



## CHAPTER xxxix.

An Act to authorise the lord mayor aldermen and citizens of the city of Birmingham to supply heat by means of hot water or steam to make further and better provision in reference to the improvement health local government and finances of the city and for other purposes. [30th July 1948.]

**W**HEREAS the city of Birmingham (hereinafter referred to as "the city") is a county borough under the management and local government of the lord mayor aldermen and citizens of the city (hereinafter referred to as "the Corporation"):

And whereas it is expedient to empower the Corporation to supply heat by means of hot water or steam within the city:

And whereas it is expedient that the powers of the Corporation in relation to the health local government and improvement of the city and other matters should be enlarged as by this Act provided:

And whereas by a deed of conveyance dated the twenty-ninth day of September nineteen hundred and thirty-six and made between Francis Edward Howard Paget (in this preamble referred to as "the grantor") of the one part and the Corporation of the other part certain land and premises situate at Elford and in the vicinity thereof (in this preamble referred to as "the Elford Hall estate") were conveyed to the Corporation:

And whereas by the said deed the Corporation covenanted with the grantor that for the fulfilment of the intention of

promoting the healthful recreation of the citizens of Birmingham they would preserve so far as possible the rural character which the Elford Hall estate then possessed and had possessed during its ownership and occupation by the grantor and his ancestors:

And whereas by the said deed the Corporation further covenanted with the grantor to use their best endeavours to include in the next general powers Bill to be promoted by them a clause making further provision as to the due execution by the Corporation of the wishes of the grantor to preserve so far as possible the rural character which the Elford Hall estate then possessed and had possessed during its occupation and ownership by the grantor and his ancestors:

And whereas it is expedient to make further provision in regard to the finances of the Corporation:

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

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

23 & 24 Geo. 5.  
c. 51. And whereas in relation to the promotion of the Bill for this Act the requirements of Part XIII of the Local Government Act 1933 have been observed:

May it therefore please Your Majesty that it may be enacted and be it enacted by the King'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 and  
collective  
titles.

1.—(1) This Act may be cited as the Birmingham Corporation Act 1948.

(2) The Birmingham Corporation Acts 1876 to 1946 and this Act may be cited jointly as the Birmingham Corporation Acts 1876 to 1948.

Division of  
Act into Parts.

2. This Act is divided into Parts as follows:—

Part I.—Preliminary.

Part II.—Heating undertaking.

Part III.—Streets buildings sewers and drains.

Part IV.—Food and sanitary matters.

Part V.—Finance and miscellaneous.

Part VI.—General.

3. The Lands Clauses Acts except sections 127 to 132 of the Lands Clauses Consolidation Act 1845 and except the provisions with respect to the purchase and taking of lands otherwise than by agreement (so far as the same are applicable for the purposes of and are not inconsistent with the provisions of this Act) are hereby incorporated with and form part of this Act.

PART I.  
—cont.  
Incorporation  
of Lands  
Clauses Acts.  
8 & 9 Vict.  
c. 18.

4.—(1) In this Act the several words and expressions to which meanings are assigned by sections 90 110 and 343 of the Public Health Act 1936 have the same respective meanings unless there be something in the subject or context repugnant to such construction.

Interpretation.  
26 Geo. 5. &  
1 Edw. 8.  
c. 49.

(2) In this Act unless the subject or context otherwise requires the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated with this Act shall have the same respective meanings And—

“ The city ” means the city of Birmingham;

“ The Corporation ” means the lord mayor aldermen and citizens of the city of Birmingham;

“ The council ” means the council of the city;

“ The town clerk ” “ the surveyor ” “ the medical officer ” and “ the sanitary inspector ” mean respectively the town clerk the surveyor the medical officer of health and any sanitary inspector of the city;

“ The Minister ” means the Minister of Health;

“ The Act of 1936 ” means the Public Health Act 1936;

“ The Act of 1933 ” means the Local Government Act 1933;

“ The Act of 1883 ” means the Birmingham Corporation (Consolidation) Act 1883;

“ The Act of 1929 ” means the Birmingham Corporation (General Powers) Act 1929;

“ Food ” has the meaning assigned to it by section 100 (Definitions) of the Food and Drugs Act 1938;

“ Daily penalty ” means a penalty for each day on which any offence is continued by a person after conviction;

“ Contravention ” includes failure to comply and “ contravene ” shall be construed accordingly;

“ Electric line ” has the same meaning as in the Electric Lighting Act 1882;

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

“ The gas undertaking ” means the gas undertaking of the Corporation;

PART I.  
—cont.

“ The heating undertaking ” means the undertaking authorised by Part II (Heating undertaking) of this Act and includes all lands stations boiler-houses properties works buildings machinery plant mains pipes ducts apparatus appliances easements rights powers and privileges for the time being belonging to or held used or enjoyed by the Corporation for or in connection with the supply of heat by means of hot water or steam;

“ The water undertaking ” means the water undertaking of the Corporation;

“ Statutory security ” means any security in which trustees are for the time being by or under any Act of Parliament authorised to invest trust money and any mortgage bond debenture debenture stock stock or other security authorised by or under any Act of Parliament of any county council or municipal corporation or other local authority as defined by section 34 (Definitions) of the Local Loans Act 1875 but does not include annuities rentcharges or securities transferable by delivery or any security of the Corporation;

38 & 39 Vict.  
c. 83.

“ Enactment ” includes this Act and any general or local Act Order byelaw or regulation for the time being in force within the city;

“ The commission ” means the British Transport Commission and any reference to the commission in relation to any functions of the commission which for the time being are delegated to an executive in pursuance of section 5 (The executives) of the Transport Act 1947 shall be construed as a reference to that executive;

10 & 11 Geo. 6.  
c. 49.

“ The authority ” means the British Electricity Authority;

“ The board ” means the Midlands Electricity Board.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied extended amended or varied by or by virtue of any subsequent enactment including this Act.

## PART II.

## HEATING UNDERTAKING.

Supply of  
heat.

5.—(1) The Corporation may supply heat by means of hot water or steam to such premises as they may think fit in the city upon and subject to such terms and conditions as may be

agreed between the Corporation and the owners or occupiers of those premises:

Provided that in the exercise of the powers of this section the Corporation shall not show undue preference to any person and shall not exercise any undue discrimination against any person.

(2) Without prejudice to the generality of the foregoing provision such terms and conditions may include the power to cut off a supply of heat in such circumstances as may be prescribed in those terms and conditions.

(3) Before the Corporation enter into an agreement with the occupier of any premises for the supply of heat to such premises they shall give notice thereof to the owner of the premises and in the event of the supply of heat to such premises being discontinued notice shall be given by the Corporation to the owner of such premises.

6.—(1) Subject to the provisions of this Part of this Act the Corporation may on lands in the city belonging or leased to them erect lay down maintain work and use stations boiler-houses mains pipes and other works for providing storing transmitting and distributing heat by means of hot water or steam and for producing any material product matter or thing arising or used in the process of such provision of heat by means of hot water or steam including the generation of electricity together with such buildings boilers engines machinery sidings electric lines matters and things of whatever description as may be required by the Corporation to enable them to provide store transmit and distribute heat by means of hot water or steam and the Corporation may accordingly on those lands provide store transmit and distribute heat by means of hot water or steam and may produce such materials products matters and things:

Works for  
provision of  
heat.

Provided that—

(a) nothing in this section shall be taken to dispense with the consent of any government department to any use of any lands of the Corporation in any case in which such consent would have been required if this section had not been enacted;

(b) any electrical works or apparatus erected laid down maintained worked and used in pursuance of this section shall be so constructed maintained worked and used as to prevent interference with any telegraphic line belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line.

PART II.  
—cont.

(2) Any electricity generated by the Corporation as aforesaid may be sold—

(a) to the authority; or

(b) with the approval of the authority to the board;

and any electricity so generated and not so sold as aforesaid may only be used for or in connection with the supply of heat under the powers of this Part of this Act at the works at which it is generated or (with the consent of the authority and the board) elsewhere.

(3) (a) The authority shall take all the electricity generated by the Corporation as aforesaid which is not—

(i) required for or in connection with the supply of heat;  
or

(ii) supplied to the board with the approval of the authority;

upon such terms and conditions as may be agreed between the Corporation and the authority or in default of agreement determined by arbitration as hereinafter provided on the basis of a supply by a willing seller to a willing buyer.

(b) Any matter to be determined by arbitration under this subsection shall be referred to and determined by an arbitrator to be agreed upon between the Corporation and the authority or in default of agreement to be appointed by the President of the Institution of Electrical Engineers and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to any such reference and determination.

As to  
construction  
of station for  
providing  
heat.

7.—(1) If the Corporation shall resolve to construct extend modify or enlarge a station for providing heat under the powers of this Part of this Act the Corporation shall forthwith give to the Minister of Fuel and Power and to the authority notice of such resolution together with such information with regard to such station as the authority may within six weeks of the service of such notice reasonably require including information as to the nature position and capacity of the proposed station (but not details of design) the proposed method of producing heat thereat the area proposed to be supplied therefrom and an estimate of the quantity or quantities of heat required by the Corporation for the purposes of the heating undertaking and of the times and form at and in which such quantity or quantities will be required Any dispute between the Corporation and the authority as to whether any information is reasonably required by the authority under this subsection shall be referred to and determined by the Minister of Fuel and Power.

(2) Within three months after the service of the said notice or the receipt of such information (whichever is the later) the authority may serve upon the Corporation a counter-notice offering a supply of heat to them upon such terms and conditions as may be specified in the counter-notice or as may be agreed between the Corporation and the authority.

(3) If within three months after the receipt of such counter-notice or such longer period as may be agreed between the Corporation and the authority the terms and conditions upon which a supply of heat is to be given to the Corporation by the authority for the purposes of the heating undertaking are not agreed between them the Corporation shall submit to the Minister of Health for determination the question whether a supply of heat shall be afforded to the Corporation by the authority and in that event the terms and conditions upon which such a supply is to be afforded.

(4) If the Minister determines that a supply of heat shall be afforded to the Corporation by the authority the authority shall afford such a supply in accordance with terms and conditions approved by the Minister:

Provided that if the Minister makes a substantial alteration in the terms or conditions on which the authority offered a supply of heat to the Corporation then if within twenty-eight days after the receipt of the determination of the Minister the authority give notice in writing to the Minister and the Corporation that the said terms or conditions are not acceptable they shall not be required to afford a supply of heat to the Corporation and the Corporation shall be entitled to proceed with their proposals as if this section had not been enacted unless within twenty-eight days of such last-mentioned notice the Corporation serve on the authority a notice requiring a supply in which case the authority shall afford a supply on the terms and conditions specified in the counter-notice referred to in subsection (2) of this section.

8.—(1) The Corporation may enter into and carry into effect agreements with any persons competent to supply heat by means of hot water or steam for the furnishing to the Corporation by such persons of a supply of heat by means of hot water or steam for the purposes of this Part of this Act and any such agreement may provide for the provision by the Corporation or for the joint user by them and any other party to the agreement of any works plant materials or things required for the purposes of the agreement. Power to buy  
heat in bulk.

(2) The Corporation may for the said purposes also enter into and carry into effect agreements for the taking and use of waste heat hot water or steam from any generating station and any authority entitled to give any such supply may enter into such an agreement.

## PART II.

—cont.

Purchase of  
land for  
heating  
undertaking.  
9 & 10 Geo. 6.  
c. 49.

Further  
powers as to  
mains and  
pipes.

9.—(1) The Corporation may be authorised by the Minister to purchase land in the city compulsorily for the purposes of the heating undertaking.

(2) The Acquisition of Land (Authorisation Procedure) Act 1946 (except section 2 thereof) shall apply as if this section were an enactment contained in a public general Act and in force immediately before the commencement of that Act.

10.—(1) For the purposes of this Part of this Act the Corporation shall have and may exercise the like powers and duties and be subject to the like restrictions as a local authority who supply water under the Act of 1936 have and are subject to under section 119 of that Act with respect to the laying and maintenance of water mains and for that purpose the mains and pipes for supplying heat by means of hot water or steam shall be deemed to be water mains and section 278 (Compensation to individuals for damage resulting from exercise of powers under Act) and section 333 (Protection for works of docks undertakers and for railways) of the Act of 1936 shall apply to the exercise of those powers:

Provided that nothing in this section shall authorise the Corporation—

(a) to lay down a main outside the city except for the purpose of—

(i) giving or facilitating a supply of heat by means of hot water or steam within the city; or

(ii) taking a supply of heat by means of hot water or steam from any works or premises outside the city;

(b) to supply heat by means of hot water or steam to any premises outside the city.

(2) The Corporation may in any street within the city lay down such service pipes with such stopcocks and other fittings as they deem necessary for supplying heat by means of hot water or steam to premises within the city and may from time to time inspect repair alter or renew and may at any time remove any service pipe stopcock or other fitting laid down in a street whether by virtue of this subsection or otherwise.

(3) (a) Where a service pipe has been lawfully laid down in on or over any land not forming part of a street the Corporation may from time to time enter upon that land and inspect repair alter renew or remove the pipe or lay down a new pipe in substitution therefor but shall pay compensation for any damage done by them.

(b) Any dispute as to the amount of compensation to be paid under this subsection shall be determined by an arbitrator to be appointed in default of agreement by the Minister.



(4) In this subsection the expression "service pipe" means a pipe for supplying heat by means of hot water or steam from a main to any premises.

PART II.  
—cont.

11.—(1) Before the Corporation—

Consultation  
with  
authority and  
board as to  
certain works.

(a) apply to the appropriate sanctioning authority for consent to the borrowing of money for the purpose of constructing laying down or executing any works for providing storing transmitting or distributing heat under the powers of this Part of this Act; or

(b) lay down any main under the provisions of this Part of this Act other than a main extending for a distance of not more than two hundred yards from any main laid down in accordance with proposals previously made under this section;

they shall give to the Minister and to the authority and the board notice of their proposals and such information with regard thereto as the authority or the board may within six weeks of the receipt of such notice reasonably require and shall consult with the authority and the board on such proposals. Any dispute between the Corporation and the authority or the board as to whether any information is reasonably required by the authority or the board under this subsection shall be referred to and determined by the Minister.

(2) Without prejudice to the generality of subsection (1) of this section such information shall include particulars of the proposals (if any) of the Corporation as to the measures to be taken with respect to—

(a) the securing of the safety of the mains pipes and apparatus of the authority and the board from damage or injury arising directly or indirectly from any mains or pipes to be laid down or placed by the Corporation under the powers of this Part of this Act;

(b) the insulation of any such last-mentioned mains or pipes so as to prevent the escape of heat therefrom;

(c) the maximum and minimum temperatures and pressures at which heat may be stored transmitted or distributed by the Corporation;

(d) the methods for measuring the volume temperature and pressure of the heat so stored transmitted or distributed; and

(e) the independent testing of such measurements.

(3) The authority and the board or either of them may within three months after the receipt of such notice or the receipt of such information (whichever is the later) make representations to the Minister with respect to such proposals.

PART II.  
—cont.

(4) If no such representations are made the Corporation shall not proceed except in accordance with the proposals sent to the authority and the board or any alteration thereof which may be agreed.

(5) If any such representations are made the Corporation shall not proceed with their proposals except with the approval of the Minister and in accordance with any modification of such proposals which the Minister may require.

(6) The provisions of this section shall not apply to the construction extension modification or enlargement of a station for providing heat under the powers of this Part of this Act.

(7) In and for the purposes of this section "the Minister" means the Minister of Fuel and Power.

Power to  
supply fittings.

12.—(1) In any premises to which the Corporation supply or propose to supply heat by means of hot water or steam they may provide (but not manufacture) and may supply by way either of sale or hire any such radiators pipes apparatus and fittings (in this Part of this Act called "fittings") as may be required for or in connection with the utilisation of the heat so supplied and may instal repair or alter any such fittings whether supplied by them or not and may provide any materials and do any work required in connection with such installation repair or alteration.

(2) The Corporation may make such charges as may be agreed or in default of agreement as may be reasonable for any fittings supplied or any materials provided or work done under this section at the request of the owner or occupier of the premises supplied and where the amount does not exceed twenty pounds such charges may be recovered summarily as a civil debt.

(3) Any fittings let by the Corporation for hire and marked or impressed with a sufficient mark or brand indicating the Corporation as the actual owners thereof—

(a) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession the same may be; and

(b) shall notwithstanding that they be fixed or fastened to any part of the premises in which they may be situate or to the soil under any such premises at all times continue to be the property of and (subject to the provisions of the Hire Purchase Act 1938) removable by the Corporation:

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

(4) All fittings supplied by the Corporation under any hire purchase agreement shall until payment of the final instalment of the purchase money for such fittings be deemed for the purposes of subsection (3) of this section to be fittings let for hire by the Corporation.

(5) (a) The Corporation shall so adjust the charges to be made by them under this section as to meet any expenditure by them thereunder including interest upon any moneys borrowed for the purposes thereof and any sums carried to a sinking fund for repayment of moneys so borrowed.

(b) The total sums expended and received by the Corporation in connection with the purposes of this section in each year including interest and any sums carried to a sinking fund shall be separately shown in the abstract of accounts of the Corporation for that year.

(6) If any person wilfully or negligently injures or suffers to be injured any fittings belonging to the Corporation he shall be liable to a penalty not exceeding five pounds and the Corporation may do all such work as is necessary for repairing any injury done and may recover the expenses reasonably incurred by them in so doing from the offender and if the amount does not exceed twenty pounds summarily as a civil debt.

13.—(1) The Corporation may from time to time prescribe a scale of charges (in this section called "heating charges") for heat supplied to premises under the powers of this Act and where heat is so supplied to any premises the heating charges in accordance with the scale shall be payable by the occupier of those premises except in any case where the owner has agreed to pay the same in which case they shall be payable by the owner.

Collection and recovery of heating charges.

(2) The heating charges payable by any person may after a demand therefor be recovered from him by the Corporation either as a simple contract debt in any court of competent jurisdiction or if the amount does not exceed twenty pounds summarily as a civil debt.

14.—(1) Subject to the provisions of this section any authorised officer of the Corporation shall on producing if so required some duly authenticated document showing his authority have a right to enter any premises in the city at all reasonable hours for the purpose of—

Power to enter premises.

(a) inspecting and examining any fittings whether belonging to the Corporation or not;

(b) ascertaining whether there is or has been on or in connection with the premises any contravention of the provisions of this Part of this Act;

PART II.  
—cont.

- (c) ascertaining whether or not circumstances exist which would authorise the Corporation to take any action or execute any work under this Part of this Act;
- (d) taking any action or executing any work authorised or required by this Part of this Act to be taken or executed by the Corporation:

Provided that admission to any premises not being a factory workshop or workplace shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier:

Provided also that nothing in this section shall authorise any officer of the Corporation without the previous consent in writing of the authority or the board (as the case may be) to enter any premises occupied or used by the authority or the board in connection with the generation or supply of electricity other than offices or showrooms.

(2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

- (a) that admission to any premises has been refused or that refusal is apprehended or that the premises are unoccupied or that the occupier is temporarily absent or that the case is one of urgency or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for any such purpose as aforesaid;

the justice may by warrant under his hand authorise the Corporation by any authorised officer to enter the premises if need be by force:

Provided that such a warrant shall not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier or that the premises are unoccupied or that the occupier is temporarily absent or that the case is one of urgency or that the giving of such notice would defeat the object of the entry.

(3) An authorised officer entering any premises by virtue of this section or of a warrant issued thereunder may take with him such other persons as may be necessary and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them.

(4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.

(5) If any person who in compliance with the provisions of this section or of a warrant issued thereunder is admitted into a factory or workplace discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret he shall unless such disclosure was made in the performance of his duty be liable to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding three months.

PART II.  
—cont.

15.—(1) If any person either—

- (a) wilfully and without the consent of the Corporation;  
or
- (b) negligently;

Interference  
with  
apparatus  
&c.

turns on opens closes shuts off or otherwise interferes with any valve cock or other work or apparatus belonging to the Corporation and thereby improperly causes the supply of heat or hot water or steam to be interfered with he shall be liable to a penalty not exceeding five pounds and (whether proceedings be taken against him in respect of his offence or not) the Corporation may recover from him the amount of any damage sustained by them either as a simple contract debt in any court of competent jurisdiction or if the amount does not exceed twenty pounds summarily as a civil debt.

(2) If any person wrongfully takes uses or diverts any heat or hot water or steam from any apparatus provided for the purposes of this Part of this Act he shall (without prejudice to any other right or remedy of the Corporation) be liable to a penalty not exceeding five pounds.

16.—(1) The Corporation may make byelaws for preventing the waste misuse or contamination of or interference with the circulation of hot water or steam used by them in connection with the supply and use of heat under this Part of this Act or for preventing the waste or undue consumption of heat supplied under this Part of this Act.

Byelaws for  
protection of  
heating  
undertaking.

(2) Byelaws under this section may include provisions—

- (a) prescribing the size nature materials strength and workmanship and the mode of arrangement connection disconnection insulation alteration and repair of the water fittings to be used; and
- (b) forbidding the use of any water fittings which are of such a nature or are so arranged or connected as to cause or permit or be likely to cause or permit—
  - (i) waste misuse or contamination of or interference with the circulation of hot water or steam;
  - (ii) reverberation in pipes; or
  - (iii) waste or undue consumption of heat.

PART II.  
—cont.

(3) If any person contravenes the provisions of any byelaw made under this section the Corporation may without prejudice to their right to take proceedings for a penalty in respect of such contravention cause any water fittings belonging to or used by that person which are not in accordance with the requirements of the byelaws of the Corporation to be altered repaired or replaced and may recover the expenses reasonably incurred by them in so doing from the person in default either as a simple contract debt in any court of competent jurisdiction or if the amount does not exceed twenty pounds summarily as a civil debt.

(4) Nothing in this section or in any byelaw made thereunder shall apply to any fittings used on premises which belong to the commission and are held or used by them for the purposes of their railway so long as those fittings are not of such a nature or so arranged or connected as to cause or permit or be likely to cause or permit—

- (a) waste misuse or contamination of or interference with the circulation of hot water or steam;
- (b) reverberation in pipes; or
- (c) waste or undue consumption of heat:

Provided that the exemption conferred by this subsection shall not extend to fittings used in hotels or dwelling-houses or in offices not forming part of a railway station.

(5) In this section the expression "water fittings" includes air-heaters water-heaters mains pipes taps cocks valves ferrules and other works used in connection with the supply or use of heat by means of hot water or steam.

Financial  
provisions.

17. For the purposes of section 62 (Revenue and expenses of Corporation undertakings) and section 63 (Accounts) of the Act of 1929 the heating undertaking shall be one of the Corporation undertakings.

Heating under-  
taking to be a  
statutory under-  
taking under  
Town and  
Country  
Planning Acts.  
10 & 11 Geo. 6.  
c. 41.

18. The provisions of the Town and Country Planning Acts 1944 and 1947 shall where applicable apply to the heating undertaking as if that undertaking were a statutory undertaking and as if the Minister of Health were the "appropriate Minister" within the meaning of section 119 of the Town and Country Planning Act 1947.

Reports and  
returns with  
respect to  
heating  
undertaking  
and supply of  
heat.

19.—(1) The Corporation shall give to the authority and the board such reports and returns and such information with respect to the heating undertaking as the authority or the board may reasonably require and the authority shall give to the Corporation such reports and returns and such

information with respect to any supply by them of heat by means of hot water or steam as the Corporation may reasonably require.

PART II.  
—cont.

(2) Any dispute between the Corporation on the one hand and the authority or the board on the other hand as to whether any reports returns or information are reasonably required by the authority or the board or the Corporation (as the case may be) shall be determined by the Minister of Fuel and Power.

20. For the protection of the authority and the board (each of whom is in this section referred to as "the electricity board") the following provisions shall unless otherwise agreed in writing between the Corporation and the electricity board apply and have effect:—

For protection  
of electricity  
boards.

(1) In this section—

the expression "apparatus" means any electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to the electricity board;

the expression "authorised work" means any main service pipe conduit duct or other work laid down placed or executed by the Corporation for the purpose of the heating undertaking in the exercise of the powers of this Part of this Act or any Act incorporated therewith:

(2) Where the Corporation require to dig or sink any trench for laying down placing or constructing any authorised work near to which any apparatus has been lawfully placed the Corporation shall give to the electricity board to whom such apparatus belongs notice in writing of such requirement together with plans sections and particulars of the authorised work to be laid in such trench and if it should appear to the electricity board that the laying down placing or construction of such authorised work would injure interfere with or endanger any apparatus or interfere with the access thereto or impede the supply of electricity by means thereof the electricity board may within fourteen days from the receipt of such notice give to the Corporation notice in writing requiring them to alter the position or depth of such apparatus in such manner as may be reasonably necessary for avoiding any such injury interference danger or impediment and any difference as to the necessity for such alteration or the manner of carrying out the alteration shall be determined by arbitration as hereinafter provided All such alterations

PART II.  
—cont.

shall (save as in this section provided) be carried out by and at the expense of the Corporation with as little detriment and inconvenience to the electricity board as the circumstances will admit and to the reasonable satisfaction of the engineer of the electricity board and under his superintendence unless after receiving not less than three days' notice for that purpose (which notice the Corporation are hereby required to give except in cases of emergency) he refuses or neglects to give such superintendence at the time specified in the notice for the commencement of such work or discontinues the same during the laying down placing or construction of such work:

- (3) The Corporation in laying down placing or constructing any authorised work shall not interfere with the access to any apparatus to any greater extent than is necessary for the purpose of or in connection with the carrying out of that work and shall not remove or displace any apparatus or do anything to endanger any apparatus or impede the passage of electricity into or through any apparatus without the consent (which shall not be unreasonably refused) of the electricity board or in any other manner than the electricity board shall reasonably approve nor in the case of apparatus proposed to be removed or displaced until good and sufficient apparatus and other works reasonably necessary or proper for continuing the supply of electricity as the same was supplied by the apparatus proposed to be removed or displaced shall at the expense of the Corporation have been first made and laid down in lieu thereof and be ready for use to the reasonable satisfaction of the engineer of the electricity board:
- (4) If the electricity board shall desire to alter the position or depth of any apparatus under subsection (2) of this section or to provide any substituted apparatus referred to in subsection (3) thereof and shall within the period of fourteen days referred to in subsection (2) of this section give not less than seven days' notice in writing thereof to the Corporation the electricity board may themselves carry out any of the said works and shall commence execute and complete the same with all reasonable dispatch and to the reasonable satisfaction of the Corporation and all reasonable expenses properly incurred by them under this subsection shall be repaid to them by the Corporation:



(5) The reasonable expense of all repairs or renewals of—

(i) any apparatus existing at the time of the laying down placing or construction of the authorised work; or

(ii) any apparatus substituted for such existing apparatus or any part thereof and being of reasonably similar size and type;

which may at any time hereafter be rendered reasonably necessary by reason of—

(a) the acts or defaults of the Corporation their contractors agents workmen or servants or any person in the employ of them or any of them in the exercise of the powers of this Part of this Act; or

(b) any subsidence resulting from the laying down placing construction or removal of any authorised work whether during the laying down placing construction or removal of the authorised work or at any time within two years thereafter: shall be borne and paid by the Corporation:

(6) The Corporation in laying down placing constructing or removing any authorised work shall make good all damage done by them to any apparatus and shall make compensation to the electricity board for any loss damage costs or expenses which they may sustain by reason of any interference with such apparatus or the access thereto or with the private service or supply lines of any person supplied by the electricity board with electricity:

(7) If any difference shall arise between the Corporation and the electricity board or their respective engineers with respect to any matter under this section the matter in difference shall be referred to a single arbitrator to be agreed upon between the parties or failing agreement to be appointed by the President of the Institution of Civil Engineers and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to the arbitration:

(8) In settling any difference under this section the arbitrator shall have regard to any duties or obligations which the electricity board may be under in respect of their apparatus and any duties or obligations which the Corporation may be under in respect of the authorised work and may if he thinks fit require the Corporation to execute any temporary or other

PART II.  
—cont.

works so as to avoid as far as may be reasonably possible interference with any purpose for which the apparatus is used.

For protection  
of certain  
water  
undertakers.

21. For the protection of the East Worcestershire Waterworks Company the South Staffordshire Waterworks Company and the Stourbridge and District Water Board (each of whom is in this section referred to as "the water undertakers") the following provisions shall unless otherwise agreed in writing between the Corporation and the water undertakers apply and have effect:—

- (1) Where the Corporation in exercise of the powers contained in this Part of this Act require to execute any work near to which any main pipe or apparatus belonging to the water undertakers has been lawfully placed the Corporation shall except in a case of emergency give to the water undertakers not less than three days' notice before commencing to execute such work and the water undertakers shall be entitled by their engineer to superintend the work and the Corporation shall conform with such reasonable requirements as may be made by the water undertakers for protecting from injury every such main pipe or apparatus and for securing access thereto and shall also if required so to do by the water undertakers repair any damage that may be done thereto:
- (2) Where the Corporation find it necessary to undermine but not to alter the position of any main pipe or apparatus belonging to the water undertakers they shall temporarily support it in position during the execution of their works and before completion provide a suitable and proper foundation for the same where so undermined:
- (3) If as a result of the execution of any work by the Corporation in exercise of the powers contained in this Part of this Act any damage is done to any main pipe or apparatus belonging to the water undertakers the water undertakers may if they so elect repair such damage and the Corporation shall repay to the water undertakers the cost reasonably incurred by them in so doing:
- (4) Nothing in paragraphs (1) and (2) of this section shall apply to a pipe for supplying heat by means of hot water or steam from a main to any premises:
- (5) If any difference shall arise between the Corporation and the water undertakers or their respective

engineers with respect to any matter under this section (other than a difference as to the construction of this section) the matter in difference shall be referred to a single arbitrator to be agreed upon between the parties or failing agreement appointed on the application of any party (after notice in writing to the other of them) by the President of the Institution of Civil Engineers and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to the arbitration.

PART II.  
—cont.

22. Nothing in this Part of this Act shall exonerate the Corporation from any indictment action or other proceedings for nuisance in the event of any nuisance being caused or permitted by them.

Corporation  
not to be  
exempted  
from  
proceedings  
for nuisance.

### PART III.

#### STREETS BUILDINGS SEWERS AND DRAINS.

23.—(1) It shall be lawful for the Corporation—

As to barriers  
&c. in streets.

- (a) at all times of ceremonies public processions rejoicings fairs exhibitions carnivals races sports or illuminations or in emergencies to cause barricades to be erected in or across any of the streets of the city; and
- (b) at all times of ceremonies public processions rejoicings fairs exhibitions carnivals races sports or illuminations to cause flagpoles and pylons to be erected in any of such streets for the purpose of displaying decorations;

and to continue the same for such time as may be deemed reasonably necessary and any person who wilfully removes damages or interferes with any such barricade flagpole pylon or decorations or any part thereof shall be liable to a penalty not exceeding two pounds.

(2) For the purpose of the erection of such barricades flagpoles and pylons the Corporation may construct or place and maintain in and under the surface of the streets of the city such sockets or slots as may in their opinion be necessary or convenient.

(3) The Corporation shall not exercise the powers of this section in such manner as to cause obstruction to or interference with the access to or exit from any station wharf or depot of the commission except with the consent of the commission but such consent shall not be unreasonably withheld and any question whether any such consent is or is not unreasonably withheld shall be referred to and determined by the Minister of Transport.

## PART III.

—cont.

Power to place  
fences near  
school  
entrances &c.38 & 39 Vict.  
c. 55.

24. For the purpose of preventing danger to pedestrians from traffic the Corporation may as respects roads (not being highways repairable by the inhabitants at large) adjacent to the entrances to or exits from any schools Sunday schools public baths public parks public halls recreation grounds playing fields alley-ways and passageways exercise the like powers of placing fences rails and posts on the sides of any footways or carriageways of such roads as under section 149 (Vesting of streets &c. in urban authority) of the Public Health Act 1875 are exerciseable by them as respects roads so repairable and the Corporation may from time to time repair renew maintain or remove any fences rails or posts so placed by them.

Planting of  
trees in  
private streets.

25. The Corporation when carrying out any private street works in any street may with the consent in writing of a majority in number and rateable value of the owners of houses and land in such street cause trees or shrubs to be planted and grass margins to be laid out in such street and erect guards or fences and otherwise do everything expedient for the protection of such trees shrubs and grass margins and any expense incurred by the Corporation under this section shall be deemed part of the expenses of carrying out the private street works in any such street:

Provided that—

- (1) no such tree shrub grass margin guard or fence shall be placed or laid out in such a situation as to hinder the reasonable use of the highway by any person entitled to the use thereof or so as to be a nuisance or injurious to the owner or occupier of any land or premises adjacent to the said street;
- (2) for the purposes of section 7 (Provision as to work which involves alteration in telegraphic line) of the Telegraph Act 1878 any work done in exercise of the powers conferred by this section shall be deemed to be work done in the execution of an undertaking authorised by an Act of Parliament and the Corporation shall be deemed to be the undertakers.

Deposit in  
respect of  
private street  
works  
expenses.

26.—(1) If the owner of any land in the city fronting adjoining or abutting on a street which is not a highway repairable by the inhabitants at large agrees to sell such land or any part thereof upon terms which include a provision to the effect that he shall pay or procure the payment of such expenses of any private street works executed or to be executed by the Corporation as may be apportioned against the land agreed to be sold he shall before the completion of the conveyance of such land deposit with the Corporation or

otherwise secure to the satisfaction of the Corporation the payment of such sum as will in the opinion of the Corporation be sufficient to pay the amount of the expenses apportioned or to be apportioned against the land agreed to be sold so far as such expenses have not previously been paid to the Corporation.

(2) For the purpose of this section the expression "sell" shall include the granting or assigning of a lease for an unexpired term of not less than fifty years in consideration of a premium and the transfer of the benefit of an agreement to grant such a lease and the expression "conveyance" shall be construed accordingly.

(3) Any person who shall contravene the provisions of this section shall be liable to a penalty not exceeding twenty pounds or in the case of a second or subsequent contravention one hundred pounds.

27.—(1) After the passing of this Act no part of any building (including the foundations) shall except with the consent of the Corporation be constructed so as to extend under the footway of any street in the city at a less depth than six feet below the surface of such footway. Restriction on buildings under footways.

(2) Any person who shall contravene the provisions of this section shall be liable to a penalty not exceeding twenty pounds and to a daily penalty not exceeding two pounds.

(3) Nothing contained in this section shall extend or apply to any building (not being a house or a building used as offices) railway or work belonging to or used by the commission in the exercise of their statutory powers so long as any such building railway or work is used or held by the commission for the purposes of their undertaking.

28. If any tree fence wall or structure or any part thereof shall fall on or across any street in the city the Corporation may remove the same and recover the reasonable cost of so doing from the owner thereof. Removal of trees &c. from streets.

29.—(1) The Corporation may remove and store any furniture articles goods or materials which may have been placed or dropped (whether accidentally or otherwise) in or upon any street in the city and which— Removal of furniture from streets.

(a) may have remained there for more than forty-eight hours; or

(b) are likely to cause an obstruction;

and the Corporation shall not be liable for any loss or damage caused by such removal or storage.

PART III.  
—cont.

(2) If the Corporation remove any furniture articles goods or materials under the powers of this section—

- (a) they shall if and as soon as it is reasonably practicable so to do notify the person whom they believe to be the owner thereof; and
- (b) they shall not exercise any power to sell any such furniture articles goods or materials whether under section 276 (Power of local authority to sell certain materials) of the Act of 1936 or otherwise until after the expiration of fourteen days from the date of such notification or three months from the day on which they removed the furniture articles goods or materials whichever shall first occur.

Mixing of  
mortar  
in streets.

30.—(1) No person shall mix mortar or any like substance in any street repairable by the inhabitants at large in the city except upon such board or in such receptacle as will protect the street from such mortar or substance:

Provided that this section shall not apply to the mixing in any street of mortar or like substance for the purposes of making up repairing altering or improving such street.

(2) Any person who shall contravene the provisions of this section shall be liable to a penalty not exceeding two pounds.

Fencing of  
forecourts.

31.—(1) In any case in which the forecourt of any premises adjoining a street or any steps or projection placed in any such forecourt or any goods placed therein whether for sale or not is or are a source of danger obstruction or inconvenience to the public the Corporation may require the owner of the premises well and sufficiently to fence such forecourt from the street.

(2) Any person who shall fail to comply with any requirement under this section shall be liable to a penalty not exceeding two pounds and to a daily penalty not exceeding one pound.

As to defective  
premises.

32.—(1) Where the Corporation are satisfied that—

- (a) any dwelling-house in the city is in such a state (in this section referred to as a "defective state") as
  - to be prejudicial to health or a nuisance; and
- (b) having regard to all the circumstances unreasonable delay in remedying the defective state would be occasioned by following in relation to that dwelling-house the procedure prescribed by sections 93 to 95 of the Act of 1936;

the Corporation may (instead of serving an abatement notice as required by section 93 of the Act of 1936) serve upon the

person upon whom it would otherwise have been appropriate under the said section 93 to serve such an abatement notice a notice to the effect that the Corporation intend to remedy the defective state of the dwelling-house themselves and specifying the defects which they intend to remedy.

(2) Not later than the end of the seventh day after the Corporation have served a notice under subsection (1) of this section the person upon whom such notice was served may serve a counter-notice upon the Corporation stating that he intends to remedy the defective state of the dwelling-house and if such person having duly served such counter-notice commences within such time thereafter as the Corporation consider reasonable to execute such works and take such steps as may be necessary to remedy such defective state and so long as he progresses to the satisfaction of the Corporation with the execution of such works and the taking of such steps the Corporation shall not take action under subsection (3) of this section in respect of such dwelling-house.

(3) At any time after the expiration of nine days after the service of a notice under subsection (1) of this section and subject to the provisions of subsection (2) of this section the Corporation may execute such works and take such steps as may be necessary to remedy the defective state of the dwelling-house to which such notice relates and subject to the provisions of subsection (4) of this section may recover the expenses reasonably incurred by them in so doing from the person upon whom the notice was served.

(4) (a) In proceedings to recover expenses under subsection (3) of this section the court shall have power to remit the whole or any part of such expenses if the court is satisfied that—

- (i) the alleged defective state did not exist at the time of the service of the notice; or
- (ii) the need to abate the defective state was not so urgent as to justify the Corporation themselves executing such works and taking such steps without first complying with the provisions of section 93 and section 94 of the Act of 1936; or
- (iii) the person upon whom the notice was served having duly served a counter-notice under subsection (2) of this section commenced within a reasonable time and progressed reasonably with the execution of such works and the taking of such steps as were necessary to remedy the defective state of the dwelling-house.

(b) A person against whom proceedings are taken under subsection (3) of this section shall upon information duly laid

PART III.  
—cont.

by him and on giving to the Corporation not less than three clear days' notice of his intention be entitled to have any person to whose act default or sufferance he alleges that the defective state of the dwelling-house was due brought before the court in the proceedings and if the original defendant proves that the defective state of the dwelling-house arose or continued by the act default or sufferance of that other person the court shall have power—

- (i) to order that such expenses as aforesaid may be recovered from that other person; or
- (ii) to apportion the expenses between persons by whose acts defaults or sufferances the defective state of the dwelling-house arose or continued in such manner as the court may deem fair and reasonable.

(5) The Corporation may if they think fit exercise the powers of this section in relation to such defects in a dwelling-house as may be specified in the notice notwithstanding the fact that other defects may exist in that dwelling-house and in that case nothing contained in this section or done or executed thereunder shall prejudice or affect the powers of the Corporation under sections 93 to 98 and section 100 of the Act of 1936 in relation to any such other defect in that dwelling-house.

Further provisions as to byelaws.

33.—(1) The matters with respect to which the Corporation may make byelaws under the provisions of section 61 (Byelaws as to buildings and sanitation) of the Act of 1936 shall include the provision of a bathroom containing a fixed bath and of apparatus fittings and pipes for supplying hot and cold water thereto in each new house of such classes as may be prescribed in the byelaws.

(2) Section 30 (Further provisions as to byelaws) of the Act of 1929 is hereby repealed but nothing in this repeal shall affect any byelaw in force at the passing of this Act.

Apportionment of expenses of sewer constructed under public highway.

34.—(1) Where the Corporation resolve to construct a sewer in a street or part of a street repairable by the inhabitants at large which has not been previously sewered and the resolution states that the construction of the sewer will in the opinion of the Corporation increase the value of premises fronting adjoining or abutting on such street or part of a street then subject to the provisions of section 36 (Provisions applicable to last two preceding sections) of this Act the expenses incurred by the Corporation in constructing the sewer so far as they do not exceed the sum authorised by the said section shall be apportioned by the Corporation on the premises fronting



adjoining or abutting on the street or part of a street according to the frontages of the respective premises as existing at the date when the resolution becomes operative.

(2) A resolution under this section shall not become operative unless and until notice thereof has been published twice in a local newspaper circulating in the city but shall become operative as from the date of the second of such publications.

Copies of newspapers containing the notice shall be sufficient evidence of the publication thereof.

(3) Nothing in this section shall authorise the apportionment of any sum on any land in contravention of any agreement between the Corporation and the owner of the land.

35.—(1) Where the Corporation have incurred expenses in constructing after the passing of this Act a length of sewer in land and that land has subsequently become a street (whether repairable by the inhabitants at large or not) then subject to the provisions of the next succeeding section the expenses so incurred so far as they do not exceed the sum authorised by that section shall be apportioned by the Corporation on the premises fronting adjoining or abutting on the street according to the frontages of the respective premises.

Apportionment of expenses of sewer before land became a street.

(2) Where on the construction of the length of sewer compensation became due to the owner of any land in which the length of sewer was constructed in respect of the damage he sustained by reason of such construction and any sum was set off against such compensation on account of the value of the land belonging to such owner having been enhanced by the construction of the length of sewer this section shall not apply to the length of sewer or to such part thereof as was constructed in such land as aforesaid.

(3) Nothing in this section shall authorise the apportionment of any sum on any land in contravention of any agreement between the Corporation and the owner of the land.

36.—(1) The sum apportionable under either of the two last preceding sections shall not exceed the sum certified by the surveyor to be at the time the average cost per lineal yard of providing a sewer having an internal diameter of nine inches in a private street in the city multiplied by the extent in lineal yards (as so certified) of the sewer or length of sewer in question.

Provisions applicable to last two preceding sections.

(2) As soon as the apportionment has been made the Corporation shall serve on the owners of the several premises

PART III.  
—cont.

affected notice of the sums respectively apportioned to them and the notice shall state the right of appeal hereinafter conferred.

(3) Any owner on whose premises any sum has been apportioned shall be entitled within fourteen days of the service upon him of such notice as aforesaid to appeal to a court of summary jurisdiction against the amount of the sum so apportioned and may on such appeal dispute the correctness of the surveyor's certificate.

If the court finds that the certificate of the surveyor is erroneous the court shall order the revision of the sums apportioned not only to the appellant but also to the owners of the other premises affected.

(4) Whenever a new building (other than a building not requiring a foul water drainage system) is erected on any premises fronting adjoining or abutting on the street or part of the street after the date when the resolution became operative or the street was laid out (as the case may be) the sum apportioned on those premises shall be recoverable to an extent proportional to the frontage on the street or part of the street of the site of and the land occupied with the new building:

Provided that where the drains of such new building are at the time of its erection made to connect with a sewer other than the sewer the expenses of the construction of which are apportioned no sum shall be recoverable in respect of the building unless and until the drains thereof are connected with the last-mentioned sewer.

For the purposes of this subsection—

(a) a building shall be deemed to be a new building erected after the date in question unless the erection of the building was completed before that date;

(b) the erection of a new building shall be deemed to include—

(i) the re-erection wholly or partially of any building of which an outer wall is pulled down otherwise than in consequence of fire or other accident to such a distance that the part of that wall remaining (if any) is less than half the previous height of the building the height being measured from the ground level to the highest point of the building;

(ii) the conversion into a dwelling-house of any building not originally constructed for human habitation;

(iii) the conversion of any premises into a factory workshop shop or place of public resort;

(iv) any extension by reason whereof the area occupied by the site of the building will with any previous extension made since the date when the resolution became operative or the street was laid out (as the case may be) be increased by an area equal to more than one-eighth or in the case of a building constructed for agricultural purposes one-quarter of that occupied by the site of the building before that date.

(5) The sum apportioned on any premises shall notwithstanding that no part thereof is immediately recoverable be treated as a local land charge for the purposes of the Land Charges Act 1925 and where part thereof has become recoverable the balance shall be so treated. 15 & 16 Geo. 5.  
c. 22.

(6) No interest shall be chargeable on any apportioned sum or any part thereof until it becomes recoverable.

(7) Where such a resolution as is mentioned in section 34 (Apportionment of expenses of sewer constructed under public highway) of this Act has been passed but the construction of the sewer to which it relates has not been completed within two years from the date when the resolution became operative all liabilities of frontagers consequent thereon shall cease.

(8) If any person from whom an apportioned sum or any part thereof becomes recoverable proves that by reason of the length of frontage of the land occupied with the building in respect of which the sum so recoverable is payable the amount recoverable is disproportionate to the benefit accruing to the premises the Corporation or on appeal a court of summary jurisdiction may remit such part of that sum as they may think just but in such case if another new building is subsequently erected on the land occupied with the first-mentioned building the sum remitted or such part thereof as is proportional to the frontage of the site of and land occupied with that other building shall become recoverable.

(9) Where under this section any sum becomes recoverable in respect of any premises that sum together with interest from the date of service of a demand therefor may be recovered either as a simple contract debt in any court of competent jurisdiction or if the amount does not exceed twenty pounds summarily as a civil debt by the Corporation from the person who is the owner of the premises at the date when a demand for payment is served and as from that date that sum and interest accrued due thereon shall until recovered be a charge on the premises and on all estates and interests therein.

## PART III.

—cont.

As to evasion  
by owners of  
sewerage  
expenses.

37. If on a complaint by the Corporation to a court of summary jurisdiction it is proved to the satisfaction of the court—

- (a) that the owner of any land has conveyed sold leased or otherwise disposed of a portion of the land; and
- (b) that by reason of such disposition any part of the land has ceased to be or has not become land fronting adjoining or abutting on a street within the meaning of section 34 (Apportionment of expenses of sewer constructed under public highway) of this Act or as the case may be of section 35 (Apportionment of expenses of sewer before land became a street) of this Act; and
- (c) that the disposal of such portion of the land was effected with the intention and for the purpose of the evasion of the payment of expenses under the said sections of this Act;

then the court shall order that such expenses shall be apportioned on the land which immediately before the date of such conveyance sale lease or disposal included the land so conveyed sold leased or disposed of and thereafter such expenses may be recovered from the owner of any part of that land on which a new building within the meaning of the last preceding section is erected and shall be a charge on any such part of that land and on all estates and interests therein to the same extent and in the same manner as any sum apportioned under either of the said sections 34 and 35 of this Act may be recovered and is charged on the premises under the last preceding section.

38.—(1) Where after the passing of this Act any person shall—

- (a) reconstruct any drain which communicates with any sewer or other drain;
- (b) lay such drain in a new position; or
- (c) on the occasion of the execution of any works to or in connection with such drain permanently discontinue the use of such drain;

such person shall cause any drain or portion of drain thereby rendered unnecessary to be cut off and sealed at each end of the drain or portion of drain so discontinued or rendered unnecessary.

(2) Any person who knowingly contravenes the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding one pound.

Abandoned  
drains to be  
filled up.

39. The Corporation at the request in writing of the owner or occupier of any premises may undertake the cleansing of any water-closets drains sinks or gullies in or connected with such premises for such remuneration as may be determined by the Corporation and the amount thereof shall be recoverable from the person by or on behalf of whom the request is made.

PART III.  
—cont.  
Cleansing of  
sinks and  
gullies.

40. For the protection of the authority and the board (each of whom is in this section referred to as "the electricity board") the following provisions shall notwithstanding anything in this Act and unless otherwise agreed in writing between the Corporation and the electricity board apply and have effect:—

For protection  
of electricity  
boards.

(1) In this section the expression "apparatus" means all or any electric lines and works as respectively defined in the Electric Lighting Act 1882:

(2) The Corporation shall not exercise any of the powers of the following sections of this Act:—

Section 23 (As to barriers &c. in streets);

Section 24 (Power to place fences near school entrances &c.);

Section 25 (Planting of trees in private streets); so as to cause damage to or obstruct or render unreasonably inconvenient the access to any apparatus of the electricity board:

(3) Nothing in section 27 (Restriction on buildings under footways) of this Act shall apply to any apparatus of the electricity board.

41. The provisions of the last preceding section shall apply to any authority now or hereafter authorised under any enactment to supply gas in the city as though—

For protection  
of gas  
authority.

(1) a reference to such authority were substituted for any reference to the authority and the board;

(2) any reference to apparatus included a reference to any main pipe service pipe or other underground apparatus laid down by such authority in the performance of its statutory functions; and

(3) for any reference to electricity there were substituted a reference to gas.

PART IV.

FOOD AND SANITARY MATTERS.

42.—(1) As from the commencement of this section the following provisions shall have effect in the city:—

Registration  
of hawkers of  
food and their  
premises.

(a) No person other than a person keeping open shop for the sale of food shall either by himself or by any person employed by him sell offer or expose for sale

PART IV.  
—cont.

any food from any cart barrow or other vehicle or from any basket pail tray or other receptacle unless he is registered with the Corporation;

- (b) No premises shall be used as storage accommodation for any food intended for sale from a cart barrow or other vehicle or from a basket pail tray or other receptacle unless the premises are registered as aforesaid.

(2) An application for a person to be registered under this section shall be made by himself and an application for premises to be so registered shall be made by the owner or occupier or intending owner or occupier thereof.

(3) Any person who contravenes the provisions of this section shall be liable to a penalty not exceeding two pounds and to a daily penalty not exceeding one pound.

(4) (a) The Corporation may refuse to register any person or premises under this section or (after giving one month's notice to the person registered or in whose name the premises are registered) may revoke the registration of any person or premises under this section if they are satisfied (i) as regards a person that the public health is or is likely to be endangered by any act or default of his in relation to the quality storage or distribution of food or (ii) as regards premises that the premises are not suitable to be used for the purposes aforesaid:

Provided that before refusing or revoking such registration the Corporation shall serve upon the person applying for registration or upon the person registered or in whose name such premises are registered a notice to appear before a committee of the council not less than seven days after the date of the notice to show cause why the Corporation should not for reasons to be specified in the notice refuse to register or revoke the registration of the person or premises. Any such notice shall state the effect of paragraphs (b) and (c) of this subsection.

(b) If the Corporation refuse to register or revoke the registration of any such person or premises they shall if required by the person applying for such registration or the person registered or in whose name the premises are registered deliver to him within seven days of the receipt of such requirement a statement in writing of the ground or grounds upon which such refusal or revocation is based.

(c) Any person appealing to a court of summary jurisdiction under section 60 (As to appeals) of this Act against any such refusal or revocation shall do so within fourteen days from the date of the notice of such refusal or revocation.

(5) The medical officer the sanitary inspector or any other officer of the Corporation appointed for the purpose shall have power at all reasonable times to enter and inspect any premises in the city in respect of which an application has been received for registration under the provisions of this section and also any premises which he shall have reason to believe are being used as storage accommodation for food intended for sale from a cart barrow or other vehicle or from a basket pail tray or other receptacle.

(6) The Corporation shall keep a register of the persons and premises registered under the provisions of this section.

(7) The provisions of this section shall not apply to any premises registered under section 14 (Registration of premises used in connection with the manufacture or sale of ice-cream or preserved food &c.) of the Food and Drugs Act 1938 or to any dairy or dairyman registered under Part II (Provisions as to milk dairies and artificial cream) of that Act or under any regulations made thereunder or made under an enactment thereby repealed.

(8) The provisions of this section shall not apply to any premises used as a theatre cinematograph theatre music hall or concert hall or to any person in respect of the sale or offer or exposure for sale of any food in any such premises.

(9) In this section the expression " food " does not include any substance contained in a container of such materials and so closed as to exclude all risk of contamination.

(10) (a) The foregoing provisions of this section shall come into operation on but not until such date as may be fixed by a resolution of the council of which date public notice shall be given by the Corporation by advertisement in one or more local newspapers circulating in the city.

Every such advertisement shall also state the effect of the said provisions and the date specified therein as the date on which such provisions shall come into operation shall not be less than one month after the date of the first publication of the advertisement:

Provided that the application for the registration required by subsection (1) of this section may be made and determined before the said provisions come into operation.

(b) A copy of a newspaper containing such advertisement shall be sufficient evidence of the publication of the advertisement.

(c) It shall be lawful for any person required to be registered under subsection (1) of this section who when the provisions of this section come into operation—

(i) is carrying on any business or using any premises for any purpose aforesaid; and

PART IV.  
—cont.

- (ii) has made application in accordance with the provisions of this Act for such registration as is required by this section;

to continue to carry on such business and to use such premises for such purpose until such time as he has been informed of the decision with regard to his application and if the decision is adverse during such further time as is provided under subsection (6) of section 60 (As to appeals) of this Act.

Byelaws as to  
meat for  
feeding  
animals.

43.—(1) The Corporation may make byelaws—

- (a) for requiring the sterilisation in such manner as may be prescribed by the byelaws of animal feeding meat exposed or offered for sale for consumption by dogs cats or other animals;
- (b) for prohibiting the sale or offer or exposure for sale of animal feeding meat for consumption by dogs cats or other animals unless such meat has been so sterilised;
- (c) for empowering any duly authorised officer of the Corporation to examine any animal feeding meat which is offered or exposed for sale for consumption by dogs cats or other animals and to seize and destroy or cause to be destroyed such animal feeding meat if it has not been so sterilised as aforesaid.

(2) In and for the purposes of this section the expression “animal feeding meat” means any flesh of cattle horses asses mules swine sheep or goats which is not sold or intended for sale for human consumption and includes any such flesh whether cooked or uncooked and whether alone or accompanied by or mixed with any other substance and the expression “flesh” includes any part of an animal.

Prohibition  
on sale of  
verminous  
articles.

44.—(1) No dealer shall sell or offer or expose for sale or deposit for the purpose of sale any furniture mattress bed-linen clothing or similar article (in this section called “article”) if the same is to his knowledge infested with bugs or other vermin or if by taking reasonable precautions he could have known the same to be so infested.

(2) If a dealer contravenes the provisions of this section he shall be liable to a penalty not exceeding five pounds and the Corporation upon a certificate of the medical officer or the sanitary inspector may remove any such verminous article and cause the same to be cleansed purified disinfected or destroyed as the case may require and may recover the cost of so doing from such dealer.

(3) (a) The medical officer and the sanitary inspector may enter any premises in which any article is sold or exposed



for sale for the purpose of examining whether there be any contravention of the provisions of this section or for the purpose of removing any verminous article.

(b) Every person who refuses to permit the medical officer or the sanitary inspector to enter any premises or make any inspection which he is authorised under the provisions of this section to enter or make or obstructs him in the execution of his duty under such provisions shall be liable to a penalty not exceeding five pounds.

(4) For the purposes of this section "dealer" means any person who trades or deals in any of the articles referred to in this section.

45.—(1) For the purpose of abating or mitigating any nuisance annoyance or damage caused in the city by house doves pigeons or starlings having or believed by the Corporation to have no owner or of preventing or minimising any such nuisance annoyance or damage which might in the opinion of the Corporation be so caused the Corporation may notwithstanding anything in the Larceny Act 1861 or in any other Act—

Nuisance from  
pigeons &c.

24 & 25 Vict.  
c. 96.

- (a) seize and humanely destroy or cause to be seized and humanely destroyed any such house doves pigeons or starlings in excess of such number as the Corporation consider reasonable;
- (b) sell or otherwise dispose of or cause to be sold or otherwise disposed of the carcasses of any such house doves pigeons or starlings; and
- (c) take such other steps as they think necessary for any such purpose:

Provided that the Corporation shall not in the exercise of the powers conferred by this section—

- (a) enter upon any premises (other than a public highway) without the consent of the occupier or the person having the exclusive control and management of the premises; or
  - (b) execute or do any work or thing affecting the structure of any building or the use of any land without the consent of the owner of the building or land.
- (2) Nothing in this section shall authorise the seizure or destruction of any wild bird in contravention of the provisions of the Wild Birds Protection Acts 1880 to 1939 or any order made thereunder.

46.—(1) No person shall instal in any building whether erected before or after the passing of this Act any furnace for steam raising or for any manufacturing or trade purpose unless such furnace is so far as practicable capable of being operated continuously without emitting smoke.

Prevention of  
smoke from  
industrial  
furnaces.

PART IV.  
—cont.

(2) Any person who contravenes the provisions of this section shall be liable to a penalty not exceeding ten pounds and any person who after conviction of an offence of installing a furnace in contravention of those provisions uses that furnace shall unless it has been amended so as to comply with those provisions be liable to a penalty not exceeding two pounds for each day on which he so uses the furnace.

(3) If a person before installing in a building a furnace to which this section applies submits to the Corporation plans proposals and particulars of the proposed furnace and furnishes them with such other necessary information in regard thereto as they may require the Corporation shall within a period of six weeks from the date upon which such plans proposals particulars and information are received by them serve a notice upon such person stating whether or not they are satisfied that the furnace is so far as practicable capable of being operated continuously without emitting smoke and if they are so satisfied or if they do not serve a notice upon such person before the expiration of the said period of six weeks no proceedings shall be taken against him under this section in respect of the installation of that furnace in accordance with the plans proposals particulars and information so submitted and furnished.

(4) Before serving a notice under this section stating that they are not satisfied that the furnace is so far as practicable capable of being operated continuously without emitting smoke the Corporation shall consult with the Minister of Fuel and Power.

(5) In determining for the purposes of this section whether a furnace is so far as practicable capable of being operated continuously without emitting smoke the Corporation or a court shall if either of the parties so desire have regard to cost and to local conditions and circumstances.

## PART V.

## FINANCE AND MISCELLANEOUS.

Power to  
borrow.

47.—(1) The Corporation shall have power in addition and without prejudice to their powers of borrowing under the Act of 1933 from time to time to borrow without the consent of any sanctioning authority the sum requisite for the payment of the costs charges and expenses of this Act and they shall pay off all moneys so borrowed within such period as the Corporation may determine not exceeding five years from the passing of this Act.

(2) The provisions of Part IX (Borrowing) of the Act of 1933 so far as they are not inconsistent with this Part of this Act shall extend and apply to money borrowed under this section as if it were borrowed under Part IX of that Act and the period fixed for the repayment of any money borrowed under this section shall as respects that money be the fixed period for the purpose of the said Part IX.

48. It shall not be lawful to exercise the powers of borrowing conferred by this Act otherwise than in compliance with the provisions of the Local Authorities Loans Act 1945.

As to exercise  
of borrowing  
powers.  
8 & 9 Geo. 6.  
c. 18.

49.—(1) The Corporation may if they think fit provide a reserve fund for the purposes of the water undertaking by setting aside out of the revenue of that undertaking such money as they think reasonable and investing the same in statutory securities until the fund so formed amounts to the maximum reserve fund for the time being prescribed by the Corporation not exceeding an amount equal to one-eighth of the capital expenditure theretofore incurred by the Corporation for the purposes of the water undertaking.

Water reserve  
fund.

(2) Any reserve fund which has been provided in respect of the water undertaking and which is in existence at the passing of this Act shall be carried to and form part of any reserve fund provided under this section.

(3) A reserve fund formed under this section shall be applicable to answer any deficiency at any time happening in the income of the Corporation from the water undertaking or to meet any extraordinary claim or demand at any time arising against the Corporation in respect thereof or for payment of the cost of renewing improving or extending any part of the works forming part thereof or otherwise for the benefit of the water undertaking and so that if that fund be at any time reduced it may thereafter be again restored to the prescribed maximum and so from time to time as often as such reduction happens.

(4) Resort may be had to the reserve fund although the fund may not at the time have reached or may have been reduced below the prescribed maximum.

(5) Section 194 (Accounts and application of water revenue) of the Act of 1883 shall have effect as if—

(a) in the paragraph commencing " Eighth " there were omitted all words after the words " In providing a reserve fund. " and there were substituted the words " In accordance with the provisions of section 49 (Water reserve fund) of the Birmingham Corporation Act 1948 " ;

PART V.  
—cont.

(b) in lieu of the words “ when amounting to fifty thousand pounds ” there were substituted the words “ when amounting to the maximum reserve fund for the time being prescribed by the Corporation.”

55 & 56 Vict.  
c. clxxiii.

(6) Section 71 (Power to increase reserve fund and to apply proceeds) of the Birmingham Corporation Water Act 1892 is hereby repealed.

(7) Section 62 (Revenue and expenses of Corporation undertakings) of the Act of 1929 shall have effect as if in paragraph (b) of subsection (1) after the words “ this Act ” there were inserted the words “ or the Birmingham Corporation Act 1948.”

Preservation  
of rural  
character of  
Elford Hall  
estate.

50.—(1) In this section “ the Elford Hall estate ” means the land and premises situate at and in the vicinity of Elford in the rural district of Lichfield which were conveyed to the Corporation by a deed of conveyance dated the twenty-ninth day of September nineteen hundred and thirty-six and made between Francis Edward Howard Paget of the one part and the Corporation of the other part.

(2) The Corporation shall so far as possible preserve the rural character which the Elford Hall estate possessed on the twenty-ninth day of September nineteen hundred and thirty-six and has possessed during its ownership and occupation by the said Francis Edward Howard Paget and his ancestors.

Exclusion of  
rule against  
perpetuities in  
certain cases.

51. The rule of law relating to perpetuities shall not apply to any right of pre-emption reserved to or by the Corporation in any property conveyed by them for a charitable or ecclesiastical purpose by an instrument coming into operation after the passing of this Act.

Amendment  
of definition  
in Part III of  
Act of 1940.  
3 & 4 Geo. 6.  
c. xix.

52. Part III (Officers' Widows' and Orphans' Pensions Scheme) of the Birmingham Corporation Act 1940 shall have effect as if in lieu of the following words (namely):—

“ the expressions ‘ period of the present emergency ’ and ‘ war service ’ have respectively the meanings assigned to those expressions in the Act of 1939 ”;

there were inserted the following words:—

“ the expression ‘ war service ’ has the meaning assigned to it in the Act of 1939 ”;

“ the expression ‘ period of the present emergency ’ means the period beginning with the first day of September nineteen hundred and thirty-nine and ending with the thirty-first day of December nineteen hundred and forty-six.”

53.—(1) The Corporation may establish and maintain an institute or institutes for the benefit of teachers and other persons employed in educational work in or in the neighbourhood of the city and may provide premises including conference rooms lecture rooms libraries theatres gymnasia club rooms and canteens.

(2) For the purposes aforesaid the Corporation may—

- (a) acquire buildings or acquire land and erect buildings thereon;
- (b) with the consent of the Minister adapt any premises or erect buildings on any land belonging to them but not already appropriated for such purposes;
- (c) make such charges as they think fit for the membership of such institute and for the use of such premises;
- (d) make regulations for the management of such institute; and
- (e) appoint and pay officers and servants to perform any services and remove such officers and servants.

54.—(1) The Corporation may provide research laboratories and—

Provision of  
research  
laboratories.

- (a) take such action as they may deem expedient for ascertaining the extent to which and the most efficient manner in which gas may be used for any purpose; and
- (b) make such tests and investigations as they may deem expedient of or with reference to materials and goods (whether finished or in process of manufacture) whether or not gas is used in connection with such materials or goods.

(2) The Corporation may provide showrooms and give demonstrations in reference to any of the matters referred to in subsection (1) of this section.

(3) The Corporation may from time to time resolve that any laboratory or any part thereof or any other thing provided by them under this section shall form part of the gas undertaking and the expenses incurred by the Corporation in connection with any laboratory or other thing which the Corporation so resolve to form part of the gas undertaking shall for the purposes of the paragraph commencing "First" of section 163 (Account and application by Corporation of gas revenue) of the Act of 1883 be deemed to be part of the working and establishment expenses of the gas undertaking.

(4) Section 56 (Provision of research laboratories) of the Birmingham Corporation Act 1946 is hereby repealed and any laboratory provided and action taken and tests and investigations made under that section shall be deemed to have been provided taken or made under this section.

9 & 10 Geo. 6.  
c. lii.

PART V.  
—*cont.*  
Further  
powers to  
improve  
rivers &c.  
4 & 5 Geo. 5.  
c. cvi.

**55.** The power conferred upon the Corporation by section 15 (Power to improve Rivers Rea and Cole Hockley Brook and Bourne Brook) of the Act of 1883 as extended by section 35 (Further provisions as to rivers) of the Birmingham Corporation Act 1914 to improve rivers streams brooks or water-courses within the city or forming the boundary thereof shall be deemed to include the power to alter restrict enlarge diminish lengthen shorten and straighten the bed and channel of any such river stream brook and watercourse and to shorten any bend and remove any angle in the course of such river stream brook or watercourse.

Byelaws as  
to pleasure  
fairs.

**56.**—(1) The Corporation may make byelaws—

- (a) for regulating the hours during which pleasure fairs may be open to the public;
- (b) for securing safe and adequate means of ingress to and egress from the ground upon which any pleasure fair is held;
- (c) for the prevention and suppression of nuisances and for preserving sanitary conditions cleanliness order and public safety at any pleasure fair.

(2) In this section the expression "pleasure fair" means any entertainment which is run for profit and which consists of or includes any or all of the following whether or not in combination with any other forms of entertainment that is to say any circus exhibition of human beings or performing animals merry-go-round roundabout switchback railway cocoanut shy hoop-la shooting gallery or swings or anything similar to any of the foregoing:

Provided that the said expression does not include any fair held by statute charter royal licence letters patent or ancient custom.

(3) Before making any byelaws under this section the Corporation shall give to the Amusement Caterers' Association and the Association of Amusement Park Proprietors of Great Britain not less than one month's notice of the intention of the Corporation to make such byelaws and such notice shall be accompanied by a copy of the draft byelaws and the Corporation shall confer with the said associations thereon before they submit them to the Secretary of State for confirmation.

As to register  
of charges.

**57.** Subsection (2) of section 264 (Private improvement expenses a charge on premises) of the Act of 1883 (which requires the Corporation to keep a register of charges under that section and of the payments made in satisfaction thereof) shall not have effect in respect of any charges arising after the passing of this Act.

## PART VI.

## GENERAL.

58. The sections of the Act of 1936 hereinafter mentioned shall have effect as if they were re-enacted in this Act and in terms made applicable thereto (that is to say):—

Application of  
provisions of  
Act of 1936.

- Section 271 (Interpretation of "provide");
- Section 275 (Power of local authority to execute certain work on behalf of owners or occupiers);
- Section 276 (Power of local authority to sell certain materials);
- Section 277 (Power of councils to require information as to ownership of premises);
- Section 283 (Notices to be in writing; forms of notices &c.);
- Section 284 (Authentication of documents);
- Section 285 (Service of notices &c.);
- Section 286 (Proof of resolutions &c.);
- Section 287 (Power to enter premises);
- Section 288 (Penalty for obstructing execution of Act);
- Section 289 (Power to require occupier to permit works to be executed by owner);
- Section 291 (Certain expenses recoverable from owners to be a charge on the premises: power to order payment by instalments);
- Section 292 (Power to make a charge in respect of establishment expenses);
- Section 293 (Recovery of expenses &c.);
- Section 294 (Limitation of liability of certain owners);
- Section 295 (Power of local authority to grant charging orders);
- Section 296 (Summary proceedings for offences);
- Section 297 (Continuing offences and penalties);
- Section 299 (Inclusion of several sums in one complaint &c.);
- Section 304 (Judges and justices not to be disqualified by liability to rates);
- Section 328 (Powers of Act to be cumulative);
- Section 329 (Saving for certain provisions of the Land Charges Act 1925);

Provided that—

- (1) the said sections 287 and 288 shall only apply to the provisions contained in Part III (Streets buildings

PART VI.  
—cont.

sewers and drains) Part IV (Food and sanitary matters) of this Act and section 56 (Byelaws as to pleasure fairs) of this Act;

(2) the said sections 277 289 291 292 294 295 and 329 shall only apply to the provisions contained in Part III (Streets buildings sewers and drains) and Part IV (Food and sanitary matters) of this Act.

As to  
byelaws.

59. As respects byelaws made under this Act the confirming authority for the purposes of section 250 (Procedure &c. for making byelaws) of the Act of 1933 shall be—

(a) in the case of byelaws made under section 56 (Byelaws as to pleasure fairs) of this Act the Secretary of State; and

(b) in all other cases the Minister.

As to appeals.

60.—(1) Any person aggrieved by any requirement refusal or other decision of the Corporation or of any officer thereof under the following sections of this Act (namely):—

Section 26 (Deposit in respect of private street works expenses);

Section 27 (Restriction on buildings under footways);

Section 31 (Fencing of forecourts);

Section 38 (Abandoned drains to be filled up); and

Section 42 (Registration of hawkers of food and their premises);

may except where otherwise expressly provided or when some other right of appeal is conferred by this Act appeal to a court of summary jurisdiction.

(2) The procedure upon any such appeal shall be by way of complaint for an order and the Summary Jurisdiction Acts shall apply to the proceedings.

(3) The time within which any such appeal may be brought shall except where otherwise expressly provided be twenty-one days from the date on which notice of the requirement refusal or decision was published or served upon the person desiring to appeal and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(4) In any case in which such an appeal lies the document notifying the requirement refusal or decision in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought unless these have already been stated in a notice to



the person concerned informing him of his right to a hearing before a committee of the council with regard to the same matter.

(5) Where a person aggrieved by any order determination or other decision of a court of summary jurisdiction under this Act is not by any other enactment authorised to appeal to a court of quarter sessions he may except where otherwise expressly provided appeal to such a court.

(6) Where any requirement refusal order determination or other decision against which a right of appeal is conferred by this Act involves the execution of any work or the taking of any action or makes it unlawful for any person to carry on any business which he was lawfully carrying on up to the time of such requirement refusal order determination or other decision or to use any premises for any purpose for which they were lawfully used up to such time—

(a) no proceedings in respect of any failure to execute the work or take the action shall be taken;

(b) the Corporation shall not execute such work or take such action; and

(c) any such person may carry on such business and use such premises for such purpose;

until the time for appealing has expired or when an appeal is lodged until the appeal has been disposed of or withdrawn or fails for non-prosecution thereof.

(7) Where upon an appeal under this Act a court varies or reverses any requirement refusal or other decision of the Corporation effect shall be given to the order of the court and in particular any necessary consent certificate or other document shall be granted or issued and any necessary entry in any register shall be made.

61. Section 298 (Restriction on right to prosecute) of the Act of 1936 shall apply to offences created by or under Part III (Streets buildings sewers and drains) and Part IV (Food and sanitary matters) of this Act as if they were offences created by or under that Act. Restriction on right to prosecute.

62. The following provisions of the Act of 1883 so far as the same are applicable in that behalf shall with any necessary modifications extend and apply to the exercise of the powers of this Act in the same manner as if those provisions were re-enacted in this Act (namely):— Application of existing enactments.

Section 8 (Power to appoint committees);

Section 9 (Proceedings of committees); and

Section 289 (Protection of members and officers of Corporation).

PART VI.  
—cont.  
Inquiries by  
Ministers.

63. The Minister the Minister of Fuel and Power and the Minister of Transport may hold such inquiries as they respectively may consider necessary in regard to the exercise of any powers conferred upon them or the giving of consents under this Act and section 290 (Power of government departments to direct inquiries) of the Act of 1933 shall apply accordingly.

Saving for  
town and  
country  
planning.

64. This Act shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning Act 1947 for the purposes of subsection (4) of section 13 (Development orders) and subsection (1) of section 118 (Application to land regulated by special enactments) of that Act.

Costs of Act.

65. The costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act as taxed by the taxing officer of the House of Lords or of the House of Commons shall be paid by the Corporation.

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