

INFORMATION FOR LAND OWNERS AND OCCUPIERS ABOUT NOTICES OF ENTRY

Internal Drainage Boards in Somerset only own very small areas of land so most maintenance or improvement works are undertaken on land owned by individuals, partnerships, companies or organisations.

The legislation under which internal drainage boards were created provides us with permissive powers to undertake works. It not only provides us with statutory powers to enter onto land to undertake works but also to purchase land even if it is contrary to the wishes of the owner.

If we wish to enter onto land to undertake works or surveys then we may do this without your agreement but only after we have given you a minimum of 7 days' notice. In these circumstances we inform you of our intention by a Notice of Entry. This Notice may take several forms depending on the type of work we plan to undertake and its extent. However our preference is always to enter onto land to undertake works with your agreement, so early on in the process of planning our work we will contact owners and discuss with them the work we plan to undertake and how it might fit in with your use of the land. We hope that we can balance the needs of our work with your use of the land. Unfortunately this is not possible in all circumstances and that is why we have the powers to enter under Notice.

If we have agreed with you to undertake works, we will normally confirm that agreement by the issue of a Notice. We believe that this secures and makes clear the rights and responsibilities of both parties.

The Sections of the Land Drainage Act 1991 (the Act) that we rely on to enter and undertake works are Sections 14, 14A, 15 and 64 of the Act. Set out below is a reprint of the legislation as it appears in the Land Drainage Act from 1991 which also includes amendments caused by the Flood and Water Management Act of 2010.

Compensation

Section 15 of the Act covers the work that we undertake specifically on the channel of a watercourse to maintain or improve it. This allows the Board to remove any material from a watercourse and to deposit it on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the spoil to be removed and deposited by mechanical means in one operation. We could also take the material away and use it for other purposes such as the construction of floodbanks or infilling areas of land.

The Board is not required to make any payment for losses (including crop losses) resulting from such a deposit, unless any injury arising from the deposit could have been avoided if the Board had exercised its powers with reasonable care.

For all our other work, Section 14 applies and this part of the Act requires the Board to pay compensation to any person who sustains a loss as a result of an action (or works) by the Board. In order for a board to make payment for any loss suffered as a result of an "injury," the loss will have to be demonstrated, justified and proven and submitted to the Board as a claim. Any claim for a loss as a result of works will be considered in the light of any betterment provided by the works and any duty that the landowner/occupier would have had as a Riparian Owner.

Part II
Provisions for Facilitating or Securing the Drainage of Land
General Powers

14. General drainage powers of boards and local authorities

- (1) Subject to section 11 above and subsection (4) and section 17 below-
- (a) every drainage board acting within the internal drainage district for which they are the drainage board; and
 - (b) every local authority acting -
 - (i) for the purpose of carrying out works in pursuance of a scheme under section 18 below;
- Shall have the powers specified in subsection (2) below.
- (2) The powers mentioned in subsection (1) above are the powers, otherwise than in connection with a main river or the banks of such a river-
- (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work;
 - (b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
 - (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land.
- (3) Subject to section 11 above and subsection (4) and section 17 below, an internal drainage board or local authority that desire, otherwise than in connection with a main river or the banks of such a river, to carry out any drainage works for the benefit of their district or area in lands outside that district or area shall have the same powers for that purpose as are conferred by this Act on persons interested in land which is capable of being drained or improved and desiring to carry out drainage works for that purpose.
- (4) Nothing in this section-
- (a) authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (5) Where injury is sustained by any person by reason of the exercise by a drainage board or local authority of any of their powers under this section, the board or authority shall be liable to make full compensation to the injured person.
- (6) In case of dispute, the amount of the compensation payable under subsection (5) above shall be determined by the Lands Tribunal.
- (7) Any expenses incurred by an internal drainage board under subsection (3) above shall be defrayed as if the expenses had been incurred in their district.

NOTES

Derivation

This section derived from the Land Drainage Act 1976, ss 17, 98(1), (7), 100(3), and the Water Act 1989, Sch 15, paras 1, 5.

Amendment

Words in square brackets substituted by the Local Government (Wales) Act 1994, s 22(5), Sch 11, para 4(2). (Substitution omitted by Flood and Water Management Act 2010, see below)

Sub-s (1)(b) "either" and subparagraph (1)(b)(ii) have been omitted by the Flood and Water Management Act 2010, s 31, Sch 2, para 29.

Sub-s (4)(b) has been omitted by the Flood and Water Management Act 2010, s 31, Sch 2, para 29.

See Further

See further, in relation to interest payable on any award of compensation: the Planning and Compensation Act 1991, s 80, Sch 18, Part I.

14A. General Powers: flood risk management works

- (1) A lead local flood authority may carry out flood risk management work if Conditions 1 and 2 are satisfied
- (2) An authority listed in subsection (3) may carry out flood risk management work if-
 - (a) Conditions 1 and 3 are satisfied, or
 - (b) Conditions 1 and 4 are satisfied.
- (3) The authorities are-
 - (a) an internal drainage board,
 - (b) a district council, and
 - (c) a lead local flood authority for an area for which there is no district council.
- (4) Condition 1 is that the authority considers the work desirable having regard to the local flood risk management strategy for its area under section 9 or 10 of the Flood and Water Management Act 2010.
- (5) Condition 2 is that the purpose of the work is to manage a flood risk in the authority's area from-
 - (a) surface runoff, or
 - (b) groundwater.
- (6) Condition 3 is that the purpose of the work is to manage a flood risk in the authority's area from an ordinary watercourse.
- (7) In subsection (6) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse.
- (8) Condition 4 is that the purpose of the work is to manage a flood risk in the authority's area from the sea and either-
 - (a) the work is within subsection (9)(a), (b) or (f), or
 - (b) the Environment Agency has consented to the work.
- (9) In this section "flood risk management work" means anything done-
 - (a) to maintain existing works (including buildings and structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
 - (b) to operate existing works (such as sluice gates or pumps);
 - (c) to improve existing works (including building or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
 - (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
 - (e) for the purpose of maintaining or restoring natural processes;
 - (f) to monitor, investigate or survey a location or a natural process;
 - (g) to reduce or increase the level of water in a place;
 - (h) to alter or remove works
- (10) Nothing in this section authorises a person to enter land except for the purpose of maintaining existing works.

- (11) Section 14(5) and (6) applies in relation to the exercise by any authority of powers under this section as to the exercise of powers under section 14
- (12) The powers under section 62 and 64 are available to an authority for a purpose in connection with the exercise of powers under this section.
- (13) In this section the following terms have the meaning given by Part 1 of the Flood and Water Management Act 2010-
 - (a) flood risk,
 - (b) lead local authority,
 - (c) surface runoff, and
 - (d) groundwater.

NOTES

Amendment

Section 14A inserted by the Flood and Water Management Act 2010, s 31, Sch 2, para 29.

See Further

See further, in relation to local flood risk management strategies: the Flood and Water Management Act 2010, s 9, s 10.

15. Disposal of spoil by boards and local authorities

- (1) Subject to subsections (2) and (3) and sections 16 and 17 below, an internal drainage board or local authority may-
 - (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any ordinary watercourse; and
 - (b) deposit any matter so removed on the banks of such a watercourse, or on such width of land adjoining such a watercourse as is sufficient to enable the matter to be removed and deposited by mechanical means in one operation.
- (2) The powers conferred on a local authority by this section shall not be exercisable except-
 - (a) for the purpose of carrying out works in pursuance of a scheme under section 18 below; or
 - (b) so far as may be necessary for the purpose of preventing flooding or mitigating any damage caused by flooding in their area.
- (3) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the Environmental Protection Act 1990.
- (4) Where injury is sustained by any person by reason of the exercise by an internal drainage board or local authority of their powers under subsection (1)(b) above-
 - (a) the board or authority may, if they think fit, pay to him such compensation as they may determine; and
 - (b) where the injury could have been avoided if those powers had been exercised with reasonable care, subsections (5) and (6) of section 14 above shall apply as if the injury had been sustained by reason of the exercise by the board or authority of their powers under that section.
- (5) An internal drainage board or local authority, on the one hand, and the council of any district or [London borough or Welsh county or county borough], on the other, may enter into an agreement providing-
 - (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and

- (b) for the payment by the board or authority to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.

NOTES

Derivation

This section derived from the Land Drainage Act 1976, ss 33, 98(1), (7), 100(3), and the Environmental Protection Act 1990, Sch 15, para 18.

Amendment

Words in square brackets substituted by the Local Government (Wales) Act 1994, s 22(5), Sch 11, para 4(3).

64. Powers of entry for internal drainage boards and local authorities

- (1) Any person authorised by an internal drainage board or local authority, after producing (if so required) a duly authenticated document showing his authority, may at all reasonable times-
- (a) enter any land for the purpose of exercising any functions of the board or, as the case may be, any functions under this Act of that authority;
 - (b) without prejudice to paragraph (a) above, enter and survey any land (including the interior of any mill through which water passes or in connection with which water is impounded) and take levels of the land and inspect the condition of any drainage work on it; and
 - (c) inspect and take copies of any Acts of Parliament, awards or other documents which-
 - (i) are in the possession of any internal drainage board, local authority or navigation authority;
 - (ii) relate to the drainage of land; and
 - (iii) confer any powers or impose any duties on that board or authority.
- (2) A person entitled under this section to enter any land-
- (a) may take with him such other persons and such equipment as may be necessary; and
 - (b) if the land is unoccupied, shall, on leaving it, leave it as effectually secured against trespassers as he found it.
- (3) Except in an emergency, admission to any land shall not be demanded as of right under this section, unless notice of the intended entry-
- (a) has been given to the occupier; and
 - (b) if the land is used for residential purposes or the demand is for admission with heavy equipment, has been given not less than seven days before the demand is made.
- (4) Where injury is sustained by any person by reason of the exercise by an internal drainage board or local authority of any of their powers under this section, the board or authority shall be liable to make full compensation to the injured person.
- (5) In case of dispute, the amount of the compensation payable under subsection (4) above shall be determined by the Lands Tribunal.
- (6) If any person intentionally obstructs or impedes any person exercising a power conferred by this section, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) This section shall not apply in relation to land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, in relation to land belonging to the Duchy of Cornwall or in relation to land belonging to a government department.
- (8) This section shall be without prejudice to any other enactment conferring powers of entry.

NOTES***Derivation***

This section derived from the Land Drainage Act 1976, ss 17(5), 39, 103, and the Criminal Justice Act 1982, ss 38, 46.

Version 3

14 August 2013