Water Supplies (Exceptional Shortage Orders) Act 1934

1934 CHAPTER 20

1 Power to make orders, and duration, variation and revocation of orders

(1) The Minister of Health (in this Act referred to as "the Minister"), where he is satisfied that by reason of an exceptional shortage of rain a serious deficiency of supplies of water in any locality exists or is threatened, may make an order in relation to any water undertakers who are authorised by any enactment to supply water, or who are lawfully supplying water, in the locality, containing such provisions for any of the following purposes, and such supplemental incidental and consequential provisions, as appear to him to be expedient with a view to meeting the deficiency, that is to say,—

(a) for authorising the undertakers, subject to any specified conditions, to take water from any specified source;

(b) for the suspension or modification, subject to any specified conditions, of any restriction or obligation to which the undertakers are subject as respects—

(i) the taking of water from any source ;

(ii) the discharge of compensation water;

(iii) the supply of water in any quantity or manner; or

(iv) the filtration or other treatment of water;

(c) for authorising or requiring any other water undertakers to give the undertakers (either within or beyond the limits of supply of those other undertakers) a supply of water in bulk on such terms as may be agreed between the undertakers concerned with the approval of the Minister or, in default of agreement, on such terms as may be determined by the Minister or by a person appointed by him for the purpose;

(d) for authorising the undertakers to prohibit the use for any particular purpose of water supplied by them in the locality, or to impose limitations on the use by consumers generally, or by any particular class of consumer, or for any particular purpose, of water supplied by the undertakers in the locality;

(e) for prohibiting, or imposing limitations on, the taking by any person (including other water undertakers) of water from a specified source (including a source from which any person to whom the prohibition or

limitation applies has, by virtue of an enactment, or of the ownership of land, or of an agreement, a right to take water), if the Minister is satisfied that the taking of water from that source seriously affects the supplies available for the undertakers;

(f) for requiring persons having the control of sluices or other works for drawing down or keeping back water in a source to operate them in accordance with the provisions of the order or of any direction given thereunder.

(2) In any order made for the suspension or modification of a restriction as respects the taking of water from a source from which water is supplied to an inland navigation or of an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation, the Minister may include provisions for prohibiting or imposing limitations on the taking of water from the navigation or for the suspension or modification of any obligation to which the navigation authority are subject as respects the discharge of water from the navigation.

(3) An order which confers on water undertakers power to prohibit, or to impose limitations on, the use of water supplied by them, may provide that, in exercising the power as respects the use of water for other than domestic purposes, the undertakers shall observe such conditions as to the reduction or suspension of charges regulated otherwise than by reference to quantities of water consumed as may be specified.

(4) In the exercise of his power to make orders, the Minister shall have regard to the interests of all persons concerned in the use of the water to which the order relates, whether for the purposes of agriculture, fisheries, industry, or navigation, or for other purposes.

(5) Subject to the provisions of this Act, an order shall cease to have effect at the expiration of such period (not exceeding six months) from the date on which it comes into operation as may be specified, and if no period is specified, at the expiration of six months from the date on which it comes into operation, but without prejudice to the power of the Minister to make a new order.

(6) The provisions of the Schedule to this Act shall have effect in relation to the procedure to be followed in connection with the making of orders.

(7) An order may be varied by a subsequent order made in accordance with the like procedure, or may be revoked by order of the Minister.

2 Power to authorise the execution of works, and entry on, and use of, land

An order may authorise undertakers on whom it confers any power or imposes any duty to execute any works required for the discharge of their functions thereunder and may authorise them for that purpose—

(a) to exercise in any specified locality the powers contained in sections twenty-eight to thirty-four of the Waterworks Clauses Act, 1847; and

(b) to enter upon any specified land after giving to the owner and occupier thereof not less than seven days notice in writing and to occupy and use the land to such extent and in such manner as may be requisite for the execution of the works.

3 Power to authorise the taking of water for an indefinite period and the purchase of land

(1) Where an order is made for the purpose of authorising under paragraph (a) of subsection (1) of section one of this Act the taking of water from any specified source and the Minister is satisfied that the purposes of the order cannot be attained without the execution of works of a permanent character, and also that the construction of such works can be completed within a period of six months after their commencement and that having regard to all relevant matters (including the interests of persons who may sustain damage by reason of the taking of water under the authority of the order) the powers to be conferred on the undertakers under this section are such as might properly have been conferred on them, if apart from any exceptional shortage of rain the taking of water from a new source had become necessary for the purposes of the undertaking, the order may authorise the undertakers to take water from that source for an indefinite period and to purchase, either compulsorily or by agreement, any specified land which, in the opinion of the Minister, is required for the purposes of the order.

(2) An order under this section may authorise undertakers on whom it confers any power or imposes any duty to execute any works required for the discharge of their functions thereunder.

(3) An order under this section which confers a power to take water from any source, or to purchase any land, whether compulsorily or by agreement, shall incorporate, with the necessary adaptations, the provisions of the Waterworks Clauses Act, 1847, with respect to the construction of the waterworks, or of the Lands Clauses Acts, as the case may require, and may incorporate, with the necessary adaptations, other provisions of the Waterworks Clauses Acts, 1847 and 1863.

(5) In construing, for the purposes of this Act or of an order under this section, any enactment incorporated in the order, this Act, together with the order, shall be deemed to be the special Act, and the undertakers shall be deemed to be the promoters of the undertaking, and the word " land " shall have the meaning assigned to it in this Act and the word " stream " shall be deemed to include canals, reservoirs, lakes and ponds.

(6) As regards any land in respect of which undertakers have acquired under an order under this section an easement or other right for the execution of works intended to be constructed underground, the undertakers shall not be required or entitled to fence off or sever the land from the adjoining land, but the owners or occupiers for the time being shall, subject to that easement or right, have the same rights to use and cultivate the land at all times as if the order had not been made, and every notice to treat for the acquisition of such an easement or right as aforesaid shall either contain or be endorsed with notice of this provision.

(7) Where undertakers are authorised by an order under this section to purchase land compulsorily, then, at any time after notice to treat has been served, the undertakers may, after giving to the owner and occupier of the land not less than seven days' notice in writing, enter on and take possession of the land, or such part thereof as is specified in the notice, without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845, but subject to payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

(8) The provisions of subsection (5) of section one of this Act shall not apply to an order in so far as it is made under this section, and the expiration of this Act shall not affect the operation of an order in so far as it is so made.

4 Power to authorise the raising of money

(1) A local authority shall have power, before as well as after the coining into operation of the Local Government Act, 1933, to borrow under that Act any money required for the discharge of their functions under an order.

(2) An order may authorise water undertakers, being a company, board or persons empowered by an enactment to supply water, to raise money required for the discharge of their functions under the order by the issue of further capital or by borrowing, and for that purpose may apply with any necessary adaptations any provisions with respect to the raising of capital, or to borrowing, contained in any enactment conferring on the undertakers power to raise money:

Provided that, where under any enactment the amount which the undertakers have power to raise by borrowing is limited by reference to a proportion of their share capital, an order under this subsection shall preserve that limitation.

5 Penalties

(1) If any water undertakers who are required by an order to give a supply of water in bulk make default in compliance with any of the provisions in that behalf contained in the order, they shall, without prejudice to the right of any person to enforce compliance with those provisions by mandamus or otherwise, be liable on summary conviction in respect of each day on which the default occurs to a fine not exceeding one hundred pounds.

(2) If any person uses or takes water in contravention of a prohibition or limitation imposed by or under an order, he shall be liable on summary conviction to a fine not exceeding fifty pounds or, in the case of a second or subsequent conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) If any person contravenes any provision contained in, or direction given under, an order with respect to the operation of a sluice or other works for drawing down or keeping back water, he shall be liable on summary conviction to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the contravention continues after conviction therefor.

6 Compensation

(1) Compensation in respect of the following matters, that is to say,—

(a) the taking of water from a source under the authority of an order, except in so far as the water is taken under the authority of an order which authorises the taking thereof for an indefinite period;

(b) the taking, under the authority of an order, of water from a source otherwise than in accordance with a restriction which has been suspended or modified by the order;

(c) the entry upon or occupation or user of land under the authority of an order made under section two of this Act;

shall be made by the undertakers in relation to whom the order is made to the owners and occupiers of, and all other parties interested in, the source or land, as the case may be, or injuriously affected by the taking of the water, or by the entry upon or occupation or use of the land, as the case may be, for damage sustained by them by reason of the matters aforesaid.

(2) Compensation shall be made by the undertakers in relation to whom an order is made prohibiting, or imposing a limitation on, the taking of water from a source, to the persons to whom the prohibition or limitation applies, for damage sustained by them by reason of the prohibition or limitation.

(3) In assessing compensation to be made under paragraph (a) or paragraph (b) of subsection (1), or under subsection (2), of this section, the arbitrator may, if he thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the undertakers and other persons taking water from the source, might fairly be apportioned to the claimant.

(4) Compensation shall be made by the undertakers in relation to whom an order is made suspending or modifying an obligation as respects the taking of water from a source, or as respects the discharge of compensation water, to persons who but for the order would have been entitled to institute proceedings in respect of a failure to comply with the obligation, for damage sustained by them by reason of water being taken without compliance with the obligation, or of compensation water not being discharged, or being discharged otherwise than in accordance with the obligation.

In assessing compensation to be made under this subsection the arbitrator may, if he thinks fit, have regard to the amount of water which, under the conditions existing by reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water has continued, if the undertaking in relation to which the obligation was imposed had never been carried out.

7 Making and determination of claims for compensation

(1) A claim for compensation under this Act shall be made by serving upon the undertakers a notice in writing stating the grounds of the claim and the amount claimed.

(2) A claim for compensation under this Act may be made at any time during the continuance of the order to which it relates, or within three months from the date on which the order ceases to have effect.

(3) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall in default of agreement be referred to, and determined by, an arbitrator agreed between the parties or, in default of agreement, to be appointed by the Minister.

(4) Where a claim is made during the continuance of an order, the arbitrator may, if he thinks fit, award a sum representing the damage which is likely to be sustained by the claimant in respect of each day on which water is taken, or is taken otherwise than in accordance with a restriction or obligation, or on which compensation water is not discharged or is discharged otherwise than in accordance with an obligation, or on which a prohibition or limitation on the taking of water is in effect, as the case may be.

(5) The decision of an arbitrator upon a question of fact shall be final and binding on the parties and the persons claiming under them respectively, but an arbitrator may, and shall if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court.

(6) The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other court.

(7) An arbitrator appointed for the purposes of this section may, in any case in which he thinks it expedient to do so, call in the aid as assessor of a person to be selected by the arbitrator from a panel of persons to be nominated by the President of the Institution of Civil Engineers and he may hear the case wholly or partially with the assistance of the assessor.

Where the arbitrator calls in the aid of a person as assessor, there shall be payable by such of the parties and in such proportions as may be determined by the arbitrator such sum in respect of the remuneration and expenses of the assessor as may be so determined.

8 Power to give directions as to sinking funds and borrowing with a view to bringing reservoirs into immediate use

(1) Where a local authority are under obligation to commence to make payments towards a sinking fund on a date which is dependent on the bringing into use of a reservoir or other works, and the Minister is satisfied that the immediate use of the reservoir or works is rendered necessary by a deficiency of water supplies due to an exceptional shortage of rain, he may direct that the obligation shall be modified in any manner which appears to him to be expedient in the circumstances.

(2) Where a local authority are authorised in connection with a water undertaking to borrow money for the purpose of paying interest accruing during the period of construction of a reservoir or other works, and the Minister is satisfied that the immediate use of the reservoir or works is rendered, necessary by such a deficiency as aforesaid, he may give directions authorising the local authority, subject to any specified conditions, to borrow money for the purpose of paying interest during such period after completion of the works as he thinks expedient.

9 Validity of orders

(1) If any person aggrieved by an order desires to question its validity, he may within twenty-one days after the publication of the notice of the making of the order in accordance with the provisions of the Schedule to this Act, make an application for the purpose to the High Court, and if upon any such application the court is satisfied that the order is invalid and, where the invalidity of the order arises from a failure to comply with any provision governing the procedure for the making thereof, is further satisfied that the interests of the applicant have been substantially prejudiced by that failure, the court may quash the order either generally or in so far as it affects any property of the applicant.

(2) Subject to the provisions of the last preceding subsection an order shall not, either before or after its making, be questioned by prohibition or certiorari or in any legal proceedings.

(3) Except by leave of the Court of Appeal no appeal shall lie to the House of Lords from a decision of the Court of Appeal in proceedings under this section.

10 Interpretation

(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

" Compensation water " means water which any water undertakers are under an obligation to discharge into a river, stream, brook or other running water or into a canal as a condition of carrying on their undertaking;

" Enactment " includes a provision in an order confirmed by Parliament;

" Inland navigation " includes any canal or navigable river;

" Land " includes an interest in land, and an easement or right in, to or over land;

" Limits of supply " means any limits specified in an enactment as the limits within which water undertakers are authorised to supply water and includes, in relation to water undertakers who are supplying water otherwise than under an enactment, the limits within which they are supplying water;

" Local authority " means the council of a borough or urban or rural district supplying water under the Public Health Act, 1875, or under any other enactment and a joint board, or joint committee, constituted under the Public Health Act, 1875, or under any other enactment for the purposes of the provision of a common water supply;

" Navigation authority " means any person or body of persons having powers under any Act of Parliament to work or maintain any inland navigation;

" Obligation " includes an obligation imposed by an enactment or by agreement, and " restriction " has a corresponding meaning;

" Order " means an order made under this Act;

" Source " includes rivers, streams, brooks and other running waters, canals, reservoirs, lakes, ponds, wells, springs and other sources, whether natural or artificial, and whether on the surface or underground;

" Specified " means specified in an order;

" Take, " in relation to water, includes the collection, impounding, diversion and appropriation of water;

" Water undertakers " means—

(a) a local authority;

(b) any company, board or persons empowered by an enactment to supply water; and

(c) any company or persons who are lawfully supplying water for use by other persons.

(2) The cesser of effect of an order (whether under subsection (5) of section one of this Act or by reason of the expiration of this Act) shall not affect—

(a) the previous operation of the order or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the order; or

(c) any punishment incurred under this Act; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such punishment may be imposed as if the order had not ceased to have effect.

11 Application to Scotland

This Act, in its application to Scotland, shall have effect subject to the following modifications, that is to say:—

(1) A reference to the Department of Health for Scotland shall be substituted for any reference to the Minister of Health except the reference to the Minister in section eight, for which reference there shall be substituted a reference to the Secretary of State.

(2) A reference to sections eighty-three to eighty eight of the Lands Clauses Consolidation (Scotland) Act, 1845, shall be substituted for the reference to sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845.

(3) "Easement " means servitude.

(4) A reference to the Court of Session shall be substituted for any reference to the High Court or to the Court of Appeal, and references to reduction or interdict shall be substituted for references to prohibition or certiorari.

(5) A reference to the Edinburgh Gazette shall be substituted for any reference to the London Gazette.

(6) The following subsection shall be substituted for subsection (1) of section four—

"(1) A local authority shall have power to borrow for the purpose of meeting any expenditure of a capital nature incurred by them in the discharge of their functions under an order, and the provisions of section twenty-three of the Local Government (Scotland) Act, 1929, as amended by any subsequent enactment, shall apply to the power hereby conferred."

(7) Subsection (2) of section four shall apply as respects water undertakers being a joint board or other body constituted under a local Act for the purposes of the provision of a common water supply in like manner as it applies as respects such water undertakers as are mentioned in that subsection.

(8) In section ten for the definition of "local authority " there shall be substituted the following definition:—

"' Local authority ' means a town council or county council";

and for paragraph (a) in the definition of " water undertakers" there shall be substituted the following paragraph:—

"(a) a local authority supplying water under any enactment or any two or more such local authorities acting in combination, and any joint board or other body constituted under a local Act for the purposes of the provision of a common water supply."

(9) The following paragraph shall be substituted for paragraph 5 of the Schedule :—

"5 The person appointed by the Department of Health for Scotland to hold any local inquiry under the last foregoing paragraph shall be entitled to summon witnesses, and examine them on oath and to call for the production of books, documents and accounts; and the expenses incurred in relation to such inquiry (including such reasonable sum as the Department may determine for the services of any officer engaged in the inquiry) shall be paid by the parties to the inquiry, or by such of them and in such proportions as the Department may direct, and the Department may certify the amount of the expenses incurred, and any sum so certified and directed by the Department to be paid by any party shall be a debt to the Crown."

12 Short title, duration and extent

(1) This Act may be cited as the Water Supplies (Exceptional Shortage Orders) Act, 1934.

(2) The provisions of this Act shall continue in force until the thirty-first day of December, nineteen hundred and thirty-five, and no longer.

(3) This Act shall not extend to Northern Ireland.