



Land Drainage Act 1991

1991 CHAPTER 59

PART II

PROVISIONS FOR FACILITATING OR SECURING THE DRAINAGE OF LAND

Control of flow of watercourses etc.

^{F1}23 **Prohibition on obstructions etc. in watercourses**

- (1) No person shall—
 - (a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or
 - (b) erect any culvert that would be likely to affect the flow of any ordinary watercourse or alter any culvert in a manner that would be likely to affect any such flow,without the consent in writing of the drainage board concerned.
- (2) The drainage board concerned may require the payment of an application fee by a person who applies to them for their consent under this section; and the amount of that fee shall be £50 or such other sum as may be [^{F2}prescribed].
- (3) Where an application is made to the drainage board concerned for their consent under this section—
 - (a) the consent is not to be unreasonably withheld; and
 - (b) if the board fail within two months after the relevant day to notify the applicant in writing of their determination with respect to the application, they shall be deemed to have consented.
- (4) In subsection (3) above “the relevant day”, in relation to an application for a consent under this section, means whichever is the later of—
 - (a) the day on which the application is made; and
 - (b) if at the time when the application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged.

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- (5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, 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.
- (6) Nothing in this section shall apply—
- (a) to any works under the control of a navigation authority, harbour authority or conservancy authority; or
 - (b) to any works carried out or maintained under or in pursuance of any Act or any order having the force of an Act.
- (7) The power of the Ministers to make an order under subsection (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [^{F3}(7A) In subsection (2) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]
- (8) Subject to section 8 above, references in this section and section 24 below to the drainage board concerned—
- (a) in relation to a watercourse in an internal drainage district, are references to the drainage board for that district; and
 - (b) in relation to any other watercourse, are references to the [^{F4}Agency].

Textual Amendments

- F1** S. 23 applied (21.07.1997) by 1994 c. xiii, s. 40
- F2** Word in s. 23(2) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 192(1)(with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F3** S. 23(7A) inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 192(2)(with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F4** Words in s. 23 substituted (1.4.1996) 1995 c. 25, s. 120(1), **Sch. 22**, para. 191(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

- C1** S. 23 excluded (2.4.2004) by Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), arts. 1, **4(8)(b)**
- C2** S. 23 excluded (11.2.2005) by Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), arts. 1, **5(9)** (with arts. 65, 66)
- C3** S. 23 excluded (25.11.2005) by Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), arts. 1, **5(7)(b)** (with arts. 3(5), 15(3))
- C4** S. 23 excluded (22.11.2006) by Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), arts. 1, **4(8)** (with art. 43)
- C5** S. 23 excluded (23.8.2007) by Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), arts. 1, **5(8)(b)** (with arts. 3(6), 12(3))

24 Contraventions of prohibition on obstructions etc.

- (1) If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect

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of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice.

- (2) The person upon whom a notice may be served under subsection (1) above is—
 - (a) in a case where the person by whom the obstruction has been erected or raised or otherwise altered has, at the time when the notice is served, power to remove the obstruction, that person; and
 - (b) in any other case, any person having power to remove the obstruction.
- (3) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above he shall be guilty of an offence and liable, on summary conviction—
 - (a) to a fine not exceeding level 5 on the standard scale; and
 - (b) if the contravention or failure is continued after conviction, to a further fine not exceeding £40 for every day on which the contravention or failure is so continued.
- (4) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above, the drainage board concerned may, without prejudice to any proceedings under subsection (3) above—
 - (a) take such action as may be necessary to remedy the effect of the contravention or failure; and
 - (b) recover the expenses reasonably incurred by them in doing so from the person in default.

25 Powers to require works for maintaining flow of watercourse.

- (1) Subject to section 26 below, where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then, unless the condition is attributable to subsidence due to mining operations (including brine pumping), the drainage board or local authority concerned may, by notice served on a person falling within subsection (3) below, require that person to remedy that condition.
- (2) For the purposes of this section in its application in relation to any watercourse—
 - (a) the drainage board concerned is the drainage board for the internal drainage district in which the watercourse is situated; and
 - (b) the local authority concerned is the local authority for the area where the land as respects which the powers under this section are exercisable is situated;but references in this section to the drainage board concerned shall, in relation to a watercourse which is not in an internal drainage district, be construed as references to the ^{F5}Agency].
- (3) Subject to subsection (4) below, a notice under this section in relation to a watercourse may be served on—
 - (a) any person having control of the part of the watercourse where any impediment occurs; or
 - (b) any person owning or occupying land adjoining that part; or
 - (c) any person to whose act or default the condition of the watercourse mentioned in subsection (1) above is due.
- (4) No notice under this section requiring any person to carry out any work on land not owned or occupied by him shall be served without the consent of the owner and the

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occupier of the land, except in a case where it is not practicable, after reasonable inquiry, to ascertain the name and address of the owner or occupier.

- (5) A notice under this section shall indicate—
- (a) the nature of the works to be carried out and the period within which they are to be carried out; and
 - (b) the right of appeal to a magistrates' court and the period within which such an appeal may be brought under section 27 below.
- (6) Subject to the right of appeal provided by section 27 below, if the person upon whom a notice is served under this section fails to carry out the works indicated by the notice within the period so indicated—
- (a) the drainage board or local authority concerned may themselves carry out the works and recover from that person the expenses reasonably incurred by them in doing so; and
 - (b) without prejudice to their right to exercise that power, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) In proceedings by the drainage board or local authority concerned for the recovery of any expenses under subsection (6) above it shall not be open to the defendant to raise any question which he could not have raised on an appeal under section 27 below.
- (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, the amount of any expenses incurred by him under this section or recovered from him by the drainage board or local authority concerned.

Textual Amendments

F5 Words in s. 25 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 191 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C6 S. 25 applied(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), **ss. 107(3), 225(2)**.

26 Competing jurisdictions under section 25.

- (1) Before exercising their powers under section 25 above in relation to any watercourse or part of a watercourse a local authority shall, according to whether or not the watercourse or part is in an internal drainage district, notify either the drainage board for that district or the [^{F6}Agency].
- (2) Where a local authority have powers (otherwise than under section 25 above) for securing the appropriate flow of water in any watercourse under their jurisdiction, the powers conferred by section 25 above shall not be exercised by any body in relation to that watercourse except—
 - (a) by agreement with the local authority; or
 - (b) where, after reasonable notice from that body, the local authority either fail to exercise their powers or exercise them improperly.
- (3) Where any watercourse is under the jurisdiction of a navigation authority, harbour authority, conservancy authority or board of conservators which are exercising their

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powers, section 25 above shall not apply to the watercourse except with the consent of that authority or board.

- (4) Nothing in this section shall apply in relation to section 25 above in its application to main rivers by virtue section 107(3) of the ^{M1}Water Resources Act 1991 (main river functions of [^{F6}Agency]).

Textual Amendments

F6 Words in s. 26 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 191 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M1 1991 c. 57.

27 Appeals against notices under section 25.

- (1) A person served with a notice under section 25 above may, within twenty-one days from the date on which the notice is served on him, appeal to a magistrates' court on any of the following grounds, that is to say—
- that the notice or requirement is not justified by that section;
 - that there has been some informality, defect or error in, or in connection with, the notice;
 - that the body which served the notice has refused unreasonably to approve the carrying out of alternative works, or that the works required by the notice to be carried out are otherwise unreasonable in character or extent, or are unnecessary;
 - that the period within which the works are to be carried out is not reasonably sufficient for the purpose;
 - that the notice might lawfully have been served on another person and that it would have been equitable for it to have been so served;
 - that some other person ought to contribute towards the expenses of carrying out any works required by the notice.
- (2) The procedure on an appeal under this section shall be by way of complaint for an order and in accordance with the ^{M2}Magistrates' Courts Act 1980.
- (3) For the purposes of the time limit for bringing an appeal under this section the making of the complaint shall be treated as the bringing of the appeal.
- (4) In so far as an appeal under this section is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (5) In the case of an appeal under this section, the appellant—
- may serve a copy of his notice of appeal on any person having an estate or interest in the part of the watercourse where the impediment occurs or land adjoining that part; and
 - shall, where the grounds upon which the appeal under this section is brought include a ground specified in subsection (1)(e) or (f) above, serve a copy of his notice of appeal on each other person referred to.

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- (6) On the hearing of an appeal under this section the court may make such order as it thinks fit—
- (a) with respect to the person by whom any work is to be carried out and the contribution to be made by any other person towards the cost of the work; or
 - (b) as to the proportions in which any expenses which may become recoverable by the body which served the notice are to be borne by the appellant and such other person.
- (7) In exercising its powers under subsection (6) above the court shall have regard—
- (a) as between an owner and an occupier, to the terms and conditions (whether contractual or statutory) of the tenancy and to the nature of the works required; and
 - (b) in any case, to the degree of benefit to be derived by the different persons concerned.
- (8) A person aggrieved by an order, determination or other decision of a magistrates' court under this section may appeal to the Crown Court.
- (9) Where upon an appeal under this section a court varies or reverses any decision of a body which has served a notice under section 25 above, it shall be the duty of that body to give effect to the order of the court.

Marginal Citations

M2 1980 c. 43.

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