



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART VII

#### LAND AND WORKS POWERS

### CHAPTER I

#### POWERS OF THE AUTHORITY

##### *Anti-pollution works*

#### **161 Anti-pollution works and operations.**

- (1) Subject to subsection (2) below, where it appears to the Authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Authority shall be entitled to carry out the following works and operations, that is to say—
- (a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so; or
  - (b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—
    - (i) of removing or disposing of the matter;
    - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
    - (iii) so far as it is reasonably practicable to do so, of restoring 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.
- (2) Nothing in subsection (1) above shall entitle the Authority to impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.

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- (3) Where the Authority carries out any such works or operations as are mentioned in subsection (1) above, it shall, subject to subsection (4) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—
- (a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the Authority, to enter any controlled waters; or
  - (b) caused or knowingly permitted the matter in question to be present in any controlled waters.
- (4) No such expenses shall be recoverable from a person for any works or operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in subsection (3) above or to enter any controlled waters.
- (5) Nothing in this section—
- (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this section; or
  - (b) affects any restriction imposed by or under any other enactment, whether public, local or private.
- (6) In this section—
- “controlled waters” has the same meaning as in Part III of this Act; and
- “mine” has the same meaning as in the <sup>M1</sup>Mines and Quarries Act 1954.

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

- C1** S. 161 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para.9** (with s. 46).  
s. 161 applied (with modifications) (21.7.1994) by 1994 c. xiii, **s. 14**  
Ss. 161-161D modified (1.2.1996) by 1995 c. 25, **s. 5(5)(g)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

**Marginal Citations**

- M1** 1954 c. 70.

**[<sup>F1</sup>161A Notices requiring persons to carry out anti-pollution works and operations.**

- (1) Subject to the following provisions of this section, where it appears to the Agency that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Agency shall be entitled to serve a works notice on any person who, as the case may be,—
- (a) caused or knowingly permitted the matter in question to be present at the place from which it is likely, in the opinion of the Agency, to enter any controlled waters; or
  - (b) caused or knowingly permitted the matter in question to be present in any controlled waters.
- (2) For the purposes of this section, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say—
- (a) in a case where the matter in question appears likely to enter any controlled waters, works or operations for the purpose of preventing it from doing so; or

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- (b) in a case where the matter appears to be or to have been present in any controlled waters, works or operations for the purpose—
  - (i) of removing or disposing of the matter;
  - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
  - (iii) so far as it is reasonably practicable to do so, of restoring 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) 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 Agency by virtue of section 161(1A) (a) above.
- (4) Before serving a works notice on any person, the Agency shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (5) The Secretary of State 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 (4) above or regulations made by virtue of paragraph (b) above; 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.
- (6) 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 (4) above or of regulations made by virtue of paragraph (b) of subsection (5) above.
- (7) Nothing in subsection (1) above shall entitle the Agency to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.
- (8) 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 reach such a place as is mentioned in subsection (1)(a) above or to enter any controlled waters.
- (9) Subsection (8) above shall 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.
- (10) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (3A) of that section.
- (11) Where the Agency—
  - (a) carries out any such investigations as are mentioned in section 161(1) above, and
  - (b) serves a works notice on a person in connection with the matter to which the investigations relate,

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

(12) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.

(13) In this section—

“controlled waters” has the same meaning as in Part III of this Act;  
“mine” has the same meaning as in the <sup>M2</sup>Mines and Quarries Act 1954.]

#### Textual Amendments

**F1** 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**

#### Marginal Citations

**M2** 1954 c. 70.

### <sup>F2</sup>**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 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.

(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A of the <sup>M3</sup>Environmental Protection Act 1990 in relation to compensation under that section.

(7) In this section—

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“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

**F2** 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**

#### Marginal Citations

**M3** 1990 c. 43.

### <sup>F3</sup>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 <sup>M4</sup>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.

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- (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

**F3** 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)

**C2** 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**

#### Marginal Citations

**M4** 1936 c. 49.

#### <sup>F4</sup>161D Consequences of not complying with a works notice.

- (1) If a person on whom the 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 a fine not exceeding £20,000 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 Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (4) If the 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 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

**F4** 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**

#### 162 Other powers to deal with foul water and pollution.

- (1) Without prejudice to the powers conferred by section 161 above and subsections (2) and (3) below, the Authority shall have power, on any land—

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- (a) which belongs to the Authority; or
  - (b) over or in which the Authority 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 Authority 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 Authority 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 Authority, 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 <sup>M5</sup>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.

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**Marginal Citations**

**M5** 1991 c. 56.



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