



# Land Drainage Act 1991

## 1991 CHAPTER 59

### PART II

#### PROVISIONS FOR FACILITATING OR SECURING THE DRAINAGE OF LAND

##### *Control of flow of watercourses etc.*

#### **23 Prohibition on obstructions etc. in watercourses**

(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
- <sup>[F1]</sup>(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,]

without the consent in writing of the drainage board concerned.

<sup>[F2]</sup>(1A) Consent under this section may be given subject to reasonable conditions.]

<sup>[F2]</sup>(1B) An internal drainage board or lead local flood authority must consult the <sup>[F3]</sup>appropriate 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. ]

<sup>[F2]</sup>(1C) The drainage board concerned must have regard to any guidance issued by the <sup>[F4]</sup>appropriate supervisory body] 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 £50 or such other sum as may be <sup>[F5]</sup>prescribed].

(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

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- (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.
- [<sup>F6</sup>(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 [<sup>F7</sup> 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
- [<sup>F8</sup>(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.]
- [<sup>F9</sup>(9) Lead local flood authority” has the meaning given by section 6 of the Flood and Water Management Act 2010.]

#### Textual Amendments

- F1** S. 23(1)(b)(c) substituted for s. 23(1)(b) (6.4.2012) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 32\(2\)](#) (with s. 49(1)(6)); S.I. 2012/879, art. 3(b) (with art. 4)
- F2** S. 23(1A)-(1C) inserted (6.4.2012) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 2 para. 32\(3\)](#) (with s. 49(1)(6)); S.I. 2012/879, art. 3(b) (with art. 4)
- F3** Words in s. 23(1B) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 322\(2\)](#) (with Sch. 7)
- F4** Words in s. 23(1C) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 322\(3\)](#) (with Sch. 7)
- F5** Word in s. 23(2) substituted (21.9.1995) by 1995 c. 25, s. 120(1), [Sch. 22](#), para. 192(1)(with ss. 7(6), 115, 117); S.I. 1995/1983, [art. 3](#)
- F6** S. 23(7A) inserted (21.9.1995) by 1995 c. 25, s. 120(1), [Sch. 22](#), para. 192(2)(with ss. 7(6), 115, 117); S.I. 1995/1983, [art. 3](#)

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- F7** Words in s. 23(8) substituted (6.4.2012) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 32(5)** (with s. 49(1)(6)); S.I. 2012/879, art. 3(b) (with art. 4)
- F8** S. 23(8)(b) substituted (6.4.2012) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 32(6)** (with s. 49(1)(6)); S.I. 2012/879, art. 3(b) (with art. 4)
- F9** S. 23(9) added (6.4.2012) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 32(7)** (with s. 49(1)(6)); S.I. 2012/879, art. 3(b) (with art. 4)

#### Modifications etc. (not altering text)

- C1** S. 23 applied (21.07.1997) by 1994 c. xiii, s. 40
- C2** S. 23 excluded (2.4.2004) by Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), arts. 1, **4(8)(b)**
- C3** S. 23 excluded (11.2.2005) by Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), arts. 1, **5(9)** (with arts. 65, 66)
- C4** S. 23 excluded (25.11.2005) by Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), arts. 1, **5(7)(b)** (with arts. 3(5), 15(3))
- C5** S. 23 excluded (22.11.2006) by Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), arts. 1, **4(8)** (with art. 43)
- C6** S. 23 excluded (23.8.2007) by Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), arts. 1, **5(8)(b)** (with arts. 3(6), 12(3))
- C7** S. 23 excluded (16.5.2008) by London Gateway Port Harbour Empowerment Order 2008 (S.I. 2008/1261), art. 1, **Sch. 10 para. 12(2)** (with arts. 41(1), 45, 54(2), 55, 56, 57, 58(6))
- C8** S. 23 excluded (9.6.2009) by Nottingham Express Transit System Order 2009 (S.I. 2009/1300), arts. 1, **5(9)** (with Sch. 13 paras. 14(2), Sch. 14 para. 19, Sch. 16)
- C9** S. 23 excluded (13.4.2010) by The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 (S.I. 2010/2020), art. 1(2), **Sch. 6 para. 11(2)** (with arts. 18, 19)
- C10** S. 23 excluded (1.2.2011) by The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41), art. 1, **Sch. 10 para. 41(2)** (with art. 51, Sch. 10 paras. 68, 85)
- C11** S. 23 disappplied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **4(c)** (with art. 26(2))
- C12** S. 23 excluded (22.8.2013) by The Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013/1933), arts. 1, **3(7)(b)** (with art. 3(8))
- C13** S. 23 excluded (6.11.2013) by The Transport for Greater Manchester (Light Rapid Transit System) (Second City Crossing) Order 2013 (S.I. 2013/2587), arts. 1, **6(9)** (with arts. 42, 43)
- C14** S. 23 excluded (15.12.2014) by The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102), arts. 1, **4(9)(b)** (with Sch. 8 para. 45)
- C15** S. 23 excluded (31.12.2014) by The Hornsea One Offshore Wind Farm Order 2014 (S.I. 2014/3331), arts. 1, **30(c)** (with arts. 37, 38)
- C16** S. 23 excluded (21.4.2015) by The Network Rail (Ordsall Chord) Order 2015 (S.I. 2015/780), arts. 1, **6(a)** (with art. 36(2))
- C17** S. 23 excluded in part (1.6.2016) by The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (S.I. 2016/547), arts. 1, **3(1)(c)** (with arts. 4, 5(3))
- C18** S. 23 excluded (2.8.2016) by The Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016/684), arts. 1, **6(9)** (with arts. 46, 47, Sch. 9 para. 4, Sch. 10 para. 12(2))
- C19** S. 23 excluded (19.8.2016) by The North Wales Wind Farms Connection Order 2016 (S.I. 2016/818), arts. 1, **33** (with art. 35)
- C20** S. 23 excluded (7.9.2016) by The Hornsea Two Offshore Wind Farm Order 2016 (S.I. 2016/844), arts. 1(2), **3(1)(c)** (with arts. 37, 38)
- C21** S. 23 excluded (27.9.2016) by The Triton Knoll Electrical System Order 2016 (S.I. 2016/880), arts. 1(2), **6(2)(c)** (with arts. 39, 40, Sch. 8 para. 19)
- C22** S. 23 excluded (24.11.2016) by The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 (S.I. 2016/1035), arts. 1, **7(10)** (with arts. 43, 44)
- C23** S. 23 excluded (5.9.2017) by The London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017/830), arts. 1, **4(9)** (with Sch. 8 para. 20)

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- C24 S. 23 excluded (8.12.2017) by The Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017 (S.I. 2017/1074), arts. 1, **3(2)(a)**
- C25 S. 23 excluded (19.12.2017) by The Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017/1150), arts. 1, **5** (with art. 32(2))
- C26 S. 23 excluded (22.12.2017) by The M20 Junction 10a Development Consent Order 2017 (S.I. 2017/1202), arts. 1, **3(1)(d)** (with arts. 4, 37)
- C27 S. 23 excluded (18.4.2018) by The Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018/446), arts. 1, **5(1)(c)** (with arts. 24(8), 33(2))
- C28 S. 23 excluded (24.8.2018) by The Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018/923), arts. 1, **5(1)(b)** (with art. 31(2))
- C29 S. 23 excluded (13.3.2019) by The Port of Tilbury (Expansion) Order 2019 (S.I. 2019/359), arts. 1, **3(1)(d)** (with arts. 55, 56)
- C30 S. 23 excluded (25.10.2019) by The Drax Power (Generating Stations) Order 2019 (S.I. 2019/1315), arts. 1, **8(3)(a)**
- C31 S. 23 excluded (30.10.2019) by The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019/1358), arts. 1, **45(1)(a)** (with art. 45(7), Sch. 13 Pt. 1 para. 19)
- C32 S. 23 excluded (25.2.2020) by The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020/114), arts. 1, **5(1)(b)** (with art. 37(2))
- C33 S. 23 excluded (4.3.2020) by The Midland Metro (Birmingham Eastside Extension) Order 2020 (S.I. 2020/141), arts. 1, **6** (with arts. 47, 48, Sch. 10 para. 19)
- C34 S. 23 excluded (21.5.2020) by The Lake Lothing (Lowestoft) Third Crossing Order 2020 (S.I. 2020/474), arts. 1, **3(c)** (with arts. 51, 57)
- C35 S. 23 excluded (25.5.2020) by The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020/511), arts. 1, **44(1)(b)** (with art. 44(8))
- C36 S. 23 excluded (22.7.2020) by The Norfolk Vanguard Offshore Wind Farm Order 2020 (S.I. 2020/706), arts. 1, **7(3)(c)** (with arts. 41, 42, Sch. 16 para. 66)
- C37 S. 23 excluded (15.10.2020) by The Great Yarmouth Third River Crossing Development Consent Order 2020 (S.I. 2020/1075), arts. 1, **3(1)(a)**
- C38 S. 23 excluded (29.10.2020) by The Southampton to London Pipeline Development Consent Order 2020 (S.I. 2020/1099), arts. 1, **36(1)(c)** (with art. 32, Sch. 9 para. 36)
- C39 S. 23 excluded (31.12.2020) by The Network Rail (Cambridgeshire Level Crossing Reduction) Order 2020 (S.I. 2020/1485), arts. 1, **4(1)(b)**
- C40 S. 23 excluded (19.1.2021) by The Network Rail (Suffolk Level Crossing Reduction) Order 2020 (S.I. 2020/1663), arts. 1, **4(b)**
- C41 S. 23 excluded (19.2.2021) by The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 (S.I. 2021/125), arts. 1, **3(1)(b)** (with arts. 4, 47)
- C42 S. 23 excluded (22.12.2021) by The Morlais Demonstration Zone Order 2021 (S.I. 2021/1478), arts. 1, **37(2)** (with arts. 15, 50, Sch. 11 para. 29)
- C43 S. 23 excluded (1.1.2022) by The Norfolk Boreas Offshore Wind Farm Order 2021 (S.I. 2021/1414), arts. 1, **7(3)(c)** (with arts. 41, 42, Sch. 17 para. 66)
- C44 S. 23 excluded (10.3.2022) by The Thurrock Flexible Generation Plant Development Consent Order 2022 (S.I. 2022/157), arts. 1, **10(1)(e)** (with Sch. 8 Pt. 6 para. 19)
- C45 S. 23 excluded (5.3.2022) by The Norfolk Vanguard Offshore Wind Farm Order 2022 (S.I. 2022/138), arts. 1, **7(3)(c)** (with arts. 41, 42, Sch. 16)
- C46 S. 23 excluded (25.3.2022) by The Bridgwater Tidal Barrier Order 2022 (S.I. 2022/299), arts. 1, **64(2)** (with art. 55)
- C47 S. 23 excluded (2.6.2022) by The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 (S.I. 2022/549), arts. 1, **3(1)(c)** (with arts. 6, 34)
- C48 S. 23 excluded (6.6.2022) by The M25 Junction 28 Development Consent Order 2022 (S.I. 2022/573), arts. 1, **47(1)(b)** (with arts. 5, 36)
- C49 S. 23 excluded (30.6.2022) by The Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (S.I. 2022/651), arts. 1, **4(1)(b)**

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- C50** S. 23 excluded (8.9.2022) by The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (S.I. 2022/934), arts. 1, **3(2)(c)**
- C51** S. 23 excluded (3.11.2022) by The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022/1067), arts. 1, **5(1)(b)**
- C52** S. 23 excluded (7.12.2022) by The A417 Missing Link Development Consent Order 2022 (S.I. 2022/1248), arts. 1, **3** (with art. 4)
- C53** S. 23 excluded (11.1.2023) by The Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 (S.I. 2022/1406), arts. 1, **5** (with art. 34(2), Sch. 12 paras. 5, 47, 79)
- C54** S. 23 excluded (18.7.2023) by The Longfield Solar Farm Order 2023 (S.I. 2023/734), arts. 1, **6(1)**
- C55** S. 23 excluded (27.7.2023) by The Boston Alternative Energy Facility Order 2023 (S.I. 2023/778), arts. 1, **40(1)** (with arts. 5, 53, Sch. 8 paras. 6, 64)
- C56** S. 23 excluded (2.8.2023) by The Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 (S.I. 2023/815), arts. 1, **5(1)(b)** (with art. 42)
- C57** S. 23 excluded (3.8.2023) by The Hornsea Four Offshore Wind Farm Order 2023 (S.I. 2023/800), arts. 1, **6(1)** (with arts. 6(2), 42, 43, Sch. 9 Pt. 1 para. 4, Sch. 9 Pt. 3 para. 6(1), Sch. 9 Pt. 4 para. 20, Sch. 9 Pt. 9 para. 4)
- C58** S. 23 excluded (4.8.2023) by The A303 (Amesbury to Berwick Down) Development Consent Order 2023 (S.I. 2023/834), arts. 1, **3(1)** (with arts. 6(2), 18, Sch. 11 paras. 5, 30)
- C59** S. 23 excluded (7.9.2023) by The A38 Derby Junctions Development Consent Order 2023 (S.I. 2023/923), arts. 1, **3** (with arts. 4, 45, Sch. 9 paras. 6, 46, 54(1))
- C60** S. 23 excluded (11.10.2023) by The Awel y Môr Offshore Wind Farm Order 2023 (S.I. 2023/1033), arts. 1, **7** (with arts. 36, 37, Sch. 9 paras. 14, 44(1), 76, 103)
- C61** S. 23 excluded (7.2.2024) by The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (S.I. 2024/70), arts. 1, **8(1)** (with art. 43, Sch. 12 paras. 5, 24)
- C62** S. 23 excluded (13.3.2024) by The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (S.I. 2024/230), arts. 1, **6** (with Sch. 11 paras. 5, 22, 37, 47, 82, 110)
- C63** S. 23 excluded (28.3.2024) by The A66 Northern Trans-Pennine Development Consent Order 2024 (S.I. 2024/360), arts. 1, **3(1)** (with arts. 18, 35, Sch. 9)
- C64** S. 23 excluded (11.4.2024) by The HyNet Carbon Dioxide Pipeline Order 2024 (S.I. 2024/436), arts. 1(2), **8(1)** (with arts. 21, 41, Sch. 10)
- C65** S. 23 excluded (25.4.2024) by The Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024/526), arts. 1, **5(1)**
- C66** S. 23 excluded (9.5.2024) by The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (S.I. 2024/564), arts. 1, **6(1)** (with arts. 35, 36, Sch. 14)
- C67** S. 23(1) excluded (29.10.2014) by The Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935), **art. 4(2)** (with arts. 30(4), 53)
- C68** S. 23(6) excluded (14.10.2008) by Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008/2512), arts. 1, **48** (with art. 36(3))
- C69** S. 23(6) excluded (9.4.2013) by The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), arts. 1, **47(1)** (with arts. 48, 68, 79, 83)

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**Changes and effects yet to be applied to :**

- s. 23 excluded by [S.I. 2020/1297 art. 3\(1\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2020/1297 was withdrawn following a request from the Department of Transport dated 9th August 2021 which followed the decision of the High Court of Justice to quash this Order in the judgement dated 2nd August 2021 (High Court of Justice — Planning Court — The Queen (on the application of Save Stonehenge World Heritage Site) v. Secretary of State for Transport — Case No. CO/4844/2020))
- s. 23 excluded by [S.I. 2021/51 art. 3\(b\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2021/51 removed from the website by request from the Department of Transport dated 12th July 2021 which followed the decision of the High Court of Justice to quash these Regulations in the judgement dated 8th July 2021 (High Court of Justice — Planning Court — The Queen (on the application of Mair Bain) v. Secretary of State for Transport — Case No. CO/642/2021).)
- s. 23(2) words substituted by [2010 c. 29 Sch. 2 para. 32\(4\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 37(5A)-(5D) inserted by [2016 anaw 3 s. 83\(2\)\(b\)](#)
- s. 37(5A) substituted in earlier affecting provision [2016 anaw 3, s. 83\(2\)\(b\)](#) by [2021 c. 30 s. 95\(2\)\(b\)\(i\)](#)
- s. 37(5B)(5C) words substituted in earlier affecting provision [2016 anaw 3, s. 83\(2\)\(b\)](#) by [2021 c. 30 s. 95\(2\)\(b\)\(ii\)](#)
- s. 37(5D)(5E) substituted in earlier affecting provision [2016 anaw 3, s. 83\(2\)\(b\)](#) by [2021 c. 30 s. 95\(2\)\(b\)\(ii\)](#)