Water Resources Act 1991

1991 CHAPTER 57

PART VII

LAND AND WORKS POWERS

Modifications etc. (not altering text)

C1 Pt. VII (ss. 154-186): Transfer of functions (1.4.1996) to the Agency by 1995 c. 25, **s. 2(1)(a)(iv)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER I

POWERS OF THE [F1APPROPRIATE AGENCY]

Textual Amendments

F1 Words in Pt. 7 Ch. 1 heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 277** (with Sch. 7)

Provisions in relation to land

154 Compulsory purchase etc.

(1) The Agency [F2or the NRBW] may be authorised by [F3the relevant Minister] to purchase compulsorily any land anywhere in England and Wales which is required by the Agency [F2or the NRBW] for the purposes of, or in connection with, the carrying out of its functions.

(2) The power of [F4the relevant Minister] under subsection (1) above shall include power—

(a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and

(b) by authorising the acquisition by the Agency **[**[F5]or, as the case may be, by the NRBW,**]** of any rights over land which is to be or has been acquired by the Agency **[**[F6]or the NRBW**]**, to provide for the extinguishment of those rights.

(3) Without prejudice to the generality of subsection (1) above, the land which the Agency **[**[F7]or the NRBW**]** may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the [M1]Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.

(4) Subject to section 182 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Agency **[**[F8]or the NRBW**]**; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.

(5) Schedule 18 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the [M2]Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.

(6) The provisions of Part I of the [M3]Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred, by virtue of any provision of this Act or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency) **[**[F9]or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)**]**), on the Agency **[**[F10]or the NRBW**]** as if—

(a) any reference in those provisions to the acquiring authority were a reference to the Agency **[**[F11]or, as the case may be, the NRBW**]**; and

(b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

[[F12](7) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.

(8) In subsections (1) and (2), "the relevant Minister" means—

(a) in relation to land in England, the Secretary of State; and

(b) in relation to land in Wales, the Welsh Ministers.**]**

Textual Amendments

F2 Words in s. 154(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(2)(a)** (with Sch. 7)

F3 Words in s. 154(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(2)(b)** (with Sch. 7)

F4 Words in s. 154(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(a)** (with Sch. 7)

F5 Words in s. 154(2)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(b)(i)** (with Sch. 7)

F6 Words in s. 154(2)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(b)(ii)** (with Sch. 7)

F7 Words in s. 154(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)

F8 Words in s. 154(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)

F9 Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(a)** (with Sch. 7)

F10 Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(b)** (with Sch. 7)

F11 Words in s. 154(6)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(c)** (with Sch. 7)

F12 S. 154(7)(8) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(6)** (with Sch. 7)

Modifications etc. (not altering text)

C2 S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **4(1)**

C3 S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **3(1)**

C4 S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **4**

C5 S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **3(1)** (with art. 3(3)(4))

Marginal Citations

M1 1981 c. 67.

M2 1965 c. 56.

M3 1965 c. 56.

155 Accretions of land resulting from drainage works.

(1) If the relevant Minister certifies that, as the result of—

(a) any drainage works carried out or improved, or proposed to be carried out or improved, by the Agency **[**[F13]or the NRBW**]** in connection with the tidal waters of a main river; or

(b) any drainage works transferred from a drainage body to the Agency **[**[F13]or the NRBW**]** in pursuance of this Act or the [M4]Land Drainage Act 1991,

there has been or is likely to be any accretion of land, the powers of the Agency **[**[F14]and the NRBW**]** by virtue of this Act, for the purpose of carrying out its functions **[**[F15]or, as the case may be, its relevant transferred functions**]**, to acquire land or any interest in or right over land by agreement or compulsorily shall include power so to acquire the land mentioned in subsection (2) below.

(2) The land mentioned in subsection (1) above is—

(a) the accretion of land or the land to which the accretion will, if it takes place, be added, together with any right to reclaim or embank the accretion; and

(b) such other land as is reasonably required for the purpose of reclamation of the accretion or for the enjoyment of it when reclaimed.

(3) An agreement or order with respect to the acquisition of any land or rights by virtue of this section may provide for the transfer to the Agency **[**[F16]or, as the case may be, the NRBW**]** of any liability for the upkeep, maintenance and repair of any bank or drainage work or of any other like liability.

(4) Where the value of any land or right is increased by the carrying out or proposed carrying out of drainage works by the Agency **[**[F17]or, as the case may be, the NRBW**]** the amount of the increase shall not be taken into account in assessing the compensation in respect of the compulsory acquisition of it.

(5) Where, by reason of a certificate having been given by the relevant Minister under this section in relation to any drainage works, the Agency **[**[F18]or, as the case may be, the NRBW**]** has acquired any land or right and a grant has been made out of public moneys for defraying the cost or part of the cost of the carrying out of the works, the Agency **[**[F18]or, as the case may be, the NRBW**]** shall—

(a) on being so required by the Crown Estate Commissioners; and

(b) on payment by the Commissioners to the Agency **[**[F19]or the NRBW**]** of the sum paid by the Agency **[**[F19]or the NRBW**]** in respect of the acquisition of the land or right, together with the amount of any costs incurred by the **[**[F20]Agency**][**[F19]or the NRBW**]** in connection with the acquisition,

transfer the land or right to the Commissioners or to any person nominated by them.

(6) If the Agency **[**[F21]or, as the case may be, the NRBW**]**, on being so required by the Crown Estate Commissioners in pursuance of subsection (5) above, fail to transfer to the Commissioners any land or right, the relevant Minister may by a vesting order transfer the land or right to the Commissioners or to a person nominated by them; and, for the purposes of this subsection, the relevant Minister shall be deemed to be a competent authority within the meaning of section 9 of the [M5]Law of Property Act 1925.

(7) In this section—

"banks" has the same meaning as in Part IV of this Act;

"drainage body" has the same meaning as in section 108 above;

"the relevant Minister"—

(a) in relation to England, means the Minister; and

(b) in relation to Wales, means the Secretary of State.

Textual Amendments

F13 Words in s. 155(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(2)(a)** (with Sch. 7)

F14 Words in s. 155(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(2)(b)** (with Sch. 7)

F15 Words in s. 155(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(2)(c)** (with Sch. 7)

F16 Words in s. 155(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)

F17 Words in s. 155(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)

F18 Words in s. 155(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(4)(a)** (with Sch. 7)

F19 Words in s. 155(5)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(4)(b)** (with Sch. 7)

F20 Word in s. 155 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F21 Words in s. 155(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 279(5)** (with Sch. 7)

Marginal Citations

M4 1991 c. 59.

M5 1925 c. 20.

156 Acquisition of land etc. for fisheries purposes.

(1) **[**[F22]Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)**][**[F23]or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)**]**, the powers conferred on the Agency **[**[F24]or, as the case may be, the NRBW,**]** by **[**[F25]those provisions**]** and section 154 above include power to purchase or take on lease (either by agreement or, if so authorised, compulsorily)—

(a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;

(b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 of the [M6]Salmon and Freshwater Fisheries Act 1975; and

(c) for the purpose of erecting and working a fixed engine, any fishery land or foreshore together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.

(2) **[**[F22]Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)**][**[F26]or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)**]**, the Agency **[**[F27]or, as the case may be, the NRBW,**]** may—

(a) either alter or remove an obstruction acquired in the exercise of the powers mentioned in subsection (1) above; or

(b) by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired,

subject, in the case of an obstruction or fishery acquired by way of lease, to the terms of the lease.

(3) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

Textual Amendments

F22 Words in s. 156(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 158** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F23 Words in s. 156(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 280(2)(a)** (with Sch. 7)

F24 Words in s. 156(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 280(2)(b)** (with Sch. 7)

F25 Words in s. 156(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 280(2)(c)** (with Sch. 7)

F26 Words in s. 156(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 280(3)(a)** (with Sch. 7)

F27 Words in s. 156(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 280(3)(b)** (with Sch. 7)

Marginal Citations

M6 1975 c. 51.

157 Restriction on disposals of compulsorily acquired land.

(1) The Agency **[**[F28]and the NRBW**]** shall not dispose of any of its compulsorily acquired land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, one of the Ministers.

(2) A consent or authorisation for the purposes of this section—

(a) shall be set out in a notice served on the Agency **[**[F29]or, as the case may be, the NRBW**]** by the Minister who is giving the consent or authorisation; and

(b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the [M7]Water Industry Act 1991 (restrictions on disposals of land by a water or sewerage undertaker).

(3) A consent or authorisation for the purposes of this section may be given on such conditions as the Minister who is giving it considers appropriate.

(4) Without prejudice to the generality of subsection (3) above, the conditions of a consent or authorisation for the purposes of this section may include a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available to such person as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.

(5) A requirement under subsection (4) above may require the opportunity to be made available in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.

[[F30](6) In this section "compulsorily acquired land", in relation to the Agency, means any land of the Agency which—

(a) was acquired by the Agency compulsorily under the provisions of section 154 above or of an order under section 168 below;

(b) was acquired by the Agency at a time when it was authorised under those provisions to acquire the land compulsorily;

(c) being land which has been transferred to the Agency from the Authority by section 3 of the 1995 Act, was acquired by theAuthority—

(i) compulsorily, under the provisions of section 154 above or of an order under section 168 below or under the provisions of section 151 of the [M8]Water Act 1989 or of an order under section 155 of that Act; or

(ii) at a time when it was authorised under those provisions to acquire the land compulsorily;

(d) being land—

(i) which has been so transferred, and

(ii) which was transferred to theAuthority in accordance with a scheme under Schedule 2 to the [M9]Water Act 1989,

was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or

(e) being land transferred as mentioned in sub-paragraphs (i) and (ii) of paragraph (d) above, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in that paragraph.**]**

[[F31](7) In this section "compulsorily acquired land", in relation to the NRBW, means any land of the NRBW which—

(a) was acquired by the NRBW compulsorily under the provisions of section 154 above or of an order under section 168 below;

(b) was acquired by the NRBW at a time when it was authorised under those provisions to acquire the land compulsorily; or

(c) being land which has been transferred to the NRBW from the Agency in accordance with a scheme made under section 23 of the Public Bodies Act 2011, was compulsorily acquired land of the Agency within the meaning of subsection (6).**]**

Textual Amendments

F28 Words in s. 157(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 281(2)** (with Sch. 7)

F29 Words in s. 157(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 281(3)** (with Sch. 7)

F30 S. 157(6) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 159** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F31 S. 157(7) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 281(4)** (with Sch. 7)

Modifications etc. (not altering text)

C6 S. 157 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **3(2)**

C7 S. 157 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **4(2)**

C8 S. 157 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **3(2)**

C9 S. 157 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **4(2)**

Marginal Citations

M7 1991 c. 56.

M8 1989 c. 15.

M9 1989 c. 29.

Works agreements for water resources purposes

158 Works agreements for water resources purposes.

(1) Without prejudice to the generality of the powers of the **[**[F32]Agency**]** by virtue of section 37 of the 1995 Act (incidental general powers of the Agency)**[**[F33], or (as

the case may be) of the NRBW by virtue of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),**]** but subject to subsection (2) below, those powers shall include power to enter into an agreement with any water undertaker, with any sewerage undertaker, with any local authority or joint planning board, or with the owner or occupier of any land, with respect to any one or more of the following matters, that is to say—

(a) the carrying out by any party to the agreement of works which the **[**[F34]appropriate agency**]** considers necessary or expedient in connection with the carrying out of any of the **[**[F34]appropriate agency's**]** functions by virtue of Part II of this Act;

(b) the maintenance by any party to the agreement of works carried out in pursuance of the agreement;

(c) provision for the **[**[F35]appropriate agency**]** to use, or have access to, any land for any purpose connected with the carrying out of any of those functions;

(d) the manner in which any reservoir is to be operated.

(2) The Secretary of State may by a direction to the **[**[F36]appropriate agency**]** direct that, in such cases or classes of cases as are specified in the direction, the **[**[F36]appropriate agency**]** shall not enter into any such agreement as is mentioned in subsection (1) above except with his consent.

(3) An agreement such as is mentioned in subsection (1) above may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the **[**[F37]appropriate agency**]** necessary or expedient for the purposes of the agreement.

(4) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land, other than registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—

(a) the agreement may be registered as a land charge under the [M10]Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D;

(b) the provisions of section 4 of that Act (which relates to the effect of non-registration) shall apply as if the agreement were such a land charge; and

(c) subject to the provisions of section 4 of that Act, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.

(5) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land which is registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—

[[F38](a) the agreement may be the subject of a notice in the register of title under the Land Registration Act 2002 as if it were an interest affecting the registered land;

(b) the provisions of sections 28 to 30 of that Act (effect of dispositions of registered land on priority of adverse interests) shall apply as if the agreement were such an interest;**]**

(c) **[**[F39]subject to the provisions of those sections,**]** the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon

that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.

(6) In this section—

"registered land" has the same meaning as in the **[**[F40]Land Registration Act 2002**]**; and

"successor", in relation to an agreement with the owner of any land, means a person deriving title or otherwise claiming under that owner, otherwise than in right of an interest or charge to which the interest of the owner was subject immediately before the following time, that is to say—

(a) where the land is not registered land, the time when the agreement was made; and

(b) where the land is registered land, the time when the notice of the agreement was registered.

Textual Amendments

F32 Word in s. 158 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F33 Words in s. 158(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 282(2)(a)** (with Sch. 7)

F34 Words in s. 158(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 282(2)(b)** (with Sch. 7)

F35 Words in s. 158(1)(c) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 282(2)(c)** (with Sch. 7)

F36 Words in s. 158(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 282(3)** (with Sch. 7)

F37 Words in s. 158(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 282(4)** (with Sch. 7)

F38 S. 158(5)(a)(b) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(a)** (with s. 129); S.I. 2003/1725, art. 2(1)

F39 Words in s. 158(5)(c) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(b)** (with s. 129); S.I. 2003/1725, art. 2(1)

F40 Words in s. 158(6) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(3)** (with s. 129); S.I. 2003/1725, art. 2(1)

Modifications etc. (not altering text)

C10 S. 158 applied (1.4.2006) by Water Act 2003 (c. 37), **ss. 33(3)(b)**, 105(3); S.I. 2006/984, art. 2(p)

C11 S. 158 applied (25.3.2022) by The Bridgwater Tidal Barrier Order 2022 (S.I. 2022/299), arts. 1, **66(3)** (with art. 55)

C12 S. 158(1) applied (with modifications) (4.6.1996) by S.I. 1996/1243, art. 18, **Sch. 5 para. 6(2)(b)**

Marginal Citations

M10 1972 c. 61.

General pipe-laying powers

159 Powers to lay pipes in streets.

(1) Subject to the following provisions of this Part, the **[**[F41]appropriate agency**]** shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe in, under or over any street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials.

[[F42](1A) The **[**[F41]appropriate agency**]** may carry out work within subsection (1)(a) to (c) if—

(a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and

(b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.**]**

(2) Without prejudice to the generality of subsection (1)(c) above, the **[**[F41]appropriate agency**]** shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.

(3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) Until the coming into force of its repeal by the [M11]New Roads and Street Works Act 1991 section 20 of the [M12]Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any pipe which is conferred by this section.

(5) In this section references to a relevant pipe are references to a resource main or discharge pipe and references to laying such a pipe shall include references-

(a) to the laying of any drain or sewer for any of the purposes specified in subsection (6) below; and

(b) to the construction of a watercourse for any of those purposes.

(6) The purposes mentioned in subsection (5) above are—

(a) intercepting, treating or disposing of any foul water arising or flowing upon any land; or

(b) otherwise preventing the pollution—

(i) of any waters, whether on the surface or underground, which belong to the **[**[F41]appropriate agency**]** or any water undertaker or from which the **[**[F41]appropriate agency**]** or any water undertaker is authorised to take water;

(ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by the **[**[F41]appropriate agency**]** or any water undertaker or which the **[**[F41]appropriate agency**]** or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or

(iii) of any underground strata from which the **[**[F41]appropriate agency**]** or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of this Act.

(7) References in this section to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe as the pipe replaced.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F42 S. 159(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 45** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

Marginal Citations

M11 1991 c. 22.

M12 1980 c. 66.

160 Power to lay pipes in other land.

(1) Subject to the following provisions of this Part, the **[**[F41]appropriate agency**]** shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.

[[F43](1A) The **[**[F41]appropriate agency**]** may carry out work within subsection (1)(a) to (c) if—

(a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and

(b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.**]**

(2) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(3) Subject to subsection (4) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (2) above shall be deemed—

(a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and

(b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.

(4) In this section references to a relevant pipe are references to a resource main or discharge pipe; and subsection (7) of section 159 above shall apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F43 S. 160(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 46** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

[F44 Restoration and improvement works for controlled waters

Textual Amendments

F44 Ss. 161-161AB substituted for s. 161 (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **5** (with reg. 7)

161. Anti-pollution works and operations

(1) This section applies where it appears to the **[**F41appropriate agency**]** that any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters.

(2) In a case where the matter appears to be or to have been present in the controlled waters, the **[**F41appropriate agency**]** shall be entitled to carry out works and operations for any of the following purposes—

(a) removing or disposing of the matter;

(b) remedying or mitigating any pollution caused by its presence in the waters; or

(c) restoring (so far as it is reasonably practicable to do so) the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.

(3) In a case where the matter appears to be likely to enter the controlled waters, the **[**F41appropriate agency**]** shall be entitled to carry out works and operations for the purpose of preventing it from doing so.

(4) The **[**F41appropriate agency**]** shall be entitled to carry out investigations for the purpose of establishing any of the following—

(a) the nature of the matter,

(b) the source of the matter;

(c) the nature and effects of any pollution caused or likely to be caused by the presence of the matter; and

(d) the identity of any responsible persons.

(5) Without prejudice to the power of the **[**F41appropriate agency**]** to carry out those investigations, the powers conferred by subsection (2) or (3) shall only be exercisable in a case where—

(a) the **[**[F41]appropriate agency**]** considers it necessary to carry out forthwith any works or operations falling within that subsection; or

(b) it appears to the **[**[F41]appropriate agency**]** , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.

(6) In this section "responsible person" means a person who has caused or knowingly permitted the matter—

(a) to be present in the controlled waters; or

(b) to be at a place from which it was likely, in the opinion of the **[**[F41]appropriate agency**]**, to enter the controlled waters.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161ZA. Other works and operations in respect of harm to controlled waters

(1) This section applies where it appears to the **[**[F41]appropriate agency**]** that any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (and it is immaterial whether the source of potential harm has been identified).

(2) In this section "harm" means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of the environmental objectives applicable to the controlled waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into or presence in those waters of any poisonous, noxious or polluting matter or waste matter.

[F45](3) . . . . . .

(4) The **[**[F41]appropriate agency**]** shall be entitled to carry out works and operations for any of the following purposes (so far as it is reasonably practicable to achieve them)—

(a) removing the source of potential harm;

(b) preventing any harm or further harm being caused to the controlled waters;

(c) in a case where the controlled waters are being or have been harmed—

(i) remedying or mitigating the effects of the harm;

(ii) restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before any harm was caused.

(5) The **[**[F41]appropriate agency**]** shall be entitled to carry out investigations for the purpose of establishing any of the following—

(a) the source of any harm or potential harm to the controlled waters;

(b) the nature and effects of any harm caused or likely to be caused to those waters; and

(c) the identity of any responsible persons.

(6) Without prejudice to the power of the **[**[F41]appropriate agency**]** to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable in a case where—

(a) the **[**[F41]appropriate agency**]** considers it necessary to carry out forthwith any works or operations falling within that subsection; or

(b) it appears to the **[**[F41]appropriate agency**]** , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.

(7) In this section "responsible person" means a person who has caused or knowingly permitted—

(a) any harm to be caused to the controlled waters; or

(b) a source of potential harm to exist that is likely, in the opinion of the **[**[F41]appropriate agency**]**, to cause harm to the controlled waters.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F45 S. 161ZA(3) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161ZB. Works and operations for improving controlled waters

(1) This section applies where it appears to the **[**[F41]appropriate agency**]** that—

(a) the condition of any hydromorphological quality element affecting any controlled waters is unsatisfactory; and

(b) it is possible to improve the hydromorphological quality element by carrying out works or operations.

(2) For the purposes of this section the condition of a hydromorphological quality element affecting the controlled waters is unsatisfactory if (whether by itself or in combination with other factors) if it is likely to prevent the waters from achieving the applicable environmental objectives.

[F46](3) . . . . . .

(4) The **[**[F41]appropriate agency**]** shall be entitled to carry out works and operations for the purpose of improving the condition of the hydromorphological quality element in question with a view to achieving (or contributing to the achievement of) the applicable environmental objectives.

(5) The [F41appropriate agency] shall be entitled to carry out investigations for the purpose of establishing why the condition of the hydromorphological quality element in question is unsatisfactory.

(6) Without prejudice to the power of the [F41appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable if it appears to the [F41appropriate agency] that it is unable to secure that the necessary works or operations are carried out by exercising its powers under section 161 or 161ZA or by serving a works notice on any responsible person.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F46 S. 161ZB(3) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161ZC. Sections 161 to 161ZB: supplementary

(1) Nothing in sections 161 to 161ZB shall entitle the [F41appropriate agency] to impede or prevent the making of any discharge in pursuance of [F47an environmental permit].

(2) Where the [F41appropriate agency] carries out any works, operations or investigations under any of the powers conferred by section 161 or 161ZA it shall, subject to subsection (3), be entitled to recover the expenses reasonably incurred in doing so from any responsible person (within the meaning of the section conferring the powers in question).

(3) No expenses are recoverable from a person for any works, operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [F41appropriate agency], to enter any controlled waters.

(4) Subsection (3) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

F48(5) . . . . . .

(6) Nothing in sections 161, 161ZA and 161ZB—

(a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under any of those sections; or

(b) affects any restriction imposed by or under any other enactment, whether public local or private.

(7) In this section—

"expenses" includes costs;

"mine" has the same meaning as in the Mines and Quarries Act 1954;
"works notice" means a notice under section 161A.

(8) In sections 161, 161ZA and 161ZB and this section "controlled waters" has the same meaning as in Part 3 of this Act [F49]...

[[F50](9) In sections 161ZA and 161ZB, "environmental objectives", "hydromorphological quality element" and "Water Framework Directive" have the meanings given by section 93(7) of this Act.**]**

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F47 Words in s. 161ZC(1) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 8(8)(a)** (with reg. 1(2), Sch. 4)

F48 S. 161ZC(5) repealed (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(m), **Sch. 28** (with reg. 1(2), Sch. 4)

F49 Words in s. 161ZC(8) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F50 S. 161ZC(9) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161A. Notices requiring persons to carry out works and operations

(1) Where it appears to the **[**[F41]appropriate agency**]** that—

(a) any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters (so that section 161 applies), or

(b) any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (so that section 161ZA applies),

the **[**[F41]appropriate agency**]** shall be entitled to serve a works notice on any responsible person.

(2) In this section "responsible person" has the same meaning as in section 161 or 161ZA) (as the case may be).

(3) For the purposes of this section a works notice is a notice requiring the person on whom it is served to carry out such works or operations as may be specified in the notice.

(4) The works or operations that may be so specified are works or operations which may be carried out under section 161(2) or (3) or section 161ZA(4) (as the case may be).

(5) Where the **[**[F41]appropriate agency**]** has carried out any such investigations as are mentioned in sections 161(4) or 161ZA(5) and serves a works notice on a responsible

person in connection with the matters to which the investigations relate it shall (unless the notice is quashed or withdrawn) be entitled to recover from that person the costs or expenses reasonably incurred in carrying out those investigations.

(6) The appropriate national authority may, if it thinks fit in relation to any person, give directions to the **[**[F41]appropriate agency**]** as to whether or how it should exercise its powers under this section or section 161AA.

(7) In this section and sections 161AA and 161AB "controlled waters" has the same meaning as in Part 3 of this Act.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161AA. Works notices: form etc

(1) A works notice—

(a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and

(b) is without prejudice to the powers of the **[**[F41]appropriate agency**]** to carry out any works or operations under section 161(5)(a) or 161ZA(6)(a).

(2) Before serving a works notice on any person, the **[**[F41]appropriate agency**]** shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.

(3) The appropriate national authority may by regulations make provision for or in connection with—

(a) the form or content of works notices;

(b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;

(c) steps to be taken for the purposes of any consultation required under subsection (2) or regulations made by virtue of paragraph (b); or

(d) any other steps of a procedural nature which are to be taken in connection with or in consequence of the service of a works notice.

(4) A works notice shall not be regarded as invalid or as invalidly served by reason only of a failure to comply with the requirements of subsection (2) or of regulations made by virtue of paragraph (b) of subsection (3).

(5) In this section and section 161A, "appropriate national authority" means—

(a) in relation to England, the Secretary of State; and

(b) in relation to Wales, the Welsh Ministers.

(6) The power to make regulations under this section shall be exercisable by statutory instrument subject—

(a) in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and

(b) in the case of regulations made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales.

(7) In this section,—

(a) paragraph (1) of section 219 does not apply; and

(b) in paragraph (2) of that section, references to "the Ministers" or the "the Secretary of State" shall be taken to be references to the appropriate national authority.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161AB. Works notices: exceptions etc

(1) Nothing in section 161A shall entitle the **[**[F41]appropriate agency**]** to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of **[**[F51]an environmental permit**]** .

(2) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the **[**[F41]appropriate agency**]**, to enter any controlled waters.

(3) Subsection (2) does not apply to the service of a notice on the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

[F52](4) . . . . . .

(5) In this section "mine" has the same meaning as in the Mines and Quarries Act 1954.**]**

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F51 Words in s. 161AB(1) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 8(8)(b)** (with reg. 1(2), Sch. 4)

F52 S. 161AB(4) repealed (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(n), **Sch. 28** (with reg. 1(2), Sch. 4)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

[F53]161B Grant of, and compensation for, rights of entry etc.

(1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.

(2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.

(3) Before serving a works notice, the **[**[F41]appropriate agency**]** shall reasonably endeavour to consult every person who appears to it—

(a) to be the owner or occupier of any relevant land, and

(b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.

(5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.

[[F54](6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5), regulations by virtue of that subsection may—

(a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;

(b) without prejudice to the generality of paragraph (a) above, provide for compensation under this section to be payable in respect of—

(i) any effect of any rights being granted, or

(ii) any consequence of the exercise of any rights which have been granted;

(c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;

(d) provide for the persons or bodies by whom, and the manner in which, any dispute—

(i) as to whether any, and (if so) how much and when, compensation under this section is payable, or

(ii) as to the person to or by whom it shall be paid,

is to be determined;

(e) provide for when or how applications may be made for compensation under this section;

(f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;

(g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;

(h) make provision similar to any provision made by paragraph 8 of Schedule 19;

(i) make different provision for different cases, including different provision in relation to different persons or circumstances;

(j) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.**]**

(7) In this section—

"prescribed" means prescribed in regulations made by the Secretary of State;

"relevant land" means—

(a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or

(b) any land adjoining or adjacent to that land or those waters;

"works notice" means a works notice under section 161A above.

Textual Amendments

F41 Words in ss. 159-161B substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F53 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117);S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

F54 S. 161B(6) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 21(6)** (with reg. 72, Sch. 4)

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

C15 S. 161B applied (with modifications) (1.4.2006) by Water Act 2003 (c. 37), **ss. 4(3)(b)**, 105(3); S.I. 2006/984, art. 2(d)

[F55]161C Appeals against works notices.

(1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.

(2) On any appeal under this section the Secretary of State—

(a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the notice, with or without modification, or quash it.

(3) The Secretary of State may by regulations make provision with respect to—

(a) the grounds on which appeals under this section may be made; or

(b) the procedure on any such appeal.

(4) Regulations under subsection (3) above may (among other things)—

(a) include provisions comparable to those in section 290 of the [M13]Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;

(d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;

(e) make provision as respects—

(i) the particulars to be included in the notice of appeal;

(ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or

(iii) the abandonment of an appeal.

(5) In this section "works notice" means a works notice under section 161A above.

(6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

Textual Amendments

F55 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117);S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

C16 S. 161C: power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

C17 S. 161C applied (with modifications) (1.4.2006) by Water Act 2003 (c. 37), **ss. 4(3)(b)**, 105(3); S.I. 2006/984, art. 2(d)

Marginal Citations

M13 1936 c. 49.

[F56]161D Consequences of not complying with a works notice.

(1) If a person on whom the **[**[F57]appropriate agency**]** serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) A person who commits an offence under subsection (1) above shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months or to **[**[F58]a fine**]** or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

(3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the **[**[F57]appropriate agency**]** may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the **[**[F57]appropriate agency**]** in doing it.

(4) If the **[**[F57]appropriate agency**]** is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the **[**[F57]appropriate agency**]** may take proceedings in the High Court for the purpose of securing compliance with the notice.

(5) In this section "works notice" means a works notice under section 161A above.

Textual Amendments

F56 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

F57 Words in ss. 161D-164 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F58 Words in s. 161D(2)(a) substituted (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 4 para. 24(5)** (with reg. 5(1))

Modifications etc. (not altering text)

C13 Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C14 Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

162 Other powers to deal with foul water and pollution.

(1) Without prejudice to the powers conferred by **[**[F59]sections 161 to 161D**]** above and subsections (2) and (3) below, the **[**[F57]appropriate agency**]** shall have power, on any land—

(a) which belongs to the **[**[F57]appropriate agency**]**; or

(b) over or in which the **[**[F57]appropriate agency**]** has acquired the necessary easements or rights,

to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose of intercepting, treating or disposing of any foul water arising or

flowing on that land or of otherwise preventing any such pollution as is mentioned in section 159(6)(b) above.

(2) Subject to the following provisions of this Part, the **[**[F57]appropriate agency**]** shall, for the purpose of carrying out its functions, have power—

(a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Subject to the following provisions of this Part, the **[**[F57]appropriate agency**]** shall, for the purpose of carrying out its functions, have power—

(a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 160 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the **[**[F57]appropriate agency**]**, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.

(5) Any dispute as to whether any consent for the purposes of subsection (4) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(6) In this section—

"relevant waterworks" means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises;

"service pipe" and "water main" have the same meanings as in the [M14]Water Industry Act 1991;

"waterworks" includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

Textual Amendments

F57 Words in ss. 161D-164 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F59 Words in s. 162(1) substituted (29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 163** (with ss. 7(6), 115, 117); S.I. 1999/1301, **art. 2**

Marginal Citations

M14 1991 c. 56.

Powers to discharge water

163 Discharges for works purposes.

(1) Subject to the following provisions of this section and to section 164 below, where the **[**[F57]appropriate agency**]**—

(a) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole or other work belonging to or used by the **[**[F57]appropriate agency**]** for the purposes of, or in connection with, the carrying out of any of its functions; or

(b) is exercising or about to exercise any power conferred by section 159, 160 or 162(2) or (3) above,

the **[**[F57]appropriate agency**]** may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

(2) Nothing in this section shall authorise any discharge which—

(a) damages or injuriously affects the works or property of any railway company or navigation authority; or

(b) floods or damages any highway.

(3) If the **[**[F57]appropriate agency**]** fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—

(a) mud and silt;

(b) solid, polluting, offensive or injurious substances; and

(c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) In this section—

"railway company" means the British Railways Board, **[**[F60]Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,**]** or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway; and

"relevant pipe" has the same meaning as in section 159 above.

Textual Amendments

F57 Words in ss. 161D-164 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F60 Words in s. 163(4) substituted (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), art. 1(1), **Sch. 1 para. 16(2)**

164 Consents for certain discharges under section 163.

(1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 163 above except with such consent as may be prescribed.

(2) Where the **[**[F57]appropriate agency**]** makes an application to any person for a consent for the purposes of this section—

(a) that application shall be accompanied or supplemented by all such information as that person may reasonably require; and

(b) the **[**[F57]appropriate agency**]** shall serve a copy of the application, and of any consent given on that application, on every person who—

(i) is registered with the **[**[F57]appropriate agency**]** in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and

(ii) has not agreed in writing that he need not be served with such a copy;

but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—

(a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and

(b) in any other case, before the end of the period of three months beginning with that day;

and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

(a) the **[**[F57]appropriate agency**]**, having made an application to any person for a consent for the purposes of this section, has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that person; and

(b) that requirement was made by that person at such a time before the end of the period within which he is required to determine the application as gave the **[**[F57]appropriate agency**]** a reasonable opportunity to provide the required information within that period,

that person may delay his determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed

by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under section 163 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the **[**[F57]appropriate agency**]** shall, as soon as practicable after making the discharge, serve a notice which—

(a) states that the discharge has been made; and

(b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom the **[**[F57]appropriate agency**]** would have been required to serve the application for that consent or any copy of that application.

(8) If the **[**[F57]appropriate agency**]** contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the [M15]Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

Textual Amendments

F57 Words in ss. 161D-164 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C18 S. 164 modified (30.11.2017) by The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), regs. 1(2), **102(4)**

Marginal Citations

M15 1945 c. 42.

Flood defence and drainage works

165 [[F61]General powers to carry out works]

[[F62](1) The **[**[F63]appropriate agency**]** may—

(a) carry out flood risk management work within subsection (1D)(a) to (f) if Conditions 1 and 2 are satisfied;

(b) carry out flood risk management work within subsection (1D)(g) or (h) if Condition 1 is satisfied.

(1A) Condition 1 is that the **[**[F64]appropriate agency**]** considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.

(1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—

(a) the sea, or

(b) a main river.

(1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.

(1D) In this section "flood risk management work" means anything done—

(a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;

(b) to operate existing works (such as sluicegates or pumps);

(c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;

(d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);

(e) for the purpose of maintaining or restoring natural processes;

(f) to monitor, investigate or survey a location or a natural process;

(g) to reduce or increase the level of water in a place;

(h) to alter or remove works.**]**

(2) The **[**[F65]appropriate agency**]** shall also have power[F66]... to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.

(3) The **[**[F67]appropriate agency**]** may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.

[[F68](4) The Agency **[**[F69]or the NRBW**]** may by agreement with any person carry out, improve or maintain, at that person's expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) **[**[F70]or article 12 of the Natural Resources Body for Wales (Establishment) Order 2012 (grants to the NRBW) (S.I.2012/1903)**]** as the Agency **[**[F69]or the NRBW**]** decides (subject to any terms on which the grant is made) to allocate for the works in question.**]**

(5) The Agency **[**[F71]or the NRBW**]** may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work [F72]... which the Agency **[**[F71]or the NRBW**]** is authorised to carry out **[**[F73]under this section**]**.

(6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.

(7) In this section "watercourse" has the same meaning as in Part IV of this Act [F74]...

Textual Amendments

F61 S. 165 heading substituted (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(6)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F62 S. 165(1)-(1D) substituted for s. 165(1) (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(2)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F63 Words in s. 165(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)

F64 Words in s. 165(1A) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)

F65 Words in s. 165(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)

F66 Words in s. 165(2) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(3)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F67 Words in s. 165(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)

F68 S. 165(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(2)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)

F69 Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(a)** (with Sch. 7)

F70 Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(b)** (with Sch. 7)

F71 Words in s. 165(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(4)** (with Sch. 7)

F72 Words in s. 165(5) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(a)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F73 Words in s. 165(5) added (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(b)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F74 Words in s. 165(7) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(5)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

Modifications etc. (not altering text)

C19 S. 165 excluded (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 11(2)**, 76(2).

166 Power to carry out works for purpose of providing flood warning system.

(1) Without prejudice to its other powers by virtue of section 37 of the 1995 Act (incidental general powers of the Agency), **[**[F75]or (as the case may be) article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),**]** Part IV of this Act and this Part, the **[**[F76]appropriate agency**]** shall have power—

(a) to provide and operate flood warning systems;

(b) to provide, install and maintain apparatus required for the purposes of such systems;

(c) to carry out any other engineering or building operations so required.

(2) Subsection (1) above shall not be construed as authorising, on the part of the **[**[F77]appropriate agency**]**, any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the **[**[F77]appropriate agency**]** by virtue of its constitution.

(3) The **[**[F78]Agency**]** may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—

(a) its functions in relation to **[**[F79]the flood risk management regions adjacent to Scotland**]** were functions in relation to that area in Scotland; and

(b) that area in Scotland were included in **[**[F80]those flood risk management regions**]**;

but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the [M16]Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

[[F81](4) In this section—

[[F82]"flood risk management region" means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010;**]**

"flood warning system" means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

(a) rainfall, as measured at a particular place within a particular period; or

(b) the level or flow of any inland water, or part of an inland water, at a particular time; or

(c) other matters appearing to the **[**[F83]appropriate agency**]** to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

"inland water" means any of the following in any part of Great Britain, that is to say—

(a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;

(b) any lake or pond, whether natural or artificial, and any reservoir or dock; and

(c) any channel, creek, bay, estuary or arm of the sea;

"rainfall" includes any fall of snow, hail or sleet.**]**

[[F81](4) In this section—

"flood warning system" means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

(a) rainfall, as measured at a particular place within a particular period; or

(b) the level or flow of any inland water, or part of an inland water, at a particular time; or

(c) other matters appearing to the **[**[F83]appropriate agency to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

"inland water" means any of the following in any part of Great Britain, that is to say—

(a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;

(b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
(c) any channel, creek, bay, estuary or arm of the sea;

"rainfall" includes any fall of snow, hail or sleet.**]]**

Textual Amendments

F75 Words in s. 166(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 285(2)(a)** (with Sch. 7)

F76 Words in s. 166(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 285(2)(b)** (with Sch. 7)

F77 Words in s. 166(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 285(3)** (with Sch. 7)

F78 Words in s. 166 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F79 Words in s. 166(3)(a) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 12(2)(a)**

F80 Words in s. 166(3)(b) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 12(2)(b)**

F81 S. 166(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(3)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)

F82 Words in s. 166(4) inserted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 12(3)**

F83 Words in s. 166(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 285(4)** (with Sch. 7)

Marginal Citations

M16 1961 c. 41.

167 Power to dispose of spoil in connection with flood defence works.

(1) Subject to subsection (2) below, the **[**[F84]appropriate agency**]** may—
(a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and
(b) deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.

(2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the [M17]Environmental Protection Act 1990.

(3) The **[**[F85]appropriate agency**]** and the council of any district or London borough **[**[F86] or Welsh county or county borough**]** may enter into an agreement providing—
(a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
(b) for the payment by the **[**[F85]appropriate agency**]** to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.

(4) In this section "banks" and "watercourse" have the same meanings as in Part IV of this Act.

Textual Amendments

F84 Words in s. 167(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 286(2)** (with Sch. 7)

F85 Words in s. 167(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 286(3)** (with Sch. 7)

F86 Words in s. 167(3) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 para. 3(4)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Marginal Citations

M17 1990 c. 43.

[F87 167A Consultation in relation to works affecting flood and coastal erosion risks

(1) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010) in Wales, the Agency must consult the NRBW.

(2) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within that meaning) in England, the NRBW must consult the Agency.

(3) This section applies to any function under—

F88(a) . . . . . .

(b) the flood risk management work provisions;

(c) byelaws made under paragraph 5 of Schedule 25.**]**

Textual Amendments

F87 S. 167A inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 287** (with Sch. 7)

F88 S. 167A(3)(a) repealed (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), regs. 1(2), **30** (with regs. 31-33)

Compulsory works orders

168 Compulsory works orders.

(1) Where the **[**F89appropriate agency**]** is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—

(a) to carry out any engineering or building operations; or

(b) to discharge water into any inland waters or underground strata,

the **[**F89appropriate agency**]** may apply to either of the Ministers for an order under this section (“a compulsory works order").

(2) Subject to the following provisions of this section, the Ministers shall each have power, on an application under subsection (1) above, by order made by statutory instrument—

(a) to confer such compulsory powers; and

(b) to grant such authority,

as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

(3) Schedule 19 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.

(4) Subject to the provisions of Schedule 19 to this Act, a compulsory works order may—

(a) without prejudice to section 154 above, confer power to acquire compulsorily any land, including—

(i) power to acquire interests in and rights over land by the creation of new rights and interests; and

(ii) power, by the compulsory acquisition by the **[**[F89]appropriate agency**]** of any rights over land which is to be or has been acquired by the **[**[F89]appropriate agency**]**, to extinguish any such rights;

(b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this paragraph;

(c) make any authority granted by the order subject to such conditions as may be specified in the order;

(d) amend or repeal any local statutory provision;

(e) contain such supplemental, consequential and transitional provision as the Minister making the order considers appropriate;

and section 156(1) above shall apply in relation to the powers conferred by virtue of this section as it applies in relation to the power conferred by section 154 above.

(5) Without prejudice to any duty imposed by virtue of section 184 below, where—

(a) either of the Ministers makes a compulsory works order authorising the **[**[F89]appropriate agency**]** to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on the **[**[F89]appropriate agency**]**; and

(b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

(6) Nothing in any compulsory works order shall exempt the **[**[F89]appropriate agency**]** from any restriction imposed by Chapter II of Part II of this Act.

(7) It is hereby declared that a compulsory works order may grant authority for discharges of water by the **[**[F89]appropriate agency**]** where the **[**[F89]appropriate agency**]** has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.

(8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 155 to 158 and 165 to 167 above.

[[F90](9) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.**]**

Textual Amendments

F89 Words in s. 168 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 288(2)** (with Sch. 7)

F90 S. 168(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 288(3)** (with Sch. 7)

CHAPTER II

POWERS OF ENTRY

169 Powers of entry for enforcement purposes.

(1) Any person designated in writing for the purpose by either of the Ministers**[**[F91], by the Agency, or by the NRBW,**]** may—

(a) enter any premises or vessel for the purpose of ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the Agency **[**[F92]or of any relevant byelaws made by the NRBW**]** is being or has been contravened; and

(b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as that Minister**[**[F93], the Agency, or the NRBW**]**—

(i) considers appropriate for the purpose mentioned in paragraph (a) above; and

(ii) has authorised that person to carry out or take away.

[[F94](2) The powers conferred by subsection (1) above in relation to any premises shall include power, in order to obtain information for the purpose mentioned in subsection (1)(a) above—

(a) to carry out experimental borings or other works on those premises; and

(b) to install and keep monitoring and other apparatus there.**]**

(3) **[**[F95]Subject to subsection (4) below,**]**this section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the **[**[F96]Agency**]** carries out functions **[**[F97]or the NRBW carries out relevant transferred functions**]**.

[[F98](3A) The Agency may designate a person under subsection (1) in relation to—

(a) any provision made by or under this Act, so far as it applies otherwise than in relation to Wales;

(b) any provision made by or under any other enactment, if the Agency carries out functions under or for the purposes of that provision;

(c) any byelaws made by the Agency.

(3B) The NRBW may designate a person under subsection (1) in relation to—

(a) any provision made by or under this Act, so far as it applies in relation to Wales;

(b) any provision made by or under any other enactment, if the NRBW carries out relevant transferred functions under or for the purposes of that provision;

(c) any relevant byelaws.**]**

F99**[**(4) The powers conferred by this section shall not have effect for the purposes of any of the Agency's **[**F100or the NRBW's**]** pollution control functions, within the meaning of section 108 of the 1995 Act.**]**

[F101(5) In this section, "relevant byelaws" means byelaws made (or treated as if made) by the NRBW in the exercise of any relevant transferred functions.**]**

Textual Amendments

F91 Words in s. 169(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(2)(a)** (with Sch. 7)

F92 Words in s. 169(1)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(2)(b)** (with Sch. 7)

F93 Words in s. 169(1)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(2)(c)** (with Sch. 7)

F94 S. 169(2) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 71**, 105(3); S.I. 2004/641, art. 3(r) (with Sch. 3 paras. 67)

F95 Words in s. 169(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F96 Words in s. 169 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F97 Words in s. 169(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(3)** (with Sch. 7)

F98 S. 169(3A)(3B) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(4)** (with Sch. 7)

F99 S. 169(4) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F100 Words in s. 169(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(5)** (with Sch. 7)

F101 S. 169(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 289(6)** (with Sch. 7)

170 Power of entry for certain works purposes.

(1) Any person designated in writing for the purpose by the Agency **[**F102or by the NRBW**]** may enter any premises for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are—

(a) the carrying out of any survey or tests for the purpose of determining—

(i) whether it is appropriate and practicable for the Agency **[**F103or the NRBW**]** to exercise any relevant works power; or

(ii) how any such power should be exercised;

(b) the exercise of any such power.

(3) The power by virtue of subsection (1) above of a person designated by the Agency **[**F104or by the NRBW**]** to enter any premises for the purposes of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and

(b) to take away and analyse such samples of water or effluent or of any land or articles as the Agency **[**[F105]or the NRBW**]** considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above and has authorised that person to take away and analyse.

(4) In this section "relevant works power" means any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 above.

Textual Amendments

F102 Words in s. 170(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(2)** (with Sch. 7)

F103 Words in s. 170(2)(a)(i) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(3)** (with Sch. 7)

F104 Words in s. 170(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(4)(a)** (with Sch. 7)

F105 Words in s. 170(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(4)(b)** (with Sch. 7)

Modifications etc. (not altering text)

C20 S. 170 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **5(1)**

C21 S. 170 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **6(1)**

C22 S. 170 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **5(1)**

C23 S. 170 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **6(1)**

171 Power to carry out surveys and to search for water.

(1) Without prejudice to the rights and powers conferred by the other provisions of this Chapter, any person designated in writing under this section by the Agency **[**[F106]or by the NRBW**]** may enter any premises for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—

[F107](a) . . . . . .

(b) whether it would be appropriate for the Agency **[**[F108]or the NRBW**]** to apply for an order under section 168 above and what compulsory powers it would be appropriate to apply for under that section.

(3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;

(b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and

(c) to take away and analyse such samples of water or of any land or articles as the Agency **[**[F109]or the NRBW**]** considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.

(4) **[**[F110]The powers conferred by this section or section 172 of the Housing and Planning Act 2016 shall not be exercised on behalf of the Agency or the NRBW in any case for purposes connected with the determination of—**]**

(a) whether, where or how a reservoir should be constructed; or

(b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,

unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.

(5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—

(a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and

(b) he has considered any representation or objections with respect to the proposed exercise of the powers under this section which—

(i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and

(ii) have not been withdrawn.

[[F111](6) In relation to the NRBW, the reference to functions in subsection (2)(a) has effect as a reference to relevant transferred functions.**]**

Textual Amendments

F106 Words in s. 171(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 291(2)** (with Sch. 7)

F107 S. 171(2)(a) omitted (13.7.2016) by virtue of Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 14 para. 23(2)**; S.I. 2016/733, reg. 3(h) (with reg. 6)

F108 Words in s. 171(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 291(3)** (with Sch. 7)

F109 Words in s. 171(3)(c) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 291(4)** (with Sch. 7)

F110 Words in s. 171(4) substituted (13.7.2016) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 14 para. 23(3)**; S.I. 2016/733, reg. 3(h) (with reg. 6)

F111 S. 171(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 291(5)** (with Sch. 7)

Modifications etc. (not altering text)

C24 S. 171 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **5(2)**

C25 S. 171 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **5(2)**

C26 S. 171 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **6(2)**

C27 S. 171 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **6(2)**

172 Powers of entry for other purposes.

(1) Any person designated in writing for the purpose by either of the Ministers**[**[F112], by the Agency, or by the NRBW**]** may enter any premises or vessel for the purpose of—

(a) determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers**[**[F113], on the Agency, or on the NRBW,**]** by virtue of any enactment to which this section applies (including a power of either or both of the Ministers to make subordinate legislation) should be exercised or, as the case may be, performed; or

(b) exercising or performing any power or duty which is so conferred or imposed.

(2) Any person designated in writing for the purpose by either of the Ministers**[**[F114], the Agency, or the NRBW,**]** may—

(a) carry out such inspections, measurements and tests on any premises or vessel entered by that person under this section or of any articles found on any such premises or vessel; and

(b) take away such samples of water or effluent or of any land or articles,

as that Minister **[**[F114], the Agency, or the NRBW,**]** considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.

(3) **[**[F115]Subject to subsection (3A) below,**]**the powers which by virtue of subsections (1) and (2) above are conferred in relation to any premises for the purpose of enabling either of the Ministers**[**[F116], the Agency, or the NRBW,**]** to determine whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under the water pollution provisions of this Act shall include power, in order to obtain the information on which that determination may be made—

(a) to carry out experimental borings or other works on those premises; and

(b) to install and keep monitoring and other apparatus there.

[[F117](3A) The powers conferred by this section shall not have effect for the purposes of any of the Agency's **[**[F118]or the NRBW's**]** pollution control functions, within the meaning of section 108 of the 1995 Act.**]**

(4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Agency **[**[F119]or the NRBW**]** carries out functions.

[[F120](5) In relation to the NRBW, the reference to functions in subsection (4) has effect as a reference to relevant transferred functions.**]**

Textual Amendments

F112 Words in s. 172(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(2)(a)** (with Sch. 7)

F113 Words in s. 172(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(2)(b)** (with Sch. 7)

F114 Words in s. 172(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)

F115 Words in s. 172(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F116 Words in s. 172(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)

F117 S. 172(3A) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F118 Words in s. 172(3A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(4)** (with Sch. 7)

F119 Words in s. 172(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(5)** (with Sch. 7)

F120 S. 172(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(6)** (with Sch. 7)

173 Powers of entry: supplemental provisions.

Schedule 20 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by the preceding provisions of this Chapter.

Modifications etc. (not altering text)

C28 S. 173 applied (with modifications) (2.7.2009) by Broads Authority Act 2009 (c. i), **s. 24(3)** (with ss. 2(3), 16(3), 41(4), 42, Sch. 6)

C29 S. 173 applied (with modifications) (2.7.2009) by Broads Authority Act 2009 (c. i), **s. 17(3)** (with ss. 2(3), 16(3), 42, Sch. 6)

174 Impersonation of persons exercising powers of entry.

(1) A person who, without having been designated or authorised for the purpose by the Agency **[**[F121]or by the NRBW**]**, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and **[**[F122]liable—**]**.

[[F122](a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.**]**

(2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist, or would not be exercisable, even if that person had been designated or authorised by the Agency **[**[F123]or by the NRBW**]**.

Textual Amendments

F121 Words in s. 174(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)

F122 S. 174(1)(a)(b) and the word preceding them substituted (1.4.1996) for words by 1995 c. 25, s. 120, **Sch. 22 para. 167** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F123 Words in s. 174(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)

CHAPTER III

PROVISIONS SUPPLEMENTAL TO LAND AND WORK POWERS

Vesting of pipes in the [F124appropriate agency]

Textual Amendments

F124 Words in s. 175 cross-heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

175 Vesting of pipes in the [F125appropriate agency].

(1) Subject to any provision to the contrary contained in an agreement between the [F125appropriate agency] and the person in whom an interest in the pipe is or is to be vested, every pipe which—

(a) is a relevant pipe for the purposes of section 159 or 160 above; and

(b) has been laid, in exercise of any power conferred by Chapter I of this Part or otherwise, by the [F125appropriate agency],

shall vest in the [F125appropriate agency].

(2) Subsection (1) above is without prejudice to the vesting of anything in the [F125appropriate agency] by virtue of the exercise by the [F125appropriate agency] of any power to acquire property by agreement or compulsorily.

Textual Amendments

F125 Words in s. 175 and heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Offence of interference with works etc.

176 Offence of interference with works etc.

(1) Subject to subsection (2) below, if any person without the consent of the [F126appropriate agency]—

(a) intentionally or recklessly interferes with any resource main or other pipe vested in the [F126appropriate agency] or with any structure, installation or apparatus belonging to the [F126appropriate agency]; or

(b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of an offence under subsection (1) above—

(a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or

(b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—

(i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and

(ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.

(3) Any person who without the consent of the **[**[F126]appropriate agency**]**—

(a) attaches any pipe or apparatus to any resource main or other pipe vested in the **[**[F126]appropriate agency**]**; or

(b) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this section,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) In proceedings against any person for an offence by virtue of paragraph (b) of subsection (3) above it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.

(5) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the **[**[F126]appropriate agency**]**; and any such breach of duty which causes the **[**[F126]appropriate agency**]** to sustain loss or damage shall be actionable at the suit of the **[**[F126]appropriate agency**]**.

(6) The amount recoverable by virtue of subsection (5) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(7) In this section "service pipe" and "stopcock" have the same meanings as in the [M18]Water Industry Act 1991, and "consumer" has the same meaning as in Part III of that Act.

Textual Amendments

F126 Words in ss. 176-179 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Marginal Citations

M18 1991 c. 56.

Compensation etc. in respect of exercise of works powers

177 Compensation etc. in respect of exercise of works powers.

Schedule 21 to this Act shall have effect for making provision for imposing obligations as to the payment of compensation in respect of the exercise of the powers conferred on the **[**[F126]appropriate agency**]** by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.

Textual Amendments

F126 Words in ss. 176-179 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Protective provisions

178 Protection for particular undertakings.

Schedule 22 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by the **[**[F126]appropriate agency**]**.

Textual Amendments

F126 Words in ss. 176-179 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

179 Protective provisions in respect of flood defence works and watercourses etc.

(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—

(a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or

(b) with any such works used by any person for irrigating any land.

(2) Where the **[**[F126]appropriate agency**]** proposes, otherwise than in exercise of any compulsory powers—

(a) to construct or alter any such inland waters in any internal drainage district as do not form part of a main river; or

(b) to construct or alter any works on or in any such inland waters,

the **[**[F126]appropriate agency**]** shall consult the internal drainage board for that district before doing so.

(3) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.

(4) Any dispute—

(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;

(b) as to whether any consent for the purposes of this section is being unreasonably withheld; or

(c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) The provisions of this section shall be without prejudice to the provisions of Schedule 22 to this Act.

Textual Amendments

F126 Words in ss. 176-179 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Modifications etc. (not altering text)

C30 S. 179 applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 67(2)**, 76(2).

180 Power of navigation authorities etc to divert the [F127appropriate agency's] watercourses.

(1) Where any watercourses under the control of the **[**F127appropriate agency**]** pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—

(a) take up, divert or alter the level of those watercourses; and

(b) do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.

(2) If any question arises under this section between the **[**F127appropriate agency**]** and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.

(3) In this section—

"relevant authority" means any navigation authority, harbour authority or conservancy authority; and

"watercourse" has the same meaning as in Part IV of this Act.

Textual Amendments

F127 Words in s. 180 and heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

181 Works in tidal lands etc.

(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the **[**F128appropriate agency**]** to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.

(2) An approval for the purposes of subsection (1) above shall be given to the **[**[F128]appropriate agency**]** by the service on the **[**[F128]appropriate agency**]** of a notice containing the approval.

(3) Section 38 of the [M19]Salmon and Freshwater Fisheries Act 1975 (tidal lands etc.) shall apply to any proposed construction, alteration or extension under section 156 above as it applies to any proposed construction, alteration or extension under that Act.

(4) Section 74 of the [M20]Land Drainage Act 1991 (application to Crown and tidal lands), so far as it relates to lands below the high-water mark of ordinary spring tides shall apply, as it applies in relation to that Act, to the flood defence provisions of this Act.

(5) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of sections 159, 160, 162(2) and (3) and 163 above.

Textual Amendments

F128 Words in ss. 181-183 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Marginal Citations

M19 1975 c. 51.

M20 1991 c. 59.

182 Mineral rights.

Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the **[**[F129]appropriate agency**]** and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the [M21]Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

Textual Amendments

F129 Words in ss. 181-183 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Marginal Citations

M21 1981 c. 67.

183 Saving for planning controls etc.

(1) Without prejudice to the operation of section 90 of the [M22]Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the [M23]Water Act 1989 relates to the functions of the **[**[F130]appropriate agency**]**, nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

(2) Nothing in the flood defence provisions of this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the [M24]Ancient Monuments and Archaelogical Areas Act 1979.

Textual Amendments

F130 Words in ss. 181-183 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Modifications etc. (not altering text)

C31 S. 183 applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 67(2)**, 76(2).

Marginal Citations

M22 1990 c. 8.
M23 1989 c. 15.
M24 1979 c. 46.

184 Duties to make recreational facilities available when building reservoirs in Wales.

(1) Where **[**[F131]the NRBW**]** carries out any works for or in connection with the construction or operation of a reservoir in Wales which—

(a) permanently affect one or more communities; and

(b) are not primarily intended by **[**[F131]the NRBW**]** to benefit the inhabitants of that or those communities,

it shall be the duty of **[**[F131]the NRBW**]** to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.

(2) It shall be the duty of **[**[F131]the NRBW**]**, in performing its duty under subsection (1) above, to consult—

(a) the community councils of the communities affected, in the case of communities having such councils; and

(b) in any case, the council of any **[**[F132]county or county borough**]** in which any community affected is situated.

Textual Amendments

F131 Words in s. 184 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 295** (with Sch. 7)

F132 Words in s. 184(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11**, para. 3(5) (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Savings in respect of existing drainage obligations

185 Savings in respect of existing drainage obligations.

(1) Nothing in the flood defence provisions of this Act shall operate to release any person from an obligation to which section 21 of the [M25]Land Drainage Act 1991 applies.

(2) The functions of the **[**[F133]appropriate agency**]** as respects the doing of any work under the flood defence provisions of this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.

Textual Amendments

F133 Words in s. 185(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 296** (with Sch. 7)

Marginal Citations

M25 1991 c. 59.

Interpretation of Part VII

186 Interpretation of Part VII.

(1) In this Part—

"discharge pipe" means a pipe from which discharges are or are to be made under section 163 above;

[[F134]"relevant transferred functions" means any functions which—

(a) were exercisable by the Agency before 1 April 2013, and

(b) are functions of the NRBW by virtue of the Natural Resources Body for Wales (Functions) Order 2013,

but this is subject to subsection (1A).**]**

"resource main" means any pipe, not being a trunk main within the meaning of the [M26]Water Industry Act 1991, which is or is to be used for the purpose of—

(a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or

(b) giving or taking a supply of water in bulk.

[[F135](1A) For the purposes of the definition of "relevant transferred functions"—

(a) a function of the Agency was exercisable before 1 April 2013 whether or not the enactment conferring it had come into force before that date, but

(b) a function is only a relevant transferred function when the enactment conferring the Agency function transferred to or conferred on the NRBW has come into force.**]**

(2) In subsection (1) above—

"source of supply" shall be construed without reference to the definition of that expression in section 221 below; and

"supply of water in bulk" has the same meaning as in section 3 above.

(3) The powers conferred by Chapter I of this Part shall be without prejudice to the powers conferred on the Agency **[**[F136]or on the NRBW**]** by any other enactment or by any agreement.

Textual Amendments

F134 Words in s. 186(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 297(2)** (with Sch. 7)

F135 S. 186(1A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 297(3)** (with Sch. 7)

F136 Words in s. 186(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 297(4)** (with Sch. 7)

Marginal Citations

M26 1991 c. 56.

Changes to legislation:
There are currently no known outstanding effects for the Water Resources Act 1991, Part VII.