



# Flood Prevention and Land Drainage (Scotland) Act 1997

## 1997 CHAPTER 36

An Act to amend the Flood Prevention (Scotland) Act 1961 in relation to flood prevention measures to be taken by local authorities; to repeal section 11(2) of the Land Drainage (Scotland) Act 1930 and section 8(2) of the Land Drainage (Scotland) Act 1941; and for connected purposes. [21st March 1997]

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:—

### *Flood prevention*

#### **1 Duty of local authorities to assess watercourses**

After section 4 of the Flood Prevention (Scotland) Act 1961 (“the 1961 Act”) there shall be inserted the following section—

#### *“Assessment and maintenance of watercourses*

##### **4A Duty of local authorities to assess watercourses**

Every local authority shall cause the watercourses in their area to be assessed from time to time for the purpose of ascertaining whether any such watercourse is in a condition which is likely to cause flooding of land, not being agricultural land, within or outwith their area.”.

#### **2 Duty of local authorities to maintain watercourses**

After section 4A of the 1961 Act there shall be inserted the following section—

**“4B Duty of local authorities to maintain watercourses**

- (1) Where it appears to a local authority, whether or not as a result of an assessment carried out under section 4A of this Act—
- (a) that any watercourse in their area is in a condition which is likely to cause flooding of land, not being agricultural land, within or outwith their area; and
  - (b) that their exercise of any power mentioned in section 2(1)(a) of this Act would substantially reduce the likelihood of such flooding,
- they shall exercise that power accordingly.
- (2) Where—
- (a) subsection (1) above would, apart from this subsection, require a local authority to exercise any power mentioned in section 2(1)(a) of this Act in relation to any watercourse, works or apparatus mentioned in that provision; and
  - (b) the watercourse, works or apparatus and the land referred to in subsection (1)(a) above are owned by the same person (not being a local authority),
- the duty on a local authority under subsection (1) above shall not apply.
- (3) Where it appears to a local authority, whether or not as a result of an assessment carried out under section 4A of this Act, that any watercourse in their area is in a condition which is likely to cause flooding of land, not being agricultural land, outwith their area, they shall notify the local authority for the area in which that land is situated.
- (4) Subsection (3) above shall not apply where it appears to the first mentioned local authority that the second mentioned local authority are aware of the likelihood of the flooding.”.

**3 Duty of local authorities to publish reports**

After section 6 of the 1961 Act there shall be inserted the following section—

*“Reports***6A Duty of local authorities to publish reports**

- (1) Every local authority shall, within the period of six months commencing with the date on which this section comes into force, prepare and publish a report specifying the measures which they consider that they require to take to prevent or mitigate the flooding of land in their area.
- (2) Not more than two years after a local authority have published the report referred to in subsection (1) above, and at intervals of not more than two years thereafter, they shall prepare and publish a report specifying—
- (a) the measures which they consider that they require to take to prevent or mitigate the flooding of land in their area;

- (b) the measures which they have taken since the date of publication of their previous report to prevent or mitigate the flooding of such land; and
  - (c) all occurrences of flooding of such land since that date.
- (3) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament alter the periods mentioned in subsection (2) above.
- (4) In this section “land” means land other than agricultural land.”.

#### **4 Increase in certain fines**

In the 1961 Act, in sections 8(4) and 9(2) and in paragraph 7 of Schedule 1 (offences of obstruction and failure to provide information), for the words from “not exceeding” to the end there shall be substituted “not exceeding level 3 on the standard scale”.

#### **5 Minor and consequential amendments**

- (1) In section 3(3) of the 1961 Act (supplementary provisions as to local authority powers)
- (a) in paragraph (a) for the words from “section twenty-seven” to the end there shall be substituted “section 53 of the Town and Country Planning (Scotland) Act 1972 (which relates to works on listed buildings)”;
  - (b) for paragraph (c) there shall be substituted—
    - “(c) section 30F (pollution offences) or section 49 (deposits and vegetation in rivers etc.) of the Control of Pollution Act 1974;”.
- (2) In section 8 of that Act (powers of entry on land)—
- (a) in subsection (1)(b) after “conferred” there shall be inserted “, or performing any duty imposed,”; and
  - (b) in subsection (3) after “sheriff” where it first occurs there shall be inserted “or a justice of the peace”, and after “sheriff” where it second and third occurs there shall be inserted “or the justice of the peace”.
- (3) In section 9(1) of that Act (provision and obtaining of information) after “powers” there shall be inserted “or perform any of their duties”.
- (4) In section 15(1) of that Act (interpretation) in the definition of “water-main” for “Water (Scotland) Acts 1946 to 1967” there shall be substituted “Water (Scotland) Act 1980”.

#### *Land drainage*

#### **6 Termination of land drainage schemes**

- (1) Notwithstanding section 1(1) of, and Part XIII of Schedule 1 to, the Statute Law (Repeals) Act 1993, section 11(2) of the Land Drainage (Scotland) Act 1930 (which preserves the effect of land drainage schemes settled under that Act and of provisions regarding such schemes) shall be taken not to have been repealed by the 1993 Act.

- (2) Section 11(2) of the Land Drainage (Scotland) Act 1930 and section 8(2) of the Land Drainage (Scotland) Act 1941 (which preserves the effect of land drainage schemes settled under that Act and of provisions regarding such schemes) shall be repealed.

*Miscellaneous*

**7 Financial provisions**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under or by virtue of any other Act.

**8 Repeals**

The enactments mentioned in the Schedule to this Act (which include enactments of no practical utility) shall be repealed to the extent specified in the third column of that Schedule.

**9 Citation, commencement and extent**

- (1) This Act may be cited as the Flood Prevention and Land Drainage (Scotland) Act 1997.
- (2) Sections 6(1) and 7 and this section shall come into force on the passing of this Act.
- (3) Section 6(2) shall come into force on 1st April 1999.
- (4) Otherwise, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different purposes.
- (5) This Act extends only to Scotland.

## SCHEDULE

Section 8.

## REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1930 c. 20.	The Land Drainage (Scotland) Act 1930.	Section 1(5).  Section 4. Section 5. Section 11(2).
1941 c. 13.	The Land Drainage (Scotland) Act 1941.	The whole Act.
1961 c. 41.	The Flood Prevention (Scotland) Act 1961.	In section 11(4), the words “Subject to the next following subsection,”.
1973 c. 65.	The Local Government (Scotland) Act 1973.	In Part II of Schedule 27, paragraph 151(c).