

ARTERIAL DRAINAGE (AMENDMENT) ACT 1995

- LONG TITLE

An Act to amend and extend the arterial drainage act, 1945, and to provide for related matters. [17th July, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- SECT 1 Interpretation.

SECT 1.—(1) In this Act— "localised flooding" means flooding that is confined or substantially confined to a particular area; "prescribed" means prescribed by regulations made by the Minister under this Act; "the Principal Act" means the Arterial Drainage Act, 1945. (2) In this Act— (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and (c) a reference to any other enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment including this Act.

- SECT 2 Regulations.

SECT 2.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purposes of enabling any provision of this Act to have full effect. (2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

- SECT 3 Amendment of section 4 of Principal Act.

SECT 3.—Section 4 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1): "(1) Whenever the Commissioners are of opinion that the execution of arterial drainage works is expedient in respect of— (a) any catchment area for the purpose of preventing or substantially reducing the periodical flooding of lands in that area or of improving by drainage lands in that area, or (b) any watercourse or any part of a watercourse for the purpose of preventing or substantially reducing the periodical flooding of lands in the area of that watercourse or such a part or of improving by drainage lands in that area, it shall be lawful for the Commissioners to prepare a scheme (in this Act referred to as a drainage scheme) for the execution of such works and for that purpose to make such engineering, environmental, valuation and other surveys of the said area as shall appear to them to be necessary or expedient."

- SECT 4 Matters to which regard is to be had in preparation of a drainage scheme.

SECT 4.—The Commissioners shall, in deciding the nature and extent of the drainage works to be included in a drainage scheme that is being prepared by them under section 4 of the Principal Act in respect of a watercourse or part of a watercourse, have regard to the effects that any such works would, if executed in pursuance of the scheme, have throughout the catchment area of which the watercourse or part thereof is a part.

- SECT 5 Periods of time specified in section 5 of Principal Act.

SECT 5.—Where a drainage scheme prepared under section 4 of the Principal Act includes a statement that the scheme has been prepared for the purpose of preventing or substantially reducing localised flooding section 5 of that Act shall have effect, in relation to that scheme, as if— (a) the reference in subsection (1) (b) thereof to one month were a reference to fourteen days, and (b) the reference in subsection (2) (c) thereof to three months were a reference to one month.

- SECT 6 Costs of arterial drainage works may be defrayed by third parties.

SECT 6.—The Commissioners may enter into an agreement with one or more other persons (including a local authority or authorities) whereby that other person or persons agrees or agree to defray, in whole or in part, the costs incurred by the Commissioners in executing or maintaining specified arterial drainage works.

- SECT 7 Entry by Commissioners on certain existing drainage works.

SECT 7.—(1) The Minister may, on application being made to him or her by the Commissioners in that behalf, give, in respect of a drainage scheme which contains a statement of the kind referred to in section 5, a certificate to the Commissioners certifying that, in the opinion of the Minister, the scheme is a scheme the purpose of which is to prevent or substantially reduce localised flooding and such a scheme in respect of which such a certificate is given is referred to in subsection (2) as "a certified drainage scheme". (2) Where the Commissioners enter on existing drainage works (being works that have been included in the works proposed to be executed by a certified drainage scheme) for the purpose of carrying out the said drainage scheme, the following provisions shall have effect, that is to say— (a) the drainage district which, immediately before the date referred to in paragraph (b), contained the said existing drainage works shall, notwithstanding section 8 (2) (b) of the Principal Act, continue in existence, (b) on and from the date on which the Commissioners first so enter on the said existing drainage works, the said drainage district shall be deemed not to contain the said works and, accordingly, the liability of a council of a county under any enactment to maintain the said works shall cease.

- SECT 8 More than one drainage scheme may be prepared in relation to a catchment area or watercourse.

SECT 8.—Nothing in the Principal Act shall be construed as preventing the Commissioners from preparing a second or further drainage scheme in relation to a catchment area, watercourse or part of a watercourse that has been the subject of such a scheme.

- SECT 9 Modification or relocation of watercourse, embankment or other works.

SECT 9.—(1) In this section "relevant works" means a watercourse, embankment or other works that has or have been completed pursuant to a drainage scheme. (2) It shall be lawful for the Commissioners to give their consent to the modification, relocation or the alteration in any other manner by a person of relevant works where they are of opinion that such modification, relocation or alteration is not likely to result in the flooding of any lands or the drainage of any lands being adversely affected. (3) (a) If relevant works are modified, relocated or altered in any other manner by a person with, or without, the consent of the Commissioners, the Commissioners may, as they consider appropriate in the circumstances— (i) re-instate those works to their condition before such modification, relocation or alteration was carried out, or (ii) maintain those works as so modified, relocated or altered. (b) The provisions of the Principal Act conferring powers on the Commissioners for the purposes of the maintenance by them of any relevant works shall apply and have effect for the purposes of the maintenance by them of relevant works under paragraph (a) (ii). (4) The costs incurred by the Commissioners in re-instating relevant works under paragraph (a) (i) of subsection (3) shall, where the modification, relocation or alteration of the works had been carried out without their consent, be borne by the person who carried out the modification, relocation or alteration and, in default of payment by him or her of those costs, may be recovered by the Commissioners from him or her as a simple contract debt in

any court of competent jurisdiction. (5) In proceedings to recover costs referred to in subsection (4), it shall be presumed until the contrary is proved that the owner of the land through which the watercourse concerned passed or, as the case may be, on which the embankment or other works concerned was or were located immediately before the modification, relocation or alteration concerned was carried out was the person who carried out that modification, relocation or alteration.

- SECT 10 Powers of Commissioners where there is a substantial risk of flooding as a result of modification or relocation of relevant works.

SECT 10.—(1) If relevant works are modified, relocated or altered in any other manner by a person without the consent of the Commissioners it shall be lawful for the Commissioners, if they are of opinion that there is a substantial and imminent risk of flooding or other injurious consequence arising as a result of such modification, relocation or alteration, to take such steps and carry out such works as they consider necessary to prevent such flooding or other injurious consequence and, without prejudice to the generality of the foregoing, the Commissioners may enter on any land and do all things thereon as they consider necessary for the said purpose. (2) (a) Subject to paragraph (b), the Commissioners shall not enter on any land pursuant to subsection (1) without giving at least 24 hours previous notice of their intention to do so to any owner or occupier of the land whose identity and whereabouts can be ascertained by the Commissioners by the taking of reasonable steps. (b) This subsection shall not apply in any case where the Commissioners are of opinion that, by reason of the particular circumstances of the case, it is necessary to enter immediately on the land concerned. (3) Where a person (not being a person who carried out the modification, relocation or alteration of the relevant works concerned) suffers loss or damage in consequence of the exercise by the Commissioners of a power conferred on them by this section, the Commissioners shall pay to the person compensation in respect of the loss or damage. (4) In this section "relevant works" has the same meaning as in section 9.

- SECT 11 Application of Lands Clauses Acts as respects compensation payable under Principal Act or this Act.

SECT 11.—(1) The Lands Clauses Acts shall apply and have effect for the purposes of— (a) the determination of the amount of any compensation to be paid under the Principal Act for— (i) the compulsory acquisition under that Act of any land, easement or other right mentioned in that Act, (ii) the compulsory substantial interference with any land or the compulsory restriction, termination or other interference of or with any easement or other right mentioned in that Act or the diversion, removal or other interference of or with any private road or bridge under and in pursuance of a drainage scheme, (iii) any loss or damage referred to in section 15, 16, 32 (2), 34 (3) or 46 (4) of that Act, (b) the determination of the amount of any compensation to be paid under section 10 (3) in respect of loss or damage referred to in that provision, (c) the payment of the amount of any compensation referred to in paragraph (a) or (b), when the amount thereof has been determined, with the modifications specified in this section and any other necessary modifications and are incorporated (except in so far as they are inconsistent with and subject to any amendments or modification, express or implied, thereof effected by the Principal Act or this Act) with the Principal Act and this Act. (2) For the purposes of such application of the Lands Clauses Acts, the Commissioners shall be deemed to be the promoter of the undertaking, and the Principal Act or, as the case may be, this Act (and, where appropriate, the vesting order concerned under section 12) shall be deemed to be the special Act. (3) (a) So much of sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, as is appropriate shall apply to compensation referred to in subparagraph (ii) or (iii) of paragraph (a) or paragraph (b) of subsection (1) as if such compensation were purchase money or compensation under that Act, with any modifications that may be prescribed and with any other necessary modifications. (b) Where money is paid into court under the said section 69, as applied by this subsection, by the Commissioners, no costs shall be payable by them to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money. (4) Section 32 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (3): "(3) In determining, under the Lands Clauses Acts, the right to or the amount of such compensation as is mentioned in subsection (2) of this section, the property arbitrator shall have regard to the benefit (if any) conferred on the claimant for such compensation or on his land by the construction of such new embankment."

- SECT 12 Vesting orders.

SECT 12.—(1) The Commissioners may, as respects land that is being compulsorily acquired by them under the Principal Act, complete the acquisition of such land by making an order under this section (in this section referred to as "a vesting order") in relation to the land. (2) The making of a vesting order shall not prejudice the right of any person to compensation under the Principal Act in respect of the land to which the order relates nor the application, by virtue of section 11, of the Lands Clauses Acts in relation to that matter. (3) Where the Commissioners, before making a vesting order, become aware that the land to be acquired by the order is subject (whether alone or in conjunction with other land) to any annuity or other payment to the Irish Land Commission or to any charge for estate duty, succession duty or inheritance tax payable to the Revenue Commissioners on the death of any person, the Commissioners shall forthwith inform the Irish Land Commission or the Revenue Commissioners, as the case may be, of the intention to make the order. (4) Whenever the Commissioners make a vesting order, they shall within 14 days after making the order— (a) in case all the land comprised in the vesting order is in the occupation of the same person, or persons, post a notice containing a copy of the order on or near the land and, in any other case, post such notice on or near the land of each occupier, and (b) give a copy of the order to— (i) every (if any) occupier of the land, and (ii) every (if any) owner of the land, whose name and the address at which he or she ordinarily resides can be ascertained by the Commissioners by reasonable inquiries. (5) (a) A vesting order shall be in the prescribed form and shall be expressed and shall operate to vest the land to which it relates in the Commissioners in fee simple free from encumbrances and all estates, rights, easements, titles and interests of any kind over or in respect of the land on a specified date not earlier than 21 days after the making of the order. (b) Notwithstanding anything contained in paragraph (a), where the Commissioners acquire by a vesting order land which is subject, either alone or in conjunction with other land, to a purchase annuity, payment in lieu of rent, or other annual sum (not being merely a rent under a contract of tenancy) payable to the Irish Land Commission, the Commissioners shall become and be liable, as from the date on which the land is vested in them by the vesting order, for the payment to the Irish Land Commission of the purchase annuity, payment in lieu of rent or annual sum or such portion thereof as shall be apportioned by the Irish Land Commission on the land as if the land had been transferred to the Commissioners by the owner thereof on that date. (c) When the Commissioners make a vesting order in relation to land, they shall send the order to the registering authority under the Registration of Title Act, 1964, and thereupon the registering authority shall cause the Commissioners to be registered under that Act as owners of the land in accordance with the order. (6) For the purposes of subsection (4) a copy of a vesting order may be given to the person concerned— (a) by delivering it to him or her, (b) by leaving it at the address at which the person ordinarily resides, or (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides or, in the case of a company (within the meaning of the Companies Act, 1963) at its registered office or, in the case of any other body, at its principal office or place of business. (7) In this section "owner", in relation to land, includes a reputed owner of the land.

- SECT 13 Amendment of section 30 of Principal Act.

SECT 13.—Section 30 of the Principal Act is hereby amended by the addition of the following at the end of subsection (1): ",and shall publish in at least one newspaper circulating in the said district a notice stating that such a report is available for inspection at the principal office of such council or, as the case may be, of each such council during office hours (and such a report shall be made available for such inspection accordingly)", and the said subsection (1), as so amended, is set out in the Table to this section. TABLE (1) Every council of a county which is, after the appointed day, responsible under this Part of this Act for the maintenance of the drainage works in an existing drainage district and the joint committee of any two or more councils of counties which are jointly so responsible shall furnish to the Commissioners in every year a report in respect of such existing drainage district and the drainage works therein, and shall publish in at least one newspaper circulating in the said district a notice stating that such a report is

available for inspection at the principal office of such council or, as the case may be, of each such council during office hours (and such a report shall be made available for such inspection accordingly).

- SECT 14 Increase of penalties under Principal Act.

SECT 14.—(1) A person convicted of an offence for which a penalty is provided in a section of the Principal Act specified in column (1) of the Table to this section shall, in lieu of the monetary penalty so provided (not being a monetary penalty of the kind referred to in subsection (2)), be liable to the penalty specified in column (2) of that Table, and the sections specified in column (1) of that Table shall be construed and have effect accordingly. (2) So much of each section of the Principal Act specified in column (1) of the Table to this section that enables a fine to be imposed, being a fine which is referred to in the section as a further fine or which is expressed in the section to be the fine to which a person shall be liable for every day during which an offence under the section is continued, shall cease to have effect and, in lieu thereof, it is hereby provided that if the contravention in respect of which a person is convicted of an offence under an aforesaid section is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention continues and for each such offence he or she shall be liable on summary conviction to a fine not exceeding £200. TABLE Section of Principal ActPenalty(1)(2)46 (2), 47 (4), 48 (5), 49 (9), 50 (4), 52 (2) and 53 (8)A fine not exceeding £1,500

- SECT 15 Repeals.

SECT 15.—The following enactments are hereby repealed, namely— (a) the provisions of the Principal Act specified in the Table to this section, (b) the Arterial Drainage (Amendment) Act, 1955. TABLE Subsections (2), (4) and (5) of section 14 Paragraph (b) of section 15 (2) Subsection (3) of section 16 Subsection (4) of section 32 Paragraph (b) of section 34 (4) Paragraphs (c) to (h) of section 37 (1) Subsections (2) and (3) of section 37 Paragraph (b) of section 46 (5)

- SECT 16 Short title, construction and collective citation.

SECT 16.—(1) This Act may be cited as the Arterial Drainage (Amendment) Act, 1995. (2) The Principal Act and this Act shall be construed together as one and may be cited together as the Arterial Drainage Acts, 1945 and 1995. ACTS REFERRED TO Arterial Drainage Act, 19451945, No. 3Arterial Drainage (Amendment) Act, 19551955, No. 23Companies Act, 19631963, No. 33Lands Clauses Consolidation Act, 18451845, c. 18Registration of Title Act, 19641964, No. 16