



Water Act 1945

1945 CHAPTER 42

PART IV

POWERS AND DUTIES OF LOCAL AUTHORITIES AND WATER UNDERTAKERS.

Miscellaneous.

34 Temporary discharge of water into watercourses.

- (1) Subject to the provisions of this section, statutory water undertakers who are carrying out, or are about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well or borehole, line of pipes or other work forming part of their undertaking may cause the water therein to be discharged into any available watercourse and for that purpose may lay and maintain in any street, whether within or outside their limits of supply, all necessary discharge pipes and apparatus, and such statutory provisions with respect to the breaking open of streets as are applicable to the undertakers shall, with any necessary modifications and adaptations, apply accordingly.
- (2) Except in a case of emergency, and except in so far as may be otherwise agreed in writing between the undertakers and the board or authority concerned, the following provisions shall have effect:—
 - (a) not less than seven days before commencing to discharge any such water as aforesaid through a pipe exceeding nine inches in diameter the undertakers shall give notice of their intentions to the catchment board of any catchment area and the fishery board of any fishery district within which any watercourse into which the water is to be discharged is situated and to any rivers board having jurisdiction over any such watercourse ;
 - (b) the undertakers shall have due regard to any representations which may be made to them as to the time, mode and rate of discharge with a view to avoiding or minimising injury or inconvenience therefrom ; and
 - (c) where the water is to be discharged into any river, canal or other inland navigation in respect of which a navigation authority exercise functions,

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the undertakers shall not discharge the water without the approval of the navigation authority, or except at such times as that authority may approve and in a manner approved by them as not likely to injure the river, canal or navigation or the banks thereof, or interfere with traffic thereon:

Provided that—

- (i) whenever the undertakers propose to discharge water on a number of occasions during a period, the giving by them of a general notice to that effect, accompanied by such particulars as it is reasonably practicable for them to give, shall constitute sufficient compliance by them with the provisions of paragraph (a) of this subsection ;
- (ii) in the case of a river, paragraph (c) of this subsection shall not apply if the point of discharge into the river is more than three miles above the limits within which the navigation authority exercise jurisdiction ;
- (iii) an approval required for the purposes of the said paragraph (c) shall not be withheld unreasonably, and any question whether it is withheld unreasonably or not shall be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers ; and
- (iv) any approval for which application is made under the said paragraph (c) shall be deemed to have been given unless notice of disapproval is given to the undertakers within seven days after the making of the application.

(3) If the undertakers are requested by—

- (a) the owner or occupier of any land which abuts on a watercourse at a point within three miles of any work of the undertakers from which water may be discharged into that watercourse under the provisions of this section ; or
- (b) the clerk to any association of mill owners any of whose constituent members is such an owner or occupier as aforesaid,

to register him for the purposes of this section, the undertakers shall enter his name and address in a register kept by them for the purpose and, so long as his name and address appear in the register, shall, except in a case of emergency and except in so far as may be otherwise agreed with him in writing, and unless the point at which the water is to be discharged as aforesaid is situated down stream of the 4 and in respect of which he is so registered, send to him in respect of that watercourse the like notices as they are (in the absence of any emergency or agreement to the contrary) required under the last foregoing subsection to send to such a board as is mentioned in paragraph (a) thereof.

- (4) Except in so far as may be otherwise agreed in writing, where the undertakers discharge water during an emergency, they shall forthwith give to the boards, authorities and registered persons concerned notice thereof and such further particulars relating to the discharge as may reasonably be required.
- (5) The undertakers shall take all necessary steps to secure that any water discharged by them under the provisions of this section shall be as free as may be reasonably practicable from mud and silt, from solid, polluting, offensive or injurious matters, and from any matter prejudicial to fish or spawn, or to spawning beds or food of fish, and, if they fail to do so, shall be guilty of an offence against this Act.
- (6) The powers of this section shall not be exercised so as to damage or affect injuriously any works or other property of a railway company or a navigation authority, or so as to flood or damage any highway.
- (7) In the exercise of the powers conferred by this section the undertakers shall do as little damage as may be and shall pay compensation to all persons for any damage sustained

by them or liability to which they may become subject by reason of the exercise of those powers and, for the purposes of this subsection, any extra expenditure which it becomes reasonably necessary for any public authority to incur for the purpose of properly discharging their statutory functions shall be deemed to be damage sustained by them.

Any question as to the amount of the compensation to be so paid shall be referred to an arbitrator to be appointed, in default of agreement, by the Minister.

35 Power to supply water fittings.

- (1) Statutory water undertakers may, on the request of any person to whom they supply or propose to supply water, supply to him, by way either of sale or hire, any such water fittings as are required or allowed by their byelaws, and may, on such request, instal, repair or alter (but not manufacture) any such water fittings, whether supplied by them or not, and may provide any materials and do any work required in connection with such installation, repair or alteration of water fittings.

The undertakers may make such charges as may be agreed or, in default of agreement, as may be reasonable for any fitting supplied, or any materials provided or work done, under this subsection and may recover such charges summarily as civil debts.

- (2) If any fittings let for hire by the undertakers bear either a distinguishing metal plate affixed thereto, or a distinguishing brand or other mark conspicuously impressed or made thereon, sufficiently indicating the undertakers as the actual owners of the fittings, those fittings—
- (a) shall, notwithstanding that they be fixed to some part of the premises in which they are situated or be laid in the soil thereunder, continue to be the property of, and removable by, the undertakers; 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 the persons in whose possession they may be:

Provided that nothing in this subsection shall affect the valuation for rating of any rateable hereditament.

- (3) Where the undertakers are a local authority—
- (a) the undertakers shall so adjust the charges to be made by them under this section as to meet any expenditure by them thereunder, including interest upon any moneys borrowed for the purposes thereof and any sums carried to a sinking fund for repayment of moneys so borrowed; and
 - (b) the total sums expended and received by the undertakers in connection with the purposes of this section in each year, including interest and any sums carried to a sinking fund, shall be separately shown in the published accounts of the undertakers for that year.
- (4) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to the undertakers, he shall be liable on summary conviction to a fine not exceeding five pounds and the undertakers may do all such work as is necessary for repairing any injury done and may recover the expenses reasonably incurred by them in so doing from the offender summarily as a civil debt.

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

36 Duty of statutory water undertakers to accept guarantees from local authorities.

- (1) The provisions of this section shall have effect in any case where the owners or occupiers of any premises in any area can require statutory water undertakers to bring water to that area if the aggregate amount of the water rates which will be payable annually in respect of those premises will not be less than a prescribed fraction of the cost to be incurred by the undertakers in complying with the requisition, and if the owners or occupiers of those premises agree to take a supply of water for a prescribed period.
- (2) If, in any such case as aforesaid, the aggregate amount of the water rates which would be payable annually in respect of any premises in the area is not sufficient to enable a valid requisition to be made by the owners and occupiers of those premises, the local authority of the district in which the area is situated may undertake that, until the water rates payable for any year in respect of premises in that area amount to a sum which would have enabled such a requisition to be made, or until the expiration of a period of twelve years, whichever first occurs, the authority will make good to the undertakers in each year the difference between that sum and the amount received by the undertakers in respect of water supplied, whether for domestic or non-domestic purposes, in that year in respect of premises in that area, and thereupon the undertakers shall lay any necessary mains and bring water to that area.
- (3) Any two or more local authorities may combine for the purpose of giving such an undertaking as aforesaid.
- (4) If the undertakers, after tender to them of an undertaking which satisfies the foregoing provisions of this section, do not before the expiration of three months lay the necessary mains and bring water to the area in question, they shall, unless they show that the failure was due to unavoidable accident or other unavoidable cause, be guilty of an offence against this Act.
- (5) In this section the expression "prescribed" means prescribed by the local enactments relating to the undertaking in question.

37 Duty of undertakers to provide domestic supply for new buildings.

- (1) Where an owner of land proposes to erect thereon buildings for which a supply of water for domestic purposes will be needed, he may require any statutory water undertakers within whose limits of supply that land is situated to lay any necessary mains and bring water thereto, and thereupon the undertakers shall, subject as hereinafter provided, comply with that requisition:

Provided that the undertakers before complying with a requisition under this subsection—

- (a) may require the owner to undertake to pay in respect of each year a sum amounting to one-eighth of the expense of providing and laying the necessary mains (less any amounts received by the undertakers in respect of water supplied, whether for domestic or non-domestic purposes, in that year from those mains) until the aggregate amount of water rates payable annually in respect of the buildings when erected and in respect of any other premises connected with the said mains at the rates for the time being charged by the undertakers equals or exceeds such sum as aforesaid or until the expiration of a period of twelve years, whichever first occurs; and

- (b) except where the owner is a local or public authority, may also require him to deposit with the undertakers as security for payment of the said annual sums, such sum, not exceeding the total expense of laying and providing the mains, as the undertakers may require.
- (2) The undertakers shall pay interest at the prescribed rate or, if no rate is prescribed, at four per cent. per annum on any sum in their hands by virtue of a requirement under paragraph (b) of the proviso to the last foregoing subsection, and shall, on the request of the owner of the land, appropriate out of that sum any amount due under the undertaking referred to in paragraph (a) of the said proviso and shall, when the said undertaking is finally discharged, repay to the owner any sum remaining in their hands as aforesaid.
- (3) If the undertakers, after receipt of a requisition under subsection (1) of this section and after tender to them of any undertaking or deposit which they may require in accordance with that subsection, do not before the expiration of three months lay the necessary mains, and bring water to the land in question in accordance with the requisition, they shall, unless they show that the failure was due to unavoidable accident or other unavoidable cause, be guilty of an offence against this Act.

38 Liability for, and recovery of, water rates.

- (1) Water rates payable to statutory water undertakers, whether under the Public Health Act, 1936, or under any other enactment, shall be payable and recoverable in accordance with the provisions of this section and not otherwise.
- (2) Except where an owner of premises who is not himself the occupier thereof is liable by or under any enactment, or by agreement with the undertakers, to pay the water rate for a supply of water to those premises, the water rate shall be payable by the occupier of the premises.
- (3) The water rate payable by any person may after a demand therefor be recovered from him by the undertakers either summarily as a civil debt, or as a simple contract debt in any court of competent jurisdiction, and, subject as hereinafter provided and to the provisions of the next following subsection, where a person fails to pay within seven days after a demand therefor any instalment of a water rate payable by him in respect of any premises, the undertakers may cut off the supply of water to the premises and recover the expenses reasonably-incurred by them in so doing in the same manner as the instalment due :

Provided that if before the expiration of the said seven days, notice in writing is given to them that there is a dispute as to the amount due in respect of the water rate, or as to the liability to pay the rate, they shall not cut off the supply of water until the dispute has, on the application of either party, been settled by a court of summary jurisdiction.

- (4) Where, at the date when an instalment of a water rate in respect of any premises becomes due, the owner of the premises is liable by or under any enactment, or by agreement with the undertakers, to pay the water rates for a supply of water to those premises and is not himself the occupier thereof, the undertakers shall not cut off the supply of water to the premises for a failure by him to pay that instalment, but that instalment, without prejudice to the right of the undertakers to enforce payment thereof by him, may be recovered by them either from the owner for the time being, or, subject as hereinafter provided, from the occupier for the time being, of the premises, in the manner in which water rates are recoverable:

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Provided that, where the occupier of the premises is not the owner thereof,—

- (a) proceedings shall not be commenced under this subsection against the occupier until notice has been given to him requiring him to pay the amount due out of any rent which is then due, or which may thereafter "become due, from him, and he has failed to comply with the notice; and
 - (b) no greater sum shall be recovered at any one time from the occupier than the amount of rent which is owing by him, or which has accrued since such notice as aforesaid was given to him; and
 - (c) if the occupier, as between himself and the owner of the premises, is not liable to pay the water rate, he shall be entitled to deduct from the rent payable by him any sum paid by him in compliance with the notice, or so recovered from him.
- (5) If any water supply is cut off by the undertakers in contravention of the provisions of this section, they shall be liable on summary conviction to a fine not exceeding five pounds for each day during which the water remains cut off.
- (6) In this section the expression " water rate " includes any additional charge payable to the undertakers in respect of a supply of water for domestic purposes within the meaning of that expression as used in the enactments relating to the undertakers.
- (7) Nothing in this section shall affect any enactment under which undertakers who are also a rating authority may be empowered to collect water rates, rents or charges together with general rates, or to recover water rates, rents or charges in the same manner as general rates.

39 Notice to be given to local authority of water supply to inhabited house being cut off.

- (1) Where, in the exercise of their powers under the last foregoing section or for any other reason, statutory water undertakers cut off the supply of water to an inhabited house, they shall within forty-eight hours give notice that they have done so to the local authority of the district in which the house is situated and, if they fail to do so, shall be liable on summary conviction to a fine not exceeding ten pounds.
- (2) This section shall not apply to the administrative county of London.

40 Power of Minister to revise water rates and charges.

- (1) The Minister, on an application made to him by any statutory water undertakers supplying water under a local enactment, or by a local authority within whose county or district any such undertakers supply water, or by twenty or more persons supplied with water by any such undertakers, may by order make such alteration in the rates and charges which the undertakers are authorised to levy and make as he considers reasonable:

Provided that, where the undertakers are a company, he shall not make any alteration by way of reduction unless he is satisfied that it will not endanger their ability, so long as their undertaking is managed efficiently, to provide a reasonable return upon the paid-up capital of the undertaking (regard being had by him to any capital which the undertakers may reasonably be expected to expend during the next five years) after paying all proper expenses of and connected with the working, management and maintenance of the undertaking, providing for any contributions which the undertakers

may lawfully carry to any reserve fund or contingency fund, making good depreciation (in so far as provision therefor is not made by any such fund as aforesaid), and meeting all other costs, charges and expenses, if any, properly chargeable to revenue.

- (2) The provisions of Part V of the First Schedule to this Act shall apply to the making of applications and orders under this section.
- (3) Unless the Minister considers that exceptional circumstances exist, he shall not vary an order made Under this section before the expiration of a period of five years beginning with the date of the said order or, if it has already been varied, the last variation thereof.
- (4) In relation to any period during which an order made under this section is in operation, the enactments relating to the undertakers shall have effect as if the rates and charges specified in the order made under this section were substituted for the rates and charges specified in those enactments.

41 Power of companies to issue redeemable stock.

- (1) This section applies to all statutory water undertakers being companies who have before the commencement of this Act created and issued any redeemable stock, or who at any time after that date may have authority to create and issue any stock, and in this section unless the context otherwise requires—

" stock " means preference stock and debenture stock,"

" preference stock " includes preference shares;

" issue " includes re-issue;

" redeemable stock " means stock issued so as to be redeemable;

" redeemed stock " means redeemable stock which has been redeemed and is available for issue under the provisions of this section.

- (2) Subject to the provisions of this section, the undertakers may from time to time issue so as to be redeemable any stock created by them and any redeemed stock:

Provided that no redeemed stock shall be issued except for the purpose of effecting the redemption of redeemable stock under the provisions of this section, unless the issue is authorised by a resolution of a general meeting of the undertakers.

- (3) Redeemable stock may be redeemed either by paying off the stock, or by issuing to an assenting holder of the stock other stock in substitution therefor, and for the purpose of raising money to pay off, or of providing stock in substitution for, any redeemable stock the undertakers may create new stock or issue redeemed stock, in either case so as to be redeemable or irredeemable, as they think fit:

Provided that—

- (a) no new stock shall be created, nor shall any redeemed stock be issued, so as to make the total amount of any particular class of stock exceed the amount of stock of that class which the undertakers are for the time being authorised to create except during an interval of three months between the creation, or, in the case of redeemed stock, the issue, of the stock and the completion of the redemption of the redeemable stock for the purpose of redeeming which the stock of that particular class is proposed to be so created or issued ; and
- (b) during such interval as aforesaid the amount raised by means of any preference stock so created or issued shall, for the purposes of any enactment regulating the borrowing powers of the undertakers, be deemed not to have been raised.

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- (4) The redemption of any preference stock issued so as to be redeemable shall not affect the validity of any mortgage, or debenture stock, if the grant or issue thereof by the undertakers was lawful in the circumstances existing at the date of the grant or issue.
- (5) Redeemable stock shall bear such rate of dividend or interest, not exceeding such maximum rate, if any, as may be prescribed in respect of the particular class of stock, and shall be redeemable at such time and in such manner and subject otherwise to such terms and conditions, as the undertakers may before the issue thereof determine:

Provided that the terms and conditions of redemption upon which any redeemable stock is issued shall be stated in any offer by the undertakers of such stock for sale and in every certificate of such stock, and no term or condition of redemption which is not so stated shall be binding upon the holder of the stock.

- (6) The undertakers shall not redeem out of revenue any redeemable stock, but any discount allowed on the issue, or any premium payable on the redemption, thereof may be written off out of revenue.
- (7) Nothing in any enactment relating to the undertakers shall require any stock created or issued under this section solely in substitution for any redeemable stock to be offered for sale by auction or tender:

Provided that the undertakers shall not without the approval of the Minister issue any such preference stock, if the amount required to pay the full dividend thereon will exceed the amount required to pay the full dividend on the stock in substitution for which the new stock is issued, but no holder of the stock shall be concerned to inquire whether any approval required by this subsection has been given.

- (8) For the purpose of any enactment relating to stamp duty, the share capital of the undertaking shall be deemed not to have been increased by the issue of share capital in pursuance of this section for the purpose of redeeming preference stock, if the preference stock is redeemed before the expiration of such an interval as is mentioned in the provisos to subsection (3) of this section.
- (9) Nothing in this section shall be taken as authorising the issue of any stock without compliance with the requirements of any Regulation for the time being in force under the Emergency Powers (Defence) Acts, 1939 and 1940.

42 Accounts of companies to be made up annually and abstracts sent to the Minister and local authorities.

- (1) Where statutory water undertakers are a company, they shall in each year after that in which they commence to supply water, or, if they are supplying water at the commencement of this Act, in each year after the commencement thereof, prepare in such form as the Minister may direct an abstract of the accounts of their undertaking for the preceding year showing under the appropriate heads their income and expenditure, the amount standing to the credit of any reserve or contingency fund and the balances brought forward and carried forward respectively, and the abstract so prepared shall be signed by the chairman of the undertakers and certified by the auditors of the undertaking.
- (2) A copy of the said abstract so signed and certified shall be transmitted forthwith to the Minister and to the clerk of the local authority of every county and district within which the undertakers supply water or have any waterworks.

- (3) If any of the foregoing provisions of this section is not complied with, the undertakers shall in respect of each offence be liable on summary conviction to a fine not exceeding twenty pounds.

43 Appointment of officers as directors.

Where the statutory water undertakers are a company then notwithstanding anything in the Companies Clauses Consolidation Act, 1845, as applied by any enactment to that company—

- (a) any person employed as chief engineer, general manager or secretary of the company may be appointed a director of the company whether he is a shareholder in the company or not, but not so as to increase the number of the directors beyond the maximum number prescribed by any enactment relating to the company;
- (b) a person appointed a director of the company by virtue of the last foregoing paragraph shall not cease to be a director by reason that he is employed as aforesaid;
- (c) any such appointment may be made by the directors of the company as well as in manner provided by the said Act;
- (d) the provisions of the said Act requiring directors to retire by rotation shall have effect as if a person appointed by virtue of this section were not a director:

Provided that—

- (i) not more than one director of the company shall hold office at the same time by virtue of this section; and
- (ii) any person appointed by the directors by virtue of this section shall cease to be a director as from the date of the next ordinary general meeting of the company, unless the appointment is approved at that meeting by a majority of the votes of the proprietors of the company entitled to vote or voting, whether personally or by proxy, at the meeting.