage district " has the meaning (subject to sections 3(11) and 89(2) above) provided by section 4(1) above;

" local land drainage scheme " has the meaning provided by section 4(1) above ;

" London excluded area " means so much of Greater London, and of any area adjoining Greater London, as does not lie, for the purpose of the exercise of land drainage functions, within the area of any water authority;

" main river " has the meaning provided by section 8(3) above;

" the Minister " means the Minister of Agriculture, Fisheries and Food;

" the Ministers " means the Minister and the Secretary of State acting jointly;

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" navigation authority " means any person or body having powers under any Act of Parliament to work or maintain a canal or other inland navigation (including a navigation in tidal water);

" prescribed " means (except in section 115) prescribed by regulations made by the Minister ;

" qualified authority ", in relation to an internal drainage district, means an authority in whose case an agreement made with the drainage board of the district under section 81 above is in force;

" water charges option order " means an order made pursuant to section 62 above ; and

" watercourse " includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Public Health Act 1936) and passages, through which water flows.

(2) Where any provision of this Act refers, in relation to an internal drainage district, to the making of any appeal or petition by a sufficient number of qualified persons, the persons who are qualified are the owners and the occupiers of any land in the district in respect of which a drainage rate is levied; and their number shall be sufficient if (but only if)—

- (a) they are not less than 40 ; or
- (b) they are not less than one-fifth of the number of persons who are qualified to make the petition or appeal; or
- (c) the annual value for the purposes of the last drainage rate levied in the district of all the land in respect of which they are qualified persons is not less than one-fifth of the annual value of all the land in respect of which that rate was levied ;

but in relation to a district divided into sub-districts the persons qualified to make a petition under section 69 above as being the owners or occupiers of land in one of the sub-districts shall also be sufficient in any case where the condition in paragraph (b) or (c) above would be satisfied if the sub-district were an internal drainage district.

(3) The references to the value of land in paragraph (c) of subsection (2) above are references to—

- (a) in the case of any land as respects which the rate referred to in that paragraph was assessed (in accordance with section 64 above) by reference to annual value (within the meaning of that section), that value;
- (b) in the case of any land as respects which the rate referred to in that paragraph was assessed (in accordance with section 65 above) by reference to rateable value, the value arrived at by applying to the rateable value (within the meaning of that section) the relative fraction applied in respect of the said rate pursuant to that section (whether pursuant to subsection (2) or to subsection (3)).

(4) References in this Act to the execution or carrying out of drainage works include references to the improvement of drainage works and in sections 15, 20, 22, 28, 50 and 98 also include references to the maintenance of drainage works.

## **117 Transitional provisions, consequential amendments, repeals and saving**

(1) Schedule 6 to this Act, which contains transitional provisions shall have effect.

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- (2) The enactments mentioned in Schedule 7 to this Act shall, in consequence of this Act, be amended as there provided.
- (3) The enactments specified in Schedule 8 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) Notwithstanding the repeal by this Act of the Land Drainage (Amendment) Act 1976, section 6(3) of the Water Act 1973 shall continue to have effect as amended by paragraph 55 of Schedule 2 to the said Act of 1976 (but so that, in consequence of this Act, the words thereby inserted after " charges " are amended to " applying for a water charges option order pursuant to section 62 of the Land Drainage Act 1976 ").

**118 Short title, commencement and extent**

- (1) This Act may be cited as the Land Drainage Act 1976.
- (2) This Act shall come into force immediately after the coming into force of the Land Drainage (Amendment) Act 1976.
- (3) Save as provided by section 32(4) above, this Act extends to England and Wales only.