

CHAPTER 336
THE PUBLIC HEALTH
(SEWERAGE AND DRAINAGE) ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

Section Title

PART I
PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.
3. Application.

PART II
PUBLIC SEWERS

4. Provision of public sewers and sewage disposal works.
5. Public sewers to vest in Authority.
6. Duty of Authority to keep map showing public sewers.
7. Power of Authority to alter or close public sewers.
8. Certain matters not to be passed into sewers or drains.

PART III
CONNECTIONS WITH PUBLIC SEWERS

9. Rights of owners and occupiers within area of Authority to drain into public sewers.
10. Use of public sewers by owners or occupiers outside area of Authority.
11. Sewer connections in streets and through private land.
12. Procedure in regard to making communication with public sewers.

PART IV
DRAINAGE AND LATRINES OF NEW BUILDINGS

13. New buildings to be provided with any necessary drains.
14. Latrine accommodation to be provided in new buildings.

PART V
DRAINAGE AND LATRINES OF EXISTING BUILDINGS

15. Provisions as to drainage of existing buildings.
16. Replacement of earth closets by water closets.
17. Buildings having insufficient latrines or latrines so defective as to require reconstruction.
18. Buildings having defective latrines capable of repair.
19. Drainage of buildings in combination into existing public sewer.

PART VI
GENERAL PROVISIONS

20. Payment of advances for defraying drainage expenses.
21. Provisions as to appeals against and enforcement of notices requiring execution of works.
22. Execution of works.
23. Certain expenses recoverable from owners or occupiers to be charge on premises; power to accept payment by instalment.
24. Powers to make charge in respect of establishment expenses.
25. Recovery of expenses.
26. Powers of entry and closing of streets.
27. Protection of Authority and its officers from personal liability.
28. Liability of director, secretary or manager of company.
29. Proceedings against several persons.
30. Recovery proceedings.
31. Power of Authority outside its area.
32. Service of notices.

PART VII
RULES

33. Rules.
34. Rules made under this Act to prevail.

CHAPTER 336

THE PUBLIC HEALTH (SEWERAGE AND DRAINAGE) ACT

An Act to make better provision for the preservation of public health by means of sewerage, drainage and sanitation.

[1st August, 1955]

Ord. No.
44 of 1953
[R.L. Cap. 336]
Act No.
1 of 2008

PART I PRELIMINARY PROVISIONS

Short title 1. This Act may be cited as the Public Health (Sewerage and Drainage) Act.

Interpretation 2.-(1) In this Act, unless the context otherwise requires-
“Authority” means, in the case of a municipality to which the provisions of this Act have been applied, the municipal council, and, in the case of a township to which the provisions of this Act have been applied, the town council or township authority, as the case may be, and in the case of an area, other than a municipality or township, to which the provisions of this Act have been applied, such officer or authority as the Minister may by notice in the *Gazette*, declare to be the Authority for the purposes of this Act;

“cesspool” means a tank or receptacle for the reception of soil water or waste water or both for which no outlet is provided;

“Chief Inspector” means the Chief Inspector appointed under the Occupational Health and Safety Act;

Cap. 297

Cap. 297

“drain” means any pipe, duct or channel, whether open or closed together with its appurtenances used or intended to be used for the drainage of buildings within the same cartilage and under the same ownership and made merely for the purpose of communicating there from with a sewer or with a cesspool or other like receptacle for drainage and includes any pipe, duct or channel, whether open or closed, used or intended to be used for the drainage of land;

“earth closet” means a closet in which faecal matter is deposited, or may be deposited, into a movable receptacle;

“factory” has the meaning assigned to it in the Occupational Health and Safety Act;

“foul water” means soil water and waste water;

“lateral drain” means that portion, including the intercepting trap, if any, and sewer connection of a system of drains or sewers which-

- (a) in the case of a sewer for foul matter lies between the intercepting chamber and the sewer; or
- (b) in the case of a sewer for storm water lies between the last inspection chambers and the sewer, or, if there be no inspection chamber, between the curtilage of the premises and the sewer;

“latrine” includes privy, urinal, earth closet and water closet;

“prejudicial to health” means injurious or likely to cause injury to health;

“private sewer” means a sewer which is not a public sewer;

“privy” means a closet for the reception of faecal matter into a non-movable receptacle and includes pit latrine and bore-hole latrine;

“public sewer” means any sewer vested in or constructed by or on behalf of or under the control of the Authority;

“septic tank” means a tank or receptacle for the reception of soil water or waste water or both for the effluent from which an outlet is provided;

“sewer” does not include a drain as defined in this Act but, save as aforesaid, includes all sewers, drains, pipes,

ducts, or channels, whether open or closed, used for the drainage of buildings or land;

“soil water” means any discharge from water closets or urinals and all water containing excremental liquid or substance;

“storm water” includes surface or rain water;

“waste water” means liquid waste of a non-excremental nature but does not include storm water;

“water closet” means latrine accommodation used, adapted or intended to be used in connection with a water carriage system and comprising provision for the flushing of the receptacle by means of water;

“workplace” does not include a factory or workshop but save as aforesaid includes any place in which persons are employed otherwise than in domestic service; and

“workshop” means any building or part of a building or any premises in which manual labour is exercised for the purposes of trade.

(2) Any reference in this Act to a drain, sewer, or other sewage disposal works shall be construed as including a reference to any manholes, ventilating shafts, pumping stations or other accessories belonging to that drain, sewer, or other sewage disposal works.

(3) For the purpose of this Act, a building or proposed building shall not be deemed to have a public sewer available unless-

(a) there is or there is in course of construction within one hundred feet of the curtilage of the building or proposed building, and at a level which makes it reasonably practicable to construct a drain to communicate therewith, a public sewer or other sewer which the owner of the building or proposed building is, or will be, entitled to use; and

(b) the intervening land is land through which he is entitled to construct a drain:

Provided that, for the purpose of this definition, the limit of one hundred feet shall not apply if the Authority undertakes

to bear so much of the expenses reasonably incurred in constructing a drain to communicate with a public sewer as may be attributable to the fact that, the distance of the public sewer exceeds one hundred feet as aforesaid.

Application

3. The provisions of this Act shall apply to municipalities or townships or other areas as the Minister may, by notice in the *Gazette*, declare.

PART II PUBLIC SEWERS

Provision of public sewers and sewage disposal works

4.-(1) An Authority may within its area and, subject to the prior approval of the Minister, outside its area-

- (a) construct and maintain a public sewer-
 - (i) in, on, under, or over any street, or under or through any cellar or vault below any street; and
 - (ii) in, on, under, or over any land, or in, on or under any building not forming part of a street, after giving reasonable notice to the owner or occupier of the land or building; and
- (b) construct and maintain sewage disposal works on any public land or land acquired or lawfully appropriated for that purpose.

(2) In the exercise of its powers under subparagraph (ii) of paragraph (a) of subsection (1), the Authority shall not be liable to pay any compensation to an owner or occupier of any private land but shall make good, or, at its option, shall pay for any damage done or occasioned by reason of the exercise of the said powers.

Public sewers to vest in Authority

5. Notwithstanding the provision of any other law, public sewers within the area of an Authority and public sewers outside the area of an Authority which the Authority has constructed or is maintaining under the provisions of section 4, shall vest in such Authority.

Duty of Authority to keep map showing public sewers

6.—(1) The Authority shall keep deposited at its offices for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers and other public sewage disposal works existing or in the course of construction within its area or under its control.

(2) Where some of the public sewers are reserved for foul water only, or for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

Power of Authority to alter or close public sewers

7. An Authority may alter the size and course of any public sewer vested in it, or may discontinue and prohibit the use of any public sewer, either entirely, or for the purpose of foul water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the Authority of the use of the public sewer for that purpose, the Authority shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the public sewer so provided.

Certain matters not to be passed into sewers or drains

8.—(1) A person shall not throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any sewer or into any drain—

- (a) any matter likely to injure the sewer or drain, or to interfere with the free flow of its content, or to effect prejudicially the treatment and disposal of its contents;
- (b) any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam which, or a liquid which, when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous, or the cause of a nuisance, or prejudicial to health; or
- (c) any petroleum spirit, or carbide or calcium except, subject to the provisions of paragraphs (a) and (b), into a drain specially constructed for that purpose.

(2) Where separate public sewers are provided for foul water and for storm water, a person shall not discharge or permit to be discharged, either directly or indirectly-

- (i) soil water or waste water into a sewer provided for storm water; or
- (ii) except with the approval of the Authority, storm water into a sewer provided for foul water.

(3) A person who contravenes any of the provisions of this section, commits an offence and on conviction shall be liable to a fine not exceeding one thousand shillings and to a further fine not exceeding one hundred shillings for each day on which the offence continues after conviction therefore.

(4) In this section the expression “petroleum spirit” means any-

- (a) crude petroleum;
- (b) oil made from petroleum, or from coal, shale peat or other bituminous substance; or
- (c) product of petroleum or mixture containing petroleum, as, when tested in the manner prescribed by or under the Petroleum Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit.

Cap. 392

PART III

CONNECTIONS WITH PUBLIC SEWERS

Rights of owners and occupiers within area of Authority to drain into public sewers

9. Subject to the provisions of this section and section 12, the owner or occupier of any premises, or the owner of any private sewer, within the area of an Authority shall be entitled to have his drains or private sewer made to communicate with any available public sewer of that Authority, and thereby to discharge foul water and storm water from those premises or that private sewer:

Provided that, this section shall not entitle any person-

- (a) to discharge directly or indirectly into any public sewer-
 - (i) any matter from a manufacturing process or any matter from a factory, other than domestic sewage

or storm water except by agreement with the Authority; or

- (ii) any matter the discharge of which into public sewers is prohibited under this Act or any other law;
- (b) to have his drains or private sewer made to communicate directly with a storm water overflow sewer;
- (c) to have his drains or private sewer made to communicate with a public sewer provided for foul water unless and until he satisfies the Authority that, the premises to be drained have a sufficient water supply available; or
- (d) to have his drains or private sewer made to communicate with any public sewer if such sewer is situated in excess of one hundred feet of the curtilage of the premises.

Use of public sewers by owners or occupiers outside area of Authority

10. Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer outside the area of an Authority shall have the like rights with respect to drainage into the available public sewers of the Authority as he would have had under section 9, if his premises or private sewer were situate within its area and the provisions of that section shall apply accordingly:

Provided that, without prejudice to the prohibition contained in section 9 against the discharge of certain matters into public sewers or into some public sewers or the right of an Authority under section 12 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection, the Authority may, in the case of a drain or private sewer from premises outside its area, refuse to permit a communication to be made except under reasonable terms and conditions as may be prescribed or as the Minister may approve, and the terms and conditions may include-

- (a) compliance with any reasonable requirements of the Authority that the premises to be drained shall be sanitary or in a proper state of repair; and

- (b) such reasonable payment or periodical payment as, subject to any special or general directions of the Minister, the Authority may see fit to impose.

Sewer connections in streets and through private land

11. For the purpose of making or maintaining a communication with a public sewer, it shall be lawful for an Authority to construct or repair a lateral drain or, with the prior consent of the Authority and in a manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on, under or over any land or building, but where the land or building does not form part of a street, the Authority or owner shall give to every owner or occupier of the land or building reasonable notice and shall be liable to make good or, at the option of the Authority or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power:

Provided that, the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or building or any adjacent land or buildings and, in case of dispute, a person aggrieved may appeal to a subordinate court in the manner set forth in subsections (6) and (7) of section 21.

Procedure in regard to making communication with public sewers

12.—(1) A person who wishes or who is required to have his drains or private sewer made to communicate with a public sewer shall give to the Authority notice of his proposals in writing in such manner as may be prescribed and at any time within twenty-one days of the receipt thereof, the Authority may, by notice to him, refuse to make the communication if it appears to the Authority that, the mode of construction of the drain or private sewer is not in conformity with the rules in force governing the same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the Authority and for the purpose of examining the mode of construction and condition

of the drain or private sewer, the Authority may, if necessary, require it to be laid open for inspection.

(2) Where a notice as aforesaid is not served on such person, the Authority shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in a manner as may be prescribed or as the Authority may decide, but it shall not be obligatory on the Authority to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) Where any payment made to the Authority exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaid by it and, where and so far as those expenses are not covered by the payments made to it, the Authority may recover the expenses or the balance thereof, from the person for whom the work was done.

(4) For the purpose of this section, the making of the communication between a drain or private sewer and a public sewer includes all the work as involves the breaking open of a street and the taking of any steps which the Authority may consider necessary for repairing, relaying and safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making the communication.

(5) A lateral drain so constructed shall vest in the Authority, but shall not thereby become a public sewer, and the maintenance, repair and renewal of the same from time to time shall be carried out by the Authority at the expense of the owner of the premises served by such drain.

(6) A person, other than a person lawfully acting on behalf of an Authority, who causes a drain or sewer to communicate with a public sewer and a person who fails to comply with or acts in contravention of any of the provisions of this section, commits an offence and on conviction shall be liable to a fine not exceeding one thousand shillings, and whether proceedings have or have not been taken in respect of that

offence, the Authority may close any communication made in contravention of any of the provisions, and recover from the offender any expenses reasonably incurred by it in so doing.

PART IV

DRAINAGE AND LATRINES OF NEW BUILDINGS

New buildings to be provided with any necessary drains

13.—(1) Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with an Authority, the Authority shall reject the plans unless either the plans show that, satisfactory provision for drainage of the building or of the extension, as the case may be, will be made or the Authority is satisfied that, in the case of that particular building or extension it may properly dispense with any provision for drainage.

(2) Except in cases where the Authority is satisfied that, in the case of any particular building or extension it may properly dispense with any provision for drainage, for the purposes of subsection (1), “satisfactory provision for drainage” means that the drainage system and appliances of the building comply with any law for the time being in force relating to the same and that the drainage systems of the premises connect either directly or indirectly with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the Authority may approve.

Latrine accommodation to be provided in new buildings

14. Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with an Authority, the Authority shall reject the plans unless either the plans and the prescribed particulars deposited therewith show that, the prescribed or sufficient and satisfactory latrine accommodation will be provided, or the Authority is satisfied that, in the case of a particular building or extension it may properly dispense with the provision of latrine accommodation:

Provided that,-

- (i) unless a sufficient water supply and public sewer are available, the Authority shall not reject the

plans on the ground only that, the proposed latrine accommodation consists of or includes an earth-closet or earth-closets or a privy or privies of a type approved by the Authority; and

- (ii) where the plans and the deposited particulars show that, the proposed building or extension is likely to be used as a factory, workshop, workplace, club, place of entertainment or other place in which persons of both sexes or different races will be employed, or will be in attendance, the Authority shall reject the plans, unless either it is satisfied after consultation with the Chief Inspector that, sufficient and satisfactory separate latrine accommodation for persons of each sex and race will be provided, or that in the circumstances, of the particular case it may properly dispense with the provision of such separate accommodation.

PART V DRAINAGE AND LATRINES OF EXISTING BUILDINGS

Provisions as
to drainage of
existing buildings

15.—(1) Where it appears to an Authority that in the case of any building—

- (a) satisfactory provisions for drainage has not been, and ought to be, made;
- (b) any appliance provided for the building is defective or insufficient;
- (c) any appliance provided for the building is in such a condition as to be prejudicial to health or a nuisance; or
- (d) any appliance formerly used for the drainage of the building, but no longer used therefore, is prejudicial to health or a nuisance,

it shall, by notice, require the owner of the building to make satisfactory provision for drainage of the building, or, as the case may be, require either the owner or the occupier of the

building to take such action and to do such work as may be necessary for connecting the drainage system to the sewer or for altering, renewing, repairing, or cleansing any existing appliance, or for filling up, removing or otherwise rendering innocuous any disused appliance.

(2) Except in cases where the Authority is satisfied that in the case of any particular building it may properly dispense with any provision for drainage, for the purpose of subsection (1), “satisfactory provision for drainage” means that the drainage system and appliances of the building comply with any law for the time being in force relating to the same and that the drainage systems of the premises connect either directly or indirectly with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the Authority may approve.

(3) In this section “appliance” means any cesspool, septic tank, private sewer, drain, soil pipe, rain water pipe, wastepipe, sink or other appliance for drainage.

Replacement of
earth closets by
water closets

16. Where any existing building in the area of an Authority has a sufficient water supply and a public sewer is available, the Authority may, subject to the provisions of subsection (3) of section 2, by notice to the owner of the building, require that any latrines, other than water closets, provided for, or in connection with the building shall be replaced by water closets and that the owner shall make an application within a specified time to have his drains made to communicate with a public sewer under section 12, notwithstanding that the latrines are not insufficient in number and are not prejudicial to health or a nuisance.

Buildings having
insufficient
latrines or
latrines so
defective as
to require
reconstruction

17. Where it appears to the Authority that-

- (a) any building is without sufficient latrine accommodation;
- or
- (b) any latrines provided for or in connection with a building are in a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition,

the Authority shall, by notice to the owner of the building, require him to provide the building with latrines or additional latrines, or substituted latrines, as the Authority may approve and may consider necessary:

Provided that, unless a sufficient water supply and public sewer are available, the Authority shall not require the provision of a water closet except in substitution for an existing water closet:

Provided further that, where a sufficient water supply, but public sewer, is not available, the Authority may require the provision of a water closet or water closets together with all necessary drainage discharging into a septic tank or other place which the Authority may approve.

Buildings having defective latrines capable of repair

18.-(1) Where it appears to an Authority that, any latrines provided for or in connection with a building are in a state as to be prejudicial to health or a nuisance, but that they can without reconstruction be put into a satisfactory condition, the Authority shall, by notice require the owner or the occupier of the building to execute the works, or take steps by cleansing the latrines or otherwise, as may be necessary for that purpose.

(2) In so far as a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, commits an offence and on conviction shall be liable to a fine not exceeding one hundred shillings and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefore:

Provided that, in any proceedings under this subsection, it shall be open to the defendant to question the reasonableness of the Authority's requirements, or of its decision to address the notice to him and not to the occupier or, as the case may be, to the owner of the building.

Drainage of buildings in combination into existing public sewer

19.-(1) Where an Authority might under this Act require each of two or more buildings to be drained separately into an existing public sewer, but it appears to the Authority

that, those buildings may be drained more economically or advantageously in combination, the Authority may require that, the buildings be drained in combination into the existing public sewer by means of a private sewer to be constructed either by the owners of the buildings in a manner as the Authority may direct, or if the Authority so elects, by the Authority on behalf of the owners:

Provided that, an Authority shall not, except by agreement with the owners concerned, exercise the powers conferred by this subsection in respect of any building for the drainage of which plans have been previously passed by the Authority.

(2) An Authority which makes a requirement as aforesaid, shall fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned, or, in a case in which the distance of the existing public sewer from the curtilage of any of the buildings in question is or exceeds one hundred feet, the proportions in which those expenses are to be borne by the owners concerned and the Authority, and shall forthwith give notice in writing of the decision to each owner affected.

(3) An owner aggrieved by a decision of an Authority may appeal in the manner set forth in subsections (6) and (7) of section 21, subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer shall be borne in the proportions so fixed, and those expenses or, as the case may be, contributions thereto, may be recovered accordingly by the person, whether the Authority or owners, by whom they were incurred in the first instance.

(4) A sewer constructed by an Authority under this section shall not be deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the Authority, or by reason of the fact that some part of those expenses is borne by it.

PART VI

GENERAL PROVISIONS

Payment of
advances for
defraying
drainage
expenses

20.—(1) In any case where it shall appear to an Authority that, the owner or occupier of any premises is unable to make a present payment of the amount of the expenses necessary to be incurred for the drainage and sewerage and latrine accommodation of that premises and the communication thereof with an available public sewer, the Authority may, subject to any general or special directions of the Minister in that behalf, make an agreement in the prescribed form with an owner or occupier for the advance of a sum of money for necessary expenses and at the interest thereon as may be prescribed and for its repayment in such and in so many instalments as the Authority may determine.

(2) A sum of money advanced shall be a charge on the premises and all estates and interests therein in respect of which the advance is made and the provisions of section 23 shall apply *mutatis mutandis* as if the sum advanced were expenses incurred by an Authority under this Act.

Provisions
as to appeals
against and
enforcement of
notices requiring
execution of
works

21.—(1) The provisions of this section and section 22 shall, subject to any express modifications specified in the section under which the notice is given, apply with respect to appeals against, and the enforcement of, notices requiring the execution of works under sections 15, 16, 17, 18 or 19, and any appeal under section 11 or 19 of this Act.

(2) A notice shall be in writing and shall indicate the nature of the works to be executed, and state the time within which they are to be executed.

(3) A person served with a notice as aforesaid may appeal in the manner hereinafter provided on any of the following grounds which are appropriate in the circumstances of the particular case:

- (a) that the notice or requirement is not justified by the terms of the law under which it purports to have been given or made;
- (b) that the works required by the notice to be executed are unreasonable in character or extent;
- (c) that the time within which the works are to be executed is not reasonably sufficient for the purpose; or
- (d) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(4) Where the grounds upon which an appeal under this section is brought include a ground specified in paragraph (d) of subsection (3), the appellant shall serve a copy of the notice of appeal on each other person referred to, and in the case of any appeal under this section may serve a copy of the notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal an order may be made with respect to the person by whom any work is to be executed or as to the proportions in which any expenses which may become recoverable by the Authority are to be borne by the appellant and other person.

(5) In the exercise of the powers conferred by subsection (4), regard shall be had 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.

(6) An appeal in pursuance of this section shall be referred to the court of a District Magistrate or Resident Magistrate exercising jurisdiction in the place where the premises are situated in pursuance of any rules made in that behalf by the High Court.

(7) The time within which any appeal may be brought shall be twenty-one days from the date on which notice requiring the works was served upon the person desiring to appeal.

Execution of
works

22.—(1) Subject to a right of appeal, where a person required by a notice to execute works fails to execute the works indicated

within the time thereby limited, the Authority may itself execute the works and recover from that person the expenses reasonably incurred by it in so doing and, without prejudice to its rights to exercise that power, he shall be liable to a fine not exceeding one hundred shillings, and to a further fine not exceeding forty shillings for each day on which the default continues after conviction therefore.

(2) In proceedings by an Authority against the person served with the notice for the recovery of any expenses which the authority is entitled to recover from him, it shall not be open to him to raise any question which he could have raised on an appeal against a notice.

Certain expenses recoverable from owners or occupiers to be charge on premises; power to accept payment by instalment

23.—(1) Where an Authority has incurred expenses for the repayment of which the owner or occupier of the premises in respect of which the expenses were incurred is liable under this Act or under any rule to which the provisions of subsection (3) of section 33 apply or by agreement with the Authority, those expenses, together with interest from the date of service of a demand for the expenses, may be recovered by the Authority from the person who is the owner or occupier of the premises at the date when the works are completed, or, where he has ceased to be the owner or occupier of the premises before the date when a demand for the expenses is served, either from him or from the person who is the owner or occupier at the date when the demand is served, and as from the date of the service of a notice on the Registrar pursuant to subsection (3), the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein.

(2)¹ The charge created shall be deemed to extend to any expenses lawfully paid to the Registrar in connection with the entry or filing or withdrawal of the notice of a charge.

¹ This subsection was part of subsection (1), however, it has been rearranged as subsection (2) and the subsequent subsections have been renumbered accordingly.

(3) The charge created under subsection (2) shall be in favour of the Authority and the Authority shall have all the powers and remedies conferred on mortgagees by any law for the time being in force.

(4) The Authority shall serve on the Registrar, prior to the commencement of any work, a notice stating the cost of which will constitute a charge on land or in respect of which the same is done, and that the work is about to be commenced, specifying the property that will be the subject of the charge and thereupon the Registrar shall enter the notice in the appropriate folio of the land register or file the same in the appropriate register for the registration of documents, as the case may be.

(5)² A person acquiring any estate or interest in any land in respect of which a notice has been entered or filed shall be deemed to have actual notice thereof.

(6) On the completion of a work, the Authority shall serve on the Registrar a further notice specifying the amount in respect of which a land by virtue of subsection (1) stands charged and thereupon the Registrar shall protect the interest of the Authority in a manner as shall appear to him appropriate.

(7) In making any entry or filing any document pursuant to subsection (6), the Registrar shall accept as conclusive the statement in writing relating to the charge of any duly constituted officer of any Authority.

(8) The Registrar shall cancel any memorial in the land register relating to a notice served on him under the provisions of subsection (4) or subsection (6) on receipt of a statement signed by the Authority that all amounts secured by the charge have been paid, or file any statement in the appropriate register of documents, whichever may be appropriate.

(9) A person having any registered interest in land in respect of which any entry or notice appears on the land register or

² This subsection has been split from subsection (4) as renumbered, and designated as subsection (5) for simplicity.

appropriate register of documents or any interest protected by the entry of a caveat may summon the Authority to appear before the High Court and show cause why the notice or entry should not be removed from the land register and the Court may make an order in the premises either *ex parte* or otherwise and as to costs as it deems fit.

(10) The Authority may agree that any expenses recoverable by it under this section shall be payable with interest by instalment within a period as it thinks fit, until the whole amount is paid.

(11)³ The instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, where recovered from the occupier and the owner is liable, may be deducted by the occupier from the rent of the premises:

Provided that, an occupier shall not be required to pay at any time any sum in excess of the amount which was due from him on account of rent at, or has become due from him on account of rent since the date on which he received a demand from the Authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded.

(12) The rate of interest chargeable under subsection (1) and subsection (10) shall be a rate as the Minister may determine.

(13) The Authority shall keep at its offices a register of all expenses incurred and advances made under this section, and show in the register the total amounts thereof, the instalment in which the same are payable, the land or premises in respect of which the same have been incurred or made, and the balances for the time being outstanding; and keep the register open at all reasonable times to the inspection of any person, free of charge.

³ This subsection has been splitt from subsection (10) and renumbering have been effected accordingly.

(14) The register and any extract therefrom, certified by any person authorised by the Authority in that behalf, shall, in any proceedings for the recovery of any expenses, advances or interest thereon or any instalment thereof, be *prima facie* evidence of the matters contained therein.

(15) In this section, the expression “Registrar” means the Registrar of Titles in any matter relating to registered land, or the Registrar of Documents in any matter relating to unregistered land.

Powers to make charge in respect of establishment expenses

24. Where under this Act an Authority is empowered to execute works and to recover from any person the expenses incurred by it in so doing, it may include in, and recover as part of, the expenses an additional sum to cover customs duties and other charges and departmental expenses on a scale or in a manner as may be prescribed or as the Minister may direct.

Recovery of expenses

25.—(1) A sum which an Authority is entitled to recover under this Act and with respect to the recovery of which no other provision is made, may be recovered either summarily as a civil debt, or as a simple contract debt in any court of competent jurisdiction.

(2) The time within which summary proceedings may be taken for the recovery of any a sums shall, except where otherwise expressly provided, be reckoned from the date of the service of a demand therefor.

Powers of entry and closing of streets

26.—(1) In the exercise of any powers and the performance of any duties conferred or imposed by this Act, an Authority or any officer thereof or any person acting on behalf of or under the direction of the Authority may—

- (a) enter any lands or premises at all reasonable times after notice to the owner or occupier and remain for a period as may reasonably be necessary for the performance of any inspection or work;
- (b) examine, open-up or cause to be opened-up and examined any sanitary convenience, sewer, drain,

cesspool, soil-pipe, water-pipe or any other fitting or thing connected with the drainage system of any building or any land as may reasonably be necessary for the performance of any inspection or work; or

- (c) temporarily close any street or thoroughfare to vehicular or pedestrian traffic or both and break open the surface of a street or thoroughfare for a period as may reasonably be necessary for the performance of any inspection or work.

(2) A person who fails or refuses to allow any person seeking to enter any lands or premises under subsection (1), obstructs or hinders a person in the performance of any duties under this Act, commits an offence and on conviction shall be liable to a fine not exceeding three hundred shillings.

Protection of
Authority and
its officers from
personal liability

27. A contract entered into by the Authority and a matter or thing done by any officer of the Authority or by any person acting on behalf or under the Authority or direction of the Authority shall not subject the Authority, an officer or a person to any action, liability, claim or demand whatsoever, if the matter or thing was done or the contract was entered into *bona fide* for the purpose of executing this Act.

Liability of
director, secretary
or manager of
company

28. Where a contravention of any of the provisions of this Act or any rules made hereunder is committed by any company or corporation, any director, secretary or manager thereof may be prosecuted and may be held liable for contravention and the consequences thereof.

Proceedings
against several
persons

29. Where proceedings under this Act are competent against several persons in respect of the joint act or default of that persons, it shall be sufficient to proceed against one or more of them without proceeding against the others.

Recovery
proceedings
Act No.
1 of 2008 s. 47

30. The Authority may by itself or any of its officers, or any person generally or specially authorised in writing by the Authority, sue for any sum recoverable under this Act, or

default in complying with any provision of this Act or any rule made hereunder, if the default is alleged to have been committed within or to affect its area, or to affect any public sewer vested in it outside its area.

Power of
Authority outside
its area

31. Nothing in any law shall be construed as preventing any Authority from exercising any power or performing any duty under this Act by reason only that in exercising the power or performing the duty it must do some act or thing or incur expenditure outside its areas.

Service of notices

32.—(1) Notices and other documents under this Act may be authenticated by the signature of any officer or person authorised by an Authority.

(2) Notices and other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of the premises by delivering the same, or a true copy thereof, to some person on the premises, or if there is no person on the premises who can be served, by fixing the same, on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall *prima facie* be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, order or other document was properly addressed and put in the post.

(3) A defect in the form of any notice or order made under this Act shall not invalidate or render unlawful the administrative action taken or be a ground for exception to any legal proceedings which may be taken in the matter to which such notice or order relates, provided the requirements thereof are substantially and intelligibly set forth.

PART VII

RULES

Rules

33.—(1) The Minister may make rules for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, in respect of any of the following matters:

- (a) the protection of public sewers;
- (b) private and public sewers and the supervision and maintenance thereof, and the communications and connections between drains and sewers, and between sewers;
- (c) the drainage of land, public places, streets and premises, and the disposal of foul water and storm water and subsoil water;
- (d) the plans, execution, construction, inspection and testing of drainage and sewerage works, and latrine accommodation, and the materials to be used in the construction thereof;
- (e) the giving of notices, and the making of and adherence to plans, sections, specifications and written particulars in relation to sewerage and drainage works, latrine accommodation and sanitary conveniences;
- (f) any forms, charges and fees relating to the subject matter of this Act and any rules made hereunder; and
- (g) the prescribing of any matter which is to be or may be prescribed under this Act.

(2) Rules made under this section may prescribe penalties for an offence consisting of the breach or contravention of the rules not exceeding three hundred shillings, and, if the offence is of a continuing nature, a further fine not exceeding forty shillings for each day during which the offence continues.

(3) Rules under this section may provide that, if any work to which a rule applies contravenes the rule—

- (i) the Authority, without prejudice to its right to take proceedings for a fine in respect of the

contravention, may by notice require the owner either to pull down or remove the work or to effect such alterations therein as may be necessary to make it comply with such rule; and

- (ii) where a person to whom such a notice has been given fails to comply with that notice before the expiration of such time as may therein be stated or such longer period as the Authority may allow the Authority may pull down or remove the work in question or effect such alterations therein as may be necessary and may recover from him the expenses reasonably incurred by it in so doing.

(4) A notice as mentioned in subsection (3) of this section shall not be given after the expiration of twelve months from the date of the completion of the whole of the work authorised, and, in any case where plans were deposited, it shall not be open to the Authority to give such a notice on the ground that the work contravenes any building rule, if either the plans were passed by the Authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work has been executed in accordance with the plans and of any requirements made by the Authority as a condition of passing the plans.

Rules made under
this Act to prevail
Cap. 288
Cap. 287

34. Where any rule or by-law relating to sewerage, drainage or sanitation made under the Local Government (Urban Authorities) Act, or the Local Government (District Authorities) Act, conflicts with or is inconsistent with or repugnant to any rule made under this Act, the rule made under this Act shall prevail.