



# Land Drainage Act 1994

## 1994 CHAPTER 25

An Act to amend the Land Drainage Act 1991 in relation to the functions of internal drainage boards and local authorities. [21st July 1994]

Be it enacted by the Queen'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 Duties with respect to the environment**

After section 61 of the Land Drainage Act 1991 there shall be inserted—

#### **“PART IVA**

#### **DUTIES WITH RESPECT TO THE ENVIRONMENT AND RECREATION**

##### **61A Duties in relation to drainage boards**

(1) It shall be the duty of an internal drainage board, of each of the Ministers and of the NRA, in formulating or considering any proposals relating to any functions of such a board—

(a) so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of such a board; and

(ii) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991,

so to exercise any power conferred with respect to the proposals on the board, that Minister or, as the case may be, the NRA as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

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- (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
  - (c) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.
- (2) Subject to subsection (1) above, it shall be the duty of an internal drainage board, of each of the Ministers and of the NRA, in formulating or considering any proposals relating to any functions of such a board—
- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) Subsections (1) and (2) above shall apply so as to impose duties on an internal drainage board in relation to—
- (a) any proposals relating to the functions of the NRA or of a water undertaker or sewerage undertaker;
  - (b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker); and
  - (c) any proposal which by virtue of section 156(7) of the Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,
- as they apply in relation to proposals relating to the functions of an internal drainage board but as if, for that purpose, the reference in subsection (1)(a) above to enactments relating to the functions of such a board were a reference to enactments relating to that to which the proposal relates.
- (4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of an internal drainage board to take such steps as are—
- (a) reasonably practicable; and
  - (b) consistent with the purposes of the enactments relating to the functions of that board,
- for securing, so long as that board have rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.
- (5) It shall be the duty of every internal drainage board, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.

- (6) Nothing in this section (or any other provision of this Act) shall require recreational facilities made available by an internal drainage board to be made available free of charge.
- (7) In this section—
- “building” includes structure; and
  - “harbour authority” means a harbour authority within the meaning of the Prevention of Oil Pollution Act 1971.

### **61B Duties in relation to local authorities**

- (1) It shall be the duty of a local authority, of each of the Ministers and of the NRA, in formulating or considering any proposals relating to any functions of a local authority under this Act—
- (a) so far as may be consistent—
    - (i) with the purposes of this Act; and
    - (ii) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991,  
so to exercise any power conferred with respect to the proposals on the local authority, that Minister or, as the case may be, the NRA as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;
  - (b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
  - (c) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.
- (2) Subject to subsection (1) above, it shall be the duty of a local authority, of each of the Ministers and of the NRA, in formulating or considering any proposals relating to any functions of a local authority under this Act—
- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
  - (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
  - (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (3) In this section “building” includes structure.

### **61C Duties with respect to sites of special scientific interest**

- (1) Where the Nature Conservancy Council for England or the Countryside Council for Wales are of the opinion that any area of land in England or, as the case may be, in Wales—
- (a) is of special interest by reason of its flora, fauna or geological or physiographical features; and

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- (b) may at any time be affected—
  - (i) by works, operations or activities of an internal drainage board,  
or
  - (ii) by works, operations or activities of a local authority under this Act,

that Council shall notify the fact that the land is of special interest for that reason to every internal drainage board and local authority whose works, operations or activities may affect the land.
- (2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—
  - (a) is land in relation to which the matters for the purposes of which section 61A or 61B above has effect are of particular importance; and
  - (b) may at any time be affected—
    - (i) by works, operations or activities of an internal drainage board,  
or
    - (ii) by works, operations or activities of a local authority under this Act,

the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every internal drainage board and local authority whose works, operations or activities may affect the land.
- (3) Where an internal drainage board or local authority have received a notification under subsection (1) or (2) above with respect to any land, the board or authority shall consult the notifying body before carrying out any works, operations or activities, or in the case of the authority any works operations or activities under this Act, which appear to the board or authority to be likely—
  - (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
  - (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.
- (4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to the Nature Conservancy Council for England, the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.
- (5) In this section—
  - “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988; and
  - “National Park authority” means a National Park Committee or a joint or special planning board for a National Park.

#### **61D Ministerial directions to drainage boards**

- (1) Where the relevant Minister, considers that any works, operations or activities which are being, or are about to be, carried out by an internal drainage board are likely to destroy or seriously damage—
  - (a) any flora or fauna or any geological or physiographical feature of special interest; or
  - (b) any building, structure, site or object of archaeological, architectural or historic interest,which in his opinion is of national or international importance, the relevant Minister may give such directions as he considers appropriate to the internal drainage board with respect to the exercise and performance of their functions.
- (2) Except in an emergency, the relevant Minister shall not give directions to an internal drainage board under this section unless he has first consulted the board.
- (3) It shall be the duty of an internal drainage board to comply with any direction which they are given under this section.

#### **61E Codes of practice**

- (1) The Ministers may by order approve any code of practice issued (whether by them or by another person) for the purpose of—
  - (a) giving practical guidance—
    - (i) to internal drainage boards with respect to any of the matters for the purposes of which sections 61A and 61C above have effect; and
    - (ii) to local authorities with respect to any of the matters for the purposes of which sections 61B and 61C above have effect; and
  - (b) promoting what appear to the Ministers to be desirable practices by internal drainage boards or, as the case may be, local authorities with respect to those matters,and may at any time by order approve a modification of such a code or withdraw their approval of such a code or modification.
- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself—
  - (a) constitute a contravention of any requirement imposed by section 61A, 61B or 61C above; or
  - (b) give rise to any criminal or civil liability;but each of the Ministers shall be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers in relation to an internal drainage board or local authority under this Act.
- (3) The power of the Ministers to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) The Ministers shall not make an order under this section unless they have first consulted—
- (a) the NRA;
  - (b) the Countryside Commission, the Nature Conservancy Council for England and the Countryside Council for Wales;
  - (c) the Historic Buildings and Monuments Commission for England; and
  - (d) such other persons or bodies as the Ministers consider it appropriate to consult.”

## **2 Repeals**

Sections 12 and 13 of the Land Drainage Act 1991 (duties with respect to the environment and recreation) are hereby repealed.

## **3 Short title, commencement and extent**

- (1) This Act may be cited as the Land Drainage Act 1994.
- (2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only.