



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER III

PROVISION OF SEWERAGE SERVICES

67 General sewerage functions

- (1) It shall be the duty of every sewerage undertaker—
 - (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers as to ensure that that area is and continues to be effectually drained; and
 - (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.
- (2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—
 - (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
 - (b) to the need to provide for the disposal of trade effluent which is so discharged.
- (3) In subsection (2) above “trade effluent” has the same meaning as in the Public Health (Drainage of Trade Premises) Act 1937.
- (4) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 20 above by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

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68 Standards of performance in connection with provision of sewerage services

- (1) For the purpose—
 - (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Chapter are to amount to breaches of the duty imposed by section 67 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker, the Secretary of State may by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in his opinion, ought to be achieved in individual cases; and such regulations may provide that if a sewerage undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (3) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
 - (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.
- (4) Subject to subsection (5) below, the Secretary of State shall not make any regulations under subsection (1) or (2) above unless—
 - (a) the Director has made a written application to the Secretary of State which—
 - (i) sets out draft provisions proposed by the Director for inclusion in such regulations;
 - (ii) specifies the sewerage undertaker or undertakers in relation to which it is proposed those provisions should apply; and
 - (iii) summarises the Director's reasons for his proposals;
 - (b) the Secretary of State is satisfied that a copy of the application has been served by the Director on every sewerage undertaker specified in the application;
 - (c) the regulations contain only the provisions proposed by the Director or those provisions with such modifications as the Secretary of State considers appropriate;
 - (d) the only modifications of the Director's proposals to which effect is given by the regulations are modifications the proposal to make which has been notified to the Director and to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications;
 - (e) such period as the Secretary of State considers appropriate has been allowed for the making by the Director and by any affected sewerage undertaker of

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representations or objections with respect to the Director's proposals and any modifications proposed by the Secretary of State; and

- (f) the Secretary of State has considered both the Director's reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- (5) Subsection (4) above shall not apply in relation to any regulations made under subsection (2) above before the transfer date.
- (6) The obligations imposed on a sewerage undertaker by virtue of the following provisions of this Chapter and the remedies available in respect of contraventions of those obligations shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 67 above and shall not be in any way qualified by any such provision.

69 Transfer of principal sewerage functions

Schedule 8 to this Act shall have effect for transferring to sewerage undertakers the functions of water authorities relating to the provision of sewerage services and for making amendments of the enactments relating to the transferred functions.

70 Allocation of cross boundary sewers

- (1) For the purposes of any scheme under Schedule 2 to this Act, so much of any sewer as is vested in a water authority immediately before the transfer date but is—
- (a) situated in the area of another water authority; and
 - (b) maintained for the purpose of draining premises in that area,
- shall be deemed to have vested in the other water authority before the coming into force of that scheme.
- (2) Where any part of a water authority's sewer is deemed by virtue of this section to have vested in another water authority, anything which—
- (a) has been done by or in relation to the first-mentioned authority for any purposes connected with that part of that sewer; and
 - (b) is in force or effective immediately before the transfer date,
- shall have effect for the purposes of any transitional provision contained in this Act as if it had been done by or in relation to that other authority.
- (3) Where any part of a sewer is vested in any sewerage undertaker by virtue of this section, the terms on which that part of that sewer—
- (a) communicates with such parts of that sewer or of any other sewer; or
 - (b) discharges into any such sewage disposal works,
- as immediately before the transfer date were vested in the same water authority as that part of that sewer but, by virtue of this section, are vested in another sewerage undertaker shall be determined, in default of agreement, by the Director.
- (4) A determination by the Director under this section shall have effect as an agreement between the sewerage undertakers in question but may be varied or revoked by a subsequent determination made by the Director on the application of either of those undertakers, as well as by agreement between the undertakers.

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- (5) In making a determination under this section, the Director shall have regard to the desirability of a sewerage undertaker's recovering the costs resulting from its allowing the sewers of other sewerage undertakers to communicate with its sewers or to discharge into its sewage disposal works and of securing a reasonable return on its capital.

71 Requisitioning of sewers

- (1) It shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—
- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by one or more of the persons who under subsection (3) below are entitled to require the provision of the sewer for that locality;
 - (b) the premises in that locality the drainage of which would be by means of that sewer are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out;
 and
 - (c) the conditions specified in section 72 below are satisfied in relation to that requirement.
- (2) In subsection (1) above the reference to domestic purposes, in relation to the drainage of premises in a particular locality to which a requirement under that subsection relates, is a reference—
- (a) where there are buildings on premises in that locality, to such of the following purposes as are specified in the requirement, that is to say—
 - (i) the removal, from the buildings and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
 - (ii) the removal, from the buildings and from such land, of water which has been used for cooking or washing, not being water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises; and
 - (iii) the removal, from the buildings and such land, of surface water;
 and
 - (b) where any person is proposing to erect buildings on premises in the locality, to such of the purposes mentioned in paragraph (a) above as are specified in the requirement in relation to times after the erection of the buildings.
- (3) Each of the following persons shall be entitled to require the provision of a public sewer for any locality, that is to say—
- (a) the owner of any premises in that locality;
 - (b) the occupier of any premises in that locality;
 - (c) any local authority within whose area the whole or any part of that locality is situated;
 - (d) where the whole or any part of that locality is situated in a new town, within the meaning of the New Towns Act 1981—
 - (i) the Commission for the New Towns; and

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- (ii) the Development Board for Rural Wales or the development corporation for the new town, according to whether or not the new town is situated within the area for which that Board is for the time being responsible;
 - and
 - (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the Local Government, Planning and Land Act 1980, the urban development corporation.
- (4) A sewerage undertaker shall not be in breach of a duty imposed by this section in relation to any locality unless—
- (a) the period of six months beginning with the relevant day has expired; and
 - (b) the sewerage undertaker has not, before the end of that period, so laid the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in that locality to communicate with the public sewer at the places determined under subsection (5) below;
- and for the purposes of this subsection the period mentioned in paragraph (a) above may be extended by agreement between the undertaker and the person or persons who required the provision of the public sewer or, where there is a dispute as to whether the period should be extended, by an arbitrator on a reference under subsection (6) below.
- (5) The places mentioned in subsection (4)(b) above shall be determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, in default of agreement, shall be such places as are determined by an arbitrator on a reference under subsection (6) below to be the places at which it is reasonable, in all the circumstances, for drains or private sewers to be used for the drainage of premises in that locality to communicate with the public sewer.
- (6) A reference for the purposes of subsection (4) or (5) above shall be to a single arbitrator appointed by agreement between the undertaker and the person or persons who required the provision of the public sewer or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) The duty of a sewerage undertaker under this section to provide a public sewer shall be owed to the person who requires the provision of the sewer or, as the case may be, to each of the persons who joins in doing so; and any breach by a sewerage undertaker of any such duty which causes any person to whom the duty is owed to sustain loss or damage shall be actionable at the suit of that person.
- (8) In any proceedings brought against a sewerage undertaker in pursuance of subsection (7) above in respect of a breach of duty which has caused any person to sustain loss or damage it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (9) In this section—
- “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple;
 - “relevant day”, in relation to a requirement to provide a public sewer for any locality, means the day after whichever is the later of the following, that is to say—

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- (a) the day on which the conditions specified in section 72 below are satisfied in relation to the requirement; and
- (b) the day on which the places where drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer are determined under subsection (5) above.

72 Financial conditions of sewer requisition

- (1) The conditions mentioned in section 71(1)(c) above are satisfied in relation to a requirement for the provision of a public sewer by a sewerage undertaker if—
 - (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the sewer; and
 - (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who—
 - (i) by virtue of section 71(3)(a) or (b) above required or joined in requiring the provision of the sewer; and
 - (ii) is not a public authority.
- (2) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any public sewer are undertakings which bind the person or persons mentioned in that subsection (in the case of two or more persons, either jointly and severally or with liability to pay apportioned in such manner as those persons may agree) to pay to the undertaker, in respect of each of the twelve years following the provision of the sewer, an amount not exceeding the relevant deficit (if any) for that year on that sewer.
- (3) For the purposes of this section the relevant deficit for any year on a public sewer is the amount (if any) by which the drainage charges payable for the use during that year of that sewer are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.
- (4) The annual borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer as were not incurred in the provision of additional capacity had been borrowed, by the sewerage undertaker providing the sewer, on terms—
 - (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
 - (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined either by the undertaker with the approval of the Director or, in default of such a determination, by the Director.
- (5) The costs of providing a public sewer (“the new sewer”) shall include—
 - (a) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and

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- (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer;
- and in this subsection “earlier public sewer”, in relation to the new sewer, means any public sewer which has been provided in the period of twelve years immediately before the provision of the new sewer and was so provided in pursuance of a requirement under section 71 above, under section 16 of the 1973 Act (requisitioning of sewers) or under any local statutory provision corresponding to the said section 71 or 16.
- (6) Any reference in this section to the provision of additional capacity in a public sewer provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that sewer as are carried out or done for the purpose of enabling that sewer to be used for purposes in addition to those for which it is necessary to provide the sewer in order to comply with the requirement.
- (7) For the purposes of this section references to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker are references to so much of the aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which—
- (a) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and
 - (b) are reasonably attributable to the use of that sewer for the drainage for domestic purposes of those premises or to the disposal of effluent drained for domestic purposes from those premises;
- and the references in this subsection to domestic purposes shall be construed as references to any of the purposes mentioned in subsection (2)(a) of section 71 above.
- (8) Where for the purposes of subsection (1)(b) above any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
- (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,
- on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (9) An approval or determination given or made by the Director for the purposes of subsection (4) or (8) above—
- (a) may be given or made in relation to the provision of a particular public sewer, in relation to the provision of sewers of a particular description or in relation to the provision of sewers generally; and
 - (b) may be revoked at any time except, in the case of an approval or determination for the purposes of subsection (4) above, in relation to a public sewer that has already been provided.
- (10) Any dispute between a sewerage undertaker and any other person as to—
- (a) the undertakings or security required by the undertaker for the purposes of this section; or
 - (b) the amount required to be paid in pursuance of any such undertaking,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the President of the Institution of Civil Engineers.

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73 Performance of sewerage functions by local authorities etc

- (1) A relevant authority may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions on that undertaker's behalf in relation to such area comprising the whole or any part of that authority's relevant area, together (where that authority are a local authority or an urban development corporation and the arrangements so provide) with parts of any adjacent relevant areas of other relevant authorities, as may be specified in the arrangements.
- (2) Arrangements entered into for the purposes of this section may contain any such provision as may be agreed between the relevant authority and the sewerage undertaker but shall not affect the availability to any person, other than the relevant authority, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out.
- (3) It is hereby declared that, if arrangements entered into for the purposes of this section so provide, a relevant authority shall be entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions.
- (4) Where arrangements entered into for the purposes of this section provide for a local authority to carry out the sewerage functions of a sewerage undertaker on the undertaker's behalf, section 101 of the Local Government Act 1972 (delegation of functions), so far as it relates to the carrying out of functions by a committee, sub-committee or officer of a local authority, shall have effect in relation to those sewerage functions only in so far as the arrangements do not otherwise provide.
- (5) In this section—
 - “new town” has the same meaning as in the New Towns Act 1981;
 - “relevant area”—
 - (a) in relation to a local authority, means the area of the authority and the whole of any new town or urban development area any part of which is situated within the area of the authority;
 - (b) in relation to the Commission for the New Towns, means any new town;
 - (c) in relation to the development corporation for any new town, means that new town;
 - (d) in relation to the Development Board for Rural Wales, means any new town situated within the area for which the Board is for the time being responsible; and
 - (e) in relation to any urban development corporation for any urban development area, means that area;
 - “relevant authority” means any of the following, that is to say—
 - (a) a local authority;
 - (b) the Commission for the New Towns, a development corporation for a new town or the Development Board for Rural Wales;
 - (c) the urban development corporation for any urban development area;
 - “sewerage functions”, in relation to a sewerage undertaker, means the functions of the undertaker by virtue of its appointment under Chapter I of this Part as a sewerage undertaker, other than—
 - (a) its functions relating to sewage disposal; and

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(b) its functions by virtue of the Public Health (Drainage of Trade Premises) Act 1937, Part V of the Public Health Act 1961 and sections 43 to 45 of the Control of Pollution Act 1974;

“urban development area” means any area so designated under Part XVI of the Local Government, Planning and Land Act 1980.

74 Control of exercise of trade effluent functions in certain cases

- (1) The provisions of the Public Health (Drainage of Trade Premises) Act 1937, Part V of the Public Health Act 1961 and sections 43 to 45 of the Control of Pollution Act 1974 shall have effect in relation to trade effluent to which this section applies subject to the provisions of Schedule 9 to this Act.
- (2) This section applies to any trade effluent if—
 - (a) prescribed substances are present in the effluent or are present in the effluent in prescribed concentrations; or
 - (b) the effluent derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.