



# Flood Prevention (Scotland) Act 1961

## 1961 CHAPTER 41 9 and 10 Eliz 2

An Act to enable the councils of counties and burghs in Scotland to take measures for the prevention or mitigation of flooding of non-agricultural land in their areas; and for purposes connected with the matter aforesaid. [19th July 1961]

### Modifications etc. (not altering text)

- C1** Act extended by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1)(3), Sch. 7 para. 2, [Sch. 8 para. 33](#)  
Act extended (1.3.1996) by [1995 c. 45](#), s. 16(1), [Sch. 4 para. 2\(1\)\(ix\)](#); S.I. 1996/218, [art.2](#)
- C2** Act extended by the [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16, para. 1(1)(xi), Sch. 17  
para. 33, [35\(1\)](#)

### Commencement Information

- II** Act wholly in force at 19.8.1961 see [s. 16\(2\)](#)

### *Flood Prevention Operations*

#### **1 Purposes for which powers of local authorities under Act are exercisable.**

(1) For the purpose of preventing or mitigating the flooding of land in their area, not being agricultural land, any council to whom this section applies may, so far as they think fit and subject to the provisions of this Act, exercise all or any of the powers specified in subsection (1) of the next following section.

[<sup>F1</sup>(2) This section applies to all councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and in this Act any reference to a local authority is a reference to a council to whom this section applies.]

### Textual Amendments

- F1** [S. 1\(2\)](#) substituted (1.4.1996) by [1994 c. 39](#), s. 180(1), [Sch. 13](#), para. 56(2); S.I. 1996/323, [art. 4\(1\)\(c\)](#)  
(2)

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Flood Prevention (Scotland) Act 1961 (repealed). (See end of Document for details)*

#### **Modifications etc. (not altering text)**

- C3 S. 1 (definition of local authority) applied (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 166\(3\), 225\(2\)](#) (with [ss. 16\(6\), 179, 222\(3\), 225\(4\)](#), [Sch. 22 para. 1](#), [Sch. 23 para. 6](#))

## **2 Powers of local authorities.**

- (1) The powers referred to in subsection (1) of the foregoing section are powers to carry out operations of the following descriptions—
- (a) the cleansing, repairing and otherwise maintaining in a due state of efficiency of—
    - (i) any watercourse;
    - (ii) any barrier, embankment or other work for defence against flooding;
    - (iii) any apparatus ancillary to any such work or to any watercourse;
  - (b) the management or operation of any work or apparatus mentioned in the foregoing paragraph;
  - (c) the improvement, alteration or reinstatement of any watercourse or of any work or apparatus mentioned in paragraph (a) of this subsection;
  - (d) the removal of any work or apparatus mentioned in the said paragraph (a);
  - (e) the construction or provision of any new watercourse or any new work or apparatus mentioned in the said paragraph (a);
  - (f) the reinstatement of land damaged by operations carried out by virtue of this Act, and the execution of works for the protection of land against damage likely to be caused by such operations.
- (2) In this Act the expression “watercourse” includes—
- (a) the bed and banks of any river, stream or burn (whether for the time being carrying water or not), and
  - (b) any ditch, drain, cut, canal, culvert, sluice or passage carrying or designed to carry water, together with the walls, pipes or other works containing or intended to contain the same,
- except that it does not include any sewer or water-main; and in the foregoing subsection “cleansing” in relation to a watercourse means the removal from the watercourse of mud, silt, debris or other obstructive matter in the ordinary course of good maintenance.
- (3) References in this Act to flood prevention operations are references to operations of any of the descriptions set out in subsection (1) of this section, and references in this Act to maintenance and management operations are references to operations of any of the descriptions set out in paragraphs (a) and (b) of that subsection.

## **3 Supplementary provisions as to powers of local authorities.**

- (1) The powers conferred on a local authority by the two foregoing sections shall, subject to the provisions of this Act, be exercisable—
- (a) as well on land outwith the area of the local authority as on land within that area;
  - (b) notwithstanding that an incidental result of the exercise is that flooding of land other than such land as is specified in subsection (1) of section one of this Act is prevented or mitigated.

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- (2) In relation to a watercourse—
- (a) the power to carry out operations of the description specified in paragraph (a) of subsection (1) of the last foregoing section shall (without prejudice to the generality of that paragraph) include power to carry away, and where the watercourse is an open watercourse to deposit on the banks thereof, any mud, gravel or other material removed from the watercourse in the maintenance thereof, and to cut and lay aside or remove any bush or scrub timber growing on the banks of the watercourse; and
  - (b) the power to carry out operations of the description specified in paragraph (c) of the said subsection (1) shall (without prejudice to the generality of that paragraph) include power to remove any dam or other work situated, or any tree growing, in, on, over or under the watercourse.
- (3) Nothing in the foregoing provisions of this Act shall authorise the carrying out of any operations by a local authority in contravention of any enactment, and in particular in contravention of—
- (a) [<sup>F2</sup>the Ancient Monuments and Archaeological Areas Act 1979], or of [<sup>F3</sup>section 53 of the <sup>M1</sup>Town and Country Planning (Scotland) Act 1972 (which relates to works on listed buildings)];
  - (b) section thirty-four of the <sup>M2</sup>Coast Protection Act 1949 (which provides for the restriction of works detrimental to navigation);
  - [<sup>F4</sup>(c) section 30F (pollution offences) or section 49 (deposits and vegetation in rivers etc.) of the <sup>M3</sup>Control of Pollution Act 1974;]
  - (d) any enactment prohibiting the carrying out of development not authorised by planning permission granted or deemed to have been granted under [<sup>F5</sup>Part III of the Town and Country Planning (Scotland) Act 1997].
- (4) Nothing in the foregoing provisions of this Act relating to maintenance and management operations shall authorise the carrying out by a local authority of any such operations so as to affect injuriously any works or property belonging to, or the carrying on of their statutory undertaking by, any statutory undertakers, [<sup>F6</sup>or any [<sup>F7</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F8</sup>an electronic communications code network] or [<sup>F9</sup>the provision of any such network], except with the consent in writing of the statutory undertakers or, as the case may be, the operator of [<sup>F10</sup>the network]]:

Provided that consent for the purposes of this subsection shall not be required if it is withheld unreasonably, and any question whether any such consent has been withheld unreasonably shall be referred to and determined by the Secretary of State.

#### Textual Amendments

- F2** Words substituted by virtue of [Ancient Monuments and Archaeological Areas Act 1979 \(c. 46, SIF 3\), s. 64\(2\), Sch. 4 para. 7](#)
- F3** Words in s. 3(3)(a) substituted (26.5.1997) by 1997 c. 36, [s. 5\(1\)\(a\)](#); S.I. 1997/1322, [art. 2\(1\)](#)
- F4** S. 3(3)(c) substituted (26.5.1997) by 1997 c. 36, [s. 5\(1\)\(b\)](#); S.I. 1997/1322, [art. 2\(1\)](#)
- F5** Words in s. 3(3)(d) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 8\(1\)](#)
- F6** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, 110(2), [Sch. 4 para. 39\(2\)](#)
- F7** Words in s. 3(4) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 4\(2\)\(a\)](#)

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- F8** Words in s. 3(4) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(2)(b)**
- F9** Words in s. 3(4) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(2)(c)**
- F10** Words in s. 3(4) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(2)(d)**

**Modifications etc. (not altering text)**

- C4** S. 3(4) extended to Post Office by [Post Office Act 1969 \(c. 48\)](#), **Sch. 4 para. 93(1)(xviii)**
- C5** S. 3(4) extended by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), s. 19(2), **Sch. 2 para. 4**  
S. 3(4) modified (1.4.2001) by [2000 c. 38, ss. 37](#), **Sch. 5 para. 1(2)(h)** (with s. 106); [S.I. 2001/869](#), **art. 2**

**Marginal Citations**

- M1** 1972 c. 52.  
**M2** 1949 c. 74.  
**M3** 1974 c. 40.

**4 Flood prevention schemes.**

- (1) No flood prevention operations other than maintenance and management operations shall be carried out by or on behalf of a local authority by virtue of the powers conferred on them by the foregoing provisions of this Act otherwise than in accordance with a scheme (in this Act referred to as a “flood prevention scheme”) made by the local authority, and confirmed by the Secretary of State, under this section.
- (2) A flood prevention scheme shall describe, by reference to maps, plans and specifications, the flood prevention operations proposed to be carried out and the land which would be affected by them; shall include an estimate of the cost of those operations; and shall specify any land on which the local authority require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations; and, where in connection with any such operations it is intended that operations for the diversion of a sewer or a watermain shall be carried out by [<sup>F11</sup>Scottish Water]<sup>F12</sup>. . . , the scheme shall also specify those last-mentioned operations.
- (3) For the purpose of providing for powers of entry on land to carry out flood prevention operations, for penalising persons who obstruct the carrying out of such operations and for the other matters mentioned in the First Schedule to this Act, a flood prevention scheme may incorporate (subject to such modifications, if any, as may be specified in the scheme) all or any of the provisions set out in that Schedule, and any of those provisions so incorporated shall have effect for the purposes of the operations to which the scheme relates:  
  
Provided that, in relation to any provision of the said Schedule so incorporated, a flood prevention scheme shall not specify as aforesaid any modification which increases any penalty or places any person other than the local authority making the scheme in a worse position than he would be in if the provision were incorporated in the scheme without modification.
- (4) A local authority, before making a flood prevention scheme relating to operations on land in the area of another local authority, shall consult with that other local authority.
- (5) The provisions of the Second Schedule to this Act shall have effect with regard to the confirmation, coming into operation and validity of a flood prevention scheme.

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#### Textual Amendments

- F11** Words in s. 4(2) substituted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\), s. 71, Sch. 7 para. 3\(2\)](#) (with s. 67); S.S.I. 2002/118, [art. 2\(3\)](#) (subject to savings in art. 3)
- F12** Words in s. 4(2) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 56(3), [Sch.14](#); S.I. 1996/323, art. 4(1)(c)(d), [Sch.2](#)

### *[<sup>F13</sup> Assessment and maintenance of watercourses*

#### Textual Amendments

- F13** [S. 4A](#) and cross heading inserted (26.5.1997) by 1997 c. 36, [s.1](#); S.I. 1997/1322, [art.2\(1\)](#)

#### **<sup>F14</sup>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.]

#### Textual Amendments

- F14** [S. 4A](#) and cross heading inserted (26.5.1997) by 1997 c. 36, [s.1](#); S.I. 1997/1322, [art.2\(1\)](#)

#### **[<sup>F15</sup>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.

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- (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.]

**Textual Amendments**  
**F15** S. 4B inserted (28.7.1997) by 1997 c. 36, s.2; S.I. 1997/1322, art.2(2)

5 ..... F16

**Textual Amendments**  
**F16** Ss. 5, 11(5) repealed by Local Government (Scotland) Act 1973 (c. 65), Sch. 29

*Prevention of obstruction of watercourses, etc.*

**6 Byelaws.**

- (1) Subject to the provisions of this section, a local authority may, for the purpose of preventing the obstruction of any particular watercourse in their area so as to be likely to cause the flooding of land, other than agricultural land, whether in their area or not, make byelaws regulating or prohibiting the deposit of rubbish or other material in or near the watercourse.
- (2) Any person who contravenes any byelaw made by virtue of the foregoing subsection shall be liable on summary conviction to a fine not exceeding fifty pounds in the case of a first conviction, or one hundred pounds in the case of a second or any subsequent conviction.
- (3) The confirming authority in relation to any byelaws made under this section shall be the Secretary of State.

*F17 Reports*

**Textual Amendments**  
**F17** S. 6A and cross heading inserted (26.5.1997) by 1997 c. 36, s.3; S.I. 1997/1322, art.2(1)

**F18 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—

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- (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.]

#### Textual Amendments

**F18** S. 6A and cross heading inserted (26.5.1997) by 1997 c. 36, s.3; S.I. 1997/1322, art.2(1)

### Supplementary

#### 7 Acquisition of land.

A local authority may be authorised by the Secretary of State to acquire by compulsory purchase any land (whether in their area or not) which they require for the exercise of their powers under this Act, and the <sup>M4</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, shall apply in relation to any such compulsory purchase as if this Act had been in force immediately before the commencement of that Act.

#### Marginal Citations

**M4** 1947 c. 42.

#### 8 Powers of entry on land.

- (1) Subject to the provisions of this section, any person authorised by a local authority shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter on any land (whether in the area of the local authority or not)—
- (a) for the purpose of determining whether, and if so in what manner, any power conferred on the local authority by this Act is to be exercised, or whether any provision of this Act or any notice given by the local authority under this Act is being or has been complied with, or
  - (b) for the purpose of exercising any power conferred [<sup>F19</sup>, or performing any duty imposed,] on the local authority by this Act, other than a power exercisable in accordance with a flood prevention scheme (but without prejudice to any provisions as to entry incorporated in any such scheme by virtue of this Act).
- (2) Admission to any land shall not be demanded as of right under this section unless fourteen days notice of the intended entry has been given to the occupier of the land.
- (3) If on application made to him the sheriff [<sup>F20</sup> or a justice of the peace] is satisfied—
- (a) that admission to any land on which any person is entitled to enter under this section has been refused to that person or that refusal is apprehended, or that

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the land is unoccupied, or that the case is one of urgency, or that an application for admission will defeat the object of the entry,

- (b) that there is reasonable ground for entry on the land for the purpose for which entry is required, and
- (c) either that notice of the intention to make the application has been given to the occupier or that it is equitable in the circumstances to dispense with such notice,

the sheriff [<sup>F20</sup>or the justice of the peace] may by warrant under his hand authorise that person to enter on the land; and any warrant so issued shall be expressed to remain in force for such period only as the sheriff [<sup>F20</sup>or the justice of the peace], having regard to all the circumstances of the case, shall fix.

- (4) If any person wilfully obstructs any other person exercising a right conferred by this section to enter, or do anything, on any land he shall be guilty of an offence and shall be liable on summary conviction to a fine [<sup>F21</sup>not exceeding level 3 on the standard scale].

#### Textual Amendments

**F19** Words in s. 8(1)(b) inserted (26.5.1997) by 1997 c. 36, s. 5(2)(a); S.I. 1997/1322, art.2(1)

**F20** Words in s. 8(3) inserted (26.5.1997) by 1997 c. 36, s. 5(2)(b); S.I. 1997/1322, art.2(1)

**F21** Words in s. 8(4) substituted (26.5.1997) by 1997 c. 36, s.4; S.I. 1997/1322, art.2(1)

## 9 Provision and obtaining of information.

- (1) For the purpose of enabling them to exercise any of their powers [<sup>F22</sup>or perform any of their duties] under this Act a local authority may require the owner or occupier of any land (whether in their area or not) to state in writing the nature of his own interest in that land and the name and address of any other person known to him as having an interest therein.
- (2) If any person fails to comply with a requirement of a local authority under this section, or in answer to any such requirement recklessly makes any statement which is false or misleading in a material particular, he shall be guilty of an offence and shall be liable on summary conviction to a fine [<sup>F23</sup>not exceeding level 3 on the standard scale].

#### Textual Amendments

**F22** Words in s. 9(1) inserted (26.5.1997) by 1997 c. 36, s. 5(3); S.I. 1997/1322, art.2(1)

**F23** Words in s. 9(2) substituted (26.5.1997) by 1997 c. 36, s.4; S.I. 1997/1322, art.2(1)

## 10 Unjustified disclosure of information.

If any person discloses any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Act or in connection with the execution thereof, he shall, unless the disclosure is made—

- (a) with the consent of the person carrying on that undertaking, or
- (b) in connection with the execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,



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be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both.

**11 Compensation.**

- (1) Where on a claim being made under this section it is shown that (after taking into account the effect of any operations that may have been carried out by the local authority under paragraph (f) of subsection (1) of section two of this Act) the value of an interest of any person in land has been depreciated, or that any person has suffered damage by being disturbed in his enjoyment of land, in consequence of the carrying out of any flood prevention operations, the local authority by whom, or on whose behalf, the operations were carried out shall pay to the person whose interest has been depreciated or who has suffered the damage compensation equal to the amount of the depreciation or damage:

Provided that a person shall not be entitled to compensation under this subsection unless the act or omission causing the depreciation or disturbance would have been actionable at his instance if it had been done or omitted otherwise than in the exercise of statutory powers.

- (2) A claim for compensation under this section shall be made by serving on the local authority a notice in writing stating the grounds of the claim and the amount claimed.
- (3) A local authority shall not be required to entertain a claim for compensation under this section unless it has been made before the expiration of two years from the depreciation becoming apparent or, as the case may be, the first occurrence of the disturbance, or ten years from the completion of the flood prevention operations, whichever is the earlier.
- (4) <sup>F24</sup> . . . any question as to the right of a claimant to recover compensation under this section, or as to the amount of the compensation recoverable, shall, in default of agreement, be referred to, and determined by, the Lands Tribunal for Scotland.
- (5) . . . . . <sup>F25</sup>

**Textual Amendments**

**F24** Words in s. 11(4) repealed (26.5.1997) by 1997 c. 36, s. 8, Sch.; S.I. 1997/1322, art.2(1)

**F25** Ss. 5, 11(5) repealed by Local Government (Scotland) Act 1973 (c. 65), Sch. 29

**12 Contributions to and by local authorities.**

- (1) A local authority may make contributions towards expenditure incurred—
  - (a) by any other person in the carrying out of operations which could properly have been carried out by the local authority under this Act, or
  - (b) by [<sup>F26</sup>Scottish Water] in carrying out, or paying compensation in respect of, any operations for the diversion of a sewer or, as the case may be, a water main, being operations connected with the improvement or alteration of a watercourse and specified in a flood prevention scheme made by that local authority.

<sup>F27</sup>(2) . . . . .

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- (3) A local authority may receive from any other person contributions towards the expenditure by the local authority in exercising their powers under this Act.

#### Textual Amendments

- F26** Words in s. 12(1)(b) substituted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71, [Sch. 7 para. 3\(3\)](#) (with s. 67); S.S.I. 2002/118, [art. 2\(3\)](#) (subject to savings in [art. 3](#))
- F27** S. 12(2) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), [Sch. 13 para. 56\(4\)](#), [Sch.14](#); S.I. 1996/323, [art. 4\(1\)\(c\)\(d\)](#), [Sch.2](#)

### 13 Financial provisions.

- (1) In respect of expenditure incurred by a local authority in carrying out flood prevention operations in accordance with a flood prevention scheme, or in the payment in respect thereof of compensation under section eleven of this Act, or in making approved contributions under section twelve of this Act, there shall be paid out of moneys provided by Parliament such sums as the Secretary of State may <sup>F28</sup> . . . direct:

Provided that—

- (i) any payments under this subsection shall be subject to such conditions, and shall be paid at such times, as the Secretary of State may <sup>F28</sup> . . . determine; and
  - (ii) no payments shall be made under this subsection in respect of expenditure incurred in the carrying out of any flood prevention operations which are maintenance and management operations, or in payment of compensation in respect of such operations.
- (2) There shall be paid out of moneys provided by Parliament—
- (a) any administrative expenses incurred by the Secretary of State in consequence of the passing of this Act; and
  - (b) any increase attributable to the provisions of this Act in the sums payable under any other enactment out of moneys so provided.
- (3) In this section “approved”, in relation to any contribution, means approved for the purposes of this section by the Secretary of State.

#### Textual Amendments

- F28** Words in s. 13(1) repealed (1.7.1999) by S.I. 1999/1820, [arts. 1\(2\), 4](#), [Sch. 2 Pt. I para. 32](#), [Pt.IV](#)

### 14 Crown rights.

- (1) In relation to any Crown land nothing in this Act, or in any scheme made under this Act, shall (except so far as the appropriate authority consents) affect prejudicially any estate, right, power, privilege or exemption of the Crown.
- (2) In this section the expression “Crown land” means land an interest in which belongs to Her Majesty in right of the Crown, or belongs to a government department or is held in trust for Her Majesty for the purposes of a government department; and the expression “appropriate authority” means—

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- (a) in relation to land an interest in which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of that interest;
- (b) in relation to land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department;

and, if any question arises as to the authority which is the appropriate authority in relation to any such land, the question shall be determined by the Treasury.

## 15 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively—

“agricultural land” has the same meaning as in section eighty-six of the <sup>M5</sup>Agriculture (Scotland) Act 1948, and includes any dwelling-house or other building occupied for the purpose of farming any land;

.....<sup>F29</sup>  
“flood prevention operations” has the meaning assigned to it by section two of this Act;

“interest”, in relation to any land, includes any [<sup>F30</sup>right in or ] over the land;  
[<sup>F31</sup> “ local authority ” has the meaning assigned to it by section 1(2) of this Act; ]

“maintenance and management operations” has the meaning assigned to it by section two of this Act;

[<sup>F32</sup> “ road ”has the meaning given to it by section 151(1) of the Roads (Scotland) Act 1984; ]

[<sup>F33</sup> “ sewer ” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968; ]

<sup>F34</sup> .....  
“statutory undertakers” and “statutory undertaking” have the same meanings as in the Town and Country Planning (Scotland) Act [<sup>F35</sup>1997];

<sup>F36</sup> .....  
“watercourse” has the meaning assigned to it by subsection (2) of section two of this Act;

“water-main” means any water-main provided, constructed or maintained under any provision of the [<sup>F37</sup>Water (Scotland) Act 1980].

- (2) References in this Act to the mitigation of flooding shall, except where the context otherwise requires, be construed as including references to the draining of flood water left by flooding.
- (3) References in this Act to land shall, except where the context otherwise requires, be construed as including references to salmon fishings.
- (4) References in this Act to a watercourse shall, except where the context otherwise requires, be construed as including references to a part of a watercourse.
- (5) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended or modified by or under any other enactment.

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*Changes to legislation: There are currently no known outstanding effects for the Flood Prevention (Scotland) Act 1961 (repealed). (See end of Document for details)*

- (6) For the purposes of this Act the service of any notice, scheme or other document on any person, body or association may (without prejudice to any other method of service) be effected by sending it to him, or, in the case of a body or association, to the secretary or other similar officer thereof, by post at his usual or last known residence, place of business or office.

#### Textual Amendments

- F29** Definition of "burgh" repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **Sch. 29**
- F30** Words in [s. 15\(1\)](#) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 12 paras. 24** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F31** Definition substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **Sch. 27 Pt. II para. 151(a)**
- F32** Definition inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 54**
- F33** Definition substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **Sch. 27 Pt. II para. 151(b)**
- F34** S.15(1): definition of "sewerage authority" repealed (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71, **Sch. 7 para. 3(4)** (with s. 67); S.S.I. 2002/118, **art. 2(3)** (subject to savings in art. 3)
- F35** S. 15(1): Words in definition substituted (27.5.1997) by 1997 c. 11, Ss. 4, 6(2), **Sch. 2 para. 8(2)**
- F36** S.15(1): definition of "water authority" repealed (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71, **Sch. 7 para. 3(4)** (with s. 67); S.S.I. 2002/118, **art. 2(3)** (subject to savings in art. 3)
- F37** S. 15(1): Words in definition substituted (26.5.1997) by 1997 c. 36, s. 5(4); S.I. 1997/1322, **art. 2(1)**

#### Marginal Citations

- M5** 1948 c. 45.

## 16 Short title, commencement and extent.

- (1) This Act may be cited as the Flood Prevention (Scotland) Act 1961.
- (2) This Act shall come into operation at the expiration of the period of one month beginning with the day on which it is passed.
- (3) This Act shall extend to Scotland only.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Flood Prevention (Scotland) Act 1961 (repealed). (See end of Document for details)*

## 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 [<sup>F38</sup>[<sup>F39</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F40</sup>an electronic communications code network or with the service provided by any such network].]

#### **Textual Amendments**

**F38** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, 110(2), **Sch. 4 para. 39(3)**

**F39** Words in Sch. 1 para. 2 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(3)(a)**

**F40** Words in Sch. 1 para. 2 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(3)(b)**

##### *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.

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- (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.

*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 [<sup>F41</sup>not exceeding level 3 on the standard scale].

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### Textual Amendments

**F41** Words in [Sch. 1 para. 7](#) substituted (26.5.1997) by [1997 c. 36, s.4](#); [S.I. 1997/1322, art.2\(1\)](#)

### 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

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[<sup>F42</sup>(e) the operator of [<sup>F43</sup>an electronic communications code network the provision] of which may be affected by any of the operations or by any alteration in the flow of water caused by the operations].

(2) In this paragraph the expression “statutory body” means any body exercising functions conferred on it by or under any enactment.

#### Textual Amendments

**F42** Sch. 2 para. 3(1)(e) substituted by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), ss. 2, 109, 110(2), [Sch. 4 para. 39\(4\)](#)

**F43** Words in Sch. 2 para. 3(1)(e) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 4\(4\)](#)

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 [<sup>F44</sup>two hundred and ten of the <sup>M6</sup>Local Government (Scotland) Act 1973] (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 [<sup>F44</sup>two hundred and ten.]

#### Textual Amendments

**F44** Words substituted by virtue of [Interpretation Act 1889 \(c. 63\)](#), s. 38(1)

#### Marginal Citations

**M6** 1973 c. 65.

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.



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- (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.

**Status:**

Point in time view as at 28/11/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Flood Prevention (Scotland) Act 1961 (repealed).