



Water Act 1945

1945 CHAPTER 42

PART IV

POWERS AND DUTIES OF LOCAL AUTHORITIES AND WATER UNDERTAKERS.

Construction of works and acquisition of land and water rights.

23 Orders of Minister conferring certain powers on water undertakers.

- (1) The Minister may, on the application of any persons who are or propose to become statutory water undertakers, make an order—
- (a) authorising them to construct, acquire by agreement, alter or continue, and to maintain, waterworks and works connected therewith;
 - (b) if the applicants are not statutory water undertakers, authorising them to supply water in any area;
 - (c) authorising the applicants to raise capital or borrow money for any purposes of the water undertaking;

and the order may contain such incidental, consequential and supplementary provisions, including provisions for the amendment or repeal of any local enactment, as the Minister thinks necessary or expedient:

Provided that—

- (i) an order made under paragraph (a) of this subsection shall not empower the applicants to acquire compulsorily any land or water rights or vary compulsorily the quantity of compensation water required by any enactment to be discharged into any watercourse or the periods during which or the manner in which such compensation water is required to be discharged;
- (ii) no order shall be made under paragraph (b) of this subsection without the consent of the local authority for every district within which the applicants are to be authorised to supply water or, in a case where they are to be authorised to supply water within the limits of supply of any statutory water

Status: This is the original version (as it was originally enacted).

undertakers supplying water under a local enactment, without the consent of those undertakers.

A consent required for the purposes of this subsection shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister.

- (2) The provisions of Part I of the First Schedule to this Act, other than paragraph 8, shall apply to the making of applications and orders under this section.

24 Power of statutory water undertakers to acquire land by agreement or compulsorily.

- (1) Any statutory water undertakers shall have power under this section to acquire land by agreement, whether by way of purchase, lease or exchange, for any of the purposes of their undertaking, but no such agreement shall have effect without the approval of the Minister.
- (2) Without prejudice to the generality of the foregoing subsection, statutory water undertakers may acquire land thereunder for the purpose of erecting houses and other buildings thereon for the use of persons employed by them for the purposes of their undertaking, and may also acquire land thereunder to be used for recreation grounds for persons so employed.
- (3) The Lands Clauses Acts, except the provisions relating to the acquisition of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections ninety-nine to one hundred and seven and sections one hundred and twenty-seven to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845, are hereby incorporated with the foregoing provisions of this section, and in construing those Acts those provisions shall be deemed to be the special Act and the word " land " shall have the meaning assigned to it in this Act.
- (4) Any local authority or statutory water undertakers may be authorised by means of a compulsory purchase order made by them and confirmed by the Minister to purchase land compulsorily under this section for any of the purposes of their water undertaking or proposed water undertaking, but those purposes shall not be deemed to include the purposes mentioned in subsection (2) of this section.
- (5) The provisions of the Second Schedule to this Act shall have effect with respect to compulsory purchase orders made under this section.
- (6) Nothing in this section shall authorise the compulsory acquisition of land which is the site of an ancient monument or other object of archaeological interest, or any land which is the property of a local authority or has been acquired for the purposes of their undertaking by any persons authorised by any enactment to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking.
- (7) A compulsory purchase order made under this section may authorise the purchase of any land belonging to the National Trust notwithstanding that such land is held by the Trust inalienably, but where any such order authorises the acquisition of land so held inalienably or of any land forming part of a common, open space or allotment, the order shall, subject to the next following subsection, be provisional only and not have effect until it is confirmed by Parliament.

- (8) So much of the last foregoing subsection as provides that any such order as aforesaid shall be provisional only and not have effect until it is confirmed by Parliament shall not apply where the order provides for giving in exchange for such land other land, not being less in area, certified by the Minister of Agriculture and Fisheries (in the case of a common or an allotment) or the Minister of Town and Country Planning (in the case of land held inalienably by the National Trust or an open space not being a common or an allotment) to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public:

Provided that—

- (a) before giving any such certificate, the Minister of Agriculture and Fisheries or the Minister of Town and Country Planning, as the case may be, shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if he thinks it necessary, hold a local inquiry; and
 - (b) the order shall provide for vesting the land given in exchange in the persons in whom the land acquired was vested, subject to the same rights, trusts and incidents as attach to the land acquired, and for discharging the land acquired from all rights, trusts and incidents to which it was previously subject.
- (9) In this section the expression " National Trust " means the National Trust for places of Historic Interest or Natural Beauty incorporated by the National Trust Act, 1907, the expression " held inalienably," in relation to land belonging to that Trust, means land which is inalienable under section twenty-one of the said Act or section eight of the National Trust Act, 1939, the expression " allotment" means an allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act, the expression " common " includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green, and the expression " open space " means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground.

25 Power of statutory water undertakers to hold and dispose of land.

Notwithstanding anything in the Lands Clauses Acts, any statutory water undertakers may hold and use for the purposes of their undertaking for such time as they think fit any land for the time being belonging to them and may from time to time, with the consent of the Minister, sell, lease, exchange or otherwise dispose of any such land in such manner, for such consideration and on such terms and conditions as they think fit and, in particular, on any such disposition may reserve to themselves any water rights or other easements in, over or belonging to, the land disposed of and may make any such disposition subject to such other reservations, conditions, restrictions and provisions with respect to the use of water, the carrying on of noxious trades or the discharge or deposit of manure, sewage or other foul matter as they think fit:

Provided that the consent of the Minister shall not be required for the grant of a lease of any such land for a term not exceeding seven years.

26 Power of statutory water undertakers to acquire water rights.

- (1) Statutory water undertakers may acquire by agreement rights to take water from any stream or other source, but no such agreement shall have effect without the approval of the Minister.

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

- (2) The Minister may on the application of any local authority or statutory water undertakers, by order provide for the compulsory acquisition by them of such rights to take water from any stream or other source as may be specified in the order.
- (3) Where the acquisition of rights under this section will result in the impounding of any stream—
- (a) the Minister shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement requires the undertakers to provide an adequate quantity of compensation water, and incorporates the appropriate provisions of Part III of the First Schedule to this Act subject to such modifications and adaptations as the Minister may approve; or
 - (b) the Minister shall in any order for the compulsory acquisition of such rights prescribe the quantity of compensation water to be provided by the undertakers and shall incorporate in the order the appropriate provisions of the said Part III subject to such modifications and adaptations as he thinks fit.
- (4) Where the acquisition of rights under this section will in the opinion of the Minister substantially reduce the flow of any stream—
- (a) the Minister shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement contains adequate provisions for limiting the extent to which and the circumstances in which water may be taken from the stream and incorporates the appropriate provisions of Part III of the Third Schedule to this Act subject to such modifications and adaptations as the Minister may approve;
 - (b) the Minister shall in any order for the compulsory acquisition of such rights prescribe the extent to which and the circumstances in which water may be taken and shall incorporate in the order the appropriate provisions of the said Part III subject to such modifications and adaptations as he thinks fit.
- (5) In assessing the quantity of compensation water to be provided under any such agreement or order or in determining the extent to which and the circumstances in which water may be taken under any such agreement or order, the Minister shall have regard to all the circumstances of the particular case, including—
- (a) the character and flow of the stream;
 - (b) the extent to which the stream is or may in the future be used for industrial purposes, fisheries, water supply by other undertakers, agriculture, transport or navigation;
 - (c) the effect on land drainage or on any canal or inland navigation of any alterations in the flow of the stream,
- and shall secure, as far as practicable, that the flow of the stream does not fall below the minimum quantity necessary to secure the interests of public health and the protection of the rights of riparian and other landowners.
- (6) The provisions of Part III of the First Schedule to this Act shall apply to the approval of agreements under this section and, if any catchment board for a catchment area or fishery board of a fishery district in which any source from which water is to be taken is situated, or any navigation authority for any river, canal or other inland navigation from which water is to be taken or which is fed by a stream from which water is to be taken to such extent as, in the opinion of the Minister, to affect the river, canal or other inland navigation duly object to the agreement in accordance with the provisions of the said Part III, and the objection is not withdrawn, the Minister shall give his approval

by order and the order shall, in the circumstances specified in paragraph 23 of the said Schedule, be provisional only and not have effect until it is confirmed by Parliament.

- (7) The provisions of Part I of the First Schedule to this Act shall apply to the making of applications and orders under subsection (2) of this section, and any such order shall, in the circumstances specified in paragraph 8 of the said Schedule, be provisional only and not have effect until it is confirmed by Parliament.

Duty to supply water for non-domestic purposes.

27 Supply of water for non-domestic purposes.

- (1) Subject as hereinafter provided, statutory water undertakers supplying water otherwise than in bulk shall give a supply of water on reasonable terms and conditions for purposes other than domestic purposes to the owner or occupier of any premises within their limits of supply who requests them to give such a supply to those premises:

Provided that they shall not be required to give such a supply if their ability to meet existing obligations to supply water for any purposes or probable future requirements to supply water for domestic purposes, without having to incur unreasonable expenditure in constructing new waterworks for the purpose, would be endangered thereby.

- (2) Any question arising under this section as to the terms and conditions on which water is to be supplied thereunder and any question whether the undertakers are justified in refusing to give a supply, shall, in default of agreement, be referred to the Minister, and the Minister may determine it himself or, if he thinks fit, refer it for determination by an arbitrator appointed by him.
- (3) Where any statutory water undertakers are required to give a supply of water under this section, the powers of those undertakers and of persons supplied or proposed to be supplied by them to lay mains and pipes for providing a supply of water for domestic purposes and to break up streets for that purpose shall apply for the purpose of the provision of a supply under this section.
- (4) Where the terms and conditions on which a supply of water is to be provided to any person under this section have been agreed or determined, and that person has done everything which he is required by such agreement or determination to do before the supply is provided, the undertakers shall, if they fail to furnish the supply within such period as may be agreed or determined, or fail to maintain the supply in accordance with the said terms and conditions, be liable (without prejudice to any civil liability) to the like penalties in the like circumstances as in the case of a failure to furnish or maintain a supply of water which they are required to provide for domestic purposes.
- (5) Section thirty-eight of this Act (which relates to liability for and recovery of water rates) shall apply in relation to charges for water supply under this section, whether by meter or otherwise, in like manner as it applies in relation to water rates.
- (6) In this section the expression " domestic purposes " has the same meaning as it has for the purposes of the enactments relating to the undertakers.

Extension of powers and duties of local authorities under the Public Health Act, 1936.

28 Extension of duty to provide water supply for houses and schools.

The duty imposed on local authorities by section three of the Rural Water Supplies and Sewerage Act, 1944, to supply water in pipes to rural localities in which there are houses or schools shall extend to all localities to which section one hundred and eleven of the Public Health Act, 1936, applies in which there are houses or schools and in which such a supply is not already available, and accordingly the said section three shall cease to have effect and for the said section one hundred and eleven there shall be substituted the following section:—

“111 Duty of local authority with respect to water supplies within their district.

- (1) It shall be the duty of every local authority—
 - (a) to take from time to time such steps as may be necessary for ascertaining the sufficiency and wholesomeness of water supplies within their district;
 - (b) to provide a supply of wholesome water in pipes to every part of their district in which there are houses or schools, and to take the pipes affording that supply to such point or points as will enable the houses or schools to be connected thereto at a reasonable cost, so, however, that this paragraph shall not require a local authority to do anything which is not practicable at a reasonable cost or to provide such a supply to any part of their district where such a supply is already available at such point or points as aforesaid ;
 - (c) to provide a supply of wholesome water otherwise than in pipes to every part of their district in which there are houses or schools and to which it is not practicable to provide a supply in pipes at a reasonable cost, and in which danger to health arises from the insufficiency or unwholesomeness of the existing supply and a public supply is required and can be provided at a reasonable cost, and to secure that such supply is available within a reasonable distance of every house and school in that part of their district.
- (2) If any question arises under paragraph (b) of the preceding subsection as to whether anything is or is not practicable at a reasonable cost or as to the point or points to which pipes must be taken in order to enable houses or schools to be connected to them at a reasonable cost, or under paragraph (c) thereof as to whether a public supply can be provided at a reasonable cost, the Minister, if requested so to do by the council of the county or by ten or more local government electors in the district of the local authority, shall, after consulting the local authority, and where the request was made by local government electors and the local authority is the council of a county district, after consulting also the council of the county, determine that question, and the local authority shall give effect to his determination.
- (3) Without prejudice to their obligations under subsection (1) of this section, every local authority shall, for the purpose of securing so far as is reasonably practicable that every house has available a sufficient supply of wholesome water for domestic purposes, exercise their powers under this Part of this Act

as amended by any subsequent enactment of requiring owners of houses to provide a supply of water thereto.”

The obligations of joint water boards Constituted before the passing of this Act under section six of the Public Health Act, 1936, or any enactment repealed by that Act shall include the obligations imposed on local authorities by this section, and the enactments relating to any such board shall have effect accordingly.

29 Amendment of s. 137 of the Public Health Act, 1936.

- (1) For subsection (1) of section one hundred and thirty-seven of the Public Health Act, 1936 (which requires new houses to be provided with a sufficient water supply) there shall be substituted the following subsection:—

“(1) Where plans of a house are, in accordance with building byelaws, deposited with a local authority, the authority shall reject the plans unless there is put before them a proposal which appears to them to be satisfactory for providing the occupants of the house with a supply of wholesome water sufficient for their domestic purposes—

- (a) by connecting the house to a supply of water in pipes provided by the local authority or other statutory water undertakers; or
- (b) if in all the circumstances it is not reasonable to require the house to be connected as aforesaid, by otherwise taking water into the house by means of a pipe; or
- (c) if in all the circumstances neither of the preceding alternatives can reasonably be required, by providing a supply of water within a reasonable distance of the house;

and the authority are satisfied that the proposal can and will be carried into effect.

Any question arising under this subsection between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether the local authority ought to pass the plans may on the application of that person be determined by a court of summary jurisdiction.”

- (2) In subsection (2) of the said section one hundred and thirty-seven for the words " for the domestic purposes of the inmates being provided in, or within a reasonable distance of, the house " there shall be substituted the words " for the domestic purposes of the occupants. "

30 Amendment of s. 138 of the Public Health Act, 1936.

- (1) For subsection (1) of section one hundred and thirty-eight of the Public Health Act, 1936 (which empowers a local authority to require an occupied house to be provided with a sufficient water supply) there shall be substituted the following subsections:—

“(1) Where a local authority are satisfied that any occupied house has not a supply of wholesome water in pipes in the house sufficient for the domestic purposes of the occupants, the local authority may—

- (a) if they are satisfied that in all the circumstances it is reasonable to require the owner of the house to connect it to a supply of water in pipes provided by the local authority or other statutory water

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

undertakers, give notice to the owner requiring him within a time specified therein to connect the house as aforesaid;

- (b) if they are not satisfied that it is reasonable in all the circumstances to require the owner to connect the house as aforesaid, but are satisfied that it is reasonable to require him otherwise to take water into the house by means of a pipe, give notice to the owner requiring him within a time specified therein so to take water into the house.

(1A) Where a local authority are satisfied that any occupied house has not within a reasonable distance thereof a supply of wholesome water sufficient for the domestic purposes of the occupants and that in all the circumstances it is not reasonable to require the owner to connect the house, or to take water into the house, as aforesaid, the local authority may give notice to the owner requiring him within a time specified therein to provide a sufficient supply of wholesome water within a reasonable distance of the house.”

(2) In subsection (2) of the said section, for the words " the preceding subsection " there shall be substituted the words " either of the preceding subsections ".

(3) After the said subsection (2) there shall be inserted the following subsection:—

“(2A) If a person on whom a notice has been served under the preceding provisions of this section objects to the requirement of the local authority, he may, within twenty-eight days after service on him of the notice, appeal to a court of summary jurisdiction and, upon any such appeal, the court may either disallow the requirement of the local authority or allow it with or without modifications.”

(4) In subsection (3) of the said section, for the words "Subject to the provisions of the next succeeding section with respect to appeals, if such a notice as aforesaid is not complied with " there shall be substituted the words " If any requirement contained in a notice given under the preceding provisions of this section, including a requirement modified by the court under the last preceding subsection, is not complied with within the time specified in the notice or, if the court extends that time, within the time as so extended. "

31 Other amendments of Public Health Act, 1936.

The provisions of the Public Health Act, 1936, mentioned in the Fourth Schedule to this Act, being provisions relating to water supply and matters connected therewith, shall be amended and repealed to the extent specified in the said Schedule.

Modernisation of Waterworks Code.

32 Incorporation and application by order of provisions of Third Schedule.

(1) The Minister may by any order made under section nine, section ten, section twelve, section twenty-three or section forty of this Act apply to any water undertaking to which the order relates such of the provisions contained in the Third Schedule to this Act as appear to him to be appropriate, subject to such modifications and adaptations as may be specified in the order.

(2) The Minister may at any time by order apply the provisions of the Third Schedule to this Act or any of them to the undertaking of any statutory water undertakers supplying

water under a local enactment, subject to such modifications and adaptations as may be specified in the order, and may by the order repeal any provision previously applicable to the undertaking to the extent to which it appears to him, having regard to the provisions of this Act which apply, or are applied by the order, to the undertaking, to be no longer required, or amend any provision previously applicable to the undertaking to any extent which appears to him necessary to bring it into conformity with the said provisions of this Act:

Provided that, during the period of five years beginning with the commencement of this Act, he shall not make such an order except on the application of the undertakers concerned.

- (3) The provisions of Part I of the First Schedule to this Act shall apply to orders made under the last foregoing subsection on the application of the undertakers concerned, and the provisions of Part II of the said Schedule shall apply to orders made thereunder without any such application, and all orders made under the said subsection shall, in the circumstances specified in paragraph 8 or paragraph 17, as the case may be, of the said Schedule, be provisional only and not have effect until they are confirmed by Parliament.
- (4) The Minister, when considering the making of an order under subsection (2) of this section, shall have regard to the powers, if any, and practice of the undertakers as regards additional charges in respect of waterclosets and baths, and the probable effect of any order made by him on the financial position of the undertaking and on the rates and charges payable by consumers of different classes.
- (5) Where the Minister makes an order under subsection (2) of this section, he shall, if so requested by the undertakers concerned before the order is made, postpone the operation of the order for such period as he deems sufficient to enable them to make an application to him under section forty of this Act (which relates to the power of the Minister to revise water rates and charges).

33 Repeal and amendment of local enactments.

- (1) The Minister may, on the application of any statutory water undertakers, by order repeal or amend any local enactment relating to the supply of water by those undertakers :

Provided that—

- (a) an order under this section shall not vary the quantity of compensation water required by any local enactment to be discharged into any watercourse or the period during which or the manner in which such compensation water is required to be discharged;
 - (b) the Minister shall not make an order under this section with respect to any matter which in his opinion could be more appropriately dealt with under any other provision of this Act.
- (2) The provisions of Part I of the First Schedule to this Act shall apply to orders made under this section and such orders shall, in the circumstances specified in paragraph 8 of the said Schedule, be provisional only and not have effect until they are confirmed by Parliament.
 - (3) Section three hundred and three of the Public Health Act. 1875 (which empowers the Minister by provisional order to repeal or alter local Acts relating to the same subject

matters as the said Act) shall cease to have effect so far as it applies to any local enactment relating to water supply.

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, 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 4and 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.

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

- (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.

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.

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

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:

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

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

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.

- (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;

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

- (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.