

ELIZABETH II



1986 CHAPTER viii

An Act to provide for the alleviation of flooding in parts of the city of York; to empower the Yorkshire Water Authority to construct works, including a barrier with a movable gate across the river Foss, and to acquire lands; to confer further powers on the Authority; and for other purposes.

[2nd May 1986]

WHEREAS—

(1) The Yorkshire Water Authority (in this Act referred to as “the Authority”) were constituted in pursuance of the Water Act 1973 as the authority responsible for water conservation, the supply of water, the provision of public sewerage and sewage disposal, land drainage, the prevention of pollution, water recreation and the management and improvement of salmon, trout and freshwater fisheries in an area comprising the county of West Yorkshire and parts of the counties of Cleveland, Derbyshire, Durham, Greater Manchester, Humberside, Lancashire, Nottinghamshire, North Yorkshire and South Yorkshire: 1973 c. 37.

(2) Part of the city of York from time to time has suffered flooding and remains at risk of further flooding from the river Foss in the city:

(3) The risk of such flooding could be substantially reduced by isolating the river Foss from the river Ouse at times of high flow and by controlling the flow of the river Foss at such times:

(4) Accordingly it is expedient that the Authority should be empowered to construct the works, including a barrier across the river Foss with a movable gate, which are authorised by this Act and to acquire lands for such works:

(5) It is expedient that the Authority should be empowered to operate the barrier and other works authorised by this Act and that provision should be made for the regulation of navigation in connection with those works as provided in this Act:

(6) It is expedient that the other provisions contained in this Act be enacted:

(7) The objects of this Act cannot be effected without the authority of Parliament:

(8) A plan and sections showing the lines, situations and levels of the works authorised by this Act, other than the altered works as defined in this Act and hereinafter referred to as "the altered works", and a book of reference to such plan 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 North Yorkshire and the chief executive of the council of the city of York, which plan, sections and book of reference are in this Act respectively referred to as the deposited plan, the deposited sections and the deposited book of reference:

(9) A plan and sections showing the lines, situations and levels of the altered works and a book of reference to such plan containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers, of the lands which may be required or taken for the altered works under the powers of this Act were deposited in the month of July, 1985, in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and with chief executive of the county council of North Yorkshire and the chief executive of the council of the city of York, which plan, sections and book of reference are in this Act respectively referred to as the substituted plan, the substituted sections and the substituted 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

1. This Act may be cited as the Yorkshire Water Authority Short title.
Act 1986.

2.—(1) In this Act, unless the subject or context otherwise Interpretation.
requires—

“the Act of 1950” means the Public Utilities Street Works Act 1950; 1950 c. 39.

“the Act of 1961” means the Land Compensation Act 1961; 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 1976” means the Land Drainage Act 1976; 1976 c. 70.

“the altered works” means Work No. 1 and Work No. 2, and so much of Work No. 3, Work No. 4 and Work No. 6 as extend more than 120, 140 and 50 metres respectively from the points of commencement for those works shown on the deposited plan;

“the Authority” means the Yorkshire Water Authority;

“the barrier” means Work No. 1 or any part thereof and any works, apparatus or conveniences constructed or provided by the Authority as a part of, or in connection with, or for the purposes of, that work or any part thereof;

“the barrier gate” means the movable floodgate forming part of the barrier;

“Browney Dyke” means that part of the river Foss which lies immediately below Castle Mills Lock and the adjacent sluice and above the junction of that river with the river Ouse;

“the city” means the city of York;

“the Council” means the council of the city;

“enactment” means any enactment, whether public general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“functions” includes powers and duties;

PART I
—cont.

“the limits of deviation” means the limits of deviation authorised by section 15 (Power to deviate) of this Act;

“master” in relation to a vessel means any person having or taking the command, charge or management of a vessel for the time being;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the navigation authority” means the Council or other navigation authority for the time being for the river Foss or the river Ouse;

“new rights” means rights to be created in favour of the Authority including rights restrictive of the user of land and the expression “new right” shall be construed accordingly;

“on” in relation to any lands includes over or under;

“the pumping station” means Work No. 2 or any part thereof and any works, apparatus or conveniences constructed or provided by the Authority as part of, or in connection with, or for the purposes of, that work or any part thereof;

“the sluice gate” means the sluice gate forming part of Work No. 5;

1980 c. 66.

“street” has the meaning given by section 329 of the Highways Act 1980;

“the tribunal” means the Lands Tribunal;

1968 c. 59.

“vessel” means a vessel of any description, whether with or without means of propulsion of any kind, and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968;

“watercourse” has the same meaning as in the Act of 1976;

“the works” means Works Nos. 1 to 9 and any works constructed in connection with those works, and includes those works as altered, replaced, repaired or renewed under subsection (5) of section 13 (Power to execute works) of this Act.

(2) Unless the context otherwise requires any reference in this Act to—

(a) a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act;

(b) a work shall be construed as a reference to that work both during the execution and after the completion thereof.

PART I
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(3) References in this Act to reference points shall be construed as references to National Grid reference points and as if there were inserted after each such reference the words “or thereabouts”.

3.—(1) (a) For the purposes of this Act, sections 6, 83 and 85 of the Third Schedule to the Water Act 1945 shall apply to the Authority and the works. Application of enactments. 1945 c. 42.

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

(2) The provisions of the Railways Clauses Consolidation Act 1845 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— 1845 c. 20.

(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 8 years from the commencement of the construction of any of the works authorised by the special Act”;

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

(c) the expression “the railway” meant the works and “the centre of the railway” meant the centre of any of the works.

(3) (a) Part I of the Act of 1965 (except section 4, section 27 and paragraph 3 (3) of Schedule 3 thereto), 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 Part II of the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981. 1981 c. 67.

(b) In section 11 (1) 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. 1845 c. 18.

PART II

LANDS

4.—(1) Subject to the provisions of this Act, the Authority may enter upon, take and use such of the lands delineated on Power to acquire lands.

PART II
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the substituted plan and described in the substituted book of reference as they may require for the purposes of—

- (a) the construction, maintenance or operation of the altered works;
- (b) obtaining materials for the construction of the altered works or depositing spoil or other material excavated during the construction thereof;
- (c) obtaining or improving access to the altered works;

or otherwise for the purposes of this Act so far they relate to the altered works.

(2) Subject to the provisions of this Act, the Authority may enter upon, take and use such of the lands delineated on the deposited plan and described in the deposited book of reference (including so much of those lands shown on the substituted plan and described in the substituted book of reference) as they may require for the purposes of—

- (a) the construction, maintenance or operation of the remainder of the works;
- (b) obtaining materials for the construction of the remainder of the works or depositing spoil or other material excavated during the construction thereof;
- (c) obtaining or improving access to the remainder of the works;

or otherwise for the purposes of this Act so far as they relate to the remainder of the works.

(3) Any lands which form part of a town green and which are acquired by the Authority under subsection (1) or (2) above shall cease for all purposes to form part of a town green and to be subject to any enactment for the management thereof.

(4) Subject to the provisions of this Act, the Authority may enter upon, take, use and appropriate so much of the subsoil and under-surface of any public street delineated on the deposited plan or the substituted plan and described in the deposited book of reference or the substituted book of reference as may be necessary for the purposes mentioned in subsection (1) or (2) above without being required to purchase the same or any easement therein or thereunder or to make any payment therefor.

(5) (a) The powers of the Authority for the compulsory acquisition of land under this section shall not be exercised after 31st December 1990.

(b) The power to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if, on or before 31st December 1990, notice to treat has been served in respect of that land.

5.—(1) If the deposited plan or the substituted plan or the deposited book of reference or the substituted 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 10 days' notice to the owner, lessee and occupier of the land in question, may apply to two justices having jurisdiction in the city for the correction thereof.

PART II
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Correction of errors in deposited and substituted plans and books of reference.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake or inadvertence, they shall certify 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 of North Yorkshire and with the chief executive of the Council and thereupon the deposited plan and the deposited book of reference or, as the case may be, the substituted plan and the substituted 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 or new rights therein (as the case may be) and execute the works in accordance with the certificate.

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

6.—(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 the Act of 1965.

Acquisition of part only of certain properties.

(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, 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.

PART II
—cont.

(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 determines 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 determines 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 determines 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 determines 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 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) above 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 makes its 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.

PART II
—cont.

(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, the Authority shall pay to him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.

7.—(1) The Authority may, instead of acquiring any land under section 4 (Power to acquire lands) of this Act, acquire compulsorily such new rights as they require over or in the land.

Power to
acquire new
rights only.

(2) Any new right so acquired shall, as respects the burden of the right, run with the land and be enforceable by the Authority against the estate and interest of every person to or for whom compensation or (where the new 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 the right—

(a) 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 the right and capable of being benefited thereby; and

(b) the right was created or imposed by a grant or covenant expressed to be for the benefit of that adjacent land.

(3) Any new right acquired under this section, whether compulsorily or by agreement, shall be a local land charge.

(4) (a) The Authority may give notice to treat in respect of any new 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 new rights under subsection (1) above 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 new rights or to land over which the new rights are or are to be exercisable, according to the requirements of the particular context.

PART II
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(b) Without prejudice to the generality of paragraph (a) above, in relation to the purchase of new rights in pursuance of subsection (1) above—

- (i) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 1 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 1 to this Act.

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

(6) Where the Authority have acquired only a new right over or in any land under this section they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land.

Disregard of recent improvements and interests.

8. In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land or new rights 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 is 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.

Extinction of private rights of way.

9.—(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 sooner.

(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 under and in accordance with the Act of 1961.

10.—(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 new rights required for the purposes of this Act over or in the lands, not being new rights of water in which some person other than the grantor has an interest.

PART II
—cont.
Grant of new rights by persons under disability.

(2) The provisions of the Act of 1965 with respect to lands and rent-charges, so far as they are applicable, shall extend and apply to any such grant and to any such new rights as aforesaid.

11.—(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 either 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.

Agreements with adjoining owners.

(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 new rights so required.

12.—(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 with respect to his reinstatement.

Power to reinstate owners or occupiers of property.

(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 III

WORKS

13.—(1) (a) Subject to the provisions of this Act, the Authority may make and maintain the whole or part of all or any of the works referred to in paragraph (b) below (together with all necessary works and conveniences connected therewith) in the lines or situations and according to the levels following, that is to say:—

Power to execute works.

- (i) as regards the altered works, the lines or situations delineated on the substituted plan and the levels shown on the substituted sections; and
- (ii) as regards the remainder of the works described in paragraph (b) below, the lines or situations delineated on the deposited plan and the levels shown on the deposited sections.

(b) The said works are—

PART III
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Work No. 1 A barrier in the river Foss incorporating piers, abutments, river walls, a movable floodgate, sill, piles and a concrete base commencing on the west side of that river at reference point SE 60575109 and terminating on the east side of that river at reference point SE 60595110;

Work No. 2 A pumping station incorporating a control building, with intake screens and an outfall culvert in the river Foss commencing at reference point SE 60545114 and terminating at reference point SE 60575108 and including a widening of the river Foss to abut the work;

Work No. 3 A flood protection wall on the west side of the river commencing at reference point SE 60525128 and terminating at reference point SE 60545114;

Work No. 4 An access road between Tower Street and Work No. 2 commencing at reference point SE 60535131 and terminating at reference point SE 60545114;

Work No. 5 A control structure on the river Foss near Castle Mills Lock incorporating a sluice gate in substitution for the existing control structure commencing at reference point SE 60605131 and terminating at reference point SE 60605130;

Work No. 6 A pipe or line of pipes in substitution for an existing pipe commencing at reference point SE 60625099 and terminating at reference point SE 60585110 incorporating penstocks at each end;

Work No. 7 A reconstruction, raising and regrading of that part of Tower Street commencing at reference point SE 60485134 and terminating at reference point SE 60455140;

Work No. 8 A car park ramped access road commencing at reference point SE 60525132 and terminating at reference point SE 60505125;

Work No. 9 A flood protection wall adjacent to Work No. 8 commencing at reference point SE 60505128 and terminating at reference point SE 60505132.

(2) The barrier shall be so constructed that when the barrier gate is in the open position there shall be provided an opening in the river Foss not less than 12.5 metres high above Ordnance Datum (Newlyn), and not less than 8 metres wide.

(3) Notwithstanding anything to the contrary in this Act or shown on the deposited plan or the deposited sections or the substituted plan or the substituted sections, but without

prejudice to the provisions of subsection (2) above and section 15 (Power to deviate) of this Act the Authority may, subject to the approval of the Minister, construct the whole or any part of the works within the respective limits of deviation for those works in accordance with dimensions and a description other than the dimensions and descriptions shown on the deposited plan and the deposited sections or the substituted plan or the substituted sections, as the case made be, or set out in subsection (1) above.

PART III
—cont.

(4) Subject to the provisions of subsection (2) above, the Authority may from time to time alter, replace, repair, renew or remove any of the works (other than Work No. 7 and Work No. 8) within the respective limits of deviation for those works.

(5) Work No. 7 and Work No. 8 shall, when completed unless otherwise agreed, be maintained by, and at the expense of, the Authority for a period of 12 months from the completion thereof and, at the expiration of that period, Work No. 7 shall be maintained by, and at the expense of, the highway authority and Work No. 8 shall be maintained by, and at the expense of, the Council.

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

Subsidiary
works.

- (a) make or alter junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, bridges, towing paths and footpaths;
- (b) make, provide and maintain all necessary and convenient buildings, walls, banks, revetments, embankments, borrow-pits, hards, pavings, coffer dams, staging, fenders, booms, mooring dolphins, moorings, buoys, beacons, landing places, boat hoists, piling, fences, gates, cuts, ducts, channels, culverts, dams, sewers, drains, intakes, syphons, watercourses, weirs, sluices, penstocks, mattresses, pitching, roads, bridges, towing paths, footpaths and landscaping works, parking places for vehicles, recreational and viewing areas and facilities, towers, pylons and all such mains, pipes, cables, wires, meters, pumps, power plant, valves and valve chambers, lights, signals and other machinery, works and appliances as may be required;
- (c) dispose of spoil or other material excavated in the execution of the works;
- (d) execute any works for the protection of any adjoining lands, buildings or structures;

PART III
—cont.

- (e) alter or remove any structure erected upon any street or land;
- (f) remove, alter, divert, stop up or interfere with 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;
- (g) 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) Any lamp-post, paving, metalling or materials in, on or under any street altered or otherwise interfered with by the Authority under the powers of this section and rendered unnecessary, and any apparatus rendered unnecessary by the substitution of other apparatus therefor, shall vest in the Authority and the substituted apparatus shall be under the same jurisdiction, care, management and direction as the existing apparatus for which it may be so substituted.

(3) In the exercise of the powers conferred by this section on any land, the Authority shall cause as little detriment and inconvenience to any person as circumstances admit and, subject to section 27 (Temporary closure of river Foss) of this Act, shall pay compensation to all persons interested in that land for any damage sustained by them in respect of that land 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.

(4) The powers conferred by this section and section 13 (Power to execute works) 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, 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 by arbitration:

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

Power to deviate.

15. Subject to the provisions of subsection (2) of section 13 (Power to execute works) of this Act, in the execution of the works or any part thereof, the Authority may deviate from the lines or situations thereof shown on the deposited plan or, as the

case may be, the substituted plan to any extent within the limits of deviation shown thereon for those works and may deviate vertically from the levels shown on the deposited sections or, as the case may be, the substituted sections to any extent upwards or to any extent downwards.

16.—(1) The Authority may in the manner shown on the substituted plan and substituted sections stop up so much of the path on the east bank of the river Foss, known as the Towing Path, as lies between the points marked “R” and “S” and substitute a new footpath therefor upon Work No. 1 between those points. Stopping up and diversion of path.

(2) (a) Notwithstanding anything in subsection (1) above, the stopping up of the existing public highway shall not take place until the Council is satisfied that the new footpath to be substituted therefor has been completed in accordance with its reasonable requirements and is open for public use or, in the case of any difference between the Authority and the Council 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 arbitration and the new footpath completed in accordance with the decision of the arbitrator:

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

(b) Before referring a matter to arbitration under paragraph (a) above, the Authority shall give to the Council 7 days’ notice of their intention so to do.

(3) As from the date of completion to the satisfaction of the Council of the new footpath or as from the date of its completion in accordance with the determination by arbitration of any difference under subsection (2) above (as the case may be), all rights of way over or along the portion of the path 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) The new footpath provided under the powers of this Act shall be repairable by the Council.

17.—(1) The Authority during and for the purposes of the execution of any of the works may temporarily stop up and divert and interfere with any road, bridleway, towing path or footpath and may for any reasonable time divert the traffic from any such road, bridleway, towing path or footpath and prevent Temporary stoppage of roads, footpaths, towing paths and bridleways.

PART III
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all persons other than those bona fide going to or from any land, house or building abutting on the road, bridleway, towing path 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, towing path or footpath without the consent of the highway authority and, in the case of a road, bridleway, towing path 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 by arbitration.

Notice to
police.

18. Before breaking up or otherwise interfering with any road in connection with the construction of any of the works, the Authority shall (except in a case of emergency) give 14 days' notice to the chief officer of police of their intention so to do.

Agreements
with highway
authorities.

19.—(1) Where under this Act the Authority are authorised to alter or stop up, divert or interfere with a street, road, bridleway, towing path or footpath, or portion thereof, they may enter into, and carry into effect, agreements with the highway authority or the persons having the charge, management or control of the street, road, bridleway, towing path or footpath, as the case may be, concerning the construction, or a contribution towards the expense of the construction, of the alteration or of any new street, road, bridleway, towing path or footpath to be made under this Act, and concerning any other matters relating thereto.

(2) The Authority may, by agreement with the highway authority or such persons, delegate to them the power of constructing and, in any case where the Authority are responsible for maintaining the same, of maintaining all or any of such alterations or new street, road, bridleway, towing path or footpath.

(3) The purposes of this section shall be purposes for which a highway authority may incur expenditure and borrow money.

Power to
dredge.

20. Subject to the provisions of this Act and within the limits of deviation shown on the deposited plan the Authority may

dredge or deepen or deposit material in the bed of the river Foss for the purposes of or in connection with the construction, operation, maintenance, alteration, replacement, repair, renewal or removal of the barrier or the pumping station and may for such purposes alter or interfere with the bed, banks, soil or foreshore of the river Foss and may use, appropriate or dispose of any materials dredged by them.

21. The Authority may for any of the purposes referred to in section 13 (Power to execute works), section 14 (Subsidiary works) or section 20 (Power to dredge) of this Act, moor or anchor vessels, or cause vessels to be moored or anchored, in the river Foss.

22.—(1) The Authority may give directions for the purpose of promoting or securing conditions in the river Foss conducive to the safe and convenient operation of any of the works and, without prejudice to the generality of the foregoing, for any of the following purposes:—

- (a) prohibiting the use of any of the works as a landing or loading place for any vessel;
- (b) prohibiting entry into the Castle Mills Lock and Browney Dyke to any vessel when the barrier is closed;
- (c) requiring the master of any vessel in the Castle Mills Lock or Browney Dyke to remove the vessel therefrom when the barrier is or is about to be closed;
- (d) for designating areas of Browney Dyke which vessels are to use or refrain from using for movement or mooring.

(2) A direction under subsection (1) above may apply—

- (a) to all vessels or to a class of vessels designated in the direction;
- (b) at all times or at such times as are designated in the direction.

(3) A notice of any direction under subsection (1) above shall be displayed by the Authority in a conspicuous position at or near the Castle Mills Lock and Browney Dyke and any of the works to which it applies.

(4) The giving of a direction shall not diminish or in any way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

(5) Any person who fails without reasonable excuse to comply with a direction under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III
—cont.

(6) Without prejudice to any other remedy available to the Authority, if a direction is not complied with within a reasonable time, a duly authorised officer of the Authority may put persons aboard the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(7) If there is no one on board a vessel to attend to a direction, a duly authorised officer of the Authority may proceed as if the direction had been given and not complied with.

(8) The powers of this section may be exercised notwithstanding that the river Foss or any part thereof will be closed to navigation or that the passage of any vessel may be obstructed, delayed or interfered with and neither the Authority nor the navigation authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of such closure, obstruction, delay or interference.

(9) Expenses incurred by the Authority in the exercise of the powers conferred by subsections (6) and (7) above in relation to any vessel shall be recoverable by them from the owner or master of the vessel.

Power to
use bed and
banks of
watercourses.

23.—(1) Subject to the provisions of this Act, 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 shown on the deposited plan, 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.

(2) The Authority shall, not less than 7 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 interested in that land for any damage sustained by them or liability to which they may become subject in respect of that land 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.

Diversion of
flow of water
in certain
watercourses.

24.—(1) Subject to the provisions of this Act the Authority may by means of Works Nos. 1, 2, 5 and 6 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 Foss and of or in any other watercourse which may be intercepted by the said works or any of them.

(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) above.

PART III
—cont.

25.—(1) Subject to the provisions of this Act, for the purpose of constructing, altering, 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.

Discharge of water.

(2) Except in a case of emergency the Authority shall not less than 7 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 any statutory undertakers within the meaning given in section 329 of the Highways Act 1980) 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.

1980 c. 66.

(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.

26. It is hereby declared that—

Application of enactments relating to land drainage and sewerage and sewage disposal.

(a) the works other than Work No. 6, being works to be constructed by the Authority in the performance of their land drainage function, are drainage works and that in constructing those works and in the exercise of

PART III
—cont.

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 1976 in relation to drainage works; and

- (b) Work No. 6, being a work to be constructed by the Authority in the performance of their sewerage and sewage disposal functions, is a sewerage work and that in constructing that work and in the exercise in that connection 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 section 14 (2) of the Water Act 1973.

1973 c. 37.

Temporary
closure of
river Foss.

27.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, but without prejudice to any requirement imposed on the Authority by or under section 28 (Operation of barrier) of this Act, the Authority may, in executing or doing in, on, under, or over the river Foss any works or things authorised by or under the foregoing provisions of this Act, close to navigation the whole or any part of the river Foss:

Provided that the Authority shall so execute or do such works or things as to ensure that at any time no more of the river Foss is so closed than is reasonably necessary in all the circumstances and if it becomes necessary to close the river Foss completely to navigation the Authority shall use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the river Foss and that the minimum interference is caused to persons who may be using or intending to use the river Foss for the purposes of trade or business (including the use of river water for cooling purposes).

(2) Without prejudice to the provisions of section 3 (Application of enactments) of this Act, neither the Authority nor the navigation authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river Foss under subsection (1) above.

Operation of
barrier.

28.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Authority may use and operate the barrier, and, in particular, the barrier gate may be closed by the Authority for such periods as they consider necessary or desirable—

- (a) at any time when it appears to the Authority that there is reason to believe that unless the barrier gate is closed floods or inundations may be caused by the overflow of the river Foss upstream of the barrier, or in any other case of emergency;

- (b) for the purpose of enabling experiments to be carried out for or in connection with the development of the most effective use of the barrier for defence against floods or inundations;
- (c) for the purpose of testing the barrier;
- (d) for the purpose of exercising and instructing staff in the operation and control of the barrier;
- (e) for the purpose of maintaining, altering, replacing, repairing or renewing the barrier, on such occasions as may be reasonably necessary, or for the purpose of removing the barrier;

PART III
—cont.

and for no other purpose and may be so closed notwithstanding that the river Foss or any part thereof will thereby be closed to navigation and that the passage of vessels in the river Foss may thereby be obstructed, delayed, or interfered with, and neither the Authority nor the navigation authority shall, as a result of such closure, be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of such obstruction, delay or interference:

Provided that, in and for the purpose of determining in any case when, and for how long, the barrier gate is to be closed, and when it is to be re-opened after any such closure, the Authority shall use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the river Foss.

(2) Before closing the barrier gate for any of the purposes mentioned in paragraphs (b) to (e) of subsection (1) above the Authority shall consult with the navigation authority as to the circumstances and manner in which the barrier gate may be closed for all or any of those purposes and as to the timing, periods and frequency of such closures and as to the appropriate notices to be given to the navigation authority in connection with such closures.

29.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Authority may use and operate the pumping station to pump water from the river Foss above the barrier into that part of the river Foss below the barrier for such periods as they consider necessary or desirable—

- (a) at any time when the barrier gate is closed and at any other time in case of emergency;
- (b) for the purpose of enabling experiments to be carried out for or in connection with the development of the most effective use of the barrier and the pumping station or either of them for defence against floods or inundations;

PART III
—cont.

- (c) for the purpose of testing the pumping station and the machinery and apparatus connected therewith;
- (d) for the purpose of exercising and instructing staff in the operation and control of the pumping station on its own or in conjunction with the barrier;
- (e) for the purpose of maintaining, altering, replacing, repairing or renewing the pumping station on such occasions as may be reasonably necessary or for the purpose of removing it;

and for no other purpose.

(2) Before commencing to pump water in the river Foss for any of the purposes mentioned in paragraphs (b) to (e) of subsection (1) above, the Authority shall consult with the navigation authority as to the circumstances and manner of operation of the pumping station for all or any of these purposes and as to the timing, periods and frequency of such pumping and as to the appropriate notice to be given to the navigation authority in connection with such operations.

Operation of
sluice gate.

30. Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Authority may use and operate the sluice gate to control the flow or level of the river Foss upstream or downstream of Work No. 5 to such extent as they think necessary or desirable for or in connection with the prevention or relief of flooding or the use or operation of any of the works.

Misuse of
certain works.

31. Any person who without lawful authority closes or opens, or attempts to close or open, the barrier gate or the sluice gate or who without lawful authority operates or attempts to operate the pumping station or in any other way interferes, or attempts to interfere, with any of those works 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 the statutory maximum or both, or on indictment to a term of imprisonment not exceeding five years or to a fine, or both:

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 any person.

Exclusion of
rivers Ouse
and Foss
enactments.
1902 c. ccxli.

32.—(1) Nothing in the Act of 1793 or the York Corporation Act 1902 or in any byelaws made thereunder prohibiting obstruction or interference with navigation, dredging, the operation of or interference with any lock or other structure, the placing or leaving of any vehicles, materials or apparatus at a public wharf or other place or the operation of cranes or other

lifting tackle or otherwise rendering any such activity subject to the control or regulation of the Council or other person shall apply to the Authority in the exercise of the powers of this Act.

PART III
—cont.

(2) In this section, “the Act of 1793” means the Act passed in the thirty-third year of His Late Majesty King George 3 intituled “An Act for making and maintaining a Navigable Communication from the Junction of the River Foss with the River Ouse, at or near the City of York, to Stillington Mill, in the Parish of Stillington, in the North Riding of the County of York; and for draining and improving certain Low Lands lying on each Side of the said River Foss.” 1793 c. 99.

33. For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Authority and the undertakers concerned, apply and have effect:— For protection of certain statutory undertakers.

(1) In this section—

“apparatus” means—

(a) mains, pipes, valves and other apparatus belonging to or maintained by the British Gas Corporation or the York Waterworks Company;

(b) electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the North Eastern Electricity Board; 1882 c. 56.

and includes any works constructed for the lodging therein of apparatus;

“the undertakers” means the British Gas Corporation, the North Eastern Electricity Board and the York Waterworks Company and, in relation to any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained.

(2) The provisions of Part II of, and Schedule 4 to, the Act of 1950 shall apply in relation to any works executed or things done within the limits of deviation under section 13 (Power to execute works) or section 14 (Subsidiary works) of this Act (hereafter in this section referred to as “the works”) as if the works were executed for road purposes within the meaning of section 21 (1) (a) of the Act of 1950 and were of the kind referred to in that section, as if the Authority were a promoting authority for the purposes of the operation of the said provisions, and as if any undertakers’ apparatus affected thereby were in a street:

PART III
—cont.

Provided that for the purposes of such application the provisions of the Act of 1950 shall have effect—

(a) so as to impose on the Authority an obligation before commencing any of the works to give notice to the undertakers under paragraph 2 of Schedule 4 to the Act of 1950 together with plans, sections and particulars of any of the works to be commenced; and

(b) as if the words in parenthesis in paragraph 3 of the said Schedule relating to a road alteration were omitted from that paragraph.

(3) The temporary stopping up or diversion of the whole or any part of any road, bridleway, towing path or footpath under the powers of section 17 (Temporary stoppage of roads, footpaths, towing paths and bridleways) of this Act shall not prejudice or affect any right of the undertakers—

(a) to maintain, operate, inspect, repair, renew or remove any apparatus which at the time of the stopping up or diversion is in the road, bridleway, towing path or footpath as the case may be; or

(b) for the purpose of such maintenance, operation, inspection, repair, renewal or removal to enter upon, break open or carry out works in that road, bridleway, towing path or footpath as the case may be.

PART IV

MISCELLANEOUS

Interpretation
of Part IV.
1936 c. 49.

34.—(1) In this Part of this Act unless the context otherwise requires, any expression used in Part II of the Public Health Act 1936 has the same meaning as in that Part of that Act; and—

“apparatus” includes any works constructed for the accommodation of apparatus;

“local authority” means a county council or a district council;

“pipe” includes a tunnel;

“sludge main” means a pipe or system of pipes (together with any pumps or other machinery or apparatus associated therewith) for the conveyance of the residue of water or sewage treated in a water or sewage treatment works as the case may be, including final effluent or the products of dewatering or incineration of such residue, or partly for any of those purposes and

partly for the conveyance of trade effluent or the residue thereof;

PART IV
—cont.

“trade effluent” has the same meaning as in the Control of Pollution Act 1974.

1974 c. 40.

(2) For the avoidance of doubt a sludge main is not a public sewer as defined in section 343 of the Public Health Act 1936.

1936 c. 49.

35.—(1) The Authority may, under and in accordance with the following provisions of this section, provide and maintain sludge mains.

Provision and maintenance of sludge mains.

(2) The following enactments shall apply in relation to sludge mains provided, or to be provided, by the Authority under this section as they apply in relation to public or other sewers:—

(a) sections 15, 30 and 31 of the Public Health Act 1936 and so much of Part XII of that Act as relates to those enactments;

(b) sections 25 and 32 (1) (a) of the Public Health Act 1936 and so much of Part XII of that Act as relates to those enactments;

(c) section 14 (5) to (7) of the Water Act 1973.

1973 c. 37.

(3) (a) Before constructing, diverting or closing a sludge main in the area of a county council the Authority shall consult the county council.

(b) Upon consultation with any local authority in pursuance of paragraph (a) above or section 14 (5) of the Water Act 1973, as applied in relation to any sludge main to be provided by the Authority under this section, the Authority shall submit to that local authority a plan showing the route of the proposed sludge main and such particulars of the sludge main as shall be reasonably required.

(c) If, within 28 days from the delivery to a local authority of a plan under paragraph (b) above, the local authority serve upon the Authority notice of their objection to the proposed sludge main, or any part thereof, the Authority shall not proceed with the provision of that sludge main, or the part of that sludge main to which the objection relates, as the case may be, unless the objection is withdrawn or the Secretary of State, after giving to the Authority and the local authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State, has approved the proposed sludge main, or that part thereof.

(d) The approval by the Secretary of State of a proposed sludge main, or any part thereof, under paragraph (c) above may be given with or without modification of the proposals submitted by the Authority to the local authority.

PART IV
—cont.

(4) The Act of 1950 shall have effect in relation to sludge mains provided, or to be provided, under this section as it has effect in relation to public sewers.

1962 c. 58.

(5) Except in so far as the Pipe-lines Act 1962 applies to any pipeline which, or the right to use which, may be acquired under this section for the provision of sludge mains, that Act shall not apply to sludge mains provided, or to be provided, under this section.

Conveyance of
trade effluents.

36.—(1) The Authority may permit the discharge of trade effluent, or the residue of trade effluent, into any sludge main provided, or to be provided, by them subject to such terms and conditions (including the payment of charges for the reception of the trade effluent or residue thereof into the sludge main) as may be determined by the Authority.

(2) Nothing in subsection (1) above shall be construed as entitling any person to discharge trade effluent or the residue of trade effluent into any sludge main provided, or to be provided, by the Authority.

Amendment
of Yorkshire
Water
Authority
(River
Derwent) Act
1976.
1976 c. xxiv.

37. The Yorkshire Water Authority (River Derwent) Act 1976 shall be amended as follows:—

(1) In section 2 (1) there shall be inserted in its alphabetical place:—

“ ‘oil’ means any substance which is used for lubricating the engine, apparatus, fittings or equipment of a powered boat;”.

(2) In section 5 (1) after the word “fuel” there shall be inserted the words “or oil”.

Power to carry
out trial
borings, etc.

38.—(1) (a) The Secretary of State may on the application of the Authority authorise them—

(i) to place and leave on or in any land any apparatus for use in connection with any survey of that or any other land (whether from the air or on the ground) and to remove such apparatus; and

(ii) to search and bore on or in any land for the purpose of ascertaining the nature of the subsoil or the presence of water therein or the quantity or quality of such water;

(b) For the purposes of this subsection where the surface of any land (whether it is above or below the surface of any adjoining land) has been raised by the deposit thereon of refuse or waste or other materials, any material lying below the surface as so raised shall be deemed to be part of the subsoil of that land.

(2) The Authority shall give notice of an application under this section to the owner and occupier of the land to which it relates and to the relevant undertakers, namely, the British Gas Corporation, the British Railways Board, the Central Electricity Generating Board, the East Midlands, North Western, North Eastern and Yorkshire Electricity Boards, the York Waterworks Company and British Telecommunications plc and the operator of any telecommunications code system whom the Authority has reasonable cause to believe has any telecommunications apparatus installed in that land for the purpose of that system.

(3) Before giving his authority the Secretary of State shall consider any representations made to him by the owner or occupier of the land within 28 days after the receipt of the notice given to him under subsection (2) above, and, unless the representations are disposed of by agreement between the Authority and the owner or occupier, shall afford to the owner or occupier and to the Authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) In their application to the Authority—

(a) Paragraph (b) of subsection (1) of section 111 of the Act of 1963 shall have effect as if the power thereby conferred to enter upon and survey land included a power to exercise the powers conferred by subsection (1) above; and

(b) Section 112 of the Act of 1963 shall have effect as if references therein to section 111 of that Act were references to that section as extended by paragraph (a) above.

(5) Section 112 of the Act of 1976 shall have effect in relation to the exercise by the Authority of the powers of this section as it has effect in relation to the exercise of the powers conferred by any enactment contained in that Act.

39.—(1) The Secretary of State may, on application made by the Authority, authorise them temporarily to place and leave on land, not being land used for residential purposes, and to remove therefrom, any materials, plant, apparatus, spoil and surplus matter required in connection with or arising out of, the exercise of their powers—

Power to place materials, etc., temporarily on land.

(a) to construct a public sewer under section 15 of the Public Health Act 1936;

1936 c. 49.

(b) to lay a water main under section 19 of the Third Schedule to the Water Act 1945;

1945 c. 42.

(c) to lay outfall pipes and associated works under section 26 of the Control of Pollution Act 1974;

1974 c. 40.

PART IV
—cont.

(d) to carry out drainage works under section 17 of the Act of 1976; and

(e) to provide and maintain sludge mains under section 34 (Provision and maintenance of sludge mains) of this Act.

(2) Subsections (2), (3), (4) and (5) of section 38 (Power to carry out trial borings, etc.) of this Act shall apply to this section.

(3) In any authorisation given under this section the Secretary of State may stipulate the period of that authorisation.

Flood
prevention.

40.—(1) If the Authority determine that any building, wharf or other structure forms part of or makes a contribution to the efficiency of the defences of any part of their area against flooding they may serve a notice (in this section referred to as “a flood prevention notice”) upon the occupier of such building, wharf or other structure designating such building, wharf or other structure as a structure to which this section applies (hereinafter in this section referred to as a “designated structure”) and such notice shall be in the form set out in Schedule 2 to this Act or in a form to the like effect.

(2) (a) Any person on whom a flood prevention notice has been served may, within 28 days after the receipt of the notice, object to the notice on the grounds that the designated structure in respect of which the notice was served does not form a part of or (as the case may be) does not make a contribution to the efficiency of the defences of any part of the area of the Authority against flooding and, unless the notice is withdrawn, the objection shall be referred to and determined by arbitration.

(b) The arbitrator may confirm, vary or rescind the notice and if he varies the notice, the notice, as so varied, shall be deemed to be the notice served on the occupier under subsection (1) above.

(3) (a) An occupier of a designated structure shall not begin to alter, demolish or otherwise interfere with the structure in such a manner as would or might impair the effectiveness of that structure as a structure forming part of or making a contribution to the efficiency of the defences of the area against flooding unless, not less than 28 days before doing so, he serves on the Authority a notice (in this section referred to as a “works notice”) describing the operations he is proposing to carry out in relation to the designated structure and giving particulars (including, where necessary, a plan and section) of any works proposed to be carried out.

(b) The Authority may serve a counter-notice prohibiting the carrying out of all or some of the operations described in the

works notice for such period not exceeding six months as may be specified in the counter-notice.

(c) A counter-notice shall be served within 28 days from the date of service on the Authority of a works notice and, if no counter-notice is served within that period or if the counter-notice is subsequently withdrawn, the occupier of the designated structure in respect of which the works notice has been served may carry out the operations described in the works notice or, as the case may be, those to which the counter-notice relates.

(d) A counter-notice shall not be served by the Authority in relation to operational land of the British Railways Board in respect of any operation to be carried out by or on behalf of the board for the purposes of their undertaking.

(4) (a) The Authority may on any land on which a designated structure is situated erect and thereafter maintain, repair or replace one or more notices of such size or type and in such position or positions and giving such information as in the opinion of the Authority will draw to the notice of persons concerned with the designated structure the fact that a flood prevention notice is in force in respect of that structure.

(b) Subsection (1) of section 111 of the Act of 1963 in its application to the Authority shall have effect as if the power thereby conferred to enter upon and survey land included a power to exercise the powers conferred by paragraph (a) of this subsection, but the Authority shall not enter upon such land for the purpose of erecting a notice until the flood prevention notice has come into effect and unless not less than three days' notice has been given to the occupier of the designated structure.

(c) Section 112 of the Act of 1963 in its application to the Authority shall have effect as if references therein to section 111 of that Act were references to that section as extended by paragraph (b) of this subsection.

(5) Not less than 28 days before serving a flood prevention notice pursuant to subsection (1) above in respect of any building, wharf or other structure occupied by, or lying wholly or partly within the jurisdiction of, a navigation authority, harbour authority or conservancy authority, the Authority shall consult that authority; and if (on so consulting prior to serving a flood prevention notice) the Authority are required by such navigation authority, harbour authority or conservancy authority to do so, the Authority shall thereafter also consult that authority before—

(a) serving any counter-notice pursuant to subsection (3) (b) above; or

(b) erecting any notice pursuant to subsection (4) (a) above;

in respect of that structure.

PART IV
—cont.

(6) A flood prevention notice given under this section shall be a local land charge and where such a notice has been varied or rescinded by an arbitrator under subsection (2) (b) above, the Authority shall within 7 days of the receipt of the arbitrator's award send a copy of the award to the registering authority, who shall make an appropriate alteration in the register.

(7) Any person who—

(a) carries out, or causes or permits to be carried out, operations in relation to a designated structure in respect of which a works notice is required by subsection (3) (a) above without serving such a notice on the Authority, or before the expiration of 28 days from the service of a works notice, or during the time when a counter-notice is in force, shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine;

(b) intentionally obstructs members or officers of the Authority in the exercise of any of the powers of the Authority under subsection (4) above, or without reasonable excuse removes or obstructs such a notice as is referred to in that subsection, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale:

Provided that a person shall not be guilty of an offence by virtue of paragraph (a) of this subsection as respects any operation if the operation is carried out, or is caused or permitted to be carried out—

(a) in an emergency in order to avoid danger to any person; or

(b) on operational land of the British Railways Board for the purposes of the board's undertaking where it appears to the board unreasonable for there to be delay;

and, as soon as reasonably practicable after the operation is carried out, particulars of the operation are furnished to the Authority.

(8) Where a building, wharf or other structure is unoccupied, the owner thereof shall be deemed, for the purposes of this section, to be the occupier.

Undertakings
and
agreements
binding
successive
owners.

41.—(1) (a) Every undertaking given to the Authority by the owner of a legal estate in land (in this section referred to respectively as "the owner" and "the land") and every agreement made between the Authority and the owner, being an undertaking or agreement—

- (i) given or made in connection with the land; and
- (ii) expressed to be given or made under this section; and
- (iii) defining that land;

shall be binding upon the owner and all persons deriving title to the land by, through or under him.

(b) An undertaking or agreement under this section shall be a local land charge.

(2) Without prejudice to the generality of the foregoing subsection an undertaking or agreement under this section may consist of or include—

(a) a covenant by the owner to carry out any works or to do anything on or in relation to it (including the making of any payment of a sum of money), or to permit the Authority to do anything on or in relation to it;

(b) an agreement by the owner for valuable consideration not to exercise a right conferred by any enactment;

but nothing in this section shall make binding an agreement not to exercise a right conferred by any enactment where the enactment provides (in whatever terms) that any such agreement shall be void or unenforceable.

(3) Any person against whom such an undertaking or agreement under this section is enforceable shall be entitled to require a copy of it from the Authority.

42. Section 265 of the Public Health Act 1875 (protection from personal liability of members and officers of certain authorities when acting under the direction of the authority) shall apply to the Authority as if—

Protection of members and officers of Authority from personal liability.
1875 c. 55.

(a) references to a local authority were references to the Authority or to a committee of the Authority;

(b) for the words “for the purpose of executing this Act” there were substituted the words “for the purpose of carrying out any of the functions of the Authority except functions under the Control of Pollution Act 1974”; and

1974 c. 40.

(c) for the words “out of the fund or rate applicable by such authority to the general purposes of this Act” there were substituted the words “by the Authority”.

43.—(1) Where in the discharge of their functions in relation to any land the Authority have carried out work in respect of which under any enactment or instrument payments are recoverable by them from the owner of that land, those payments may, by an agreement made by them with that owner

Expenses chargeable on land.

PART IV
—cont.

either before or after the carrying out of the work, and expressed to be made under this section, be declared to be and they shall thereby become a charge on that land and on all estates and interests therein upon the terms prescribed by that agreement.

(2) Any such charge shall be a local land charge.

Recovery of expenses, etc., otherwise than as civil debt.
1945 c. 42.

44.—(1) Any sum which the Authority are entitled to recover summarily as a civil debt under any of the provisions of the Water Act 1945 specified in subsection (2) below may be recovered by the Authority either summarily as a civil debt or in any court of competent jurisdiction.

(2) The provisions of the Water Act 1945 referred to in subsection (1) above are—

- (a) sections 14 (10), 17 (3), 18 (4), 35 (1) and 35 (4) of that Act; and
- (b) sections 41 (3), 41 (4), 42 (4), 44 (2), 45 (3), 60 (2), 63 (1), 64 (2), 66 (1), 67, 68 (2), 69 (1) and 73 (2) of the Third Schedule to that Act.

Service of documents.
1974 c. 40.

45. Section 95 of the Control of Pollution Act 1974 (which makes provision for the service of documents on and by water authorities) shall apply to the giving and service of documents which the Authority are required or authorised by the Act of 1976 and by this Act to give or serve as it applies to the giving or serving of any documents required or authorised by the Control of Pollution Act 1974 to be given or served.

PART V

GENERAL

Grants respecting works.

46. In section 90 of the Act of 1976—

- (a) in subsection (6), the reference to functions under section 17 (1) (b) or (c) of that Act shall include a reference to functions under Part III of this Act so far as relating to the improvements of existing drainage works or the construction of new drainage works;
- (b) in subsection (6) (a), the reference to sections 65 and 66 of the Act of 1963 shall include a reference to Part II of this Act;
- (c) in subsection (6) (d), the reference to section 33 (4) of the Act of 1976 shall include a reference to subsection (3) of section 14 (Subsidiary works), section 23 (Power to use bed and banks of watercourses) and subsection (3) of section 25 (Discharge of water), of this Act.

47. Section 43 of the General Rate Act 1967 (which exempts from rating certain property occupied or maintained by drainage authorities) shall apply and have effect in relation to Works Nos. 1, 2, 3, 4, 5 and 9 as if each of those works were such a structure or appliance as is referred to in paragraph (b) of subsection (1) of that section.

PART V
—cont.
Exemption of certain works from rating.
1967 c. 9.

48.—(1) Works Nos. 1 and 5 shall each be deemed to have been constructed under a licence under section 36 of the Act of 1963 granted by the Secretary of State to the Authority and the provisions of section 28 (Operation of barrier) of this Act shall be deemed to be included in the licence under which the barrier is deemed to have been constructed.

Certain works deemed to be constructed under impounding licence.

(2) 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 licence deemed by the foregoing subsection to have been granted under this section as they apply to those so granted.

49. In their application to development authorised by Part III of this Act, Article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1977 shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.

Planning permission.
S.I. 1977/289.

50.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.

Liability of directors, etc.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

51. 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.

Arbitration.

52.—(1) 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,

Crown rights.

PART V
—cont.

use, enter upon 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;
- (b) belonging to Her Majesty in right of Her Duchy of Lancaster, without the consent in writing of the Chancellor for the time being of the said Duchy; or
- (c) 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.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

SCHEDULES

Section 7.

SCHEDULE 1

ADAPTATION OF PART I OF THE ACT OF 1965 IN CONNECTION WITH PURCHASE OF NEW 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 extent, if any, to which the value of the land over or in 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.

(2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, 1973 c. 26. 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 or in land is purchased' and for the words 'acquired or taken from him' there shall be substituted the words 'over or in 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 or in 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

SCH. 1
—cont.

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.

1973 c. 26.

(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 'right proposed' and 'right is'."

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 over-ridden 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.

SCH. 1
—cont.

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.

SCHEDULE 2

Section 40.

FORM OF FLOOD PREVENTION NOTICE
YORKSHIRE WATER AUTHORITY ACT 1986
FLOOD PREVENTION NOTICE

To the occupier
of the premises known as (a)

1. You are hereby informed that the Yorkshire Water Authority have determined that (b)
being part of the above-mentioned premises, forms part of, or contributes to the efficiency of, the defences of some part of the Yorkshire Water Authority's area against flooding.

2. By virtue of section 40 (Flood prevention) of the Yorkshire Water Authority Act 1986 the service of this notice causes the (c) to become a designated structure for the purposes of that section.

3. A copy of the said section is enclosed with this notice.

Date

.....
(Signature of officer authorised to serve this notice).

(a) Sufficient description of premises of which the designated structure is part which may refer to a plan.

(b) Description of the wall, building, etc., forming the designated structure, which may refer to a plan.

(c) Brief, but sufficient, description of designated structure, e.g., "wall", "wharf", etc.

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CHAPTER viii

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Application of enactments.

PART II

LANDS

4. Power to acquire lands.
5. Correction of errors in deposited and substituted plans and books of reference.
6. Acquisition of part only of certain properties.
7. Power to acquire new rights only.
8. Disregard of recent improvements and interests.
9. Extinction of private rights of way.
10. Grant of new rights by persons under disability.
11. Agreements with adjoining owners.
12. Power to reinstate owners or occupiers of property.

PART III

WORKS

Section

13. Power to execute works.
14. Subsidiary works.
15. Power to deviate.
16. Stopping up and diversion of path.
17. Temporary stoppage of roads, footpaths, towing paths and bridleways.
18. Notice to police.
19. Agreements with highway authorities.
20. Power to dredge.
21. Mooring of vessels by Authority.
22. Directions for control of vessels.
23. Power to use bed and banks of watercourses.
24. Diversion of flow of water in certain watercourses.
25. Discharge of water.
26. Application of enactments relating to land drainage and sewerage and sewage disposal.
27. Temporary closure of river Foss.
28. Operation of barrier.
29. Operation of pumping station.
30. Operation of sluice gate.
31. Misuse of certain works.
32. Exclusion of rivers Ouse and Foss enactments.
33. For protection of certain statutory undertakers.

PART IV

MISCELLANEOUS

34. Interpretation of Part IV.
35. Provision and maintenance of sludge mains.
36. Conveyance of trade effluents.
37. Amendment of Yorkshire Water Authority (River Derwent) Act 1976.
38. Power to carry out trial borings, etc.
39. Power to place materials, etc., temporarily on land.
40. Flood prevention.
41. Undertakings and agreements binding successive owners.
42. Protection of members and officers of Authority from personal liability.
43. Expenses chargeable on land.
44. Recovery of expenses, etc., otherwise than as civil debt.
45. Service of documents.

PART V
GENERAL

Section

- 46. Grants respecting works.
- 47. Exemption of certain works from rating.
- 48. Certain works deemed to be constructed under impounding licence.
- 49. Planning permission.
- 50. Liability of directors, etc.
- 51. Arbitration.
- 52. Crown rights.

SCHEDULES:

- Schedule 1—Adaptation of Part I of the Act of 1965 in connection with purchase of new rights.
- Schedule 2—Form of flood prevention notice.