
SECTION 76: Drainage

Commenced 1 October 1993

SI No. 197 of 1993

Associated Repeals: Section 9 and section 10 (part) of the Summary Jurisdiction (Ireland) Act, 1851.

Associated Regulations or Orders: None

Guidance Note Edition: June 1994.

The primary purpose of this section is to reenact in an updated and strengthened form the powers dealing with drainage of public roads and related matters contained in the Summary Jurisdiction (Ireland) Act, 1851 and the Local Government Act, 1925.

An adequate road drainage system is essential to prevent flooding of the road itself, to avoid weakening the substructure of the road and to avoid erosion etc.

SUBSECTION (1) permits road authorities to construct or maintain drains to remove water from a public road or to prevent it flowing onto one. Road authorities will also be allowed to use land for the temporary storage or preparation of road construction or maintenance materials such as gravel, earth etc. These were longstanding powers in section 32 of the Local Government Act, 1925.

SUBSECTION (2) obliges road authorities to give at least one month's notice to landowners before going onto any land to carry out drainage works or to temporarily prepare or store road construction materials. The landowner has a right to make objections or representations and these must be considered by the road authority. **Subsection (4)** provides for compensation in respect of damage caused to land.

SUBSECTION (3) gives road authorities power to take action in an emergency such as a landslide, flooding, subsidence etc. where there is a serious hazard to road users or the road itself is being or will be seriously damaged. Wide powers are being given to road authorities to prevent or reduce the hazard to road users or damage to the road. It is vital that road authorities be able to act quickly in emergencies without, if necessary, having to give advance notice. Compensation is payable in respect of any damage to land.

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SUBSECTION (4) gives a right to compensation where the carrying out of drainage works, the preparation or storage of road construction materials or the carrying out of emergency works has caused damage to land. A landowner will not be entitled to compensation in respect of pre-existing damage caused by water draining off a public road, but will be entitled to compensation for any additional damage caused by new works. There is a longstanding right from time immemorial to drain water off a public road.

There will be a six months' time limit for the making of claims for damage. On the basis of existing case law, the Courts will extend this period where damage only becomes apparent long after the work alleged to have caused it has been completed or where it would otherwise be unjust not to extend the period. In the vast majority of cases six months is adequate and gives the road authority some degree of certainty as to its exposure to claims, rather than leaving it to face a claim years later.

SUBSECTION (5) requires landowners to take all reasonable steps to ensure that water is not prevented from draining off a public road into their land and to ensure that water, soil etc. does not escape from their land onto a public road. This is a restatement in updated form of similar provisions in section 9 of the Summary Jurisdiction (Ireland) Act, 1851.

SUBSECTION (6) enables a road authority to serve a written notice on a landowner or occupier requiring him to do specified works to ensure that water can drain from a public road onto his land or to prevent water, soil etc. from escaping from his land onto a public road.

SUBSECTION (7) gives a person on whom a notice has been served a right to appeal to the District Court against the notice within fourteen days.

A person may appeal on the grounds that he/she is not the owner or occupier of the land in question, he/she may claim that water is or was not prevented from draining off the road, that water, soil etc. is or was not falling onto the road, that the cost of carrying out the required action would be unreasonable or that sufficient time was not

given in order to carry out the required action. These provisions are similar to those relating to trees and dangerous structures in section 70 of this Act and are modelled on those in the Fire Services Act, 1981. The question as to what is "unreasonable expense" will have to be determined by the facts of each case.

Notice of an appeal must be given to the road authority and the road authority may plead its case in court.

SUBSECTION (8) provides that the District Court may, on appeal, affirm, reject or amend the notice issued by the road authority under **subsection (6)**. It is the affirmed or amended notice that will have legal effect.

SUBSECTION (9) provides that the District Court in whose area the affected public road is located has jurisdiction to hear an appeal against a notice. Any appeal on a matter of fact from the decision of the District Court is precluded. The right of appeal to the High Court on a point of law is not of course denied.

SUBSECTION (10) states that notice under **subsection (6)** will not have effect until fourteen days after its service or until the date which the District Court specifies on determination of an appeal. If the Court does not specify a date, the order will come into effect on the date of the Court's decision.

SUBSECTION (11) makes it an offence not to comply with a notice under this section. A person guilty of such an offence is liable, on summary conviction under **section 81**, to a fine of up to £1,000 or to imprisonment of up to six months, or both. The road authority may prosecute the offence itself.

SUBSECTION (12) empowers the road authority to carry out the action specified in a notice issued under **subsection (6)** in a case where the person on whom the notice was served has failed to comply with it. The road authority is also being given power to carry out reasonable additional remedial works as it sees fit.

This does not give the road authority power to act indiscriminately and all actions must be governed by reasonableness and be directly related to the work specified in the notice.

SUBSECTION (13) gives a road authority the right to take urgent action where there is an immediate and serious hazard to road users or actual or expected serious damage to the road arising from water being prevented from draining off a public road or from water, soil etc. falling onto a public road. This power can be exercised whether or not a notice has been issued under subsection (6).

SUBSECTION (14) gives the road authority discretion to recover its costs from the landowner where it takes urgent action under subsection (13) or where it carries out the works specified in a notice under subsection (6), the landowner having failed to do so.

SUBSECTION (15) prohibits (under paragraph (a)) scouring, deepening, widening or filling in drains or excavatory new drains within 15 metres of the nearest edge of a public road unless the road authority has given its written consent. This is a restatement of an existing power in section 9 of the Summary Jurisdiction (Ireland) Act, 1851. The doing of anything which would interfere with a bridge or any other structure (such as an embankment) which carries or supports a public road is also prohibited, unless the local authority gives its written permission.

The road authority will be able to attach conditions, restrictions or requirements to a consent under paragraph (a) and it will be an offence not to comply.

This provision does not preclude the ordinary maintenance of drains which the landowner or occupier is required to carry out to ensure water is not prevented from draining from the public road or to prevent water, soil, or other material falling onto a public road.

A road authority will be able to immediately prohibit any activity covered by paragraph (a) where damage has, is being or will be caused to a public road. It will be an offence not to comply and the cost of repairing or preventing the damage can be recovered from the person carrying out the activity which was prohibited or from the landowner, except where the local authority had previously given its consent to the activity.

SUBSECTION (16) makes provision for the service of notices on landowners. The local authority must serve a notice before it enters on land to carry out works under subsection (12). It must, if possible, give prior notice or alternatively the earliest possible notice once it has entered on land to carry out emergency or urgent works under subsections (3) or (13), or remedial works under subsection (15).

SUBSECTION (17) defines "drain" for the purposes of the section.

