

LAND DRAINAGE ORDINANCE
- CHAPTER 446

LAND DRAINAGE ORDINANCE - LONG TITLE
Long title VerDate:06/30/1997

An Ordinance to make provision for the constitution of Drainage Authority Areas and the carrying out of drainage works within such areas and for connected matters.
(Enacted 1994)

[31 March 1994]

(Originally 20 of 1994)

SECT 1
Short title VerDate:06/30/1997

PART I

PRELIMINARY

This Ordinance may be cited as the Land Drainage Ordinance.
(Enacted 1994)

SECT 2
Interpretation VerDate:07/19/2002

In this Ordinance, unless the context otherwise requires-
"approved plan" means a finalised draft plan approved by the Chief Executive in Council under section 11(1)(a); (Amended 61 of 1999 s. 3)
"bank" means any bank, wall or embankment, adjoining, confining or constructed for the purpose of, or in connection with, any watercourse, and-

(a) in the case of a watercourse within which tidal waters flow, includes all land between the bank of the watercourse and low water mark of mean spring tides; and

(b) in the case of any other watercourse, includes all land between the bank of the watercourse and the water in the watercourse;

"barrister" has the meaning assigned to it in section 2 of the Legal Practitioners Ordinance (Cap 159);

"Board" means a Drainage Appeal Board constituted under section 30;

"compensatable interest" means the estate or interest of-

(a) a person having an unexpired term in land (including any further term which could be obtained as of right) of not less than one month or a tenancy or subtenancy terminable (whether by virtue of an Ordinance or otherwise) by either party by not less than one month's notice;

(b) a mortgagee in possession;

(c) the holder of a valid and subsisting option to purchase an estate or interest referred to in paragraph (a) or (b);

(d) a purchaser under an agreement for sale and purchase to whom the benefit of an estate or interest referred to in paragraph (a) or (b) has already passed;

"domestic premises" means any premises which are constructed or intended to be used for habitation;

"draft plan" or "draft Drainage Authority Area plan" means a draft plan notified in the Gazette under section 5;

"Drainage Authority" means the Director of Drainage Services;

"Drainage Authority Area" means the Drainage Authority Area shown in a draft Drainage Authority Area plan notified in the Gazette under section 5 or an approved plan notified in the Gazette under section 11;

"drainage works" includes-

(a) the cleansing, scouring, dredging or desilting of any main watercourse;

(b) the removal of any natural or artificial obstruction in any main watercourse;

(c) the repair, strengthening, alteration or removal of any embankment for the purpose of defence against water; and

(d) any works for the prevention or abatement of injury or damage which might be caused by the carrying out of any of the operations referred to in paragraph (a), (b) or (c);

"emergency" means the existence of a substantial risk of injury to any person or damage to any property caused by or consequential upon flooding;

"land" includes-

(a) land covered by water; and

(b) the whole or part of any building or other erection or fixture on land;

"Land Registry" means the Land Registry established under the Land Registration Ordinance (Cap 128) and any District Land Registry established under the New Territories Ordinance (Cap 97);

"main watercourse" means any main watercourse designated in a draft Drainage Authority Area plan notified in the Gazette under section 5 or an approved plan notified in the Gazette under section 11;

"mortgage" means a mortgage or charge registrable in the Land Registry;

"obstruction" in Parts III and IV includes earth, stone, timber and material of all kinds artificially placed in any main watercourse;

"occupier" includes a tenant of an owner of land whether or not he pays rent and a person who resides in a building;

"owner" in relation to land, means the person holding that land-

(a) directly under a Government lease; or

(b) under another title directly from the Government registered in the Land Registry; (Amended 29 of 1998 s. 105)

"Panel" means the panel of persons appointed to be the Drainage Appeal Board Panel under section 29(1);

"registered professional engineer" has the meaning assigned to it in section 2 of the Engineers Registration Ordinance (Cap 409);

"Secretary" means the Secretary for the Environment, Transport and Works; (Amended 61 of 1999 s. 3; L.N. 330 of 1999; L.N. 106 of 2002; 23 of 2002 s. 126)

"solicitor" has the meaning assigned to it in section 2 of the Legal Practitioners Ordinance (Cap 159);

"structure" in Parts III and IV, subject to section 21(3), includes a bridge, fence, barrier, post, culvert or pipe crossing;

"watercourse" includes-

(a) any river, stream, ditch, channel, drain, pipe, cut, culvert, tunnel, nullah, dyke, weir, sluice, flood storage pond, flood pumping station, and other passage used wholly or partly for the conveyance or storage of stormwater or surface water but does not include-

(i) any pipe or channel intended primarily for sewage or industrial discharges; and

(ii) any drain and sewer as defined by section 2 of the Buildings Ordinance (Cap 123); and

(b) the bank, channel or bed of any watercourse which is wet normally but may be, from time to time, dry.

(Enacted 1994)

SECT 3

Preparation of draft plans VerDate:06/30/1997

PART II

CONSTITUTION OF DRAINAGE AUTHORITY AREAS

(1) The Drainage Authority shall prepare draft Drainage Authority Area plans of such parts of Hong Kong as the Secretary may direct.

(2) A draft plan prepared under subsection (1) shall show-

(a) the boundary of the Drainage Authority Area; and

(b) such watercourses in that Drainage Authority Area as are considered to be appropriate by the Drainage Authority to be designated as main watercourses in the plan.

(3) The Drainage Authority may, in conjunction with any draft plan prepared under subsection (1), prepare explanatory material relating to the plan, which may be in the form of diagrams, illustrations, notes or descriptive matter; and any such explanatory material shall form part of the plan referred to in subsection (1).

(Enacted 1994)

SECT 4

Amendment, replacement and cancellation of draft plan VerDate:06/30/1997

A draft plan or part thereof prepared under section 3 and notified under section 5 may be amended by a draft plan showing the amendments and a draft plan prepared under section 3 and notified under section 5 may be replaced by another draft plan or cancelled, provided that the Drainage Authority shall not amend any part of or replace a draft plan in respect of which an objection has been made under section 7 or an application for review has been made under section 8.

(Enacted 1994)

SECT 5

Publication and inspection of draft plans VerDate:06/30/1997

(1) Where the Drainage Authority has prepared or replaced a draft plan at any time under section 3 or 4, he shall cause a notice of the plan

to be published in-

- (a) 2 issues of the Gazette in English and Chinese;
 - (b) 2 issues of 2 Chinese language newspapers; and
 - (c) 2 issues of an English language newspaper.
- (2) The notice referred to in subsection (1) shall-
- (a) contain a general description of the Drainage Authority Area shown in the draft plan;
 - (b) state where and when a copy of the plan may be inspected by the public;
 - (c) specify the time within which, and the manner in which, objections to the draft plan prepared or replaced under section 3 or 4 may be made; and
 - (d) where the Drainage Authority has replaced a draft plan, identify the draft plan which has been replaced under section 4.
- (3) A copy of a draft plan shall be available for inspection by the public free of charge at such offices of the Government as the Drainage Authority thinks fit for a period of 60 days from the date of first publication of a notice in the Gazette under subsection (1) and during the hours when those offices are normally open to the public.
- (4) The Drainage Authority shall supply a copy of the draft plan prepared or replaced under section 3 or 4, or the draft plan showing the amendments under subsection (5), to any person on request and upon payment of such fee as he may determine.
- (5) Where the Drainage Authority has at any time amended a draft plan under section 4, he shall publish a notice of such amendments in the same manner as is specified in subsections (1) and (2) except that the period referred to in subsection (3) shall be 30 days and the notice shall also identify the draft plan which has been amended under section 4.
- (6) Where the Drainage Authority has cancelled a draft plan at any time under section 4, he shall publish a notice of such cancellation in the same manner as is specified in subsection (1) except that the notice shall be published in one issue of the Gazette and the newspapers referred to in that subsection and that the notice shall also identify the draft plan which has been cancelled under section 4.
- (7) A copy of a draft plan notified under this section shall be deposited in the Land Registry and shall be available for inspection by any person without payment of any fee.
- (Enacted 1994)

SECT 6

Effect of publication of notice under section 5 VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) Upon the first publication of a notice in the Gazette under section 5(1) or (5)-

(a) this Ordinance shall apply with respect to the Drainage Authority Area and main watercourses shown on the draft plan as notified under section 5(1) or (5), and this Ordinance shall continue to so apply notwithstanding any proposed alterations made under sections 7 and 8;

(b) (i) any draft plan replaced by the draft plan as notified under section 5(1) shall be thereby repealed; or

(ii) that part of any draft plan amended by the draft plan as notified under section 5(5) shall be thereby repealed; and

(c) any approved plan referred to the Secretary by the Chief Executive in Council for replacement under section 17(1)(b) and so replaced by a draft plan notified under section 5(1) shall be thereby repealed. (Amended 61 of 1999 s. 3)

(2) Upon the publication of a notice under section 5(6), the draft plan so notified shall be thereby repealed.

(3) The repeal of any draft plan under this section shall not affect anything lawfully done or any right to compensation under this Ordinance which has accrued prior to such repeal.
(Enacted 1994)

SECT 7

Objections VerDate:06/30/1997

(1) Any person aggrieved by a draft plan notified in the Gazette under section 5(1) may, by a written statement of objection delivered to the Drainage Authority not later than the 60 days referred to in section 5(3), object to the draft plan.

(2) Any person aggrieved by an amended draft plan notified in the Gazette under section 5(5) may, by a written statement of objection delivered to the Drainage Authority not later than the 30 days referred to in that subsection, object to the amended draft plan.

(3) a written statement under subsection (1) or (2) shall set out-

(a) the nature of and reasons for the objection; and

(b) if the objection would be removed by an alteration of the draft plan, any alteration proposed.

(4) Upon receipt of a written statement of objection under subsection (1) or (2), the Drainage Authority may-

(a) reject the objection and shall inform the objector of such rejection; or

(b) propose alterations to the draft plan to meet the objection.

(5) If the Drainage Authority proposes to make any alterations to the draft plan pursuant to subsection (4), he shall-

(a) publish a notice of the proposal to alter the draft plan in the same manner as set out in section 5(1) and the notice shall-

(i) contain particulars of the proposed alterations; and

(ii) specify that any person aggrieved by the proposed alterations may, by a written statement of objection delivered to the Drainage Authority not later than 30 days from the date of first publication of the notice in the Gazette, object to the proposed alterations and the written statement shall set out the nature of and reasons for the objection; and

(b) give notice of the proposed alterations in writing to the objector by registered post and request the objector to inform the Drainage Authority in writing within 30 days from the date of the notice in a registered letter addressed to the Drainage Authority whether he agrees or objects to the proposed alterations.

(6) Any person aggrieved by the proposed alterations as contained in the notice published under subsection (5)(a) may, by a written statement of objection delivered to the Drainage Authority not later than 30 days from the date of first publication of the notice in the Gazette, object to the proposed alterations and the written statement shall set out the nature of and reasons for the objection.

(7) If no written objection to the proposed alterations is delivered to the Drainage Authority within the time specified in the notice under subsection (5)(a) and the original objector-

(a) does not inform the Drainage Authority under subsection (5)(b) whether he agrees or objects to the proposed alterations; or

(b) has informed the Drainage Authority under subsection (5)(b) that he objects to the proposed alterations, the Drainage Authority shall, save and except in the event that the original objector notifies the Drainage Authority in writing before the meeting as hereinafter provided that he agrees to the proposed alterations, consider the objection to the draft plan at a meeting of which the original objector is given at least 14 days' notice and he or his authorized representative may attend such meeting and if he or his authorized representative so desires shall be heard.

(8) If a written objection to the proposed alterations is delivered to the Drainage Authority within the time specified in the notice under subsection (5)(a), the Drainage Authority shall consider the objection to

the draft plan and the objection to the proposed alterations at a meeting of which the objectors in question are given at least 14 days' notice and all objectors or their authorized representatives may attend such meeting and if they or their representatives so desire shall be heard.

(9) Upon consideration of objection under subsection (7) or objections under subsection (8) the Drainage Authority may-

(a) reject the objection or objections; or

(b) make alterations to the draft plan to meet such objection or objections,
and in either case, the Drainage Authority shall inform the objectors of such decision.

(Enacted 1994)

SECT 8

Right of review VerDate:06/30/1997

(1) Any objector referred to in section 7 aggrieved by a decision of the Drainage Authority under section 7(4)(a) or (9) may, within 30 days of being notified of the decision of the Drainage Authority, apply in writing to the secretary to the Panel for a review of the Drainage Authority's decision and shall serve a copy of the application on the Drainage Authority.

(2) A written application for review under subsection (1) shall set out the nature of and the grounds for the application.

(3) Where the Drainage Authority receives a copy of an application under subsection (1), he shall, within 21 days of such receipt, send to the secretary to the Panel and the applicant his written representation concerning the application.

(4) Upon receipt of an application under subsection (1), the secretary to the Panel shall fix a time and place for the review, which shall be a date not more than 2 months after the receipt of the application and shall give at least 14 days' notice thereof to the applicant and the Drainage Authority.

(5) On a review under this section, hearing of which shall, subject to subsection (13), be held in public, the applicant or his authorized representative and the Drainage Authority or his authorized representative may attend before the Board and shall be given an opportunity to make representations.

(6) If the applicant or his authorized representative does not attend at the time and place fixed for the review, the Board may proceed with the review or adjourn it.

(7) On a review under this section, the Board may-

(a) confirm the decision of the Drainage Authority;

(b) direct the Drainage Authority to consider making alterations to the original draft plan or the draft plan as altered under section 7(9), as the case may be.

(8) Where the Board is disposed to direct the Drainage Authority to consider making alterations to the original draft plan or the draft plan as altered under section 7(9), as the case may be, and it appears to the Board that the alterations directed by the Board to be considered by the Drainage Authority affect any land, other than land which appears to the Board to be of concern to the applicant, the Board shall direct the Drainage Authority to publish a notice of any such proposed alterations in the same manner as described in section 7(5)(a).

(9) Any written objection received by the Drainage Authority within 30 days after the first publication of a notice in the Gazette under subsection (8) shall be considered at a meeting of the Board of which the applicant, the Drainage Authority and all objectors to the proposed alterations are given at least 14 days' notice.

(10) The applicant, the Drainage Authority and all objectors may attend the meeting referred to in subsection (9), and may be heard in person or by their authorized representatives.

(11) After hearing the applicant, the Drainage Authority and the objectors or their authorized representatives at the meeting held under subsection (10), the Board may-

(a) confirm the decision of the Drainage Authority;

(b) direct the Drainage Authority to consider making alterations to the original draft plan or the draft plan as altered under section 7(9), as the case may be.

(12) Where the Board confirms the decision of the Drainage Authority or directs the Drainage Authority to consider making alterations under subsection (7) or (11), the chairman of the Board shall-

(a) notify in writing the applicant and the objector (if any) of the Board's decision and the reasons for that decision;

(b) send to the Secretary a report stating-

(i) the Board's decision as respects the application for review and the objection (if any) duly made under subsection (9); and

(ii) the reasons for that decision; and

(c) send a copy of the report as referred to in paragraph (b) to the Drainage Authority.

(13) Where the Board hearing a review, after consulting the parties to the review, is satisfied that it is desirable to do so, it may by order

direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present.
(Enacted 1994)

SECT 9

Delivery of draft plan to Secretary VerDate:06/30/1997

(1) Where-

(a) at the expiry of the time for the making of objections under section 7, no objection has been delivered to the Drainage Authority; or

(b) an objection has been delivered to the Drainage Authority but-

(i) the Drainage Authority has rejected the objection under section 7(4) or (9); and

(ii) at the expiry of the time for applying for a review under section 8 no such application has been made,
the Drainage Authority shall prepare a finalised draft plan by incorporating into the draft plan any amendments made under section 4 and as soon as practicable deliver the finalised draft plan and a schedule of objections made under section 7(1) or (2) (if any) to the Secretary.

(2) Where-

(a) at the expiry of the time for the making of objections under section 7, an objection has been delivered under that section;

(b) the objector has, pursuant to section 7(5)(b), informed the Drainage Authority that he agrees to any proposed alterations; and

(c) no objection to the proposed alterations has been delivered to the Drainage Authority at the expiry of the time for the making of such objections specified under section 7(5)(a),
the Drainage Authority shall prepare a finalised draft plan-

(i) by incorporating any amendments made under section 4 into the draft plan; and

(ii) by altering the plan referred to in paragraph (i) in accordance with the alterations,
and as soon as practicable, deliver to the Secretary the finalised draft plan, a copy of the draft plan notified in the Gazette under section 5, a schedule of objections made under section 7(1) or (2), the letter of agreement referred to in paragraph (b), and a statement giving particulars of the alterations made to the draft plan notified in the Gazette under section 5 and the reasons therefor.

(3) Where the Drainage Authority has altered a draft plan to meet objections under section 7(9), and no application for a review has been

made under section 8 at the expiry of the time for the making of such applications, the Drainage Authority shall prepare a finalised draft plan-

(a) by incorporating any amendments made under section 4 into the draft plan; and

(b) by altering the plan referred to in paragraph (a) in accordance with the alterations,
and as soon as practicable deliver to the Secretary-

(i) the finalised draft plan;

(ii) a copy of the draft plan notified in the Gazette under section 5;

(iii) a schedule of objections made under section 7(1) or (2) and (5)(a); and

(iv) a statement giving particulars of alterations made to the draft plan notified in the Gazette under section 5 and the reasons therefor.

(4) Where the Board has given a direction to consider making alterations under section 8(7)(b) or (11)(b), the Drainage Authority shall give consideration to such direction and thereafter he shall prepare a finalised draft plan-

(a) by incorporating any amendments made under section 4 into the draft plan; and

(b) by altering the draft plan referred to in paragraph (a) in accordance with the alterations proposed by the Drainage Authority and the Board as the Drainage Authority thinks fit,
and as soon as practicable deliver to the Secretary-

(i) a copy of the draft plan notified in the Gazette under section 5;

(ii) the finalised draft plan;

(iii) a copy of the Board's direction;

(iv) particulars of any alterations made to comply with the direction or the reasons for refusing to make alterations as directed by the Board, as the case may be;

(v) a statement giving particulars of any alterations made to the draft plan notified in the Gazette under section 5 otherwise than in consequence of a direction by the Board and the reasons for those alterations; and

(vi) a schedule of objections made under section 7(1) or (2) and (5)(a).

(5) Where the Drainage Authority rejects an objection under section 7(4) or (9) then upon the confirmation of such rejection given by the Board under section 8(7) or (11), the Drainage Authority shall prepare a finalised draft plan-

(a) by incorporating any amendments made under section 4 into the draft plan; and

(b) by altering the plan referred to in paragraph (a) in accordance with any alterations made by the Drainage Authority, and as soon as practicable deliver to the Secretary-

(i) a copy of the draft plan notified in the Gazette under section 5;

(ii) the finalised draft plan;

(iii) a copy of the Board's decision; and

(iv) a statement giving particulars of alterations (if any) made to the draft plan notified in the Gazette under section 5 and the reasons for those alterations.

(Enacted 1994)

SECT 10

Submission of draft plan to Chief Executive in Council VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

Upon receipt of a finalised draft plan delivered by the Drainage Authority under section 9, the Secretary shall submit the finalised draft plan to the Chief Executive in Council for approval, and shall submit therewith- (Amended 61 of 1999 s. 3)

(a) a copy of the draft plan notified in the Gazette under section 5;

(b) a copy of the draft plan showing the amendments as referred to in section 4;

(c) a schedule of objections (if any) made under section 7(1) or (2) and (5)(a);

(d) a schedule of the alterations (if any) made by the Drainage Authority with a view to meeting such objections;

(e) the report (if any) delivered by the Board under section 8(12);

(f) a schedule of the alterations (if any) made by the Drainage Authority in consequence of a direction given under section 8(7) or (11); and

(g) any proposals by the Secretary to meet the objections.
(Enacted 1994)

SECT 11

Powers of Chief Executive in Council upon submission VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) Upon submission of the finalised draft plan under section 10, the Chief Executive in Council may-

(a) approve it;

(b) refuse to approve it; or

(c) refer it to the Secretary for further consideration and amendment.

(2) The Chief Executive in Council may by notice in the Gazette correct any omission from or error in an approved plan.

(3) On such approval being given, the Secretary shall, as soon as practicable, cause to be published in the Gazette in Chinese and English and in one issue of 2 Chinese language newspapers and one English language newspaper a notice-

(a) of such approval; and

(b) giving particulars of the place and times at which a copy of the approved plan may be inspected by the public.

(Enacted 1994. Amended 61 of 1999 s. 3)

SECT 12

Effect of publication of notice under section 11(3) VerDate:06/30/1997

Upon the publication of a notice in the Gazette by the Secretary under section 11(3), this Ordinance shall apply with respect to the Drainage Authority Area and main watercourses designated in the approved plan and the draft plan notified under section 5 is thereby repealed provided that such repeal shall not affect anything lawfully done or any right to compensation under this Ordinance which has accrued prior to such repeal.
(Enacted 1994)

SECT 13

Refusal to approve plan VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) If the Chief Executive in Council refuses to approve a finalised draft plan under section 11(1)(b), the Secretary shall, as soon as practicable, cause to be published in the Gazette in Chinese and English and in one issue of 2 Chinese language newspapers and one English language newspaper a notice of such refusal; and any such refusal shall be without prejudice to the preparation of a new draft plan in respect of the same Drainage Authority Area and the submission of the same to the Chief Executive in Council under this Ordinance. (Amended 61 of 1999 s. 3)

(2) Upon publication of a notice of refusal under subsection (1), the draft plan notified in the Gazette under section 5 is thereby repealed provided that such repeal shall not affect anything lawfully done or any right to compensation under this Ordinance which has accrued prior to such repeal.

(Enacted 1994)

SECT 14

Reference to amend a plan under section 11(1)(c) VerDate:06/30/1997

(1) Upon a reference under section 11(1)(c), the Secretary shall, as soon as practicable, cause to be published in the Gazette in Chinese and English and in one issue of 2 Chinese language newspapers and one English language newspaper a notice of such reference.

(2) Upon the publication of a notice in the Gazette under subsection (1), this Ordinance shall continue to apply with respect to the Drainage Authority Area shown and the main watercourses designated in the draft plan notified in the Gazette under section 5 until the publication of a notice of the draft Drainage Authority Area plan prepared under subsection (4).

(3) Upon a reference under section 11(1)(c), the Secretary may direct the Drainage Authority to prepare a new draft Drainage Authority Area plan incorporating such amendments as the Secretary thinks fit to replace the plan referred, or a plan showing such amendments as the Secretary thinks fit.

(4) Upon the direction given under subsection (3), the Drainage Authority shall prepare a new draft Drainage Authority Area plan or a plan showing such amendments and publish it in accordance with section 5(1) or

(5), as the case may be, and such plan shall be deposited in accordance with section 5(7).

(Enacted 1994)

SECT 15

Deposit of copies of approved plan VerDate:06/30/1997

A copy of the approved plan, certified as such by the Secretary, shall be deposited in the Land Registry and shall be available for inspection by any person without payment of any fee.
(Enacted 1994)

SECT 16

Availability of Drainage Authority Area plans VerDate:06/30/1997

The Drainage Authority shall, after a finalised draft plan has been approved under section 11(1)(a), secure that printed copies of the approved plan are available at his office, on payment of such fee as he may determine, for purchase.
(Enacted 1994)

SECT 17

Revocation and replacement of approved plans VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) The Chief Executive in Council may- (Amended 61 of 1999 s. 3)

(a) revoke in whole or in part any approved plan; or

(b) refer any approved plan to the Secretary for replacement by a new draft plan.

(2) Notification of any revocation or reference under subsection

(1) shall be published as soon as practicable in the Gazette and in one issue of 2 Chinese language newspapers and one English language newspaper, and noted by the Land Registrar on the copy of the approved plan deposited under section 15.

(3) Upon any reference under subsection (1)(b), a new draft plan intended to replace the approved plan referred to shall be prepared, exhibited, submitted and deposited in accordance with this Ordinance in like manner as the plan it is intended to replace.

(4) Upon publication of a notice of revocation, the approved plan is thereby repealed provided that such repeal shall not affect anything lawfully done or any right to compensation under this Ordinance which has accrued prior to such repeal.

(Enacted 1994)

SECT 18

Power to execute drainage works VerDate:06/30/1997

PART III

POWERS OF THE DRAINAGE AUTHORITY

(1) Where the Drainage Authority is of the opinion that the flow of any main watercourse or the ability of any main watercourse to discharge storm and surface water can be maintained or enhanced by the execution of any drainage works he may, subject to section 22, execute such drainage works.

(2) Before executing any drainage works under this section, the Drainage Authority shall serve on the occupier and owner of the land upon or within which the drainage works are to be executed a notice-

(a) specifying the drainage works proposed to be executed;

(b) specifying the time within which the drainage works are to be completed; and

(c) stating that such occupier or owner may, within 21 days of the service of the notice, send to the Drainage Authority a written statement of objection to the proposed drainage works on any or all of the following grounds-

(i) that the extent of land to be affected by the proposed drainage works is excessive;

(ii) that the proposed drainage works or part thereof are unnecessary; or

(iii) that the period of time specified for the completion of the proposed drainage works is excessive.

(3) If no objection is duly made under subsection (2), the Drainage Authority may proceed with the execution of the drainage works.

(4) Upon receipt of a written statement of objection under subsection (2), the Drainage Authority shall consider the objection and decide whether-

(a) to proceed with the execution of the drainage works; or

(b) to propose to make alterations to the proposed drainage works to meet the objection.

(5) Where the Drainage Authority proposes to make any alterations to the proposed drainage works pursuant to subsection (4)(b), he shall-

(a) serve on-

(i) the objector; and

(ii) any other person who in the Drainage Authority's opinion may be affected by such alterations,

a notice specifying the proposed alterations and stating that representations in writing concerning the proposed alterations may be made to the Drainage Authority within 14 days of the service of the notice; and

(b) consider any representation made under paragraph (a) before he decides whether to proceed with the drainage works with or without alterations.

(6) Where the Drainage Authority decides to proceed with the execution of the drainage works with or without alterations under subsection (4) or (5), as the case may be, he shall notify the objector and each of the persons notified under subsection (5)(a)(ii) of-

(a) the Drainage Authority's decision; and

(b) their right of appeal under section 28.

(7) In cases of emergency the Drainage Authority may execute such drainage works as may appear to him to be necessary without notice to the occupier or owner referred to in subsection (2) and the decision of the Drainage Authority that the particular case is one of emergency shall be final and binding on all persons.

(8) In cases of emergency the Drainage Authority shall, as soon as practicable after the commencement of any drainage works pursuant to subsection (7), serve a notice on the occupier and owner of any land upon or within which the drainage works are executed informing them of their right to claim compensation under section 36.

(9) Any drainage works may be executed by an agent of the Drainage Authority, or any independent contractor employed and authorized for the purpose by the Drainage Authority.

(10) A person shall not, without lawful excuse, interfere with, remove or damage any drainage works.
(Enacted 1994)

SECT 19

Temporary works VerDate:06/30/1997

(1) In addition to executing any drainage works under section 18, the Drainage Authority, his agent, or any independent contractor employed and authorized for the purpose by the Drainage Authority may, subject to section 22, construct, lay, erect, remove and maintain any temporary works, that is to say, any dams, flumes, diversion channels, culverts, fences, stores, offices or any other works or things required for the purpose of or connected with such drainage works.

(2) Where the Drainage Authority, his agent, or any independent contractor employed and authorized for the purpose by the Drainage Authority intends to execute or maintain such temporary works as are

authorized under subsection (1), the Drainage Authority shall give at least 7 days' notice of such intention to the occupier and owner of any land affected by the proposed temporary works and inform such occupier and owner of their right to compensation under section 36 unless it appears to the Drainage Authority that an emergency exists which necessitates immediate temporary works and the decision of the Drainage Authority that the particular case is one of emergency shall be final and binding on all persons.

(3) In cases of emergency the Drainage Authority shall, as soon as practicable after the commencement of the temporary works, serve a notice on the occupier and owner of any land upon or within which the works are executed informing them of their right to claim compensation under section 36.

(4) A person shall not, without lawful excuse, interfere with, remove or damage any temporary works.
(Enacted 1994)

SECT 20

Power to require removal of obstruction from main watercourse VerDate:06/30/1997

(1) Where in the opinion of the Drainage Authority, obstructions block any main watercourse or impede its free flow or are likely to cause damage to any property or life in a Drainage Authority Area, the Drainage Authority may by notice require-

(a) the occupier and owner of the land on which the obstructions are situated; or

(b) any person causing the obstructions,
to remove such obstructions within such time as may be specified in the notice.

(2) If an obstruction in respect of which a notice has been served under subsection (1) is not removed within the time specified in the notice, the Drainage Authority, his agent, or any independent contractor employed and authorized for the purpose by the Drainage Authority may, subject to section 22, remove the obstruction and the Drainage Authority may recover the expenses, including supervision charges, reasonably incurred in doing so from the person on whom the notice has been served and in the case of the occupier and owner who have both been served with the notice under subsection (1)(a), they shall be jointly and severally liable to the Drainage Authority for such expenses.

(3) In cases of emergency the Drainage Authority, his agent, or any independent contractor employed and authorized for the purpose by the Drainage Authority may execute such works to remove any obstruction as may appear to him to be necessary without notice to the occupier, owner or person referred to in subsection (1) and the Drainage Authority may recover the expenses, including supervision charges, reasonably incurred

in doing so from any such occupier, owner or person and the decision of the Drainage Authority that the particular case is one of emergency shall be final and binding on all persons.
(Enacted 1994)

SECT 21

Power to require removal of structures from main watercourse VerDate:07/01/1997

Adaptation amendments retroactively made - see 29 of 1998 s. 105

(1) Where in the opinion of the Drainage Authority, a structure that has been or is being erected or set up in, over or under any main watercourse blocks that main watercourse or impedes its free flow or is likely to cause damage to any property or life in a Drainage Authority Area, the Drainage Authority may by notice require-

(a) the occupier and owner of the land on which the structure is situated; or

(b) the person having control or possession or causing the erection or setting up of the structure,
to remove it within such time as may be specified in the notice.

(2) If a structure in respect of which a notice is served under subsection (1) is not removed within the time specified in the notice, the Drainage Authority, his agent or any independent contractor employed and authorized for the purpose by the Drainage Authority may, subject to section 22, remove the structure and the Drainage Authority may recover the expenses, including supervision charges, reasonably incurred in doing so from the person on whom the notice has been served and in the case of the occupier and owner who have both been served with the notice under subsection (1)(a), they shall be jointly and severally liable to the Drainage Authority for such expenses and such expenses may be waived by the Drainage Authority if the structure was erected, or set up, and maintained without the contravention of any Ordinance, Government lease or other instrument under which the land, where the structure was erected, or set up, and maintained, is held. (Amended 29 of 1998 s. 105)

(3) For the purpose of this section, "structure" means a bridge, fence, barrier, pillar, post, culvert, pipe crossing, pier, wall, stair, shed or other similar structure.
(Enacted 1994)

SECT 22

Power of entry for purpose of executing works, etc. VerDate:06/30/1997

(1) Where the Drainage Authority has a power or a right under this Part or Part IV-

- (a) to execute any drainage works;
- (b) to execute any temporary works; or

(c) to remove any obstruction or structure, then if for the purpose of exercising that power or that right it is necessary for a person to enter on any land, a person duly authorized in writing by the Drainage Authority may at any reasonable time enter on any land within a Drainage Authority Area for that purpose.

(2) The power to enter on land under subsection (1) includes-

(a) the power to authorize the entry or passage of such other persons, and such vehicles, plant, apparatus, machinery, supplies or materials as may be necessary;

(b) the power to carry out works for the purpose of facilitating their passage;

(c) the power to place and leave on or in the land and to remove therefrom such vehicles, plant, apparatus, machinery, supplies or materials.

(3) No person shall, in the exercise of any power of entry under this section, enter on any land which is occupied without giving to the occupier at least 7 days' notice of his intention to do so unless it appears to the Drainage Authority that an emergency exists which necessitates immediate entry and the decision of the Drainage Authority that the particular case is one of emergency shall be final and binding on all persons.

(4) A person shall not, in the exercise of a power conferred by subsection (2)(c), place or leave on or in any land or remove therefrom any vehicles, plant, apparatus, machinery, supplies or materials unless notice of his intention to do so has been included in the notice required by subsection (3).

(5) A person shall not execute any works authorized by subsection

(2)(b) unless a notice of his intention to do so has been included in the notice required by subsection (3).

(6) Any person who, in the exercise of any power of entry authorized under this section, enters on any land shall, if required to do so by any person, produce evidence of such authority.

(7) Nothing in this section shall be construed to authorize the Drainage Authority or any person to enter domestic premises.
(Enacted 1994)

SECT 23

Power of entry for purpose of inspection, etc. VerDate:06/30/1997

(1) A person duly authorized in writing by the Drainage Authority may at any reasonable time enter on any land for the purpose of-

(a) inspecting any main watercourse;

(b) preparing any draft Drainage Authority Area plans; and

(c) surveying that or any other land in connection with the exercise by the Drainage Authority of any of his powers or rights under this Ordinance.

(2) Section 22(2), (3), (4), (5) and (6) has effect in relation to a person authorized under this section to enter on any land as it has effect in relation to a person authorized under section 22 to enter on any land.

(3) Nothing in this section shall be construed to authorize the Drainage Authority or any person to enter domestic premises.
(Enacted 1994)

SECT 24

Disposal of spoil VerDate:06/30/1997

(1) The Drainage Authority, his agent or any independent contractor employed and authorized by the Drainage Authority for the purpose of executing any drainage works or works under this Part or Part IV may, without making payment for it, appropriate and dispose of any matter removed in the course of the execution of such drainage works or works provided that if the Drainage Authority is of the opinion that there may be a claim for such matter, the Drainage Authority may take possession of such matter.

(2) The Drainage Authority shall post, on or near the land where he has taken possession of any matter under subsection (1), a notice setting out details of such matter and shall, in such notice, call upon any claimant to submit his claim to the matter within such time as is specified in the notice, being not less than 14 days after the day on which the notice was posted.

(3) The Drainage Authority may refuse to return any matter of which he has taken possession under subsection (1) unless he is satisfied that the claimant is the owner of the matter.

(4) The Drainage Authority may recover from a claimant to whom any matter, of which the Drainage Authority has taken possession under subsection (1), is returned any expenses incurred by him in the removal and storage of such matter.

(5) Any matter of which the Drainage Authority has taken possession

under subsection (1), which is not claimed within the time referred to in subsection (2) or which the Drainage Authority refuses to return under subsection (3) to any person, shall become the property of the Drainage Authority free from the rights of any person and may be disposed of by the Drainage Authority.
(Enacted 1994)

SECT 25

Delegation by the Drainage Authority VerDate:06/30/1997

(1) The Drainage Authority may delegate in writing to any public officer or class of public officer the exercise or performance of any of the powers, duties or functions conferred or imposed upon him under this Ordinance.

(2) Where a delegation is made under subsection (1), the delegate may, on such delegation taking effect, exercise or perform the delegated powers, duties or functions in the same manner and shall be subject to the same liabilities as if those powers, duties or functions were exercised or performed by the Drainage Authority.
(Enacted 1994)

SECT 26

Obstructions in watercourses VerDate:06/30/1997

PART IV

CONTROL OF OBSTRUCTIONS, ETC. IN, OVER AND UNDER MAIN WATERCOURSES

(1) No person shall, without the consent in writing of the Drainage Authority, carry out any engineering work or filling or erect any dam, weir, culvert or other like obstruction in any main watercourse impeding its flow.

(2) An application shall be made to the Drainage Authority for his consent under this section and if the Drainage Authority fails within 4 months after the receipt of the application to notify the applicant in writing of his determination with respect to the application, the Drainage Authority shall be deemed to have consented thereto.

(3) If the Drainage Authority refuses to give his consent required under this section, the Drainage Authority shall give the reasons for such refusal to the applicant.

(4) If any person carries out any work or erects any obstruction in contravention of this section, the Drainage Authority, his agent, or any

independent contractor employed and authorized by the Drainage Authority for the purpose may remove, alter or pull down the work or obstruction and recover from that person the expenses, including supervision charges, reasonably incurred in doing so.

(5) A consent required under this section may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out.

(6) Any consent given or deemed to have been given by the Drainage Authority under this section shall not entitle any person or any works or proposed works not to comply with the provisions of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127), the Buildings Ordinance (Cap 123), the Town Planning Ordinance (Cap 131) or of any other enactment. (Enacted 1994)

SECT 27

Structures in watercourses, etc. VerDate:06/30/1997

(1) No person shall erect any structure in, over or under any main watercourse except with the consent of and in accordance with plans approved by the Drainage Authority, and no person shall, without the consent of the Drainage Authority, carry out any work of repair on any structure in, over or under such a watercourse if the repair work is likely to affect the flow of water in the watercourse.

(2) No person shall erect any structure designed to contain or direct water from any main watercourse within a Drainage Authority Area except with the consent of and in accordance with plans approved by the Drainage Authority.

(3) An application shall be made to the Drainage Authority for his consent or approval under this section and a consent or approval required under this section may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out, and any such consent or approval shall, if neither given nor refused within 4 months after application therefor is made, be deemed to have been given.

(4) If the Drainage Authority refuses to give his consent or approval required under this section, the Drainage Authority shall give the reasons for such refusal to the applicant.

(5) If any person carries out any work in contravention of this section, the Drainage Authority, his agent, or any independent contractor employed and authorized for the purpose by the Drainage Authority may remove, alter or pull down the work and recover from that person the expenses, including supervision charges, reasonably incurred in doing so.

(6) Any consent or approval given or deemed to have been given by the Drainage Authority under this section shall not entitle any person or

any works or proposed works not to comply with the provisions of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127), the Buildings Ordinance (Cap 123), the Town Planning Ordinance (Cap 131) or of any other enactment.

(Enacted 1994)

SECT 28

Appeals VerDate:07/01/1997

Amendments retroactively made - see 25 of 1998 s. 2

PART V

APPEALS

(1) Any person aggrieved by a decision, requirement or determination of the Drainage Authority under section 18, 20(1), 21(1), 26 or 27 may appeal to the Board by sending a notice of appeal to the secretary of the Panel within 21 days after notification of the Drainage Authority's decision, requirement or determination.

(2) The grounds for an appeal against the Drainage Authority's decision under section 18 shall be confined to the grounds for making an objection under section 18(2).

(3) Upon receipt of a notice under subsection (1), the secretary to the Panel shall fix a time and place for the hearing of the appeal, which shall be a date not more than 2 months of the receipt of such notice and shall give at least 14 days' notice thereof to the appellant and the Drainage Authority.

(4) The appellant and the Drainage Authority may appear before the Board in person, where applicable, or by an authorized representative.

(5) If a person mentioned in subsection (4) fails to appear on the date set for the hearing of an appeal, the Board may adjourn the hearing or proceed to hear any other party entitled to appear and may make its decision without hearing the absent party.

(6) At the completion of the hearing of an appeal, which, subject to subsection (9), shall be held in public, against the Drainage Authority's decision under section 18 the Board may-

(a) confirm the decision appealed against; or

(b) order the Drainage Authority to make such alterations in connection with the proposed works as the Board thinks fit.

(7) At the completion of the hearing of any appeal, which, subject to subsection (9), shall be held in public, against the Drainage Authority's requirement or determination under section 20(1), 21(1), 26 or 27, the Board may confirm, reverse or vary the requirement or determination appealed against.

(8) Where a notice of appeal under subsection (1) has been received by the secretary to the Panel, or where a notice of appeal under section 33(2) has been received by the Court of First Instance, the Drainage Authority shall not execute drainage works under section 18(1), (3) or

(4), or exercise his power under section 20(1) or (2) or 21(1) or (2) within or upon the land to which the notice of appeal refers until after the appeal is determined by the Board or the Court of First Instance, at or after which time the Drainage Authority shall act in accordance with the decision of the Board or the Court of First Instance, as the case may be. (Amended 25 of 1998 s. 2)

(9) Where the Board hearing an appeal, after consulting the parties to the appeal, is satisfied that it is desirable to do so, it may by order direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present.

SECT 29

Appointment of Drainage Appeal Board Panel VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) The Chief Executive may appoint a panel of persons to be the Drainage Appeal Board Panel whom he considers suitable to sit as members of a Drainage Appeal Board.

(2) The Chief Executive shall not appoint a public officer to the Panel.

(3) The Chief Executive may appoint a member of the Panel as Chairman of the Panel and may appoint another such member as Deputy Chairman of the Panel as he thinks fit.

(4) The Chief Executive may appoint a public officer to be the secretary to the Panel.

(5) Members of the Panel shall be appointed for 3 years but shall be eligible for reappointment.

(6) Members of the Panel may resign at any time by notice in writing given to the Chief Executive.
(Enacted 1994. Amended 61 of 1999 s. 3)

SECT 30

Constitution of a Drainage Appeal Board VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) On receipt of an application for a review under section 8(1) or a notice of appeal under section 28(1), the secretary to the Panel shall

notify the Chairman of the Panel who, subject to subsections (2), (3), (6) and (7), shall nominate a Board.

(2) The Chairman of the Panel shall not nominate a Board to review any decision of the Drainage Authority in question or hear an appeal or act as its chairman if he has a direct or indirect interest in the outcome of the review or the appeal.

(3) Subject to subsection (7), the Deputy Chairman of the Panel shall, in the absence of the Chairman of the Panel or if the Chairman of the Panel has a direct or indirect interest in the outcome of a review or an appeal, nominate a Board to proceed with the review or to hear the appeal.

(4) Subsection (2) shall apply to the Deputy Chairman of the Panel as it applies to the Chairman of the Panel.

(5) Subject to subsections (2), (4), (6) and (7), the Chairman or Deputy Chairman of the Panel shall act as chairman of a Board.

(6) If the Chairman and Deputy Chairman of the Panel have a direct or indirect interest in the outcome of a review or an appeal, the Chief Executive may appoint another member of the Panel, who does not have a direct or indirect interest in the review or the appeal, to nominate a Board to proceed with the review or to hear the appeal and to act as chairman of the Board. (Amended 61 of 1999 s. 3)

(7) If the Chairman and Deputy Chairman of the Panel are precluded by illness or absence from Hong Kong from exercising their functions, the Chief Executive may appoint another member of the Panel to act as chairman of the Board. (Amended 61 of 1999 s. 3)

(8) A solicitor or barrister may be present at any proceedings of a Board to advise the chairman on any matter of law.

(9) A member of a Board, other than a person who is in full-time employment in any office of remuneration under the Government, may be remunerated at such rate as the Financial Secretary may determine from time to time or in any particular case. (Amended 61 of 1999 s. 3)
(Enacted 1994)

SECT 31

Exercise of Drainage Appeal Board jurisdiction VerDate:06/30/1997

(1) At least 3 members, of whom one shall be the chairman of the Board and one shall be a registered professional engineer in the civil, geotechnical or structural engineering discipline, shall be present-

(a) in every proceeding before the Board relating to a review and to determine the review; or

(b) to hear and determine an appeal.

(2) Every question before the Board shall be determined by the opinion of the majority of the chairman of the Board and the members present in the review or the appeal; in the event of an equality of votes the chairman of the Board shall have a casting vote.

(Enacted 1994)

SECT 32

Powers of Drainage Appeal Board VerDate:07/01/1997

Amendments retroactively made - see 25 of 1998 s. 2

(1) A Board may, for the purpose of proceedings before it-

(a) receive and consider any material, whether, by way of oral evidence, written statements, documents or otherwise, whether or not such material would be admissible in evidence in civil or criminal proceedings;

(b) by notice in writing signed by the chairman of the Board, require any person to appear before it at any proceedings and to give evidence and produce documents;

(c) administer oaths and affirmations;

(d) examine on oath or affirmation any person attending before it at any proceedings;

(e) order the inspection of any land within a Drainage Authority Area by the Drainage Authority and authorize the entry on and viewing of such land.

(2) The chairman and members of the Board may, for the purpose of proceedings before the Board, enter, inspect and view any land within a Drainage Authority Area.

(3) A witness before the Board shall be entitled to the same immunities and privileges as if he were a witness in proceedings before the Court of First Instance. (Amended 25 of 1998 s. 2)

(4) Any notice or order of a Board shall be issued under the hand of the chairman of the Board.

- SECT 33

Appeal to Court of First Instance on point of law VerDate:07/01/1997

Amendments retroactively made - see 25 of 1998 s. 2

(1) A decision of the Board on an appeal under section 28 shall be final:

Provided that any person aggrieved by the decision as being erroneous in

point of law may appeal to the Court of First Instance, and upon any such appeal the Court of First Instance may confirm, reverse or vary the decision of the Board.

(2) Notice of any such appeal shall be given within one month after notification of the decision of the Board.

(3) Save as otherwise provided in this Ordinance, the practice and procedure in relation to any such appeal shall be subject to any rules of court.

(4) The decision of the Court of First Instance shall be final.
(Enacted 1994. Amended 25 of 1998 s. 2)

SECT 34

No recovery of money except under this Ordinance VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

PART VI

COMPENSATION

No person shall have any right against the Government or any other person to recover any money in respect of any works executed or anything done by the Drainage Authority and authorized under this Ordinance except to the extent of the rights to compensation provided for in section 36.

(Enacted 1994. Amended 61 of 1999 s. 3)

SECT 35

No right to compel or restrain VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

No person shall have any right against the Government, the Drainage Authority, his agent or independent contractor employed and authorized by him, to compel or restrain anything authorized under this Ordinance.

(Enacted 1994. Amended 61 of 1999 s. 3)

SECT 36

Compensation VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) The compensation referred to in section 34 is the right to recover from the Government for the matters set out in column 2 of Part II of the Schedule a sum assessed on the basis specified opposite thereto in column 3 thereof and with regard to the provisions of Part I of the Schedule, subject to- (Amended 61 of 1999 s. 3)

(a) the claim being served on the Drainage Authority within the

appropriate period specified in column 5 of Part II of the Schedule; and

(b) the other provisions of this Ordinance.

(2) Every person who is described in column 4 of Part II of the Schedule shall have the right to recover compensation for the matters set out opposite thereto in column 2 to the extent suffered or incurred by him as assessed under this Ordinance.

(Enacted 1994)

SECT 37

Resumption of land on application VerDate:06/16/2000

(1) If any land has been rendered incapable of reasonably beneficial use as a result of the execution by the Drainage Authority of any works authorized under this Ordinance, the owner of the land affected may, within the expiration of 1 year from the date of the completion of the works, apply to the Chief Executive in Council for an order for the Government to resume so much of his land as has been so rendered incapable of reasonably beneficial use. (Amended 29 of 1998 s. 105; 61 of 1999 s. 3)

(2) The Chief Executive in Council may, if he is of the opinion that the land or so much of it has been so rendered incapable of reasonably beneficial use, make an order referred to in subsection (1) and the order shall specify the period of notice referred to in subsection

(3). (Amended 61 of 1999 s. 3)

(3) Where the Chief Executive in Council makes an order under subsection (2), the Secretary- (Amended 61 of 1999 s. 3)

(a) shall publish once in the Gazette and at least in 2 Chinese language newspapers and one English language newspaper a notice-

(i) stating that an order has been made under subsection (2) and the period of notice specified in the order;

(ii) describing the land ordered to be resumed; and

(iii) stating where and when a plan of the land may be inspected;
and

(b) shall, not later than the date on which the notice is first published in the Gazette in pursuance of paragraph (a), serve a copy of the notice on any person appearing to the Secretary to have an interest in the land ordered to be resumed.

(4) The resumption of land described in the order shall be effective upon the expiration of the period of notice as specified in the order.

(5) Upon the expiration of the period of notice specified in the order, the land shall-

(a) where it is an undivided share in land, vest in The Financial Secretary Incorporated together with such rights to the use and occupation of any building or part thereof as may be appurtenant to the ownership of that share; and

(b) in all other cases, revert to the Government, (Amended 29 of 1998 s. 105)

but in either case the land shall vest or revert without any conveyance and free of all mortgages, charges, claims, estates, easements, rights or interests of any kind in favour of any person.

(6) The ownership of any apparatus belonging to an owner or supplier of gas, electricity, water or telecommunications services and situated in, under or over any land shall not be altered by reason only of the vesting or reversion of that land under subsection (5). (Amended 36 of 2000 s. 28)

(7) The Secretary shall, as soon as practicable after the land has vested in The Financial Secretary Incorporated or reverted to the Government under subsection (5), cause- (Amended 29 of 1998 s. 105)

(a) such vesting or reversion to be noted in the register of the land kept in the Land Registry;

(b) to be published in the Gazette in Chinese and English and in one issue of a Chinese language newspaper and an English language newspaper a notice-

(i) describing the land resumed;

(ii) stating where and when a plan of the land may be inspected;

(iii) stating that any person entitled to compensation under this Ordinance may serve a written claim upon the Drainage Authority; and

(c) a copy of such notice in Chinese and English to be affixed in a prominent position on or near the land resumed.

(8) Upon the vesting under subsection (5)(a) of an undivided share in land in The Financial Secretary Incorporated such share, together with any part of a building the exclusive use and occupation of which is appurtenant to the ownership of such share, shall be deemed to be unleased land for the purposes of section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap 28). (Amended 29 of 1998 s. 86) (Enacted 1994)

SECT 38

Claims out of time VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

(1) Subject to subsection (2), if a claim is not served on the Drainage Authority before the expiration of the period specified in column 5 of Part II of the Schedule in respect of that matter, the right to claim compensation therefor shall be barred.

(2) The period referred to in subsection (1) may, upon application made to the Lands Tribunal either before or after the expiration of that period, be extended in accordance with this section.

(3) Notice of an application under subsection (2) shall be given to the Drainage Authority by the applicant.

(4) The Lands Tribunal may extend the period within which a claim shall be served upon the Drainage Authority if it considers that the delay in serving the claim was occasioned by mistake of fact or mistake of any matter of law (other than the matter contained in subsection (1)) or by any other reasonable cause and that the Government is not materially prejudiced in the conduct of its case or otherwise by the delay. (Amended 61 of 1999 s. 3)

(5) An extension may be granted by the Lands Tribunal under subsection (4) with or without conditions for such period as it thinks fit but not in any case exceeding 6 years from the time when the right to compensation first arose.
(Enacted 1994)

SECT 39

Claims procedure VerDate:06/30/1997

(1) Any person claiming under section 36 shall serve on the Drainage Authority a claim in writing stating-

(a) the name of the claimant, and his address for service of notices;

(b) a full description of the land to which the claim relates including any covenants, easements, rights or restrictions affecting the land;

(c) the nature of the claimant's interest in the land including, in the case of a sublessee or subtenant, his landlord's name and address and details of the sublease or subtenancy;

(d) details of any mortgage, including the principal still owing and the name and address of the mortgagee;

(e) if the claimant has let the land or any part thereof, the name and address of each tenant and details of his lease or tenancy;

(f) particulars of the claim showing-

- (i) the amount of the claim;
 - (ii) under which item of Part II of the Schedule the claim is made;
- and
- (iii) how the amount claimed under each item is calculated.
- (2) The Drainage Authority may by notice in writing to the claimant request him to furnish further particulars of and in support of his claim and any item thereof.
- (3) If the Drainage Authority and the claimant do not settle the claim or any part thereof by agreement within 7 months of the service of the claim under subsection (1), either party may refer the claim or the part thereof as is still in dispute with particulars thereof to the Lands Tribunal.
(Enacted 1994)

SECT 40
Jurisdiction of Lands Tribunal VerDate:06/30/1997

- (1) The Lands Tribunal shall have jurisdiction to hear and determine in accordance with this Ordinance all claims for compensation which may be referred to it under section 39(3) and applications provided for by section 38(2).
- (2) The Lands Tribunal shall also have jurisdiction to award compensation or any part thereof to a claimant if at the time of the award the Lands Tribunal has no notice or intimation of any dispute as to his entitlement; but the making of any such award shall not affect the entitlement to receive compensation under this Ordinance of any other person who may thereafter be held by a court of competent jurisdiction to have a better title to the compensation or any part thereof than the person to whom it was awarded.
- (3) An award of compensation under subsection (2) shall not in any way affect the entitlement of a mortgagee to be paid compensation in accordance with section 41.
(Enacted 1994)

SECT 41
Payment to mortgagees VerDate:07/01/1997

Amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

- (1) Subject to subsection (2), a mortgagee of land which vests in The Financial Secretary Incorporated or reverts to the Government under this Ordinance shall, in so far as he has priority as against any other

mortgagee, be entitled to be paid so much of the compensation as is required to discharge his mortgage debt including any interest thereon. (Amended 29 of 1998 s. 105)

(2) If compensation is payable under this Ordinance otherwise than for land resumed or if the land to which the compensation relates is part only of the mortgage security a mortgagee shall, in so far as he has priority as against any other mortgagee, be entitled to be paid so much of the compensation as is necessary to reduce his mortgage debt to an amount which is adequately secured by the land or the remaining land as the case may be.

(3) The payment of compensation, as required by subsections (1) and (2), shall be made in accordance with the written agreement of the claimant and every mortgagee of the land or failing such agreement in accordance with an order of the Court of First Instance under subsection

(4). (Amended 25 of 1998 s. 2)

(4) The claimant or any mortgagee may apply to the Court of First Instance for an order as to the payment of unpaid compensation and on any such application the Court of First Instance may make such order as it thinks just and equitable having regard to the requirements of subsections

(1) and (2). (Amended 25 of 1998 s. 2)

SECT 42

Interest VerDate:04/12/2001

For the validation of interest payments and application provisions relating to the amendments made by 6 of 2001, see section 13 of 6 of 2001.

(1) The Lands Tribunal may direct that interest be paid on compensation (but not on costs)- (Amended 6 of 2001 s. 10)

(a) in the case of compensation payable under item 1 of Part II of the Schedule, as if the claim were made under the Lands Resumption Ordinance (Cap 124) for land resumed under that Ordinance; and (Amended 29 of 1998 s. 87)

(b) in any other case, from such date and for such period as it thinks fit and, subject to subsection (2), at such rate as it may fix. (Amended 6 of 2001 s. 10)

(2) The rate of interest fixed under subsection (1)(b)-

(a) in respect of a working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on that day; and

(b) in respect of a non-working day must not be lower than the lowest of the interest rates paid on deposits at 24 hours' call by

note-issuing banks at the close of business on the last working day before that day. (Added 6 of 2001 s. 10)

(3) In this section-

"non-working day" (é□žã·¥ä½œæ—¥) means a day that is not a working day;

"note-issuing bank" (ç™¼é™šš€è;€) has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap 65);

"working day" (ã·¥ä½œæ—¥) means any day other than-

(a) a public holiday; or

(b) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap

1). (Added 6 of 2001 s. 10)

(Enacted 1994)

SECT 43

Compensation payable out of general revenue VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

All compensation (including any interest thereon) and all costs-

(a) agreed to be paid to a claimant by the Drainage Authority; or

(b) awarded by the Lands Tribunal against the Government, (Amended 61 of 1999 s. 3)

shall be paid out of the general revenue within 3 months of the agreement or final award, unless there is a dispute as to the person entitled to such compensation.

(Enacted 1994)

SECT 44

Surrender of title documents VerDate:06/30/1997

The Drainage Authority may require any claimant to whom compensation is payable for land resumed under this Ordinance to surrender his documents of title to the Drainage Authority as a condition of payment being made; and in any case where the documents of title relate also to land not resumed, the Drainage Authority shall return them to the claimant after the vesting or reversion has been noted in the register of the land kept in the Land Registry under section 37(7)(a).

(Enacted 1994)

SECT 45

Service of notice and order VerDate:06/30/1997

PART VII

MISCELLANEOUS

(1) Any notice or order required to be served under this Ordinance may be served by serving a copy-

(a) personally; or

(b) by registered post addressed to the last known place of business or residence of the person to be served; or

(c) by leaving the same with an adult occupier of the land to which the notice or order relates or by posting the same upon a conspicuous part of such land.

(2) In addition to the method of service mentioned in subsection

(1)(a), (b) or (c), the publication in the Gazette of any such notice or order together with the available particulars of the person to whom it is addressed shall be good service.

(3) Any notice or order served by registered post shall be deemed, unless the contrary is shown, to have been served on the day succeeding the day on which it would have been received in the ordinary course by registered post.

(4) In proving service by registered post it shall be sufficient to prove that the letter containing the notice or order was duly addressed and posted.

(Enacted 1994)

SECT 46

Offences VerDate:06/30/1997

(1) Any person who wilfully obstructs any person lawfully exercising or performing any power, duty or function arising under this Ordinance commits an offence and is liable to a fine not exceeding \$50000.

(2) Any person who contravenes section 18(10) or 19(4) commits an offence and is liable to a fine not exceeding \$25000.

(3) Any person who contravenes section 26(1) or 27(1) or (2) commits an offence and is liable to a fine not exceeding \$50000.

(Enacted 1994)

SECT 47

Power to make regulations VerDate:06/30/1997

The Secretary may by regulation provide for-

- (a) the procedures and matters relating to-
 - (i) making an appeal to the Board under section 28 including matters to be set out in or to accompany a notice of appeal;
 - (ii) the hearing of such appeal; and
 - (iii) the determination of such appeal;
- (b) the procedures and matters relating to-
 - (i) applying for a review under section 8 including matters to be set out in or to accompany an application for review;
 - (ii) the hearing of such review; and
 - (iii) the determination of such review;
- (c) the procedures to be followed in making an application for consent or approval and in giving a consent or approval under sections 26 and 27; and
- (d) generally, the carrying into effect of the provisions of this Ordinance.
(Enacted 1994)

SECT 48
Certain Ordinances not to apply VerDate:07/01/1997

Amendments retroactively made - see 29 of 1998 s. 87
Except to the extent that provision is otherwise made in this Ordinance-

- (a) the Lands Resumption Ordinance (Cap 124) shall not apply to the resumption of land under section 37; and (Amended 29 of 1998 s. 87)
- (b) the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127) shall not apply to drainage works executed under section 18, temporary works carried out under section 19 or removal works carried out under section 20, 21, 26(4) or 27(5).
(Enacted 1994)

SECT 49
Limitation of public liability VerDate:07/01/1997

Adaptation amendments retroactively made - see 61 of 1999 s. 3

- (1) Without prejudice to the right to compensation under section 36, no liability shall rest upon the Government or upon any public officer

by reason of the fact that any drainage works or works are carried out in accordance with the provisions of this Ordinance, nor shall anything in this Ordinance make it obligatory for the Drainage Authority to inspect any watercourse, land or structure to ascertain that the provisions of this Ordinance are complied with or that plans submitted to him are accurate. (Amended 61 of 1999 s. 3)

(2) No matter or thing done by the Drainage Authority or by any public officer acting under his direction shall, if it were done bona fide for the purpose of carrying out the provisions of this Ordinance, subject him or such public officer personally to any action, liability, claim or demand whatsoever.
(Enacted 1994)

SECT 50
(Omitted as spent) VerDate:06/30/1997

(Omitted as spent)
(Enacted 1994)

SCHEDULE
SCHEDULE VerDate:07/01/1997

Adaptation amendments retroactively made - see 29 of 1998 ss. 87, 88 & 105; 61 of 1999 s. 3
[sections 36, 38, 39 & 42]

COMPENSATION

PART I

1. General effect of this Part

The provisions in this Part shall, where applicable, have effect for the purpose of assessing compensation under Part II and shall-

(a) be in addition to such of the provisions of the Lands Resumption Ordinance (Cap 124) as apply, by virtue of Part II, to the assessment of compensation; and

(b) prevail over any provision referred to in paragraph (a) which is inconsistent or in conflict with a provision in this Part.
(Amended 29 of 1998 s. 88)

2. Definitions applicable to Part II

(1) In this Schedule-
"disturbance" (ä³/₄µæ³/₄) means the dispossession of a person of land or the interruption of or interference with a trade or business, whether such

dispossession, interruption or interference is temporary or permanent; "disturbance payment" (ä³/4µæ“³/4è£œå,Ÿé†‘) means a sum equal to-

(a) the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the dispossession of a person of land by reason of the matter for which the claimant is entitled to claim compensation under Part II; and

(b) in the case of disturbance of a trade or business on any land, the expenditure and loss of money actually and reasonably incurred or to be reasonably incurred and arising from the disturbance of that trade or business by reason of the matter for which the claimant is entitled to claim compensation under Part II.

(2) For the purpose of the definition of "disturbance payment" (ä³/4µæ“³/4è£œå,Ÿé†‘), such disturbance payment shall not include any expenditure or loss which would not be recoverable, on the grounds that the expenditure or loss was too remote or was not caused by the disturbance, if the disturbance were a tort.

3. Disturbance payments

(1) For the purposes of assessing the amount to be awarded to the claimant in respect of a disturbance payment, the Lands Tribunal shall, in respect of any expenditure or loss to be incurred and in respect of which the claimant is entitled under this Ordinance to be compensated, assess the value of that expenditure or loss at the time of award as if that expenditure or loss formed part of a claim for damages in tort.

(2) No disturbance payment shall be payable in respect of any interference with a trade or business in any case in which such interference does not subsist for a period exceeding 14 days.

4. Unlawful building or development works

Compensation may be reduced so far as may be just and equitable in respect of any building or part thereof or any development or part thereof which has been constructed or modified, or on which building or development works have been carried out, so as to amount to a contravention of the Buildings Ordinance (Cap 123) or the Town Planning Ordinance (Cap 131) being a contravention within the meaning of either of those Ordinances, as the case may be, or to a contravention of a Government lease or other instrument under which the land built upon is held.

(Amended 29 of 1998 s. 105)

5. Compensation where damage results only partly from the works

The compensation assessed under item 2, 3, 4 or 5 of Part II shall be reduced to such extent as may be just and equitable having regard to the share in the responsibility for the loss or damage not reasonably attributable to or connected with the works.

6. Claim by a mortgagee in possession

Where under this Ordinance a claim for compensation may be made by a mortgagee in possession-

(a) such claim may include compensation in respect of the whole interest which comprises the mortgage security; and

(b) compensation received by the mortgagee shall be applied by him firstly, to the settlement or reduction of the debt due under the mortgage, and then to the payment of any excess to the mortgagor.

7. Apportionment of compensation

Where there is a dispute between persons owning compensatable interests in any land or building as to the apportionment of the compensation payable or paid, the Lands Tribunal shall, on the application of any such person, apportion that compensation amongst such persons in such manner as may be just and equitable having regard to their respective rights and interests in the land or building.

8. Date of valuation and interest

Where under column 3 of Part II, compensation is to be assessed on the basis of the value of land or structure, or the value of a claimant's interest in land, or of a rent, that value or that rent shall be assessed as at the date of the happening of the relevant event mentioned in column 2 of Part II; and the person entitled to claim shall be the person fitting the description mentioned in the column 4 of Part II on that date.

9. No double compensation

Nothing in this Ordinance shall enable any person to recover compensation-

(a) in respect of a loss or expense which he has not suffered or incurred; or

(b) which is greater than the loss suffered or expense incurred by him:

Provided that in assessing compensation under this Ordinance no account shall be taken of any amount recovered by the claimant under a policy of insurance.

10. Government may undertake work

Where under this Ordinance, a person is entitled to claim compensation and that compensation is to be assessed on the basis of an expense incurred, the Government may, on written notice to that person, carry out the operations in respect of which the expense would otherwise be claimable. (Amended 61 of 1999 s. 3)

PART II

Item	Matters for which compensation may be claimed	Basis on which compensation is to be assessed	Persons who may claim compensation for their respective losses	Period within which the claim shall be served on the Drainage
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1.	<p>The resumption of</p> <p>land under section</p> <p>37 of this Ordinance.</p>	<p>As if the claim</p> <p>were made under</p> <p>the Lands Resumption Ordinance (Cap 124) for land resumed under that Ordinance.</p>	<p>Any person who</p> <p>would be entitled to claim compensation for land resumed under the Lands Resumption Ordinance (Cap 124) if the land had been resumed thereunder.</p>	<p>Authority</p> <p>Before the expiration of 1 year from the effective date of the resumption of the land under section 37(4) of this Ordinance.</p>
2.	<p>(a) Physical or structural damage to any land or building resulting from the operations carried out under section 23 of this Ordinance.</p> <p>(b) Damage to crop or agricultural cultivation resulting from the operations carried out under section 23 of this Ordinance.</p> <p>(c) Disturbance resulting from the operations carried out under section 23 of this Ordinance.</p>	<p>The expense which is fairly and reasonably incurred in repairing the damage and any expense fairly and reasonably incurred in preventing or mitigating the damage.</p> <p>The compensation for the damage to the crop or agricultural cultivation.</p>	<p>Any person owning a compensatable interest in the land or building.</p> <p>Any person owning the crop or agricultural cultivation.</p> <p>Same as in paragraph (a).</p>	<p>Before the expiration of 1 year from the date of the completion of the operations carried out under section 23 of this Ordinance from which damage is alleged to have resulted.</p> <p>Same as in paragraph (a).</p> <p>Same as in paragraph (a).</p>
3.	<p>(a) Physical or structural damage to any</p>	<p>The expense which is fairly and reasonably incurred</p>	<p>Any person owning a compensatable</p>	<p>Before the expiration of 1 year from the date of the</p>

	land or building resulting from the execution of drainage works under section 18 of this Ordinance.	in repairing the damage and any expense fairly and reasonably incurred in preventing or mitigating the damage.	interest in the land or building.	completion of the drainage works.
	(b) Damage to crop or agricultural cultivation resulting from the execution of drainage works under section 18 of this Ordinance.	The compensation for the damage to the crop or agricultural cultivation.	Any person owning the crop or agricultural cultivation.	Same as in paragraph (a).
	(c) Disturbance resulting from the execution of drainage works under section 18 of this Ordinance.	A disturbance payment.	Same as in paragraph (a).	Same as in paragraph (a).
4.	(a) Physical or structural damage to any land or building resulting from the execution of temporary works under section 19 of this Ordinance.	The expense which is fairly and reasonably incurred in repairing the damage and any expense fairly and reasonably incurred in preventing or mitigating the damage.	Any person owning a compensatable interest in the land or building.	Before the expiration of 1 year from the date of the completion of the temporary works.
	(b) Damage to crop or agricultural cultivation resulting from the execution of temporary works under section 19 of this Ordinance.	The compensation for the damage to the crop or agricultural cultivation.	Any person owning the crop or agricultural cultivation.	Same as in paragraph (a).
	(c) Disturbance resulting from the execution of temporary works under section 19 of this Ordinance.	A disturbance payment.	Same as in paragraph (a).	Same as in paragraph (a).
5.	(a) Physical or structural damage to any land or building resulting from the requirement	The expense which is fairly and reasonably incurred in repairing the damage and any expense fairly and	Any person owning a compensatable interest in the land or building.	Before the expiration of 1 year from the date the entry is no longer required.

	of entry under section 22 of this Ordinance.	reasonably incurred in preventing or mitigating the damage.		
	(b) Damage to crop or agricultural cultivation resulting from the requirement of entry under section 22 of this Ordinance.	The compensation for the damage to the crop or agricultural cultivation.	Any person owning the crop or agricultural cultivation.	Same as in paragraph (a).
	(c) Disturbance resulting from the requirement of entry under section 22 of this Ordinance.	A disturbance payment.	Same as in paragraph (a).	Same as in paragraph (a).
6.	(a) The removal, under section 21 of this Ordinance, of any structure which was erected, or set up, and maintained without the contravention of any Ordinance, Government lease or other instrument under which the land, where the structure was erected, or set up, and maintained, is held.	The expense which is fairly and reasonably incurred in the removal of the structure.	Any person on whom a notice has been served under section 21(1) of this Ordinance and who has complied with such notice to remove the structure.	Before the expiration of 1 year from the date of removal.
	(b) The loss sustained in respect of a structure removed under section 21 of this Ordinance, which was erected, or set up, and maintained without the contravention of any Ordinance, Government lease or other instrument under which the land, where the structure was erected, or set up, and maintained, is	The amount which is fairly and reasonably estimated as the value of the structure at the time of removal.	Any person owning a share or interest in the structure.	Same as in paragraph (a).

held.

(c) Disturbance resulting from the removal, under section 21 of this Ordinance, of any structure which was erected, or set up and maintained without the contravention of any Ordinance, Government lease or other instrument under which the land, where the structure was erected, or set up, and maintained, is held.

(Amended 29 of 1998 s. 105)

A disturbance payment.

Any person owning a compensatable interest in the land on which the structure is situated.

Same as in paragraph (a).