

SCHEDULES

FIRST SCHEDULE

Section 4.

PROVISIONS WHICH MAY BE INCORPORATED IN FLOOD PREVENTION SCHEMES

Permissible limits of deviation

- 1 In carrying out the operations the local authority may deviate laterally from the lines, and may deviate vertically from the levels, to any extent not exceeding the limits of lateral and vertical deviation respectively shown on the plans referred to in the scheme.

Temporary works

- 2 In addition to carrying out the operations the local authority may, in, on or over any land situated within the limits of lateral deviation shown on the plans and specifications referred to in the scheme, or in, on or over other land so shown as required for the purpose, construct, lay or erect and maintain any temporary works, that is to say, any coffer dams, channels, culverts, engines, pumps, plant, machinery, roads, fences, stores, offices and other buildings, or any other works or things required for the purposes of or connected with the operations:

Provided that any electrical works or apparatus constructed, laid or erected under this paragraph shall be so constructed, laid or erected, and so maintained and used, as to prevent interference with any telegraphic line as defined in the Telegraph Act, 1878, belonging to or used by the Postmaster-General, or with telegraphic communication by means of any such line.

Powers of entry

- 3 (1) The local authority, or any person duly authorised by them in that behalf, shall, for the purpose of carrying out the operations and of executing any temporary works, have power at all reasonable times to enter on any land situated within the limits of lateral deviation shown on the plans referred to in the scheme, or on other land so shown as required for the purpose, and for the purpose of obtaining access to any such land may enter any land.
- (2) Any power of entry under the last foregoing sub-paragraph shall include power to authorise the entry or passage of such persons, vehicles, plant, machinery, supplies or materials as may be necessary, and to authorise the carrying out of work for the purpose of facilitating their passage.
- (3) Any person entitled to enter on any land by virtue of any right of entry under this paragraph shall, if so required, produce evidence of his authority before entering on the land, and shall not demand admission as of right unless fourteen days notice of the intended entry has been given to the occupier of the land.

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

Power to cut bushes and scrub and to take down fences

- 4 The local authority may, for the purpose of carrying out the operations or of executing any temporary works, cut and lay aside or remove, or cut and use for the aforesaid purposes, any bush or scrub timber growing on land situated within the limits of lateral deviation shown on the plans referred to in the scheme, or on other land so shown as required for the purpose, and may take down and lay aside any fence on such land, take down any dykes thereon, cut and grub out any hedges thereon and generally clear and level such land and remove any obstructions therefrom.

Fencing of land, etc.

- 5 The local authority shall, so far as is necessary for the protection of any persons or animals, fence any land on which the operations are being carried out or any temporary works are being executed, and shall take such measures as may be practicable to prevent stock from straying in consequence of the exercise by them of any of their powers under the scheme.

Disposal of spoil

- 6 Except as otherwise provided under the scheme the local authority may dispose of excavated spoil, so far as not required for the purpose of carrying out the operations or executing any temporary works, by constructing spoil banks along the natural banks of any watercourse situated within the limits of lateral deviation shown on the plans referred to in the scheme, or within other land so shown as required for the purpose, or by spreading the spoil on the land adjacent to the natural banks of any such watercourse, or by carrying the spoil away for disposal at a tip, or for sale ; and the proceeds of any such sale shall be applied by the local authority in defraying their expenditure in carrying out the operations:

Provided that the local authority shall not dispose of spoil under this paragraph unless they have first given to the owner thereof (unless he cannot be found) an opportunity of taking possession of it.

Penalty for obstructing local authority in exercise of powers

- 7 If any person obstructs the local authority in the exercise of any of their powers under the scheme, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds in the case of a first conviction and twenty pounds in the case of a second or any subsequent conviction.

Interpretation

- 8 In any provision of this Schedule, unless the context otherwise requires.—
 " the scheme " means the scheme in which the provision is incorporated ;
 " the operations " means the operations to which the scheme relates ;
 " the local authority " means the local authority by whom the operations are to be carried out.

SECOND SCHEDULE

Section 4.

PROVISIONS AS TO CONFIRMATION, COMING INTO
OPERATION AND VALIDITY OF FLOOD PREVENTION SCHEMES

- 1 A flood prevention scheme may be submitted to the Secretary of State by the local authority by whom the flood prevention operations to which the scheme relates (hereinafter in this Schedule referred to as " the operations ") are to be carried out.
- 2 Before submitting a flood prevention scheme to the Secretary of State the local authority shall in two successive weeks publish in at least one local newspaper circulating in their area and in the locality where the operations are to be carried out, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the scheme ;
 - (b) specifying a place in the said area, and (if different) in the locality where the operations are to be carried out, where a copy of the scheme to be submitted and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of three months from the date of the first publication of the notice ; and
 - (c) stating that, within the said period, any person may by notice to the Secretary of State object to the confirmation of the scheme.
- 3 (1) Not later than the date on which the said notice is first published as aforesaid, the local authority shall serve a copy thereof (together with a copy of the proposed scheme and of any relevant map or plan) on the following:—
- (a) every person known to the local authority to have any interest in any land on which it is proposed that any of the operations shall be carried out, or in any land which may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations ;
 - (b) any other local authority in whose area it is proposed that any of the operations shall be carried out;
 - (c) any statutory body the exercise of whose functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations ;
 - (d) any body or association appearing to the local authority to represent persons who in their opinion may be affected by any of the operations ; and
 - (e) the Postmaster-General (whose address for service for the purposes of this paragraph shall be the Post Office Headquarters (Scotland), General Post Office, Edinburgh 1.)
- (2) In this paragraph the expression " statutory body " means any body exercising functions conferred on it by or under any enactment.
- 4 Not later than the date on which the said notice is first published as aforesaid, the local authority shall cause a copy thereof to be displayed in a prominent position in the locality in which the operations are to be carried out.
- 5 If before the expiration of the said period of three months an objection is received by the Secretary of State from any party on whom a copy of the said notice is required by paragraph 3 of this Schedule to be served, or from any other party appearing to the Secretary of State to be likely to be affected by any of the proposed operations or, as the case may be, to represent persons likely to be so affected, and the objection is not withdrawn, the Secretary of State shall cause a public local inquiry to be held.

- 6 The provisions of subsections (2) to (9) of section three hundred and fifty-five of the Local Government (Scotland) Act, 1947 (which relate to the holding of local inquiries) shall apply in relation to a public local inquiry held under the foregoing paragraph as they apply in relation to local inquiries held under the said section three hundred and fifty-five.
- 7 (1) After considering any objections to the proposed scheme, which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Secretary of State may confirm the scheme either without modification or with such modification as (subject to the next following sub-paragraph) he thinks fit, or may refuse to confirm the scheme:
- Provided that the Secretary of State shall not confirm a scheme with any modification unless he has first—
- (a) intimated the terms of the modification to the parties on whom a copy of the notice mentioned in paragraph 3 of this Schedule is required by that paragraph to be served and on any other person who in the Secretary of State's opinion may be affected by the modification ;
 - (b) given them an opportunity to make representations thereanent; and
 - (c) considered any representations so made.
- (2) A modification made under this paragraph—
- (a) if it relates to a provision of the First Schedule to this Act which has been incorporated (with or without modification) in the scheme as submitted to the Secretary of State, shall not alter that provision in such a way as to make any penalty greater than is specified in the said Schedule or place any person other than the local authority making the scheme in a worse position than he would be in if the provision were incorporated as set out in the said Schedule ;
 - (b) if it consists of the incorporation of a provision of the said Schedule which has not been incorporated in the scheme as submitted to the Secretary of State, shall provide for the provision to be incorporated either as set out in the said Schedule or with such modification only as might have been made under the foregoing sub-paragraph if the provision had been incorporated in the scheme as so submitted.
- 8 If the Secretary of State confirms the scheme (with or without modification) the local authority shall publish in the manner prescribed by paragraph 2 of this Schedule a notice stating that the scheme has been confirmed, and naming a place where a copy of the scheme may be seen at all reasonable hours, and paragraphs 3 and 4 of this Schedule shall apply to any such notice as they apply to a notice required to be published by the said paragraph 2.
- 9 If any person aggrieved by a flood prevention scheme desires to question the validity thereof, or of any provision contained therein, on the grounds that it is not within the powers of this Act, or on the grounds that any requirement of this Act has not been complied with in relation to the making or confirmation of the scheme, he may, within six weeks from the date on which the notice required by the last foregoing paragraph is first published, make an application to the Court of Session, and on any such application the Court—
- (a) may by interim order suspend the operation of the scheme, or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings ; and

- (b) if satisfied that the scheme, or any provision contained therein, is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as aforesaid, may quash the scheme, or any provision contained therein, either generally or in so far as it affects any property of the applicant.
- 10 Subject to the provisions of the last foregoing paragraph, a flood prevention scheme shall not, either before or after it has been made or confirmed, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which the notice required by paragraph 8 of this Schedule is first published.

TABLE OF STATUTES REFERRED TO IN THIS ACT

Short Title	Session and Chapter
Telegraph Act, 1878	41 & 42 Vict. c. 76.
Public Health (Scotland) Act, 1897	60 & 61 Vict. c. 38.
Acquisition of Land (Assessment of Compensation) Act, 1919	9 & 10 Geo. 5. c. 57.
Water (Scotland) Act, 1946	9 & 10 Geo. 6. c. 42.
Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947	10 & 11 Geo. 6. c. 42.
Local Government (Scotland) Act, 1947	10 & 11 Geo. 6. c. 43.
Town and Country Planning (Scotland) Act, 1947	10 & 11 Geo. 6. c. 53.
Agriculture (Scotland) Act, 1948	11 & 12 Geo. 6. c. 45.
Water (Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 31.
Lands Tribunal Act, 1949	12, 13 & 14 Geo. 6. c. 42.
Coast Protection Act, 1949	12, 13 & 14 Geo. 6. c. 74.
Rivers (Prevention of Pollution) (Scotland) Act, 1951	14 & 15 Geo. 6. c. 64.