



# Flood Prevention (Scotland) Act 1961 (repealed)

1961 CHAPTER 41 9 and 10 Eliz 2

*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>M1</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

M1 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>F1</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).

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- (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>[F2</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 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>[F2</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>[F2</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>[F3</sup>not exceeding level 3 on the standard scale].

#### Textual Amendments

- F1** 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)
- F2** Words in s. 8(3) inserted (26.5.1997) by 1997 c. 36, s. 5(2)(b); S.I. 1997/1322, art.2(1)
- F3** 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>[F4</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>[F5</sup>not exceeding level 3 on the standard scale].

#### Textual Amendments

- F4** Words in s. 9(1) inserted (26.5.1997) by 1997 c. 36, s. 5(3); S.I. 1997/1322, art.2(1)
- F5** 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

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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,

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>F6</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>F7</sup>

### Textual Amendments

- F6** Words in s. 11(4) repealed (26.5.1997) by 1997 c. 36, s. 8, Sch.; S.I. 1997/1322, art.2(1)
- F7** 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

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- (b) by a sewerage or water authority 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>F8</sup>(2) .....

- (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

**F8** 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>F9</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>F9</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

**F9** 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.

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- (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—
- (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>M2</sup>Agriculture (Scotland) Act 1948, and includes any dwelling-house or other building occupied for the purpose of farming any land;  
.....<sup>F10</sup>
  - “flood prevention operations” has the meaning assigned to it by section two of this Act;
  - “interest”, in relation to any land, includes any estate in or right over the land;
  - [<sup>F11</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>F12</sup> “road” has the meaning given to it by section 151(1) of the Roads (Scotland) Act 1984;]
  - [<sup>F13</sup>“sewer” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968;]
  - [<sup>F14</sup>“sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]
  - “statutory undertakers” and “statutory undertaking” have the same meanings as in the Town and Country Planning (Scotland) Act [<sup>F15</sup>1997];
  - [<sup>F16</sup>“water authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]
  - “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>F17</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.

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- (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.
- (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

- F10** Definition of "burgh" repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)
- F11** Definition substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. II para. 151\(a\)](#)
- F12** Definition inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 54](#)
- F13** Definition substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. II para. 151\(b\)](#)
- F14** [S. 15\(1\)](#): Definition inserted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 58\(5\)\(a\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F15** [S. 15\(1\)](#): Words in definition substituted (27.5.1997) by 1997 c. 11, Ss. 4, 6(2), [Sch. 2 para. 8\(2\)](#)
- F16** [S. 15\(1\)](#): Definition inserted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 58\(5\)\(b\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)
- F17** [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

- M2** [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.

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