

THE COUNCIL'S LEGAL RESPONSIBILITIES RELATING TO WATER MANAGEMENT

The Council's responsibilities/liabilities in relation to flooding and other water issues arises from many sources an outline of the most relevant being:

Part 1 - Common Law Responsibilities

1. As a riparian owner arising out of its own land holdings of land adjacent to watercourses. Rights arise by virtue of common law and include:
 - ❑ the right to receive and the right of flow of water
 - ❑ subject to certain restrictions, the right to use the water
 - ❑ a right to build a defence against flooding provided it is not built in the channel so as to cause obstruction.

2. Liabilities of Riparian Owners include:
 - ❑ liability for flooding/escape of water in circumstances which amount to nuisance or negligence on the part of the owner
 - ❑ liability for damage which is the natural consequence of the escape or overflow of water (brought or collected on land for the owners use) under the Rule in Rylands and Fletcher (but this does not apply to water naturally on the land)
 - ❑ not to use the watercourse in such a way as to interfere with the rights of someone further downstream or pollute the water
 - ❑ A riparian owner is under no common law duty to clear a watercourse which becomes silted or obstructed through natural causes, but under the Land Drainage Act 1991 a local authority may require the riparian owner to carry out such works

3. Flood defence rests primarily with the riparian owner, but a local authority has permissive powers (but not in connection with a main river) to carry out flood defence works under the Land Drainage Act 1991.

Part 2. Statutory responsibilities and role of Leeds City Council

Reservoirs Act 1975

4. The local authority has the duties of an undertaker where it is the owner of large raised reservoirs registered under the Act. The Council has a number of such reservoirs (e.g. Waterloo Lake, Yeadon Tarn, and Fenton Dam). It is also responsible for a significant number of sizeable lakes and ponds (e.g. Gledhow Lake, Paul's Pond, and Golden Acre Park Lake) that are not large enough to be registered. In respect of these the Council will have a duty of care in common law and would be liable (see Rylands v Fletcher) if a failure caused injury to third parties or their property.

Land Drainage Act 1991

7. This Act makes reference to Internal Drainage Boards which have certain operational and regulatory powers. Internal Drainage Boards are in operation only in a small area of Leeds, near Wetherby.
8. Section 14 confers on the local authority permissive powers to maintain and improve ordinary watercourses and construct new works for the purpose of preventing flooding or mitigating any damage caused by flooding in their area.
9. Section 20 confers powers on a local authority to undertake drainage work for any person, but at that persons expense.
10. A Local Authority has powers to secure a proper flow under Section 25 and to serve notice on persons requiring them to carry out necessary works to maintain the flow of "ordinary" watercourses.
11. The above may require consent/consultation with the Environment Agency.
12. Section 66 enables a local authority to make bylaws to secure the efficient working of the drainage system in its area - subject to the provisions within the Act (see below).

Public Health Act 1936

13. Section 259 confers statutory nuisance powers in relation to polluted watercourses which cause a nuisance or give rise to conditions prejudicial to health
14. Section 260 confers statutory powers to execute works, including maintenance or improvement works, in relation to drainage, where filth, stagnant waters or matter likely to be prejudicial to health or a nuisance .
15. Section 262 enables the local authority to require a developer to cover etc a culvert/watercourse in relation to land to be developed.
16. Section 263 makes it unlawful to cover over or culvert and watercourse without the agreement of the local authority to plans and sections.
17. Section 264 enables a local authority to require a landowner to repair cleans etc culverts in watercourses on his land.

Highways Act 1980

17. Under the Act Highway Authorities have power to drain water from highways. Section 41 places a duty on the highway authority to reasonably maintain and repair the highway so that it is free of danger to users.

Road Traffic Acts, Transport Act 2000, New Roads and Streetworks Act 1991

19. These Acts also have an effect on water management.

Local Government Act 1972

20. Section 138 enables local authorities to incur expenditure to avert alleviate or eradicate the effects or potential effects of any emergency or disaster - but these powers cannot be used as alternative powers to those available under Section 14 of the Land Drainage Act.

Environment Act 1995

21. This places a duty on the Environment Agency to exercise a supervision in relation to flood defence generally, and to provide a 24 hour flood warning service.

Planning Guidance

22. Planning Policy Guidance Note 25 (PPG25, *Development and Flood Risk*) states that flood risk should be taken into account by planning authorities in the preparation of development plans/determination of planning applications.
23. A planning authority should ensure the provisions of adequate drainage arrangements in a new development.

Local Acts/Bylaws

24. Leeds has enacted bylaws in relation to Land Drainage (under Section 66 of the Land Drainage Act 1991). These give the local authority the power to prevent certain activities that might interfere with the condition or free flow of watercourses.