

# Ordinary Watercourse Consenting and Enforcement Policy

October 2014

## 1.0 Introduction

Following the introduction of the Flood and Water Management Act 2010 (FWMA) Lancashire County Council has been designated as a Lead Local Flood Authority (LLFA) and, as a result, now has responsibility for managing flood risk from local sources of flooding. These local sources of flooding refer to flooding from surface water, ground water and ordinary watercourses (see glossary for definitions).

Prior to the FWMA, providing consent for works on ordinary watercourses was the responsibility of the Environment Agency and enforcement activity was undertaken by the relevant district council. It is now however the responsibility of the LLFA to manage both consenting and enforcement activity related to ordinary watercourses (except in those areas covered by an Internal Drainage Board). This policy sets out how Lancashire County Council will apply the relevant legislation and undertake its responsibilities for ordinary watercourse consenting and enforcement.

## 2.0 Lancashire County Council Flood Risk Management Team

In order to respond to the new duties and responsibilities placed on councils by the FWMA, Lancashire County Council has established a Flood Risk Management

Team in the Environment Directorate. This team has Consenting and Enforcement Officers who are responsible for managing consenting and enforcement activity related to ordinary watercourses across the Lancashire County Council administrative area (with the exception of the area covered by the Earby and Salterforth Internal Drainage Board). Inappropriate works and unauthorised activity in relation to ordinary watercourses can present a significant flood risk in some areas and therefore needs to be managed appropriately.

It is the role of the Consenting and Enforcement Officers to assess applications for consent to carry out works in ordinary watercourses and to take enforcement action against those who have contravened the requirements set out in legislation. The consenting process is covered briefly in Section 4 of this policy. Section 5 goes on to examine the legislative framework under which Lancashire County Council can take formal enforcement action related to ordinary watercourses. However, where possible, Lancashire County Council will always try to work with land owners and informal enforcement and negotiation options will usually be explored prior to initiating formal legal enforcement procedures. Our approach to informal enforcement activity is explored in Section 6 of this policy.

### 3.0 Riparian responsibility

Riparian owners (those who own land adjoining, above, or with a watercourse running through it) are responsible for the maintenance of watercourses on their land. A riparian owner can be an individual land owner, a range of individuals, private companies, local authorities or other organisations. These riparian responsibilities apply to both ordinary watercourses and main rivers.

Riparian owners must let water flow through their land without any obstruction, pollution or diversion which affects the rights of others. They are responsible for maintaining the bed and banks of the watercourse as well as the trees and shrubs growing on the banks. Riparian owners must also keep any structure, such as culverts, trash screens, weirs and mill gates, clear of debris. They must accept flood flows through their land, even if these are caused by inadequate capacity downstream. However a landowner has no duty in common law to improve the drainage capacity of a watercourse for which they are responsible.

### 4.0 Land Drainage Consent

Under Section 23 of the Land Drainage Act 1991 (the "LDA") (as amended by paragraph 32 of Schedule 2 of the FWMA 2010) anyone who intends to carry out works which may obstruct or affect the flow of an ordinary watercourse needs written consent from Lancashire County Council. Please contact the County Council if you require further advice to establish whether a land drainage consent is required before starting works.

A land drainage consent is required for:

- The erection of, or alteration to, any mill, dam, weir or similar obstruction to the flow of any ordinary watercourse, or
- The construction of a culvert in any ordinary watercourse, or
- The alteration of a culvert that would affect the flow of an ordinary watercourse, or
- Temporary works in an ordinary watercourse such as scaffolding, a dam, pumping off excessive water, or any major drainage work.

The necessary forms for submitting an application for land drainage consent can be found on the Lancashire County Council website and the fee payable, by cheque or BACS, is £50.00 per structure. Further information and guidance is also available on the Lancashire County Council website and it is possible to submit an application for land drainage consent electronically or by post.

It should be noted that LCC will generally refuse consent applications which seek to culvert an existing ordinary watercourse. This is in line with Environment Agency guidance on protecting watercourses.



## 5.0 Consenting and Enforcement Legislation

The LDA and the FWMA set the legal framework for ordinary watercourse consenting and enforcement. The introduction of the FWMA in 2010 has resulted in some amendments to the LDA. The amended versions of the relevant sections of the LDA are set out at Appendix 1. There are four main instances in which Lancashire County Council as LLFA is empowered to take enforcement action in relation to ordinary watercourses and this information is summarised in the following sections of this policy.

### 5.1 Designation of Features – Flood and Water Management Act Schedule One

The FWMA gives designating authorities (of which Lancashire County Council is one) the power to designate a structure (generally man made managed assets such as walls and trash screens) or feature (natural landscape features such mounds and banks) which represents a flood risk. Once a structure or feature has been designated it may not be altered, removed or replaced without the prior consent of the responsible authority (Paragraph 5(1) of Schedule 1 to the FWMA).

LLFAs are able to take enforcement action against a person who does alter, remove or replace a designated feature without prior consent. Lancashire County Council has a separate Designation Policy which outlines the approach to the designation of flood risk structures and features. If any person is found to have contravened paragraph 5(1) then the responsible authority is able to serve an enforcement notice. This notice will direct the recipient to take certain actions in order to put right the contravention. The person responsible is committing an offence if they fail to comply with an enforcement notice and, on conviction, may be liable to a fine. If the required remedial works are still not completed, the responsible authority can authorise someone else (for example, a contractor on its behalf) to complete

the works and can then recover the costs from the person responsible.

### 5.2 Obligations to repair watercourse – Land Drainage Act Section 21

Under Section 21 of the LDA, as amended by the FWMA, where any person who, before the commencement of the LDA (i.e. 1st December 1991) had an obligation to do work to repair and maintain a watercourse, bridge or drainage work, but fails to do so, the drainage board (either the LLFA or Internal Drainage Board) can serve notice on them requiring them to complete the works to fulfil that obligation. A common law obligation to carry out works to remove an obstruction from a watercourse, arising out of the riparian ownership responsibilities referred to above, falls within the “obligation” referred to in Section 21, and can therefore be subject to enforcement under this section.

The person has seven days following service of the notice to comply with the requirements. If the requirements of the notice are not met within seven days, the drainage board can take remedial action to complete the works and recover costs from the person liable to complete the repairs. The Environment Agency has retained consenting and enforcement powers related to main rivers. However Section 13 of the FWMA does allow for flood risk management functions to be exercised on its behalf by another Risk Management Authority. Lancashire County Council and the Environment Agency are currently piloting an approach which will allow the county council to undertake some enforcement activity on main rivers. This will be considered on a case by case basis and Lancashire County Council will only undertake enforcement activity on behalf of the Environment Agency when both parties are in agreement and only in situations where enforcement on main river is beneficial to enforcement on associated ordinary watercourses.

### 5.3 Prohibition of obstructions in watercourse – Land Drainage Act Sections 23 and 24

Under Section 23 of the LDA, a person is prohibited from placing an obstruction in a watercourse - specifically a mill, dam, weir or other obstruction to the flow – without the consent of the drainage board. This prohibition also relates to erecting and altering culverts in the watercourse. However, subject to reasonable conditions, consent may be given for works of this nature (please see section 4.0 of this policy for further details). Section 23 of the LDA states that this consent should not be ‘unreasonably withheld’ and if the relevant drainage board fail to assess the consent application within two months then they are deemed to have consented.

If a person believes that consent has been unreasonably withheld then the issue can be ‘referred to a single arbitrator to be agreed by both the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party’ (LDA Section 23(5)).

Under Section 24 of the LDA, provision is made for the enforcement of the prohibitions set out in Section 23. Section 24 states that a contravention of Section 23 constitutes a nuisance and the drainage board is able to serve notice on the person who erected the obstruction or any other person who has the power to remove it. If the person fails to comply with the notice they can be subject, on conviction, to a fine and the drainage board is able to take action to remedy the obstruction and recover the costs from the person responsible.

### 5.4 Powers to require works for maintaining flow of watercourse – Land Drainage Act Section 25

Section 25 of the LDA makes enforcement provisions for those instances where the proper flow of an ordinary watercourse is being impeded. If the condition of a watercourse is impeding the flow of water then the drainage board may serve notice on a person who (a) has control of that part of the watercourse or (b) owns or occupies land adjoining that part of the watercourse or (c) is responsible for the condition of the watercourse, requiring them to take action to remedy the condition.

This notice should specify the nature of the works required and the person served has the right of appeal to the Magistrates Court. Subject to this right of appeal, if the recipient of the notice fails to take the appropriate action then they will be guilty of an offence and liable, on conviction, to a fine. The drainage board can also carry out the works to maintain the flow of the watercourse and recover the cost of those works from the person responsible.

### 5.5 Powers of entry to land

Officers of Lancashire County Council, authorised Under Section 64 of the Land Drainage Act 1991, have the legal power to enter any land for the purposes of carrying out their functions under the Act and to survey any land and inspect the condition of drainage work on it. Officers may only enter land at reasonable times and must first produce, if so required, a document showing their authority. Except in the case of emergency, admission to land should not be demanded as of right unless notice of the intended entry has been given to the occupier. If the land is used for residential purposes, the notice period must be at least 7 days. Any person who intentionally obstructs or impedes an authorised Officer is guilty of an offence and could be liable to a fine.



## 6.0 Lancashire County Council Consenting and Enforcement Procedure

Both the LDA and FWMA set the legal framework for consenting and enforcement activity in relation to ordinary watercourses. As previously outlined Lancashire County Council has the power to take enforcement action against persons responsible for a number of ordinary watercourse related contraventions.

Despite the formal legal enforcement powers available, the County Council prefers in the first instance to work with land owners and developers to resolve issues on an informal basis. Formal enforcement action (serving statutory notices and taking remedial action to complete works) will only be considered as a last resort. When completing enforcement action, Lancashire County Council's key objectives are to manage flood risk and bring unauthorised activity under control. However consideration will also be given to protecting the local environment and amenity.

There are several ways in which Lancashire County Council can be made aware of a breach of the statutory requirements set out in this policy. As part of its wider remit, the Flood Risk Management Team is responsible for completing investigations into reported flood incidents. In some cases the flood incident may have been caused as a result of unauthorised works or poor maintenance of an ordinary watercourse and these issues are passed to a Consenting and Enforcement Officer to investigate.

On other occasions a member of the public or a colleague from one of our partner organisations

may report an issue where unauthorised activity has taken place or where the state of repair of a watercourse is causing problems. On becoming aware of a potential enforcement issue, a Consenting and Enforcement Officer will endeavour to make contact with the land owner or person responsible within 10 working days. This may take the form of a letter or a site visit. There are some occasions where identifying the current owner of the land or the person responsible can prove difficult and this can lead to delays in making an initial contact.

The first letter will advise the land owner or the person responsible of the nature of the enforcement issues and will request that they contact the Flood Risk Management Team within 14 days. On receipt of contact from the land owner or person responsible, the Consenting and Enforcement Officer will arrange a site meeting to discuss the works required to remedy the situation.

This will be followed up with a letter to confirm the nature of the works and the deadline for completion. As stated above, Lancashire County Council prefers to work with land owners rather than initiate formal enforcement proceedings and land owners/responsible persons are therefore usually given 28 days to complete any identified works. The land owner/person responsible is encouraged to contact the Consenting and Enforcement Officer once the works are completed in order to organise a follow up site visit. If the works have been completed to the satisfaction of the Consenting and Enforcement Officer, the matter will be considered resolved.

If the land owner/person responsible does not notify the Consenting and Enforcement Officer that the works have been completed within the allocated 28 days, a site visit will take place to establish whether the agreed works have been completed. If the agreed works have not been completed, a follow up letter will be issued to the land owner, giving a further 28 days to complete the works. If the works are still not completed following this second period the Consenting and Enforcement Officer will instruct Lancashire County Council's Legal Department to initiate formal enforcement proceedings against the land owner/person responsible.

This process will begin with the serving of a notice under the relevant section of either the FWMA or the LDA. If the relevant enforcement notice is ignored, Lancashire County Council may then exercise the powers set out in previous sections of this policy. Any reasonable costs incurred in the completion of the works may then be recharged to the land owner/person responsible. Taking action in default is a last resort and works will only be undertaken where there is a flood risk occurring as a result of the breach. The flood risk will be assessed by an officer from the Lancashire County Council Flood Risk Management Team who will consider the following issues:

- Whether there has been a flood incident related to the contravention
- Whether the contravention significantly increases the likelihood of a flood incident occurring

On some occasions the level of flood risk presented by the breach may result in a reduction in the above timescales, for example in a situation where an internal property flood incident may occur imminently if the breach

is ignored or where there is flooding to the highway which makes it hazardous and unsafe to use.

The Consenting and Enforcement Officer will ensure the person who reported the issue is kept informed regarding the progress of their complaint; however it should be understood that enforcement can sometimes be a lengthy process. Lancashire County Council has a certain amount of discretion with regards to enforcement and there will be some occasions where there is a breach of legal requirements but enforcement is not considered to be expedient or in the public interest. The following sections highlight some general principles regarding when we will and will not seek to take enforcement action. The main purpose of ordinary watercourse enforcement is to minimise flood risk and this will always be the first consideration.

### **7.0 Where Enforcement is Expedient**

When deciding whether enforcement is expedient the significance of the flood risk will usually be the primary consideration. It should be noted that enforcement activity can be an expensive and time consuming process and requests for action will therefore be prioritised on a flood risk basis. If the breach is not presenting a flood risk, a decision may be taken not to progress enforcement action. Whilst the severity of the flood risk will be the primary factor in deciding whether to undertake enforcement action, a Consenting and Enforcement officer will also consider issues such as the wider environmental and amenity impact caused by the breach.



### 7.1 Where Enforcement is not expedient

Under Section 23 of the LDA it is possible for Lancashire County Council to provide consent to a land owner for placing an obstruction in a watercourse, where appropriate. It is not however possible to provide retrospective consent for unconsented works and therefore enforcement action under Section 24 of the LDA may be required. In situations where the unconsented works are not presenting a flood risk (or may even be preventing one) it may not be expedient to take enforcement action. The Consenting and Enforcement officer will keep a register of all unconsented works to ensure they continue to be monitored. If it becomes apparent that the unconsented works are presenting a flood risk at a point in the future it may become necessary to take enforcement action against the land owner.

In other cases the enforcement issue may be temporary in nature or may have already ceased by the time the Consenting and Enforcement Officer has been made aware of the situation. Where this activity has not led to a significant flood risk or damage to the environment then it is unlikely enforcement activity will be progressed

### 8.0 What is not covered by this policy?

As a Lead Local Flood Authority Lancashire County Council has responsibility for providing consents and taking enforcement action related to ordinary watercourses. The following list provides information about consenting and enforcement related works which are outside of Lancashire County Council's remit and therefore not covered by this policy:

- Consenting and enforcement requests relating to Main Rivers – these continue to be the responsibility of the Environment Agency. However, there are some instances where Lancashire County Council will undertake enforcement on main rivers on behalf of the EA.
- Connections to the private sewer system – this is the responsibility of the water provider

for the area which in Lancashire will usually be United Utilities. However a small area is served by Yorkshire Water

- When the proposed works are related to discharging into a main river or United Utilities system
- When the enforcement issue relates to a dispute between neighbouring land owners Lancashire County Council may suggest that land owners take their own independent legal advice which may include recourse to the Agricultural Land Tribunal. add (please refer to S28-30 of the LDA).

This will usually be the case where the enforcement issue relates to a neighbour level disagreement, for example where action taken on one person's land is leading to flooding on a neighbour's land. Issues of this nature can represent a considerable resource implication for the County Council in terms of investigation and undertaking any relevant enforcement action.

Lancashire County Council does not have the resources to act as a mediator between land owners and may be unable to undertake the level of investigation required to establish whether actions taken by one land owner have in fact led to an incident of flooding on neighbouring land. The Agricultural Land Tribunal is an independent statutory body and is therefore an appropriate organisation to consider drainage disputes between neighbours. Lancashire County Council will try to assist parties in reaching a solution to the extent that is appropriate in its role as LLFA, for example by providing relevant information.

### 9.0 Further Information

For more information about Lancashire County Council's ordinary watercourse consenting and enforcement role please contact the Lancashire County Council Flood Risk Management Team at [FRM@lancashire.gov.uk](mailto:FRM@lancashire.gov.uk) or visit our website [www.lancashire.gov.uk](http://www.lancashire.gov.uk) and search 'flooding.'



## Glossary

**Agricultural Land Tribunal** - part of the HM Courts and Tribunal Service, Agricultural Land and Drainage plays an important role in settling disputes and other issues between agricultural tenants and landlords.

**Flood and Water Management Act (FWMA) 2010** – legislation developed in response to the Pitt Review to address flood risk and water management.

**Ground water** - (as defined in s6 FWMA 2010) means all water which is below the surface of the ground and in direct contact with the ground or subsoil.

**Internal Drainage Board (IDB)** - a type of operating authority which is established in areas of special drainage need in England and Wales with permissive powers to undertake work to secure clean water drainage and water level management within drainage districts. An IDB operates on a water catchment area rather than administrative boundaries.

**Land Drainage Act (LDA) 1991** - An Act to consolidate the legislation relating to internal drainage boards, and to the functions of such boards and of local authorities in relation to land drainage, as amended by the FWMA 2010.

**Lead Local Flood Authority (LLFA)** – in relation to an area in England means (a) the unitary authority for the area, or (b) if there is no unitary authority, the county council for the area. In Lancashire the three LLFAs are Lancashire County Council, Blackburn with Darwen Council and Blackpool Council.

**Ordinary Watercourse** – (as defined in s6 FWMA 2010) - a “watercourse” that does not form part of a main river. “Watercourse” has the meaning given by s72(1) Land Drainage Act 1991, and includes rivers which are not “main rivers”, streams, ditches, drains, cuts, dykes, sluices, sewers (other than a public sewer).

**Surface water** - (as defined in s6 FWMA 2010) - rainwater (including snow and other precipitation) which—  
(a) is on the surface of the ground (whether or not it is moving), and  
(b) has not entered a watercourse, drainage system or public sewer.



## Appendix One – Legislation

### The Flood and Water Management Act Schedule One (Paragraphs 5 and 11)- Designation of Features

#### Effect of designation

5(1) A person may not alter, remove or replace a designated structure or feature without the consent of the responsible authority. (2) A designation is a local land charge.

#### Enforcement notice

11(1) If a person contravenes paragraph 5(1) the responsible authority may give an enforcement notice.

(2) The notice may be given to— (a) the person who contravened paragraph 5(1), or (b) the owner of the designated structure or feature.

(3) The notice must direct the recipient to take specified steps, within a specified period, to remedy the contravention.

(4) If a person (P) fails to comply with an enforcement notice—

- (a) P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) the responsible authority may authorise a person to take the steps specified in the notice,
- (c) the responsible authority may require

P to pay expenses incurred under paragraph (b), and  
(d) payment required under paragraph (c) is recoverable as a debt.

### The Land Drainage Act 1991

#### 21 Enforcement of obligations to repair watercourses, bridges, etc. - with FWMA amendments

(1) This section applies to any obligation to which any person was subject, before the commencement of this Act, by reason of tenure, custom, prescription or otherwise, except an obligation under an enactment re-enacted in this Act or the Water Resources Act 1991.

(2) If any person—

- a) is liable, by reason of any obligation to which this section applies, to do any work in relation to any watercourse, bridge or drainage work (whether by way of repair, maintenance or otherwise); and
- (b) fails to do the work, the drainage board concerned may serve a notice on that person requiring him to do the necessary work with all reasonable and proper despatch.

(3) Subject to section 107(2) of the Water Resources Act 1991, the powers conferred by this section shall not be exercisable in connection with a main river, the banks of such a river or any drainage works in connection with such a river.

(4) If any person fails, within seven days, to comply with a notice served on him under subsection (2) above by the drainage board concerned, the board may do all such things as are necessary for that purpose.

(5) Any expenses reasonably incurred, in the exercise of their powers under this section, by the drainage board concerned may be recovered from the person liable to repair.

(6) Subject to section 8 above, references in this section to the drainage board concerned—

(a) in relation to any watercourse, bridge or drainage works in an internal drainage district, are references to the drainage board for that district; and

(b) in relation to any watercourse, bridge or drainage works in an area outside an internal drainage district, are references to the lead local flood authority for the area

(7) ‘Lead Local Flood Authority’ has the meaning given by section 6 of the Flood and Water Management Act 2010  
Section 6b has been amended by Schedule 2 of the FWMA, paragraph 31(2) and section 7 has been added

### 23 Prohibition on obstructions etc. in watercourses – with FWMA amendments

(1) No person shall—

(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or

(b) erect a culvert in an ordinary watercourse or

(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse

(1A) Consent under this section may be given subject to reasonable conditions

(1B) An internal drainage board or lead local flood authority must consult the Environment Agency before carrying out work within subsection 1(a), (b) or (c) if the board or authority is ‘the drainage board concerned’ for the purposes of this section.

(1C) The drainage board concerned must have regard to any guidance issued by the Environment Agency about the exercise of the board’s functions under this section



(2) The drainage board concerned may require the payment of an application fee by a person who applies to them for their consent under this section; and the amount of that fee shall be determined in accordance with a prescribed charging scheme

(3) Where an application is made to the drainage board concerned for their consent under this section—

- (a) the consent is not to be unreasonably withheld; and
- (b) if the board fail within two months after the relevant day to notify the applicant in writing of their determination with respect to the application, they shall be deemed to have consented.

(4) In subsection (3) above “the relevant day”, in relation to an application for a consent under this section, means whichever is the later of—

- (a) the day on which the application is made; and
- (b) if at the time when the application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged.

(5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

(6) Nothing in this section shall apply—

- (a) to any works under the control of a navigation authority, harbour authority or

conservancy authority; or  
 (b) to any works carried out or maintained under or in pursuance of any Act or any order having the force of an Act.

(7) The power of the Ministers to make an order under subsection (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[F3(7A) In subsection (2) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]

(8) Subject to section 8 above, references in this section and sections 24 and 25 below to the drainage board concerned—

- (a) in relation to a watercourse in an internal drainage district, are references to the drainage board for that district; and
- (b) in relation to a watercourse in an area outside an internal drainage district, are references to the lead local flood authority for the area

(9) Lead local flood authority has the meaning given by section 6 of the Flood and Water Management Act 2010

## 24 Contraventions of prohibition on obstructions etc

(1) If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice.

(2) The person upon whom a notice may be served under subsection (1) above is—

- (a) in a case where the person by whom the obstruction has been erected or raised or otherwise altered has, at the time when the notice is served, power to remove the obstruction, that person; and
- (b) in any other case, any person having power to remove the obstruction.

(3) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above he shall be guilty of an offence and liable, on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the contravention or failure is continued after conviction, to a further fine not exceeding £40 for every day on which the contravention or failure is so continued.

(4) If any person acts in contravention of, or fails to comply with, any notice served under subsection (1) above, the drainage board concerned may, without prejudice to any proceedings under subsection (3) above—

- (a) take such action as may be necessary

to remedy the effect of the contravention or failure; and (b) recover the expenses reasonably incurred by them in doing so from the person in default.

## 25 Powers to require works for maintaining flow of watercourse

(1) Where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then, unless the condition is attributable to subsidence due to mining operations (including brine pumping), the drainage board concerned may, by notice served on a person falling within subsection (3) below, require that person to remedy that condition.

(3) Subject to subsection (4) below, a notice under this section in relation to a watercourse may be served on—

- (a) any person having control of the part of the watercourse where any impediment occurs; or
- (b) any person owning or occupying land adjoining that part; or
- (c) any person to whose act or default the condition of the watercourse mentioned in subsection (1) above is due.

(4) No notice under this section requiring any person to carry out any work on land not owned or occupied by him shall be served without the consent of the owner and the occupier of the land, except in a case where it is not practicable, after reasonable inquiry, to ascertain the name and address of the owner or occupier.



(5) A notice under this section shall indicate—

- (a) the nature of the works to be carried out and the period within which they are to be carried out; and
- (b) the right of appeal to a magistrates' court and the period within which such an appeal may be brought under section 27 below.

(6) Subject to the right of appeal provided by section 27 below, if the person upon whom a notice is served under this section fails to carry out the works indicated by the notice within the period so indicated—

- (a) the drainage board concerned may themselves carry out the works and recover from that person the expenses reasonably incurred by them in doing so; and
- (b) without prejudice to their right to exercise that power, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(7) In proceedings by the drainage board concerned for the recovery of any expenses under subsection (6) above it shall not be open to the defendant to raise any question which he could not have raised on an appeal under section 27 below.

(8) Nothing in this section shall affect the right of an owner or occupier to recover from the other, under the terms of any lease or other contract, the amount of any expenses incurred by him under this section or recovered from him by the drainage board concerned.

## **27 Appeals against notices under section 25**

(1) A person served with a notice under section 25 above may, within twenty-one days from the date on which the notice is served on him, appeal to a magistrates' court on any of the following grounds, that is to say—

- (a) that the notice or requirement is not justified by that section;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the body which served the notice has refused unreasonably to approve the carrying out of alternative works, or that the works required by the notice to be carried out are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the period within which the works are to be carried out is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on another person and that it would have been equitable for it to have been so served;
- (f) that some other person ought to contribute towards the expenses of carrying out any works required by the notice.

(2) The procedure on an appeal under this section shall be by way of complaint for an order and in accordance with the Magistrates' Courts Act 1980.

(3) For the purposes of the time limit for bringing an appeal under this section the making of the complaint shall be treated as the bringing of the appeal.

(4) In so far as an appeal under this section is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(5) In the case of an appeal under this section, the appellant—

- (a) may serve a copy of his notice of appeal on any person having an estate or interest in the part of the watercourse where the impediment occurs or land adjoining that part; and
- (b) shall, where the grounds upon which the appeal under this section is brought include a ground specified in subsection (1)(e) or (f) above, serve a copy of his notice of appeal on each other person referred to.

(6) On the hearing of an appeal under this section the court may make such order as it thinks fit—

- (a) with respect to the person by whom any work is to be carried out and the contribution to be made by any other person towards the cost of the work; or
- (b) as to the proportions in which any expenses which may become recoverable by the body which served the notice are to be borne by the appellant and such other person.

(7) In exercising its powers under subsection

(6) above the court shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions (whether contractual or statutory) of the tenancy and to the nature of the works required; and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

(8) A person aggrieved by an order, determination or other decision of a magistrates' court under this section may appeal to the Crown Court.

(9) Where upon an appeal under this section a court varies or reverses any decision of a body which has served a notice under section 25 above, it shall be the duty of that body to give effect to the order of the court.



