

River Medway (Flood Relief) Act 1976

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ELIZABETH II



1976 CHAPTER xxii

An Act to provide for the relief of flooding in part of the catchment area of the river Medway; to authorise the Southern Water Authority to construct works and to acquire lands; and for other purposes.

[29th July 1976]

WHEREAS the Southern Water Authority (hereinafter in this Act referred to as "the Authority") were constituted in pursuance of the Water Act 1973 as the Authority 1973 c. 37. responsible for all aspects of water conservation, the supply of water, the prevention of pollution, the provision of public sewerage and sewage disposal, land drainage, fisheries and water recreation within an area which includes the catchment area of the river Medway (hereinafter in this Act referred to as "the river"):

And whereas during and after periods of heavy rainfall there is extensive flooding of the land adjacent to the river and in particular of the land in the parishes of Tonbridge and

Hildenborough in the district of Tonbridge and Malling in the county of Kent (hereinafter in this Act referred to as “the county”) and further downstream:

And whereas the flooding of such land could be substantially alleviated by controlling the flow of the river and by storing temporarily part of such flow in a flood storage area adjoining the river and it is expedient and in the public interest to authorise the Authority to acquire the land for the provision of such an area and in times of high flow to control the flow of the river and to store temporarily part of such flow in such area:

And whereas it is expedient that the Authority should be empowered to construct the works which they are by this Act authorised to construct and to acquire lands and easements for such works:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the objects of this Act cannot be effected without the authority of Parliament:

And whereas plans and sections showing the lines, situations and levels of the works authorised by this Act, and a book of reference to such plans containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers, of the lands which may be acquired or used compulsorily under the powers of this Act, have been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and with the chief executive of the county council of the county of Kent and such plans, sections and book of reference are in this Act respectively referred to as the deposited plans, the deposited sections and the deposited book of reference:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the River Medway (Flood Relief) Act 1976.

Interpretation.

2.—(1) In this Act, unless the subject or context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

1930 c. 44.

“the Act of 1930” means the Land Drainage Act 1930;

- “ the Act of 1961 ” means the Land Compensation Act 1961; PART I
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1961 c. 33.
- “ the Act of 1963 ” means the Water Resources Act 1963; 1963 c. 38.
- “ the Act of 1965 ” means the Compulsory Purchase Act 1965; 1965 c. 56.
- “ the Act of 1973 ” means the Water Act 1973; 1973 c. 37.
- “ the Authority ” means the Southern Water Authority;
- “ the control structure ” means Work No. 9D and includes any other work, appliance or apparatus connected therewith or incidental thereto;
- “ the county ” means the county of Kent and “ the county council ” means the council of the county;
- “ enactment ” includes an enactment in this Act or in any general or local Act and any order, byelaw or regulation for the time being in force within the area of the Authority;
- “ land ” means any corporeal hereditament, including a building, and includes land covered by water and any interest in, or right over, land;
- “ the Minister ” means the Minister of Agriculture, Fisheries and Food;
- “ the river ” means the river Medway;
- “ the sluice gates ” means the sluice gates forming part of the control structure or any of them;
- “ the Third Schedule ” means the Third Schedule to the Water Act 1945; 1945 c. 42.
- “ the tribunal ” means the Lands Tribunal;
- “ the weirs ” means the weirs forming part of the control structure or any of them;
- “ the works ” means Works Nos. 1 to 11 and any works, apparatus and conveniences connected therewith, constructed or provided by the Authority as part of, or in connection with, or for the purposes of, those works or any of them.

(2) References in this Act to reference points shall be construed as references to National Grid reference points.

(3) Unless the subject or context otherwise requires, any reference in this Act to a work identified by the number of such

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work or by such number and a letter of the alphabet shall be construed as a reference to the work of that number or of that number and letter (as the case may be) authorised by this Act.

(4) Unless the subject or context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

Application
of
enactments.

3.—(1) (a) For the purposes of this Act, sections 6, 83 and 85 of the Third Schedule shall apply to the Authority and the works.

(b) The said sections are hereby incorporated with this Act and, as so incorporated, shall have effect as if for references therein to undertakers there were substituted references to the Authority.

1845 c. 20.

(2) Section 16 of the Railways Clauses Consolidation Act 1845 and the provisions of that Act with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this Act and, as so incorporated, shall have effect as if—

(a) for the words “the period by the special Act limited for the completion of the railway” there were substituted the words “the period of five years from the commencement respectively of the construction of any of the works authorised by the special Act”;

(b) the expression “the company” meant the Authority;

(c) the words “the lands described in the said plans or mentioned in the said book of reference” in the said section 16 meant the lands so described and mentioned within the limits of deviation shown on the deposited plans; and

(d) the expression “the railway” meant the works authorised by this Act and “the centre of the railway” meant the centre line of any such works respectively.

(3) (a) Part I of the Act of 1965 (except section 4, subsection (5) of section 24, section 27, and sub-paragraph (3) of paragraph 3 of Schedule 3 thereof), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 applies and as if this Act were a compulsory purchase order under the said Act of 1946.

1946 c. 49.

(b) In subsection (1) of section 11 of the Act of 1965, as so applied, for the words “fourteen days” there shall be substituted the words “three months”.

(c) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.

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1845 c. 18.

PART II

WORKS

4.—(1) (a) Subject to the provisions of this Act the Authority may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown upon the deposited sections make and maintain in the county the works hereinafter described, together with all necessary works and conveniences connected therewith:—

Power to
construct
works.

The parish of Leigh in the district of Sevenoaks—

Work No. 1 A drain being a diversion of the drain crossing parcel numbered 4724 on the 1/2500 National Grid Plan, TQ5446-5546 (1972), commencing at reference point 5545214627 and terminating at reference point 5544814623.

Work No. 1A A pipe having a diameter of 450 millimetres (18 inches) in substitution for an existing drain (partly open and partly in culvert), commencing at the termination of Work No. 1 and laid at the foot of the railway embankment until the embankment meets Lower Green Street, thence along Ensfield Road beneath the embankment and terminating at reference point 5545214615.

Work No. 2 A pipe having a diameter of 600 millimetres (24 inches) in substitution for an existing drain (partly open and partly in culvert), commencing at the pond in parcel numbered 4413 on the said National Grid Plan at reference point 5544214614 and laid across the said parcel to the foot of the railway embankment, thence along that embankment until the embankment meets Ensfield Road, thence diagonally across the said road and terminating at the termination of Work No. 1A.

Work No. 2A A pipe having a diameter of 300 millimetres (12 inches) in substitution for an existing drain, commencing at reference point 5544214618 and terminating by a junction with Work No. 2 at reference point 5544614618.

Work No. 3 A pipe having a diameter of 450 millimetres (18 inches) in substitution for the drain which commences at the pond (parcel numbered 6122 on the said

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National Grid Plan) and then passes under the railway embankment and discharges into another drain, commencing at reference point 5546114621 and terminating at reference point 5548514619.

Work No. 4 A protective embankment, commencing at reference point 5548114614 and terminating at reference point 5548614614.

Work No. 4A A protective embankment incorporating a culvert fitted with a flap valve, commencing by a junction with Work No. 4 at reference point 5548514608 and terminating at reference point 5549214614.

Work No. 4B A pumping station at reference point 55491460.

Work No. 4C An access road from Ensfield Road to the Leigh Sewage Works being in part a new road including the culverting of Internal Drainage Board water-course No. 63 and in part an improvement of an existing track commencing at reference point 5545114612 and terminating at reference point 5548914608.

Work No. 5 A protective embankment incorporating a culvert fitted with a flap valve, commencing at reference point 5550314613 and terminating at reference point 5551014612.

Work No. 6 A protective embankment, commencing at reference point 5550914618 and terminating at reference point 5550914615.

Work No. 7A A berm to strengthen and protect the railway embankment, commencing by a junction with Work No. 4A at reference point 5549214613 and terminating by a junction with Work No. 5 at reference point 5550214611.

The parish of Leigh and the parish of Tonbridge in the district of Tonbridge and Malling—

Work No. 7B A berm to strengthen and protect the railway embankment, commencing by a junction with Work No. 5 at reference point 5551014610 and terminating at reference point 5559714603.

The parish of Tonbridge—

Work No. 7C A berm to strengthen and protect the railway embankment, commencing at reference point 5560514602 and terminating by a junction with Work No. 9F at reference point 5563814597.

The parish of Leigh—

Work No. 7D A berm to strengthen and protect the railway embankment, commencing by a junction with Work No. 6 at reference point 5550914616 and terminating at reference point 5559814606.

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The parish of Tonbridge—

Work No. 7E A berm to strengthen and protect the railway embankment, commencing at reference point 5560514605 and terminating by a junction with Work No. 9E at reference point 5563914603.

The parishes of Leigh and Tonbridge—

Work No. 8 A diversion of the river, commencing at reference point 5558414585 and terminating at reference point 5560114604.

The parish of Leigh—

Work No. 9A An access road, commencing by a junction with Powder Mill Lane (C58 road) at reference point 5561514643 and terminating at reference point 5563514628.

Work No. 9B A control house at reference point 55621462.

Work No. 9C A flood retention embankment incorporating the culverting of the Powder Mill Stream by a pipe fitted with a penstock gate, commencing at the termination of Work No. 9A and terminating at reference point 5563914612.

Work No. 9D A control structure across the diverted channel of the river (Work No. 10) incorporating sluice gates and tilting weirs, commencing at the termination of Work No. 9C and terminating at reference point 5563914609.

The parishes of Leigh and Tonbridge—

Work No. 9E A flood retention embankment, commencing at the termination of Work No. 9D and terminating by a junction with the railway embankment at reference point 5563914600.

The parish of Tonbridge—

Work No. 9F A flood retention embankment including the culverting of Haysden No. 1 stream, commencing by a junction with the railway embankment at reference point 5563914599 and terminating by a junction with the embankment of the Tonbridge By-pass (Classified road A.21) at reference point 5563514577.

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Work No. 9G A berm to strengthen and protect the embankment of the said Tonbridge By-pass, commencing at the termination of Work No. 9F and terminating at reference point 5563014575.

The parish of Tonbridge and the parish of Bidborough in the district of Tunbridge Wells—

Work No. 9H A flood retention embankment, commencing at the termination of Work No. 9G and terminating at reference point 5561514501.

The parishes of Leigh and Tonbridge—

Work No. 10 A diversion of the river, commencing at reference point 5562514612 and terminating at reference point 5571914615.

The parish of Tonbridge—

Work No. 11 A watercourse to divert the flow of a watercourse adjoining the bridle path No. 60 into the gravel pit adjacent to the said Tonbridge By-pass, commencing at reference point 5561114541 and terminating at reference point 5560314556.

(b) In this subsection—

- (i) references to the parish of Tonbridge shall be construed as references to that part of the Tonbridge and Malling district which comprised the former Tonbridge urban district; and
- (ii) “the railway embankment” means the embankment on which the railway of the British Railways Board between Tonbridge and Redhill is constructed.

(2) Notwithstanding anything to the contrary in this Act or shown on the deposited plans or the deposited sections, but without prejudice to the provisions of section 6 (Power to deviate) of this Act the Authority may, subject to the approval of the Minister and the Secretary of State construct the whole or any part of Work No. 9H within the limits of deviation in accordance with dimensions and a description other than the dimensions and description shown on the deposited plans and the deposited sections or set out in the last foregoing subsection.

(3) (a) The Authority may lay electric lines in, on or over any highway and, with the consent of the owners and occupiers of any other land, in, on or over that land for the purpose of—

- (i) establishing telegraphic, telephonic or other electrical communication either between any part of the undertaking of the Authority (as for the time being authorised by any enactment) and any part of the works, or between different parts of those works; or

- (ii) inspecting, maintaining, repairing, managing, working, or using the works or any of them.

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(b) Subsections (3), (4) and (5) of section 5 of the Third Schedule shall extend and apply to any electric lines laid under this subsection as if they were wires, posts, conductors and other apparatus laid under the said section 5 and for that purpose shall be deemed to be incorporated with this Act.

(c) In this subsection “electric line” has the same meaning as in the Electricity (Supply) Acts 1882 to 1936.

(4) The Authority may from time to time renew and alter any of the works described in subsection (1) of this section.

5.—(1) Subject to the provisions of this Act and within the Subsidiary limits of deviation shown on the deposited plans, the Authority works in connection with or for the purposes of the works may—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, droves, ways, bridges and footpaths;
- (b) make, provide and maintain all necessary and convenient walls, banks, embankments, borrow pits, hards, mooring, boat hoists, rollers and other facilities for transporting boats, piling, fences, facilities for watering cattle and other animals, culverts, drains, intakes, syphons, watercourses, weirs, sluices, mattresses, pitching, roads, droves, bridges, footpaths, and all such mains, pipes, cables, wires, meters, pumps, machinery, works and appliances as may be required;
- (c) raise, widen, lengthen, alter and reconstruct the bridges over any watercourses widened, deepened, strengthened, straightened or diverted under the powers of this Act and the approaches to such bridges and strengthen, underpin and deepen the piers, arches and other supports and the foundations thereof without acquiring the said bridges or any interest therein;
- (d) stop up and discontinue so much of the watercourses shown on the deposited plans as will be rendered unnecessary by reason of the execution of the works;
- (e) dispose of spoil or other material excavated in the execution of the works;
- (f) execute any works for the protection of any adjoining lands, buildings or structures;
- (g) remove, alter, divert or stop up any drain, sewer or watercourse, the Authority providing a proper substitute before interrupting the flow of sewage in any drain or sewer or water in any watercourse;

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(h) fell, lop or cut and remove any tree, bush, shrub or other vegetation; and

(i) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928).

1928 c. 32.

(2) In the exercise of the powers conferred by this section, the Authority shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any damage sustained by them by reason of the exercise by the Authority of such powers. Any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

(3) The powers conferred by this and the last foregoing section of this Act in so far as they authorise the carrying out of any works in, on, over or under any highway shall not be exercised by the Authority without the consent of the highway authority having powers in relation thereto, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of the consent) as the highway authority may require, and any question whether such consent is unreasonably withheld or any conditions so imposed are unreasonable shall be determined in relation to any trunk road by the Secretary of State and in relation to any other highway by arbitration:

Provided that such consent shall not be necessary where consent for the carrying out of the works is required by the Public Utilities Street Works Act 1950.

1950 c. 39.

(4) Any electrical works or equipment constructed, erected, laid down, maintained, worked or used pursuant to the powers conferred by this section shall be so constructed, erected or laid down and so maintained, worked and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line.

Power to deviate.

6. The Authority in constructing the works may deviate laterally from the lines or situations of the works as shown on the deposited plans to any extent not exceeding the limits of deviation shown on those plans and may deviate vertically from the levels shown on the deposited sections to any extent upwards or downwards:

Provided that—

(a) no part of the embankments comprised in or forming part of Works Nos. 4, 4A, 5, 6, 9C, 9E, 9F and 9H shall be constructed at a greater height above the general surface of the ground than that shown on the deposited sections and 1 metre in addition thereto;

(b) except for the purpose of crossing over a watercourse, excavation or hollow no pipe authorised by this Act shall be raised above the surface of the ground unless and except so far as is shown on the deposited sections.

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7.—(1) Upon completion of the diversions of the river specified in Works Nos. 8 and 10 the new channel of the river for the lengths of the diversions shall be treated as part of the main river of the Authority for the purposes of Part II of the Act of 1930 and the former channel of the river diverted by Work No. 8, to the extent that any parts thereof are not incorporated in the new channel, and such part of the former channel of the river diverted by Work No. 10 as lies between reference points 5562914610 and 5566514603 shall cease to be treated as part of the main river; and the Authority shall forthwith send the main river map (as defined in paragraph 6 of Schedule 2 to the Act of 1973) of their area to the Minister for the purpose of its being varied to give effect to the provisions of this section.

Works Nos. 8 and 10 to be part of main river.

(2) Sub-paragraph (2) of paragraph 11 of the said Schedule 2 shall not apply to the alteration of the main river map in pursuance of this section.

8. Works Nos. 4, 4A, 5, 6, 9C, 9D, 9E, 9F and 9H shall be deemed to have been constructed under section 36 of the Act of 1963 granted by the Secretary of State to the Authority and, except as may be otherwise provided by this Act, the provisions of the Act of 1963 relating to licences granted under section 36 of that Act shall apply to the licences deemed by this section to have been granted under that section as they apply to those so granted.

Certain of the works deemed to be constructed under impounding licence.

9.—(1) (a) The Authority may divert the footpaths and bridleway in the county described in column (1) of Schedule 1 to this Act in the districts referred to in column (2) and the parishes referred to in column (3) of the said Schedule in the manner shown on the deposited plans between the points specified in column (4) of the said Schedule as shown on the deposited plans, and subject to the provisions of this Act may stop up and cause to be discontinued as a public highway so much of each of the said footpaths or bridleway as will be rendered unnecessary by the diversion thereof under the powers of this Act.

Power to divert footpaths and bridleway.

(b) The Authority may for the purposes of and in connection with the diversion of the footpaths numbered 435 and 25 on the map referred to in column (1) of the said Schedule construct footbridges over the river and references in this section to a diverted footpath shall in relation to the said two footpaths be construed as including any footbridge over the river constructed under this paragraph.

(c) The Authority may in connection with the diversion of the footpath numbered 25 as aforesaid widen, strengthen and improve

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the site of so much of the footpath, as diverted, as is under the bridge (No. 83) carrying the railway of the British Railways Board between Tonbridge and Redhill over the river.

(2) (a) Notwithstanding anything in subsection (1) of this section where a footpath or bridleway is diverted the existing public highway shall not be stopped up under the powers of this section until the highway authority concerned are satisfied that the new footpath or bridleway to be substituted therefor has been completed in accordance with their reasonable requirements and is open for public use or, in the case of any difference between the Authority and the highway authority as to whether the said requirements have been complied with or as to their reasonableness, until the matter in dispute has been referred to and determined by the Secretary of State and he has certified that the new footpath or bridleway has been completed in accordance with his determination:

Provided that the Authority shall not be required under this section to construct or complete any new footpath or bridleway to a greater width or better standard than the footpath or bridleway for which such new footpath or bridleway is substituted.

(b) Before applying to the Secretary of State for his determination the Authority shall give to the highway authority seven days' notice of their intention so to do.

(3) As from the date of completion to the satisfaction of the highway authority of any such diverted footpath or bridleway or as from the date of the determination by the Secretary of State as aforesaid (as the case may be), all rights of way over or along the portion of the footpath or bridleway so stopped up shall be extinguished and the Authority may appropriate and use, for the purposes of the works authorised by this Act, the site and soil thereof so far as they are owners of the land on both sides thereof.

(4) Any footpath or bridleway diverted under the powers of this Act shall be repairable by the authority or person by which or by whom it was repairable before its diversion and be subject to the same public rights of way as were exercisable over the footpath or bridleway before its diversion.

Temporary
stoppage of
watercourses,
roads,
footpaths and
bridleways.

10.—(1) The Authority during and for the purpose of the execution of any of the works may temporarily stop up and divert and interfere with any watercourse or any road, bridleway or footpath and may for any reasonable time divert the traffic from any such road, bridleway or footpath and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road, bridleway or footpath from passing along and using the same.

(2) Reasonable access shall be provided for foot-passengers, with or without animals, bona fide going to or from any such land, house or building.

(3) The powers of this section shall not be exercised with reference to any road, bridleway or footpath without the consent of the highway authority having powers in relation thereto and, in the case of a road, bridleway or footpath which is vested in any person other than the highway authority, that person, and any such consent may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of the consent) as the highway authority or other person may think fit to impose but shall not be unreasonably withheld, and any question whether any such consent is or is not unreasonably withheld or whether any conditions are or are not reasonable shall be determined in relation to any trunk road by the Secretary of State and in relation to any other bridleway or footpath by arbitration.

(4) The powers of this section shall not be exercised with reference to any watercourse which is under the jurisdiction of an internal drainage board without the consent of the board concerned and any such consent may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of the consent) as the board concerned may think fit to impose but shall not be unreasonably withheld, and any question whether any such consent is or is not unreasonably withheld or whether any conditions are or are not reasonable shall be determined by the Minister.

(5) The powers of this section shall not be exercised with respect to a road so as to obstruct or interfere with the access to or exit from any station or depot of passenger road transport operators, except with their consent.

(6) The exercise of the powers conferred by this section in relation to a highway shall not affect the powers of the Post Office under the Telegraph Acts (as defined in section 21 of the Post Office Act 1969) to maintain, inspect, repair, renew or remove telegraphic lines or to open or break up that highway for any of those purposes. 1969 c. 48.

11.—(1) The Authority may by means of the Works Nos. 1, 1A, 2, 2A, 3, 4, 4A, 4C, 8, 9C, 9D, 9E, 9F, 9H, 10 and 11 and any works constructed in connection therewith divert, abstract, intercept, stop up or otherwise interfere with the waters or the flow of water in the river and of or in any other watercourse which may be intercepted by the said works or any of them. Diversion of flow of water in certain watercourses.

(2) The restriction imposed by subsection (1) of section 23 of the Act of 1963 shall not apply to abstraction of water under subsection (1) of this section.

12.—(1) (a) Subject to the provisions of this Act the Authority for the purposes of improving or regulating the flow of any of the watercourses which may require improvement or regulation Power to Authority to improve and regulate flow of watercourses.

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consequent upon the operation or maintenance of any of the works may—

- (i) widen, dredge, cleanse and scour the watercourse;
- (ii) reduce or remove any shoals, shelves, banks or other accumulations therein;
- (iii) alter or remove or cause to be altered or removed any weirs, sluices or other impediments or obstructions whatsoever therein or on the banks thereof;
- (iv) alter or reconstruct any culvert or other structure therein or on the banks thereof.

(b) Any spoil or other material dredged or removed in the exercise of the powers of this subsection may be deposited on the banks of the watercourse.

(2) The Authority 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 by them of the powers of this section. Any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

(3) The powers conferred on the Authority by this section shall not be exercised in relation to a watercourse under the jurisdiction of an internal drainage board except with the consent of the board concerned and any such consent may be given subject to such reasonable terms and conditions (other than a monetary payment as the consideration for the grant of the consent) as the board may think fit but shall not be unreasonably withheld, and any question as to whether any such consent is or is not unreasonably withheld or whether any conditions are or are not reasonable shall be determined by the Minister.

Discharge of
water into
streams.

13.—(1) For the purpose of constructing, altering, enlarging, repairing, cleaning or examining any of the works the Authority may cause the water in any such work to be discharged into any available watercourse and for that purpose may lay and maintain all necessary discharge pipes and apparatus.

(2) Except in a case of emergency the Authority shall not less than seven days before commencing to discharge water into a watercourse as aforesaid give notice of their intention to the occupier of the land on which the discharge is to be made:

Provided that whenever the Authority 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 this subsection.

(3) In the exercise of the powers conferred by this section the Authority 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 (including a statutory undertaker) 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 determined by the tribunal.

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—cont.

(4) (a) The Authority shall take all necessary steps to secure that any water discharged by them under 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.

(b) Sections 46 and 47 of the Water Act 1945 shall apply to any such offence as if it were an offence against that Act. 1945 c. 42.

14. The Authority may enter into and carry into effect agreements or arrangements with the drainage board of any drainage district or the owners of or other persons interested in any land in or through which the works are or may be constructed or the drainage of which may be affected by the construction of the works for or with respect to the execution of any works or the doing of anything which may be rendered necessary or convenient by reason or in consequence of the exercise of the powers of this Act. Any such agreement may provide for the payment by the Authority of or the making of contributions by them towards the cost incurred or to be incurred by any such drainage board, owners or other persons in or in connection with the execution of such last-mentioned works or the doing of any such thing or the payment by the Authority of compensation for any injury suffered by such drainage board, owners or other persons by reason or in consequence of the execution by the Authority of the works of that Authority.

Agreements with owners of land and others for execution of works.

15.—(1) The Authority may for the purposes of the works enter upon and use so much of the bed or banks of any watercourse as is within the limits of deviation of any of the works shown on the deposited plans and as may be required for those purposes, and they may also for the purposes of executing and placing temporary works and conveniences in connection with the works occupy and use temporarily so much of such bed and banks within the said limits as may be required for those purposes or any of them.

Power to use bed and banks of watercourses.

(2) The Authority shall, not less than seven days before entering upon and using the bed or banks of any watercourse as aforesaid, give notice of their intention to the occupier of the land comprising such bed or banks and shall pay compensation to all persons for

PART II
—cont.

any damage sustained by them or liability to which they may become subject by reason of the exercise by the Authority of the powers conferred by this section, and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

Removal of
obstructions
and debris.

16.—(1) The Authority may remove any thing in the river or on any land which has been or in the opinion of the Authority is likely to be flooded by the Authority in the exercise of the powers conferred by section 17 (Operation of sluice gates) of this Act if the thing is causing or, in the opinion of the Authority, is likely to become an obstruction or impediment to the operation of the control structure.

(2) (a) If any thing removed by the Authority under subsection (1) of this section is so marked as to be readily identifiable as the property of any person, the Authority shall within one month of its coming into their custody give notice, as required by subsection (5) of this section, to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period vest in the Authority.

(b) Any thing removed by the Authority under subsection (1) of this section which is not so marked shall thereupon vest in the Authority.

(3) The Authority may at such time and in such manner as they think fit dispose of any thing referred to in paragraph (b) of subsection (2) of this section and if it is sold the proceeds of sale shall be applied by the Authority in payment of the expenses incurred by them under this section in relation to the thing, and any balance—

(a) shall be paid to any person who within three months from the time when the thing came into the custody of the Authority proves to the reasonable satisfaction of the Authority that he was the owner thereof at that time; or

(b) if within the said period no person proves his ownership at the said time, shall vest in the Authority.

(4) If any thing removed under this section—

(a) is sold by the Authority and the proceeds of sale are insufficient to reimburse the Authority for the amount of the expenses incurred by them in the exercise of their powers of removal; or

(b) is unsaleable;

the Authority may recover as a debt in any court of competent jurisdiction the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Authority or who was the owner at the time of its abandonment or loss.

(5) A notice given under paragraph (a) of subsection (2) of this section shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Authority possession may be retaken at a place named in the notice within the time specified in the notice, being not less than fourteen days after the date when the notice is served.

PART II
—cont.

(6) Sections 111 and 112 of the Act of 1963 shall apply to the exercise by the Authority of the powers of this section and for that purpose the Authority in exercising those powers shall be deemed to be performing one of their functions.

17.—(1) Notwithstanding anything to the contrary in any enactment or in any rule of law but subject to the provisions of this section, the Authority may operate the sluice gates to control the flow of the river downstream of the control structure in such manner and for such periods as they think necessary or desirable—

- (a) at any time when it appears to the Authority necessary to prevent or alleviate or otherwise control floods or inundations caused by the overflow of the river downstream of the control structure;
- (b) in any other case of emergency;
- (c) for the purpose of testing the sluice gates; or
- (d) for any other purpose.

(2) The sluice gates may be operated under paragraph (a) or (b) of subsection (1) of this section notwithstanding that such operation results in floods or inundations caused by the overflow of the river upstream of the control structure, but the sluice gates shall not be operated under paragraph (c) or (d) of the said subsection if in the opinion of the Authority such operation is likely to result in floods or inundations caused by the overflow of the river either upstream or downstream of the control structure.

(3) (a) The powers of the Authority to operate the sluice gates for any of the purposes mentioned in paragraphs (a) and (b) of subsection (1) of this section shall be exercised in accordance with the provisions of a scheme made by the Authority and approved by the Minister.

(b) A scheme made under this subsection shall include provision as to—

- (i) the minimum rate of flow in the river below which the sluice gates shall not be operated so as to cause or aggravate the overflow of the river upstream of the control structure;

PART II
—cont.

(ii) the maximum level or quantity of water to be retained in the flood storage area; and

(iii) the rate of flow or quantity of water which may from time to time be discharged into the river downstream of the control structure.

(c) A scheme made under this subsection may be confirmed, varied, replaced or revoked by a subsequent scheme so made and approved.

(d) Before making a scheme the Authority shall consult with the county council, the Maidstone Borough Council, the Sevenoaks District Council, the Tonbridge and Malling District Council, the Tunbridge Wells District Council, the National Farmers' Union, the Country Landowners' Association and the British Railways Board and such other persons representative of interests likely to be substantially affected by the scheme as the Minister may direct (hereinafter in this subsection referred to as "the specified interests").

(e) Before submitting a scheme to the Minister for approval under this subsection the Authority shall supply a copy of the scheme to each of the specified interests and shall notify them of the date on which it is proposed to submit the scheme for such approval.

(f) The Minister may approve the scheme with or without modifications but if any representations are made to him by any of the specified interests within one month of the date on which the scheme was submitted to him for approval and those representations have not been disposed of by agreement between the Authority and the specified interest submitting the representations and any other specified interest affected by the representations, the Minister before approving the scheme shall either—

(i) cause a local inquiry to be held; or

(ii) afford to the Authority, to the specified interest making the representations and to any other specified interest whose interests appear to the Minister to be affected by such representations an opportunity of being heard by a person appointed by the Minister for the purpose.

(g) The provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 shall apply to a local inquiry held under the last foregoing paragraph as they apply to a local inquiry held under that Act.

(h) After the Minister has approved a scheme under this subsection, the Authority shall supply a copy thereof on demand and at a reasonable charge to any specified interest.

(4) Where damage is sustained by any person by reason of the exercise by the Authority of their powers under this section, the Authority shall pay full compensation to that person and the amount of the compensation shall, in default of agreement, be determined by the tribunal.

18. The Authority may operate the weirs and the penstock gate incorporated in Work No. 9C so as to control the flow of water down the Powder Mill Stream but neither the weirs or the penstock gate shall be so operated as to reduce the level of the water in that stream immediately downstream of the pipe culverting that stream through Work No. 9C to less than 23.95 metres above Ordnance Datum (Newlyn).

PART II
—cont.

Operation of
weirs and
penstock
gate.

19. Any person who without lawful authority closes or opens or attempts to close or open, the sluice gates or any of them or in any other way interferes, or attempts to interfere, with the control structure or the operation thereof shall be liable on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding two hundred pounds, or both, or on indictment to a term of imprisonment not exceeding five years or to a fine, or both:

Misuse of
sluice gates,
etc.

Provided that a person shall not be guilty of an offence by virtue of this section as respects any act done in an emergency in order to avoid danger to the public.

20.—(1) The Authority shall place, maintain and operate on or near Ensfield Road (classified road No. C.61) such barriers for preventing or controlling the passage of vehicles and pedestrians along the said road and traffic signs (as defined in section 54 of the Road Traffic Regulation Act 1967) as the highway authority may from time to time direct for warning and regulating the road traffic coming from either direction when the road has been or, in the opinion of the Authority, is likely to be flooded and may for the purpose of such provision, placing or maintenance, open or break up or otherwise interfere with the said road.

Regulation
of traffic on
Ensfield Road.

1967 c. 76.

(2) Sections 111 and 112 of the Act of 1963 shall apply to the performance by the Authority of their duties under this section and for that purpose the Authority in performing those duties shall be deemed to be performing one of their functions.

PART III

LANDS

21.—(1) Subject to the provisions of this Act, the Authority may enter upon, take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of—

Power to
acquire lands.

(a) the works;

(b) obtaining materials for the construction of the works, or depositing spoil or other material excavated during the construction thereof;

(c) providing an area for the temporary storage of the flood waters of the river;

PART III
—cont.

(d) obtaining access to the works or to the area provided for the temporary storage of the flood waters of the river;

or otherwise for the purposes of this Act or other purposes connected therewith.

(2) (a) The powers of the Authority for the compulsory acquisition of lands under this section shall not be exercised after 31st December, 1979.

(b) The power to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if before 31st December, 1979, notice to treat has been served in respect of that land.

Correction of errors in deposited plans and book of reference.

22.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Authority after giving not less than ten days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, and with the chief executive of the county council, and a copy thereof shall be deposited with every clerk of a local authority and chairman of a parish council or parish meeting with whom a copy of the deposited plans (or so much thereof as includes the land to which the certificate relates) has been deposited in accordance with the standing orders of the Houses of Parliament or who has the custody of any copy so deposited, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Authority to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

Acquisition of part only of certain properties.

23.—(1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Act of 1965, as applied by this Act, the following provisions of this section shall apply to the land subject to the notice instead of subsection (1) of section 8 of that Act and, in the case of agricultural land, instead of sections 53 to 56 of the Land Compensation Act 1973.

(2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house, together with any park or garden belonging thereto, or part only of an agricultural unit, then, if the person on whom the notice is served, within six weeks after the day on which the notice is served on him, serves on the Authority a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (hereinafter in this section referred to as "the land subject to the counter-notice"), the question whether he shall be required to sell the part shall, unless the Authority agree to take the land subject to the counter-notice, be referred to the tribunal.

(3) If the said person does not serve such a counter-notice as aforesaid within six weeks after the day on which the notice to treat is served on him, or if on such a reference to the tribunal the tribunal determine that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, or, in the case of part of land consisting of a house together with a park or garden belonging thereto, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.

(4) If on such a reference to the tribunal the tribunal determine that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.

(5) If on such a reference to the tribunal the tribunal determine that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Authority are authorised to acquire compulsorily under this Act.

(6) If the Authority agree to take the land subject to the counter-notice, or if the tribunal determine that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the

PART III
—cont.

land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

- (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Authority are authorised to acquire compulsorily under this Act.

(7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) of this section, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the Authority may, within six weeks after the tribunal make their determination, withdraw the notice to treat, and if they do so shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in default of agreement by the tribunal.

(8) Where a person is under this section required to sell part only of a house, building or factory, or of land consisting of a house together with any park or garden belonging thereto, or of an agricultural unit, the Authority shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.

(9) In this section “agricultural land” and “agricultural unit” have the meanings assigned to those expressions by section 109 of the Agriculture Act 1947.

1947 c. 48.

Power to
acquire
easements
only.

24.—(1) The Authority may, instead of acquiring any land which they are authorised to acquire compulsorily under this Act, acquire compulsorily such easements or rights over or in the land as they may require for any purpose for which they are authorised to acquire the land.

(2) Such rights may consist of or include—

(a) a right to flood the land or to flood the land to a greater depth or for a longer period than it would have been flooded but for the exercise by the Authority of the powers of section 17 (Operation of sluice gates) of this Act;

(b) rights restrictive of the user of the land.

(3) (a) Any easement or right relating to land which the Authority are authorised to acquire compulsorily shall, as respects the burden of such easement or right, run with the land and be enforceable by the Authority against the estate and interest of every person for whose use or in respect whereof compensation

or (where the easement or right is acquired by agreement) the agreed purchase price is paid and all persons deriving title by, through or under that person without any limit of time and as though, as respects the benefit of such easement or right, the Authority had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the burden of such easement or right and capable of being benefited thereby and the easement or right were created or imposed by a grant or covenant expressed to be for the benefit of that adjacent land.

(b) For the avoidance of doubt, it is hereby declared that the rule of law relating to perpetuities does not apply to any easement or right acquired under this section, whether compulsorily or by agreement.

(4) Section 84 of the Law of Property Act 1925 (which enables the Lands Tribunal to discharge or modify restrictive covenants) shall not apply to any right restrictive of the user of land authorised to be acquired under this section. 1925 c. 20.

(5) Any easement or right acquired under this section, whether compulsorily or by agreement, shall be a local land charge for the purpose of the Local Land Charges Act 1975. 1975 c. 76.

(6) Until the Local Land Charges Act 1975 comes into force—

(a) the proper officer of the council of each district in which the land burdened by such easement or right is situated shall on receipt of a copy thereof cause it to be registered in the register of local land charges in such manner as is prescribed by the rules made in reference to local land charges under subsection (6) of section 15 of the Land Charges Act 1925; 1925 c. 22.

(b) for the purpose of effecting the registration of an easement or right acquired under this section (but for no other purpose) such easement or right shall be deemed to relate to a restriction on the user or mode of user of land or buildings enforceable by a local authority under a covenant or agreement made with them.

(7) (a) No easement or right acquired under this section shall be registrable under the Land Charges Act 1972 or constitute a land charge of any of the classes described in that Act. 1972 c. 61.

(b) Every such easement or right shall be an overriding interest under paragraph (ii) of subsection (1) of section 70 of the Land Registration Act 1925. 1925 c. 21.

(8) (a) The Authority may give notice to treat in respect of any such easement or right, describing the nature thereof; and the Act of 1965, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory acquisition of

PART III
—*cont.*

easements or rights under subsection (1) of this section as they apply to the compulsory acquisition of land so that, in appropriate contexts, references in that Act to land are read as referring, or as including references, to the easements or rights or to land over which the easements or rights are or are to be exercisable, according to the requirements of the particular context.

(b) Without prejudice to the generality of the last preceding paragraph, in relation to the purchase of easements or rights in pursuance of subsection (1) of this section—

- (i) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 2 to this Act;
- (ii) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

(c) A notice to treat given under this section shall be endorsed with notice of the effect of section 8 of the Act of 1965 as applied by paragraph 2 of Schedule 2 to this Act.

(9) The Authority may, with or without consideration, release either wholly or partly any easement or right acquired under this section.

(10) Where the Authority have acquired an easement or right only over or in any land under this section—

- (a) they shall not be required or, except by agreement or during the execution of the works authorised by this Act, entitled to fence off or sever that land from the adjoining land;
- (b) the owner or occupier of the land for the time being shall, subject to the easement or right, have the same right to use the land as if this section had not been enacted.

**Easements
only to be
acquired in
respect of
certain lands.**

25.—(1) (a) Notwithstanding the provisions of subsection (1) of section 21 (Power to acquire lands) of this Act, the Authority shall not acquire compulsorily under the powers of this Act any part of the specified lands, except as provided in paragraph (b) of this subsection.

(b) The Authority may acquire such easements or rights in respect of the specified lands as they may require for the purpose of flooding the land for a longer period than it would have been flooded but for the exercise by the Authority of the powers of section 17 (Operation of sluice gates) of this Act without being obliged or compellable to acquire any greater interest in, under

or over the specified lands, and may give notice to treat in respect of the acquisition of such easements or rights describing the extent thereof and (subject to the foregoing provisions of this section and to the other provisions of this Act) the provisions of the Act of 1965, as applied by this Act, shall extend and apply in relation to the acquisition of such easements or rights as if they were lands within the meaning of those provisions.

PART III
—cont.

(c) Subsections (2) to (9) inclusive of section 24 (Power to acquire easements only) of this Act shall apply to this section as they apply to that section.

(2) In this section “specified lands” means the lands referred to in Schedule 3 of this Act.

26. In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, works executed, or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was, at the time of the erecting, executing or making of the building, works, improvement or alteration, directly or indirectly concerned if the tribunal are satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration (as the case may be) was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Disregard of recent improvements and interests.

27.—(1) All private rights of way over any land which may be acquired compulsorily under this Act shall be extinguished on the acquisition of the land, whether compulsorily or by agreement, or on the entry on the land in pursuance of subsection (1) of section 11 of the Act of 1965, as applied by this Act, whichever is the sooner.

Extinction of private rights of way.

(2) Any person who suffers loss by the extinguishment of any right under this section shall be entitled to be paid by the Authority compensation, to be determined, in case of dispute, in accordance with the provisions of the Act of 1961.

28.—(1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the Authority any easement or right required for the purposes of this Act over or in the lands, not being an easement or right of water in which some person other than the grantor has an interest.

Grant of easements by persons under disability.

PART III
—cont.

(2) The provisions of the Act of 1965 with respect to lands and rentcharges, so far as they are applicable, shall extend and apply to any such grant and to any such easement or right as aforesaid.

Provision of substituted sites.

29. The powers of the Authority to purchase land by agreement shall include power to purchase land by agreement for the purpose of providing substituted sites or facilities for the owners and occupiers of land which may be acquired under this Act.

Agreements with adjoining owners.

30.—(1) The Authority may enter into and carry into effect agreements with any person being the owner of, or interested in, any land adjoining any portion of the works, or of land which may be acquired by the Authority under this Act, with respect to the sale by the Authority to him (subject to such reservations, restrictions or other provisions as to the Authority seem fit) of any land not required for the works.

(2) The Authority may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land required by the Authority for the purposes of this Act or any easement or right so required.

Power to reinstate owners or occupiers of property.

31.—(1) The Authority may enter into, and carry into effect, an agreement or arrangement with the owner or occupier of any land acquired or to be acquired under this Act by the Authority with respect to his reinstatement.

(2) Any such agreement may provide for the exchange of land; and for that purpose the Authority may pay or receive money for equality of exchange.

PART IV

MISCELLANEOUS AND GENERAL

Application of enactments relating to land drainage.

32. It is hereby declared that the works, being works to be constructed by the Authority in the performance of their land drainage functions, are drainage works and that in constructing those works and in the exercise of the other powers of this Act the Authority shall have, in addition to the powers of this Act, all such powers as are conferred on them by or under the Act of 1930 and the Land Drainage Act 1961 in relation to drainage works.

1961 c. 48.

Grants by Minister towards expenditure of Authority.

33.—(1) In section 55 of the Act of 1930 the reference to expenditure incurred under that Act shall include a reference to expenditure incurred under this Act, and subsections (1) and (2) of section 38 of the Land Drainage Act 1961 shall have effect accordingly.

1968 c. 34.

(2) In subsection (1) of section 37 of the Agriculture (Miscellaneous Provisions) Act 1968—

(a) the reference to functions under paragraph (b) or paragraph (c) of subsection (1) of section 34 of the Act of

1930 shall include a reference to functions of a similar nature under this Act; and

PART IV
—cont.

(b) in relation to that section as it applies by virtue of paragraph (a) of this subsection—

(i) the reference in paragraph (a) to sections 65 and 66 of the Act of 1963 shall be construed as a reference to Part III of this Act; and

(ii) the reference in paragraph (c) to subsection (3) of section 34 of the Act of 1930 shall be construed as a reference to section 5 (Subsidiary works), section 12 (Power to Authority to improve and regulate flow of watercourses), section 13 (Discharge of water into streams), section 14 (Agreements with owners of land and others for execution of works) and section 15 (Power to use bed and banks of watercourses) of this Act.

34. Section 120 of the Act of 1963 shall apply to the service of documents required or authorised by this Act to be given to or served on any person as it applies to the service of documents required or authorised by that Act to be given to or served on any person. Service of documents.

35. For the protection of the undertakers the provisions of this section shall, unless otherwise agreed in writing between the Authority and the undertakers and except in any case in which the mutual obligation of the Authority and the undertakers are determined by Part III of the Public Utilities Street Works Act 1950, apply and have effect— For protection of gas, electricity and water undertakers.
1950 c. 39.

(1) In this section unless the subject or context otherwise requires—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means—

(a) in the case of electricity undertakers, electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by or lawfully laid or erected by such undertakers; or 1882 c. 56

(b) in the case of gas or water undertakers any mains, pipes or other apparatus belonging to such undertakers or for the maintenance of which they are responsible;

and includes any structure for the lodging therein of apparatus;

PART IV
—cont.

“ in ” in a context referring to apparatus includes under, over, across, along or upon;

“ plan ” includes a section and description;

“ position ” includes depth;

“ specified work ” means any work or thing done under powers conferred by this Act;

“ the undertakers ” means the British Gas Corporation, the South Eastern Electricity Board and the West Kent Water Company:

- (2) Notwithstanding anything in this Act or shown on the deposited plans, the Authority shall not, under the powers of this Act, acquire any apparatus otherwise than by agreement:
- (3) The powers conferred on the Authority by paragraph (i) of subsection (1) of section 5 (Subsidiary works) of this Act to alter apparatus shall not be exercised in respect of any apparatus otherwise than in accordance with the provisions of this section:
- (4) If the Authority in the exercise of the powers of this Act acquire any interest in or use any land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the undertakers to use, maintain, repair, renew or inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation to the reasonable satisfaction of the undertakers:
- (5) (a) If the Authority, for the purpose of the execution of any specified work, require the removal of any apparatus, they shall give to the undertakers written notice of such requirement with a plan of the proposed work, and if it is agreed between the Authority and the undertakers or, in default of agreement, determined by arbitration that the removal of the apparatus is reasonably required and that it should be removed the following provisions of this paragraph shall have effect;

(b) If it is agreed or determined by arbitration in accordance with sub-paragraph (a) of this paragraph that any apparatus should be removed or if in consequence of the execution of any specified work the undertakers shall reasonably require to remove any apparatus, the Authority shall, if practicable, afford to the undertakers the necessary facilities and rights for the laying or

construction of adequate alternative apparatus in other lands of the Authority and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

PART IV
—cont.

Provided that if the alternative apparatus or any part thereof is to be laid or constructed elsewhere than in other lands of the Authority and the Authority are unable to afford such facilities and rights as aforesaid the undertakers shall, on receipt of a written notice to that effect from the Authority, forthwith use their best endeavours to obtain the necessary facilities and rights:

- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Authority in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the undertakers and the Authority or, in default of agreement, settled by arbitration;
- (b) The undertakers shall, after the manner of laying or construction and the line and situation of any alternative apparatus has been agreed, or settled by arbitration as aforesaid, and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) of this section, proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section and, in default, the Authority may remove the apparatus:
- (7) Notwithstanding anything in paragraph (6) of this section, if the Authority give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the laying or construction of the alternative apparatus or the removal of the apparatus required to be removed as will be situate in any lands of the Authority, such work, instead of being executed by the undertakers, shall be executed by the Authority with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Authority to execute the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres (12 inches) above the apparatus:

PART IV
—cont.

- (8) Where in accordance with the provisions of this section the Authority afford to the undertakers facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands of the Authority of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Authority and the undertakers, or, in default of agreement, determined by arbitration:

Provided that—

(a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or through a specified work the arbitrator shall—

(i) give effect to all reasonable requirements of the Authority for ensuring the safety and efficient operation of the specified work and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such work; and

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus laid or constructed through the lands of the Authority for which the alternative apparatus is to be substituted;

(b) if the facilities and rights to be afforded by the Authority in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted, are, in the opinion of the arbitrator, less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation by the Authority to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:

- (9) (a) Not less than twenty-eight days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the removal of which has not been required by the Authority under paragraph (5) of this section, the Authority shall submit to the undertakers a plan of the work to be executed;

- (b) Such work shall be executed only in accordance with the plan submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the execution of such work:

PART IV
—cont.

Provided that—

(i) if the undertakers, within fourteen days after the submission to them of any such plan, shall, in consequence of the work proposed by the Authority, reasonably require the removal of any apparatus and give written notice to the Authority of such requirement the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Authority under paragraph (5) thereof; and

(ii) nothing in this sub-paragraph shall preclude the Authority from submitting at any time, or from time to time, but in no case less than twenty-eight days before commencing the execution of any such work, a new plan in lieu of the plan previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;

- (c) The Authority shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency but, in such a case, they shall give to the undertakers notice and a plan of the work as soon as reasonably practicable and thereafter shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:

- (10) Where any highway in which any apparatus is situated has been diverted by the Authority under the powers of section 9 (Power to divert footpaths and bridleway) of this Act, the undertakers shall, notwithstanding such diversion, continue to have the same powers and rights in respect of the apparatus remaining in the land which by reason of the diversion has ceased to be a highway (not being apparatus rendered derelict or unnecessary) as they would have if it had remained a highway and no such rights shall be extinguished by virtue of the said section 9 but nothing in this paragraph shall prejudice or affect any right of the Authority or of the undertakers to require removal of such apparatus under this section:

PART IV
—cont.

- (11) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed, the Authority shall provide an alternative means of access to such apparatus:
- (12) The Authority shall repay to the undertakers the reasonable costs, charges and expenses incurred by the undertakers in or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this section;
 - (b) the cutting off of any apparatus from any other apparatus; and
 - (c) any other work or thing reasonably necessary in consequence of the exercise by the Authority of any of the powers of this Act:

1950 c. 39.

Provided that subsections (3) and (4) of section 23 of the Public Utilities Street Works Act 1950 shall so far as applicable extend and apply to any payment to be made by the Authority under this paragraph as if the Authority were the promoting authority and works hereinbefore in this paragraph mentioned were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or settled by arbitration under section 35 (For protection of gas, electricity and water undertakers) of the River Medway (Flood Relief) Act 1976":

- (13) If by reason or in consequence of the execution, user or failure of any of the specified works, or any subsidence resulting from any of those works, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the undertakers or any interruption in the supply of gas, electricity or water (as the case may be) by the undertakers shall be caused, the Authority shall bear and pay the cost reasonably incurred by the undertakers in making good such damage, or in restoring the supply of gas, electricity or water (as the case may be) and shall—
- (a) make reasonable compensation to the undertakers for any loss sustained by them; and

(b) indemnify the undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertakers;

by reason or in consequence of any such damage or interruption:

Provided that—

(i) nothing in this paragraph shall impose any liability on the Authority with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the undertakers or their contractors or workmen;

(ii) the undertakers shall give to the Authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Authority:

(14) The temporary stopping up or diversion of any highway under the powers of section 10 (Temporary stoppage of watercourses, roads, footpaths and bridleways) of this Act shall not prevent the undertakers from obtaining access to any apparatus nor prejudice or affect any right of the undertakers—

(a) to lay, erect, maintain, inspect, renew or remove any apparatus in the highway; or

(b) for the purposes of such laying, erection, maintenance, inspection, renewal or removal to enter upon or break open that highway:

(15) (a) Any difference which may arise between the Authority and the undertakers under this section shall be settled by arbitration;

(b) In settling any difference under this section the arbitrator shall have regard to any duty or obligation which the undertakers may be under in respect of any apparatus and may, if he thinks fit, require the Authority to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with any purposes for which the apparatus is used.

36. For the protection of the Post Office, the following provisions shall, unless otherwise agreed in writing between the Authority and the Post Office, apply and have effect:—

For protection of Post Office.

(1) In this section, unless the subject or context otherwise requires—

“ telegraphic line ” has the same meaning as in the Telegraph Act 1878;

1878 c. 76.

PART IV
—cont.

“apparatus” means any telegraphic line belonging to or used by the Post Office and includes any works constructed for the lodging therein of apparatus:

- (2) Notwithstanding anything in this Act or shown on the deposited plan the Authority shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
- (3) Nothing in section 4 (Power to construct works) of this Act shall authorise the doing of anything constituting an infringement of the exclusive privilege with respect to telecommunication conferred on the Post Office by subsection (1) of section 24 of the Post Office Act 1969.

1969 c. 48.

For
protection of
British
Railways
Board.

37. For the protection of the British Railways Board (in this section referred to as “the board”) the following provisions shall unless otherwise agreed in writing between the Authority and the board apply and have effect:—

- (1) In this section—

“railway property” means any railway of the board and any works connected therewith for the maintenance or operation of which the board are responsible and includes any lands held or used by the board for the purposes of such railway or works;

“specified works” means so much of the works (whether temporary or permanent) authorised by this Act or by section 16 of the Railways Clauses Consolidation Act 1845 as incorporated with this Act as may be situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property and includes the maintenance and renewal of such works;

“construction” includes execution, placing and altering and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer to be appointed by the board;

“plans” include sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction):

- (2) The exercise of the powers of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of land as applied by section 3 (Application of enactments) of, and incorporated with, this Act shall not prevent the exercise by the Board of such rights as

1845 c. 20.

the board may have of access (with or without vehicles, machinery and materials) for the board and their agents and employees over any such land to and from railway property:

- (3) The Authority shall not under the powers of this Act acquire compulsorily any railway property but they may in accordance with the provisions of section 24 (Power to acquire easements only) of this Act acquire such easements and rights in any railway property delineated on the deposited plans as they may reasonably require for the purposes of the works and notwithstanding the provisions of the said section 24 the Authority shall fence off the specified works from railway property to the satisfaction of the engineer where reasonably required by him:
- (4) The Authority shall before commencing the specified works (other than works of maintenance or repair) furnish to the board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:
Provided that if within twenty-eight days after such plans have been furnished to the board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:
- (5) If within twenty-eight days after such plans have been furnished to the board the board shall give notice to the Authority that the board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the operation of the railway or the stability of railway property then if the Authority desire such part of the specified works to be constructed the board shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Authority in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (6) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works whether temporary or permanent which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the board or

PART IV
—cont.

by the Authority if the board so desire with all reasonable dispatch and the Authority shall not commence the construction of the specified works until the engineer shall have notified the Authority that the protective works have been completed to his reasonable satisfaction:

- (7) (a) The Authority shall give to the engineer notice in writing of their intention to commence the construction of any of the specified works in accordance with sub-paragraph (b) of this paragraph and except in emergency (when they shall give such notice as may be reasonably practicable) also of their intention to carry out any works for the repair or maintenance of the specified works;
- (b) The period of notice required to be given by the Authority to the board by virtue of sub-paragraph (a) of this paragraph shall be—
- (i) six months in any case where upon signifying his approval or disapproval of plans pursuant to paragraph (6) of this section, the engineer has reasonably given it as his opinion that the construction, maintenance or repair of the specified works will require the Authority to have temporary occupation of the permanent way of the railway (including land lying within a distance of 2 metres from any outer rail of the railway) or will necessitate the imposition of speed restrictions, or the substitution, diversion or suspension of train services;
 - (ii) subject to (i) above, one month in relation to the construction, maintenance or repair of Works Nos. 4, 4A, 5, 6, 7A, 7B, 7C, 7D and 7E; and
 - (iii) two months in all other cases:
- (8) The specified works shall when commenced be carried out with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and under the supervision (if given) and to the reasonable satisfaction of the engineer and in such manner as to cause as little damage to railway property as may be and so far as is reasonably practicable so as not to interfere with or obstruct the free, uninterrupted and safe user of the railway or the traffic thereon and the use by passengers of railway property and if any damage to railway property or any such interference or obstruction shall be caused or take place the Authority shall notwithstanding any such approval as aforesaid make good such damage and shall on demand pay to the

Board all expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:

- (9) The Authority shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall ensure access for the engineer at all reasonable times to all working sites, depots and works at which materials to be employed in the construction of the specified works are being made, constructed or assembled and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (10) The board shall at all times afford reasonable facilities to the Authority and their agents for access to any works carried out by the board under this section during their construction and shall supply the Authority with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (11) If any alterations or additions either permanent or temporary to railway property shall be reasonably necessary in consequence of the construction of the specified works such alterations and additions may be effected by the board after notice has been given to the Authority and the Authority shall pay to the board on demand the cost thereof as certified by the engineer including in respect of permanent alterations and additions a capitalised sum representing the increased or additional cost of maintaining, working and when necessary renewing any such alterations or additions:
- (12) The Authority shall repay to the board all costs, charges and expenses reasonably incurred by the board—
 - (a) in constructing any part of the specified works on behalf of the Authority as provided by paragraph (5) of this section or in constructing any protective works under the provisions of paragraph (6) of this section including in respect of any permanent protective works a capitalised sum representing the cost of maintaining and renewing such works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;

PART IV
—cont.

(c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, diversion or suspension of services which may be necessary for the same reason;

(d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;

(e) in respect of the approval by the engineer of plans submitted by the Authority and the supervision by him of the specified works:

- (13) If at any time after the completion of the specified works not being works vested in the board the board shall give notice to the Authority informing them that the state of repair of the specified works appears to be such as to affect prejudicially railway property, the Authority shall, on receipt of such notice, take such steps as may be necessary to put the specified works in such state of repair as not to affect prejudicially railway property and, if and whenever the Authority fail to do so, and at any time in cases of emergency (without being required to give notice as aforesaid) the board may make and do in and upon the lands of the board or of the Authority all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the Board in so doing shall be repaid to them by the Authority:
- (14) All temporary structures, erections, works, apparatus and appliances erected or placed by the Authority under the powers of this Act, upon, over or under any railway of the Board shall as soon as reasonably practicable be removed by the Authority at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with, or interruption to, the traffic on the railways of the Board as may be and if any damage to railway property or such interference, delay or interruption shall be caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances the Authority shall forthwith make good such damage and pay to the board the reasonable costs and expenses to which they may be put and reasonable compensation for any loss which they may sustain by reason of such damage, interference, delay or interruption:

(15) Before providing any illumination or illuminated road traffic sign on or in connection with the specified works or in the vicinity of the railway the Authority shall consult with the board and comply with any reasonable requirements of the board in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling directing or securing the safety of traffic on the railway:

(16) Any additional expense which the Board may reasonably incur after giving two months' notice to the Authority in widening, altering, reconstructing or maintaining railway property in pursuance of any powers existing at the passing of this Act by reason of the existence of the specified works shall be repaid by the Authority to the Board:

(17) The Authority shall be responsible for and make good to the Board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the board—

(a) by reason of the specified works or the failure thereof; or

(b) by reason of any act or omission of the Authority or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the Authority shall effectively indemnify and hold harmless the board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the board on behalf of the Authority or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the board or of any person in their employ or of their contractors or agents) excuse the Authority from any liability under the provisions of this section:

Provided that the Board shall give to the Authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Authority:

(18) Any difference arising between the Authority and the board under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

PART IV
—cont.
Arbitration.

38. Where under this Act any dispute or difference is to be referred to or determined by arbitration, then, unless otherwise provided, such dispute or difference shall be referred to, and determined by, a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Saving for
Town and
Country
Planning Act
1971.
1971 c. 78.

39. In their application to development authorised by Part II of this Act, article 3 of, and class XII in Schedule 1 to, the Town and Country Planning General Development Order 1973 shall have effect as if the authority to develop given by this Act in respect of Works Nos. 1 to 11 were limited to such development begun within ten years after the passing of this Act.

Crown rights.

40. Nothing in this Act affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing in this Act authorises the Authority to take, use or in any manner interfere with any land or hereditaments or any rights of whatsoever description—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

SCHEDULES

SCHEDULE 1

Section 9.

FOOTPATHS AND BRIDLEWAY TO BE DIVERTED

(1) Footpath or bridleway	(2) District	(3) Parish	(4) Letters on deposited plans showing extent of stopping up
No. on map prepared by county council under section 32 of the National Parks and Access to the Countryside Act 1949			
FP 432	Sevenoaks	Leigh	A to B
FP 58	Tonbridge Wells	Bidborough	C to D
FP 46	Tonbridge and Malling	Tonbridge	{ E to F L to T
FP 435	Sevenoaks	Leigh	G to H
FP 25	Tonbridge and Malling	Tonbridge	{ I to J M to N
FP 47	Tonbridge and Malling	Tonbridge	K to L
FP 427	Sevenoaks	Leigh	O to P
BR 60	Tonbridge and Malling	Tonbridge	R to S

1949 c. 97.

In this schedule references to the parish of Tonbridge shall be construed as references to that part of the Tonbridge and Malling district which comprised the former Tonbridge urban district.

SCHEDULE 2

Section 24.

ADAPTATION OF PART I OF THE ACT OF 1965 IN CONNECTION WITH PURCHASE OF EASEMENTS OR RIGHTS

1. In the Act of 1965 (hereafter in this Schedule referred to as "the Act") for section 7 (which relates to compensation) there shall be substituted the following:—

"7.—(1) In assessing the compensation to be paid by the Authority under this Act regard shall be had not only to the

SCH. 2
—cont.

extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.

1973 c. 26.

(2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words ‘land is acquired or taken’ there shall be substituted the words ‘a right over land is purchased’ and for the words ‘acquired or taken from him’ there shall be substituted the words ‘over which the right is exercisable.’”

2. For section 8 of the Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following:—

“8.—(1) Where in consequence of the service on a person in pursuance of section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (hereafter in this subsection referred to as ‘the relevant land’)—

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (hereafter in this section referred to as ‘the Tribunal’); and

(b) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the compulsory purchase order to which the notice to treat relates shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the Tribunal directs.

(2) Any question as to the extent of the land in which a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of the preceding subsection shall be determined by the Tribunal.

(3) Where in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section a

compulsory purchase order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the Authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the Authority to withdraw the notice.

SCH. 2
—cont.

(4) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1) of this section, are that at the beginning of paragraphs (a) and (b) there shall be inserted the words 'a right over', for the word 'severance' there shall be substituted the words 'right on the whole of the house, building or manufactory or of the house and the park or garden' and for the words 'part proposed' and 'part is' there shall be substituted respectively the words 'rights proposed' and 'right is'." 1973 c. 26.

3. The following provisions of the Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely:—

- section 9 (4) (failure of owners to convey);
- paragraph 10 (3) of Schedule 1 (owners under incapacity);
- paragraph 2 (3) of Schedule 2 (absent and untraced owners); and
- paragraphs 2 (3) and 7 (2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the Authority.

4. Section 11 (Powers of entry) of the Act shall be so modified as to secure that as from the date on which the Authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (Penalty for unauthorised entry) and 13 (Entry on sheriff's warrant in the event of obstruction) of the Act shall be modified correspondingly.

5. Section 20 (Compensation for short term tenants) of the Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

6. Section 22 (Protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased) of the Act shall be so modified as to enable the Authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation.

Section 25.

SCHEDULE 3

LANDS REFERRED TO IN SECTION 25 (EASEMENTS ONLY TO BE ACQUIRED IN RESPECT OF CERTAIN LANDS) OF THIS ACT

Area (1)	No. on deposited plans (2)
District of Tunbridge Wells— Parish of Bidborough	1, 2, 3.
District of Sevenoaks— Parish of Penshurst	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11A, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.
Parish of Leigh	1, 2, 3, 4, 5.

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