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Drainage, 76.—(1) A road authority may—
etc.

(a) construct and maintain drains in, on, under, through or to any land for the purpose of draining water from, or preventing water flowing onto, a public road,

(b) use any land for the temporary storage or the preparation of any gravel, stone, sand, earth or other material required for the construction or maintenance of a public road.

(2) Before entering on any land to perform a function under *subsection (1)*, a road authority shall—

(a) at least one month before the date upon which it proposes to enter on the land, serve a notice on the owner or occupier of the land—

(i) stating that it proposes to enter on the land,

(ii) specifying the function that it proposes to perform thereon,

(iii) stating that objections or representations may be made in writing to the road authority in relation to the proposed performance of the function before a specified date (which shall be not less than two weeks from the date of service of the notice), and

(iv) informing him of his right to apply for compensation under *subsection (4)*,

(b) consider any objections or representations made to it under *paragraph (a)* and not withdrawn.

(3) (a) Where as a result of flooding, landslide, subsidence or other emergency there is an immediate and serious hazard to persons using a public road or serious damage has been, is being or will be caused to a public road, a road authority may take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.

(b) In the exercise of its functions under *paragraph (a)*, a road authority may enter on any land and carry out any works or do anything which it considers necessary for the purposes of *paragraph (a)*.

(4) (a) The owner or occupier of any land who suffers damage in consequence of the exercise by a road authority of its functions under *subsection (2) or (3)* shall be entitled to recover from the road authority compensation in respect of that damage:

Provided that in assessing compensation regard shall not be had to any existing damage caused by water draining into, onto, under, through or to the land from an existing public road but only to any additional damage resulting from the exercise by the road authority of its functions under *subsection (1) or (3)*.

(b) A claim for compensation under *paragraph (a)* shall be made not later than six months after the date on which the activity, in respect of which the claim is made, was completed and shall, in default of agreement, be determined by arbitration under the Lands Clauses Acts but subject to the proviso that the arbitrator shall have jurisdiction to make a nil award.

(5) The owner or occupier of any land adjacent to a public road shall take all reasonable steps to ensure that—

(a) water is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,

(b) water, soil or other material is prevented from flowing or falling onto a public road from his land.

(6) A road authority may serve a notice in writing on the owner or occupier of any land adjacent to a public road requiring him to carry out specified works or take specified measures—

(a) to ensure that water is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,

(b) to prevent water, soil or other material from flowing or falling onto a public road from his land.

(7) (a) A person on whom a notice under *subsection (6)* has been served may, within fourteen days from the date of service, appeal against the notice to the District Court on any one or more of the following grounds—

(i) that he is not the owner or occupier of the land,

(ii) that water was not and is not prevented, obstructed or impeded from draining into, onto, under, through or to his land from a public road,

(iii) that water, soil or other material was not and is not flowing or falling onto a public road from his land,

- (iv) that compliance with the requirements of the notice would involve unreasonable expense,
 - (v) that the notice specified an unreasonably short time for complying with its requirements or any of them.
- (b) Notice of the appeal shall be given to the road authority and that authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (8) (a) On the hearing of the appeal the Court may, as it thinks proper, either—
- (i) confirm the notice unconditionally, or
 - (ii) confirm the notice subject to such modifications, alterations or additions as the Court thinks reasonable, or
 - (iii) annul the notice.
- (b) Where the Court confirms the notice, subject to modifications, alterations or additions, the notice shall have effect subject to such modifications, alterations or additions.
- (9) (a) The jurisdiction conferred on the District Court by this section shall be exercised by the Judge of that Court having jurisdiction in the district in which the public road referred to in *subsection (6)* is situated.
- (b) No appeal shall lie to the Circuit Court from a decision of the District Court under this section.
- (10) A notice under *subsection (6)* shall not have effect until—
- (a) the expiration of fourteen days from the date of service of the notice, or
 - (b) if an appeal is taken and the notice is confirmed, with or without modifications, the date upon which the decision of the Court is pronounced or the date upon which the order of the Court is expressed to take effect, whichever is the later.
- (11) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence.
- (12) Where an owner or occupier fails to comply with a notice under this section, the road authority may take the action specified in the notice or such other action as it thinks fit.
- (13) Where a road authority considers that—
- (a) water prevented, obstructed or impeded from draining into, onto, under, through or to any land from a public road, or
 - (b) water, soil or other material flowing or falling onto a public road from any land,

presents an immediate and serious hazard to persons using a public road or has caused, is causing or will cause serious damage to a public road it may, notwithstanding the provisions of *subsections (6) to (12)*, take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.

(14) Where a road authority takes action under *subsection (12) or (13)* it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.

(15) (a) A person who, without the consent of a road authority—

(i) within 15 metres of a public road (measured from its nearest edge) scours, deepens, widens or fills in any existing drain or excavates any new drain,

(ii) interferes with, or carries out any works which interfere with, a bridge, culvert, retaining wall, embankment or other structure providing lateral or other support for a public road,

shall be guilty of an offence.

(b) A consent under *paragraph (a)* may be given by the road authority subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

(c) (i) Where a road authority considers that the carrying out, with or without its consent, of an activity referred to in *paragraph (a)* has damaged, is damaging or will damage a public road, it may serve a notice in writing on the person carrying out such activity or on the owner or occupier of the land on which such activity is being carried out requiring that the activity cease forthwith and a person who fails to comply with a notice served on him shall be guilty of an offence.

(ii) A road authority may repair any damage and take measures to prevent or reduce any damage relating to an activity under *paragraph (a)* and may, where it has not given its consent under that paragraph, recover from the person carrying out the activity or the owner or occupier of the land, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it.

(16) Where a road authority—

(a) proposes to enter on any land under *subsection (12)*,

(b) has entered or proposes to enter on any land under *subsection (3), (13) or (15)*,

it shall as soon as may be serve on the owner or occupier of the land, a notice stating that it proposes to enter or has entered on the land and specifying the action that it proposes to take or has taken thereon.

(17) In this section, "*drain*" includes—

- (a) a ditch, channel, gutter, pipe, tunnel, culvert, soakpit, percolation area or percolation trench,
- (b) a barrier to divert water into a drain.

