



Water Industry Act 1991

1991 CHAPTER 56

PART VI

UNDERTAKERS' POWERS AND WORKS

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

179 Vesting of works in undertaker

- (1) Subject to subsection (3) below and to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—
 - (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
 - (b) every sewage disposal works constructed by a sewerage undertaker, shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.
- (2) In addition to the sewers and works which vest in a sewerage undertaker by virtue of subsection (1) above, the following shall also vest in such an undertaker, that is to say—
 - (a) every sewer or sewage disposal works with respect to which a declaration of vesting made by that undertaker under Chapter II of Part IV of this Act takes effect; and
 - (b) every sewer which is laid in the area of that undertaker under Part XI of the Highways Act 1980 (making up private streets) and is not a sewer belonging to a road maintained by a highway authority.

Status: This is the original version (as it was originally enacted).

- (3) Subsection (1) above shall not apply to a service pipe laid in a street other than the street in which the water main with which it connects is situated and shall not apply to a service pipe laid otherwise than in a street where that pipe is laid—
- (a) in pursuance of the duty imposed by virtue of section 46(4) above; or
 - (b) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.
- (4) If any water fittings let for hire by a water undertaker are suitably marked, they—
- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
 - (b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;
- but nothing in this subsection shall affect the valuation for rating of any rateable hereditament.
- (5) It is hereby declared that anything which, in pursuance of any arrangements under section 97 above, is done on behalf of a sewerage undertaker by a relevant authority within the meaning of that section is, subject to any provision to the contrary contained in any such arrangements, to be treated for the purposes of this section as done by the undertaker.
- (6) The preceding provisions of this section are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of any scheme under Schedule 2 to this Act or of the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.
- (7) In this section—
- “relevant pipe”—
- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
 - (b) in relation to a sewerage undertaker, means any sewer or disposal main;
- and
- “water fittings” has the same meaning as in Part III of this Act;
- and water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this section if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

Damage etc. caused by works

180 Compensation for damage caused by works etc

Schedule 12 to this Act shall have effect for making provision for imposing obligations for the purpose of minimising the damage caused in the exercise of certain powers conferred on undertakers and for imposing obligations as to the payment of compensation.

181 Complaints with respect to the exercise of works powers on private land

- (1) Subject to subsection (2) below, it shall be the duty of the Director to investigate any complaint made or referred to him with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or by virtue of section 159 or 161(2) above.
- (2) The Director shall not be required to investigate any such complaint as is mentioned in subsection (1) above if—
 - (a) the complaint appears to the Director to be vexatious or frivolous;
 - (b) the Director is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it; or
 - (c) the complaint was first made to the Director or the appropriate customer service committee more than twelve months, or such longer period as the Director may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant.
- (3) Where the Director, in pursuance of his duty under this section, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—
 - (a) it shall be the duty of that undertaker to provide the Director with all such information and assistance as he may reasonably require for the purposes of his investigation; and
 - (b) it shall be the duty of the Director, before giving any direction under subsection (4) below, to consider any representations made to him by the complainant or by that undertaker with respect to the subject-matter of the complaint.
- (4) If on a complaint under subsection (1) above with respect to the exercise of any powers by a relevant undertaker, the Director is satisfied that that undertaker—
 - (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
 - (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,the Director may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.
- (5) The Director shall not under subsection (4) above direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment except in so far as it appears to him appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.
- (6) The duties of a relevant undertaker by virtue of subsection (3)(a) above shall be enforceable under section 18 above by the Director.
- (7) A person to whom any amount is required, in pursuance of a direction under subsection (4) above, to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this section.

- (8) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (4) above.

182 Codes of practice with respect to work on private land

- (1) For the purposes of section 181 above it shall be the duty of every company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker—
- (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Secretary of State for his approval a code of practice with respect to its exercise of any powers conferred by or by virtue of section 159 or 161(2) above; and
 - (b) if required to do so by the Secretary of State at any subsequent time, to submit proposed modifications of that code to the Secretary of State for his approval.
- (2) The Secretary of State, if he considers it appropriate to do so for the purpose of promoting what appear to him to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker, of any powers conferred by or by virtue of section 159 or 161(2) above, may at any time by order made by statutory instrument, in relation to that company—
- (a) approve any code of practice with respect to the exercise of those powers which has been submitted to him (whether or not under subsection (1) above) by that company for his approval;
 - (b) approve any modifications of such a code which have been so submitted; or
 - (c) withdraw his approval for any such code or modification.
- (3) A contravention of a code of practice as for the time being approved under this section in relation to a company shall not—
- (a) affect the powers conferred on that company as a relevant undertaker by this Part;
 - (b) of itself entitle any person to be paid any amount under subsection (4) of section 181 above; or
 - (c) give rise to any criminal or civil liability;
- but the Director shall take into account whether there has been any such contravention in determining whether to give a direction under that subsection to that company and in determining the amount to which any such direction relates.
- (4) The Secretary of State shall not make an order under subsection (2) above unless he has first consulted all such persons as he considers it appropriate to consult.
- (5) The duties of a relevant undertaker under subsection (1) above shall be enforceable under section 18 above by the Secretary of State.

Protective provisions

183 Protection for particular undertakings

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

184 Power of certain undertakers to alter public sewers etc

- (1) The NRA or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers or airport operator may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—
 - (a) are vested in the undertaker; and
 - (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
 - (i) any watercourse or other works vested in or under the control of the NRA or that internal drainage board;
 - (ii) any property of the Civil Aviation Authority;
 - (iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;
 - (iv) the railway of the railway undertakers; or
 - (v) the airport in question.
- (2) In subsection (1) above “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.
- (3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker—
 - (a) are or will be equally effectual; or
 - (b) entail or will entail additional expense for the sewerage undertaker,may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) In this section—

“airport operator” means the person who is the airport operator for the purposes of Part V of the Airports Act 1986 in relation to an airport to which that Part of that Act applies; and

“dock undertakers” has the same meaning as in Chapter II of Part IV of this Act.

185 Duty to move pipes etc. in certain cases

- (1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

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- (3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.
- (4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.
- (5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.
- (6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, the undertaker shall pay interest at such rate as may be determined either—
 - (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,
 on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (7) An approval or determination by the Director for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.
- (8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by the Director.
- (9) In this section—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in section 158 above.

186 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) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.
- (3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—
 - (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or

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- (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream, without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.
- (4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.
- (5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.
- (6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (7) 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;
 - (c) as to whether any condition subject to which any such consent has been given was reasonable; or
 - (d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,
- shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) 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.
- (8) In this section “relevant inland waters” means any inland waters other than any which form part of a main river for the purposes of Part IV of the Water Resources Act 1991.
- (9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

187 Works in tidal lands etc

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker 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 a relevant undertaker by the service on that undertaker of a notice containing the approval.
- (3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

188 Mineral rights

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers 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 Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

189 Power to sell minerals deriving from sewerage works

- (1) A sewerage undertaker may sell any materials which—
 - (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and
 - (b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.
- (2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.
- (3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

190 Saving for planning controls

Without prejudice to the operation of section 90 of the 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 Water Act 1989 relates to the functions of a relevant undertaker, 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.

191 Duties to make recreational facilities available when building reservoirs in Wales

- (1) Where a water undertaker 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 that undertaker to benefit the inhabitants of that or those communities,
 it shall be the duty of that undertaker 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 every water undertaker, 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

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- (b) in any case, the council of any district in which any community affected is situated.
- (3) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Interpretation of Part VI

192 Interpretation of Part VI

- (1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under section 165 above.
- (2) In this Part references 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 (within the meaning of section 158 above) as the pipe replaced.
- (3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.
- (4) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—
 - (a) to maintain a pipe or a connection with it; or
 - (b) to alter a pipe only where certain conditions are satisfied,as are imposed on the undertaker by or under any enactment.
- (5) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.