



Water Industry Act 1991

1991 CHAPTER 56

PART VI

UNDERTAKERS' POWERS AND WORKS

CHAPTER I

UNDERTAKERS' POWERS

Powers in relation to land

155 Compulsory purchase

- (1) A relevant undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of the Secretary of State under subsection (1) above shall include power—
 - (a) to authorise the acquisition of interests in and rights over land by the creation of new interests and rights; and
 - (b) by authorising the acquisition by a relevant undertaker of any rights over land which is to be or has been acquired by that undertaker, to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which a relevant undertaker may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
- (4) Subject to section 188 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by a relevant undertaker;

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and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.

- (5) Schedule 9 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.
- (6) The provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred (whether by virtue of the memorandum and articles of the company for the time being carrying out the functions of the undertaker or any enactment or otherwise) on a relevant undertaker, as if—
 - (a) any reference in those provisions to the acquiring authority were a reference to that undertaker; and
 - (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

156 Restriction on disposals of land

- (1) A company holding an appointment under Chapter I of Part II of this Act shall not dispose of any of its protected land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, the Secretary of State.
- (2) A consent or authorisation for the purposes of this section—
 - (a) shall be set out in a notice served by the Secretary of State on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or of interests or rights in or over land or, as the case may be, on every such company; and
 - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 157 of the Water Resources Act 1991.
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Secretary of State considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above and subject to subsection (5) below, the conditions of a consent or authorisation for the purposes of this section may include—
 - (a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available, in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;
 - (b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part II of this Act as relate to the disposal of its protected land or of any interest or right in or over that land;
 - (c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—

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- (i) consult with the Countryside Commission (as respects land in England) or the Countryside Council for Wales (as respects land in Wales) and, in the case of an area of special scientific interest in England, with the Nature Conservancy Council for England; and
 - (ii) enter into such agreements under section 39 of the Wildlife and Countryside Act 1981 (management agreements) or such covenants under subsection (6) below as the Secretary of State may determine;
 - (d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in paragraph (c) above, either by the Countryside Commission or the Countryside Council for Wales or only after consultation with that Commission or Council.
- (5) A consent or authorisation shall not be given on any such condition as is mentioned in subsection (4)(a) above except where the Secretary of State is satisfied that the condition will have effect in relation only to—
 - (a) land which, or any interest in or right over which, was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or
 - (b) land situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest.
- (6) Where a company holding an appointment under Chapter I of Part II of this Act is proposing, in such a case as is mentioned in subsection (4)(c) above, to dispose of, or of any interest or right in or over, any of its protected land, it may enter into a covenant with the Secretary of State by virtue of which it accepts obligations with respect to—
 - (a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or
 - (b) the use or management of the land;and a covenant under this subsection shall bind all persons deriving title from or under that company and shall be enforceable by the Secretary of State accordingly.
- (7) Section 3 above shall have effect for the purposes of this section as if every proposal which—
 - (a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, or with respect to any interest or right in or over any such land; and
 - (b) is a proposal for which the Secretary of State's consent or authorisation is required under this section,were a proposal relating to the functions of such an undertaker.
- (8) In this section—
 - “area of outstanding natural beauty or special scientific interest” means an area which—
 - (a) is for the time being designated as an area of outstanding natural beauty for the purposes of the National Parks and Access to the Countryside Act 1949; or
 - (b) is an area in relation to which a notification given, or having effect as if given, under section 28 of the Wildlife and Countryside Act 1981 (areas of special scientific interest) for the time being has effect;

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and the reference in subsection (4)(c) above to an area of special scientific interest shall, accordingly, be construed as a reference to an area such as is mentioned in paragraph (b) of this definition; and

“the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988.

157 Byelaws with respect to undertakers' waterways and land

- (1) Every relevant undertaker shall have power to make such byelaws as are mentioned in subsection (2) below with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.
- (2) The byelaws referred to in subsection (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—
 - (a) the preservation of order on or in any such waterway or land;
 - (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
 - (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.
- (3) Without prejudice to the generality of any of the paragraphs of subsection (2) above, the byelaws mentioned in that subsection include byelaws—
 - (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
 - (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;
 - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;
 - (d) providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws; and
 - (e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (4) Schedule 10 to this Act shall have effect with respect to byelaws under this section.
- (5) Byelaws made under this section shall cease to have effect at the end of the period of ten years beginning with the day on which they were made; but the Secretary of State may by order made by statutory instrument make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.
- (6) In this section—

“boat” includes a vessel of any description, and “boating” shall be construed accordingly;

“waterway” has the same meaning as in the National Parks and Access to the Countryside Act 1949.

Pipe-laying

158 Powers to lay pipes in streets

- (1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—
 - (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
 - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
 - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials.
- (2) Without prejudice to the generality of subsection (1)(c) above, every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.
- (3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.
- (4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the highway authority concerned before determining in accordance with this subsection where to fit a stopcock in a highway.
- (5) Where a water undertaker exercises its powers under this section for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.
- (6) Until the coming into force of its repeal by the New Roads and Street Works Act 1991 section 20 of the Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any relevant pipe which is conferred by this section.
- (7) Subject to section 161(7) below, in this section references to a relevant pipe shall be construed—
 - (a) in relation to a water undertaker, as references to a water main (including a trunk main), resource main, discharge pipe or service pipe; and
 - (b) in relation to a sewerage undertaker, as references to any sewer or disposal main.

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159 Power to lay pipes in other land

- (1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—
 - (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
 - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
 - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.
- (2) Nothing in subsection (1) above shall authorise a water undertaker to lay a service pipe in, on or over any land except where—
 - (a) there is already a service pipe where that pipe is to be laid; or
 - (b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of subsections (3) to (5) of section 46 above.
- (3) The power conferred by virtue of paragraph (b) of subsection (1) above, and the power conferred in relation to that paragraph by virtue of paragraph (c) of that subsection shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.
- (4) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.
- (5) Subject to subsection (6) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (4) above shall be deemed—
 - (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and
 - (b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.
- (6) Subsection (5) above shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—
 - (a) laying or altering a service pipe; or
 - (b) complying with a duty imposed under section 41 or 98 above.
- (7) Subject to subsection (2) above, in this section “relevant pipe” has the same meaning as in section 158 above.

Other works powers

160 Power to carry out works for sewerage purposes

- (1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person’s expense—

- (a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or
- (b) any work which the undertaker has required that person to carry out under Part IV of this Act;

and for that purpose the undertaker shall have all such rights as that person would have.

- (2) Sections 291, 293 and 294 of the Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

161 Power to deal with foul water and pollution

- (1) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials;

and the provisions of section 158 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

- (2) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

- (3) Without prejudice to the powers conferred by subsections (1) and (2) above but subject to the provisions of Chapter III of this Part, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

- (a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or
- (b) of otherwise preventing the pollution—
 - (i) of any waters, whether on the surface or underground, which belong to the NRA or any water undertaker or from which the NRA or any water undertaker is authorised to take water;

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- (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by the NRA or any water undertaker or which the NRA or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
 - (iii) of any underground strata from which the NRA or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the Water Resources Act 1991.
- (4) Where any water undertaker is proposing to carry out any such works as are mentioned in subsection (3) above and the proposed works will affect any watercourse, the undertaker shall consult the NRA before carrying out the works.
- (5) Without prejudice to the protective provisions of Chapter III of this Part, nothing in subsection (3) above shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.
- (6) Any dispute as to whether any consent for the purposes of subsection (5) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) In section 158 above the references to the laying of a relevant pipe shall include references—
- (a) to the laying of any drain or sewer for any of the purposes mentioned in subsection (3)(a) and (b) above; and
 - (b) to the construction of a watercourse for any of those purposes.
- (8) In this section—
- “the protective provisions of Chapter III of this Part” means the provisions of sections 183 to 191 below;
 - “relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and
 - “waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

162 Works in connection with metering

- (1) Subject to the following provisions of this section, to section 148 above and to the provisions of Chapter III of this Part, where—
- (a) any relevant undertaker has fixed any charges in relation to any premises by reference to volume or has given notice of its intention of so fixing any charges within the period specified in the notice; and
 - (b) there is either—
 - (i) a service pipe which is connected with a water undertaker’s water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or
 - (ii) a drain or private sewer which connects those premises with a public sewer,

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- the undertaker shall have power, in accordance with section 172 below or otherwise, to carry out any works specified in subsection (3) below.
- (2) The power under subsection (1) above to carry out works specified in subsection (3) below shall include power to carry out any such works in a street; and the power conferred by virtue of subsection (1)(c) of section 158 above and subsection (6) of that section shall apply in relation to the power conferred by this subsection as they apply in relation to the powers conferred by that section.
- (3) The works mentioned in subsections (1) and (2) above are, in relation to any premises—
- (a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;
 - (b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for that house;
 - (c) works for the purpose of maintaining, repairing, disconnecting or removing—
 - (i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or
 - (ii) any pipes or apparatus installed in the course of any works specified in this section;
- and
- (d) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c) above, including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (4) A notice given for the purposes of subsection (1)(a) above may relate to particular premises or to any description of premises and shall be given—
- (a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and
 - (b) by serving a copy of the notice on the Secretary of State.
- (5) Subject to subsection (6) below, any works carried out by a water undertaker by virtue of the provisions of this section shall be necessary works for the purposes of Chapter II of Part III of this Act.
- (6) Nothing in this section shall prevent the exercise by a water undertaker of its power by virtue of subsection (3)(b) of section 64 above to impose a condition by virtue of subsection (2)(c) or (d) of section 47 above in a case where it has, under the said section 64, required the provision of a separate service pipe to any premises.
- (7) Part II of Schedule 6 to this Act shall apply to the powers conferred by this section.
- (8) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this section to carry out

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any works on any premises shall be referred to the arbitration of a single arbitrator appointed—

- (a) by agreement between the undertaker and that person; or
- (b) in default of agreement, by the Director.

- (9) Without prejudice to subsection (2) above, nothing in section 158, 159 or 161 above shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

163 Power to fit stopcocks

- (1) Subject to subsection (2) below and without prejudice to section 159 above, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker, whether that pipe belongs to the undertaker or to any other person.
- (2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

164 Agreements for works with respect to water sources

- (1) A water undertaker may enter into agreements under this section with the owners and occupiers of any land, or with a local authority, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—
- (a) for the purpose of draining that land; or
 - (b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.
- (2) Before entering into an agreement under this section with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult the NRA and, if the watercourse is subject to the jurisdiction of a navigation authority, that authority.
- (3) An agreement under this section with the owner of any land which is expressed to be binding on and enforceable against the owner's successors in title to that land—
- (a) may be registered under section 2 of the Land Charges Act 1972 as an obligation affecting land falling within Class D; and
 - (b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.
- (4) In this section the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under this section shall be defrayed as part of their general expenses.

Powers to discharge water

165 Discharges for works purposes

- (1) Subject to the following provisions of this section and to section 166 below, where any water undertaker—
 - (a) is exercising or about to exercise any power conferred by section 158, 159, 161 or 163 above (other than the power conferred by section 161(3) above); or
 - (b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.
- (2) Nothing in this section shall authorise any discharge which—
 - (a) damages or injuriously affects the works or property of any railway undertakers or navigation authority; or
 - (b) floods or damages any highway.
- (3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—
 - (a) mud and silt;
 - (b) solid, polluting, offensive or injurious substances; and
 - (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,the undertaker shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In this section “relevant pipe” means any water main (including a trunk main), resource main, discharge pipe or service pipe.

166 Consents for certain discharges under section 165

- (1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 165 above except with the consent of the NRA and of any navigation authority which carries out functions in relation to—
 - (a) the part of the watercourse where the discharge is made; or
 - (b) any part of that watercourse which is less than three miles downstream from the place of the discharge.
- (2) Where a water undertaker makes an application to any authority for a consent for the purposes of this section—
 - (a) that application shall be accompanied or supplemented by all such information as that authority may reasonably require; and
 - (b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—
 - (i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the

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application relates is proposed to be made and are not upstream from that place; and

(ii) has not agreed in writing that he need not be served with such a copy;

but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—

(a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and

(b) in any other case, before the end of the period of three months beginning with that day;

and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

(a) an undertaker which has made an application to any authority for a consent for the purposes of this section has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that authority; and

(b) that requirement was made by that authority at such a time before the end of the period within which that authority is required to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,

that authority may delay his determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under section 165 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—

(a) states that the discharge has been made; and

(b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.

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- (8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

Compulsory works orders

167 Compulsory works orders

- (1) Where a water undertaker is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—
 - (a) to carry out any engineering or building operations; or
 - (b) to discharge water into any inland waters or underground strata,the undertaker may apply to the Secretary of State for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Secretary of State may, on an application under subsection (1) above, by order made by statutory instrument—
 - (a) confer such compulsory powers; and
 - (b) grant such authority,as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.
- (3) Schedule 11 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.
- (4) Subject to the provisions of Schedule 11 to this Act, a compulsory works order may—
 - (a) without prejudice to section 155 above, confer power to acquire compulsorily any land, including—
 - (i) power to acquire interests in and rights over land by the creation of new rights and interests; and
 - (ii) power, by the compulsory acquisition by any water undertaker of any rights over land which is to be or has been acquired by that undertaker, to extinguish any such rights;
 - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part of this Act which do not apply for those purposes apart from by virtue of this paragraph;
 - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
 - (d) amend or repeal any local statutory provision;
 - (e) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (5) Without prejudice to any duty imposed by virtue of section 191 below, where—

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- (a) the Secretary of State makes a compulsory works order authorising a water undertaker to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on such an undertaker; and
- (b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

- (6) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water).
- (7) It is hereby declared that a compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.
- (8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 172 and 173, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

Entry to land etc. by water undertakers

168 Entry for works purposes

- (1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
 - (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or
 - (ii) how any such power should be exercised;
 - or
 - (b) the exercise of any such power.
- (3) The power, by virtue of subsection (1) above, of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—
 - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
 - (b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—
 - (i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above; and
 - (ii) has authorised that person to take away and analyse.

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- (4) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.
- (5) In this section “relevant works power” means any power conferred by any of the provisions of sections 158, 159, 161, 163 and 165 above, other than section 161(3).

169 Power to carry out surveys and to search for water

- (1) Without prejudice to the rights and powers conferred by section 168 above, any person designated in writing under this section by a water undertaker may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—
 - (a) whether it would be appropriate for the undertaker to acquire any land, or any interest or right in or over land, for purposes connected with the carrying out of its functions; or
 - (b) whether it would be appropriate for the undertaker to apply for a compulsory works order under section 167 above and what compulsory powers it would be appropriate to apply for under that section.
- (3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—
 - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
 - (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and
 - (c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) The powers conferred by this section shall not be exercised in any case for purposes connected with the determination of—
 - (a) whether, where or how a reservoir should be constructed; or
 - (b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.
- (5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—
 - (a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and
 - (b) he has considered any representations or objections with respect to the proposed exercise of the powers under this section which—
 - (i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and

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(ii) have not been withdrawn.

(6) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

170 Entry etc. for other purposes

(1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—

- (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of Part III of this Act to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under section 64(4), 66(3) or 75 above; or
 - (ii) how any such power should be exercised;
- (b) the exercise of any such power;
- (c) the monitoring and recording of—
 - (i) whether water supplied to any premises for domestic or food production purposes is wholesome at the time of supply; or
 - (ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,

and the carrying out of any tests for that purpose.

(2) Any person designated for the purpose—

- (a) by any water undertaker within whose area any waterworks are situated; or
- (b) by any water undertaker which takes water from any waterworks,

shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of section 72 above in relation to those waterworks.

(3) Any person designated in writing for the purpose by a water undertaker may—

- (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being, or has been, contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or
 - (iii) exercising any such power or performing any such duty;

or

- (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.

(4) During any period when a prohibition or restriction under section 76 above is in force, any person designated for the purpose by the water undertaker which imposed

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the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.

- (5) The power by virtue of subsection (1) above of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—
 - (a) considers necessary for the purpose of determining any of the matters mentioned in paragraph (a) or (c) of that subsection; and
 - (b) has authorised that person to carry out or take away.
- (6) Expressions used in this section and in any provision of Part III of this Act in relation to which this section has effect shall have the same meaning in this section as in that provision; and, without prejudice to the generality of this provision, subsections (2) and (3) of section 68 above and the definitions of “food production purposes” and “wholesome” in section 93(1) above shall apply for the purposes of any power conferred by virtue of subsection (1)(c)(i) above as they apply for the purposes of that section.
- (7) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsections (2) and (4) of this section; and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this section.
- (8) The provisions of this section shall be without prejudice to the other rights and powers conferred by this Part.

171 Entry for sewerage purposes

- (1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—
 - (a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;
 - (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;
 - (c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;
 - (d) generally for the purpose of carrying out the undertaker’s functions under the relevant sewerage provisions.
- (2) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above.
- (3) Any person designated by a sewerage undertaker under subsection (1) above for the purpose of exercising any power under this section for the purposes of Chapter III of Part IV of this Act may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent which is passing (either directly or through a private drain or sewer) from those premises into any of the undertaker’s public sewers.

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- (4) The result of any analysis of a sample taken by any designated person under subsection (1) above shall not be admissible as evidence in any legal proceedings under Chapter III of Part IV of this Act unless the requirements of subsection (5) below are satisfied.
- (5) The requirements mentioned in subsection (4) above are that the designated person shall—
- (a) forthwith after taking the sample, notify his intention to have it analysed to the occupier of the trade premises in question;
 - (b) there and then divide the sample into three parts;
 - (c) cause each part to be placed in a suitable container which shall be sealed up and marked; and
 - (d) deliver one part to the occupier, retain one part for future comparison and, if he thinks fit to have an analysis made, submit one part to the analyst.
- (6) In this section “trade effluent” and “trade premises” have the same meanings as in Chapter III of Part IV of this Act; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

172 Entry for metering purposes

- (1) Where the conditions set out in section 162(1) above are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
- (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (3) of section 162 above is practicable;
 - (ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out; or
 - (iii) how any works specified in that subsection should be carried out;
 - (b) the carrying out of any works so specified;
 - (c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;
 - (d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.
- (3) Part II of Schedule 6 to this Act shall apply in relation to the rights and powers conferred by the preceding provisions of this section.
- (4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part IV of this Act for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this section) for the purpose of reading that meter or apparatus exercise the power conferred by section 171 above as if that purpose were included in the purposes mentioned in subsection (1) of that section.

173 Impersonation of persons entitled to entry

- (1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

CHAPTER II

PROTECTION OF UNDERTAKERS' WORKS, APPARATUS ETC.

Protection of apparatus in general

174 Offences of interference with works etc

- (1) Subject to subsection (2) below, if any person without the consent of the water undertaker—
 - (a) intentionally or recklessly interferes with any resource main, water main or other pipe vested in any water undertaker or with any structure, installation or apparatus belonging to any water undertaker; or
 - (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under subsection (1) above—
 - (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or
 - (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—
 - (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
 - (ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (3) Any person who, without the consent of the water undertaker—
 - (a) attaches any pipe or apparatus—
 - (i) to any resource main, water main or other pipe vested in a water undertaker; or
 - (ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;

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- (b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
 - (c) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this section,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In proceedings against any person for an offence by virtue of paragraph (c) of subsection (3) above it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.
 - (5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to a water undertaker, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
 - (6) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the water undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.
 - (7) The amount recoverable by virtue of subsection (6) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
 - (8) A water undertaker may—
 - (a) do all such work as is necessary for repairing any injury done in contravention of subsection (5) above; and
 - (b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.
 - (9) In this section “consumer” and “water fitting” have the same meanings as in Part III of this Act; and in subsection (1) above the references to apparatus belonging to a water undertaker do not include references to any meter which belongs to such an undertaker and is used by it for the purpose of determining the amount of any charges which have been fixed by the undertaker by reference to volume.

Protection of meters

175 Offence of tampering with meter

- (1) If any person—
 - (a) so interferes with a meter used by any relevant undertaker in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or
 - (b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,
 he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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- (2) A person shall not be guilty of an offence under this section in respect of anything done by him with the consent under section 176 below of the undertaker which uses the meter.

176 Consent for the purposes of section 175

- (1) Where an application is made to any relevant undertaker for a consent for the purposes of section 175 above, the undertaker—
- (a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and
 - (b) subject to subsection (2) below, may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.
- (2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in subsection (1)(b) above, unless it is reasonable to do so.
- (3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in subsection (1)(b) above, the undertaker—
- (a) shall carry out those works as soon as reasonably practicable after giving the notice; and
 - (b) may recover from that person any expenses reasonably incurred by it in doing so.
- (4) Any dispute between a relevant undertaker and any other person (including another such undertaker)—
- (a) as to whether the undertaker or that other person should bear any expenses under subsection (3) above; or
 - (b) as to the amount of any expenses to be borne by any person under that subsection,
- 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 Director.
- (5) Subsection (3) above shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

177 Financial obligations with respect to any interference with a meter

- (1) A relevant undertaker which carries out any works made necessary by the commission of an offence under section 175 above shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.
- (2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—
- (a) to comply with any obligation imposed on it by section 176 above; or
 - (b) to exercise reasonable care in the performance of the duty imposed by subsection (3)(a) of that section,
- shall be entitled to recover compensation from the undertaker.

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- (3) Any dispute between a relevant undertaker and any other person (including another such undertaker)—
- (a) as to whether the undertaker or that other person should bear any expenses under this section;
 - (b) as to whether the undertaker should pay any compensation under this section; or
 - (c) as to the amount of any expenses to be borne by any person under this section or as to the amount of any such compensation,
- 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 Director.

Obstruction of sewerage works etc.

178 Obstruction of sewerage works etc

- (1) A person who wilfully obstructs any person acting in the execution of any of the relevant sewerage provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
- (2) If on a complaint made by the owner of any premises, it appears to a magistrates' court that the occupier of those premises is preventing the owner of those premises from carrying out any work which he is required to carry out by or under any of the relevant sewerage provisions, the court may order the occupier to permit the carrying out of the work.
- (3) Sections 300 to 302 of the Public Health Act 1936 (which relate to the determination of questions by courts of summary jurisdiction and to appeals against such determinations) shall apply for the purposes of and in relation to the determination under subsection (2) above of any matter by a magistrates' court—
- (a) as they apply for the purposes of or in relation to a determination by such a court under that Act; and
 - (b) in the case of section 302, as if the reference to a decision of a local authority included a reference to a decision of a sewerage undertaker.

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

179 Vesting of works in undertaker

- (1) Subject to subsection (3) below and to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—
- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
 - (b) every sewage disposal works constructed by a sewerage undertaker,

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shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

- (2) In addition to the sewers and works which vest in a sewerage undertaker by virtue of subsection (1) above, the following shall also vest in such an undertaker, that is to say—
- (a) every sewer or sewage disposal works with respect to which a declaration of vesting made by that undertaker under Chapter II of Part IV of this Act takes effect; and
 - (b) every sewer which is laid in the area of that undertaker under Part XI of the Highways Act 1980 (making up private streets) and is not a sewer belonging to a road maintained by a highway authority.
- (3) Subsection (1) above shall not apply to a service pipe laid in a street other than the street in which the water main with which it connects is situated and shall not apply to a service pipe laid otherwise than in a street where that pipe is laid—
- (a) in pursuance of the duty imposed by virtue of section 46(4) above; or
 - (b) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.
- (4) If any water fittings let for hire by a water undertaker are suitably marked, they—
- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
 - (b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;
- but nothing in this subsection shall affect the valuation for rating of any rateable hereditament.
- (5) It is hereby declared that anything which, in pursuance of any arrangements under section 97 above, is done on behalf of a sewerage undertaker by a relevant authority within the meaning of that section is, subject to any provision to the contrary contained in any such arrangements, to be treated for the purposes of this section as done by the undertaker.
- (6) The preceding provisions of this section are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of any scheme under Schedule 2 to this Act or of the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.
- (7) In this section—
- “relevant pipe”—
 - (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
 - (b) in relation to a sewerage undertaker, means any sewer or disposal main; - and
 - “water fittings” has the same meaning as in Part III of this Act;
- and water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this section if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously

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impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

Damage etc. caused by works

180 Compensation for damage caused by works etc

Schedule 12 to this Act shall have effect for making provision for imposing obligations for the purpose of minimising the damage caused in the exercise of certain powers conferred on undertakers and for imposing obligations as to the payment of compensation.

181 Complaints with respect to the exercise of works powers on private land

- (1) Subject to subsection (2) below, it shall be the duty of the Director to investigate any complaint made or referred to him with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or by virtue of section 159 or 161(2) above.
- (2) The Director shall not be required to investigate any such complaint as is mentioned in subsection (1) above if—
 - (a) the complaint appears to the Director to be vexatious or frivolous;
 - (b) the Director is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it; or
 - (c) the complaint was first made to the Director or the appropriate customer service committee more than twelve months, or such longer period as the Director may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant.
- (3) Where the Director, in pursuance of his duty under this section, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—
 - (a) it shall be the duty of that undertaker to provide the Director with all such information and assistance as he may reasonably require for the purposes of his investigation; and
 - (b) it shall be the duty of the Director, before giving any direction under subsection (4) below, to consider any representations made to him by the complainant or by that undertaker with respect to the subject-matter of the complaint.
- (4) If on a complaint under subsection (1) above with respect to the exercise of any powers by a relevant undertaker, the Director is satisfied that that undertaker—
 - (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
 - (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

the Director may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

- (5) The Director shall not under subsection (4) above direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment except in so far as it appears to him appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.
- (6) The duties of a relevant undertaker by virtue of subsection (3)(a) above shall be enforceable under section 18 above by the Director.
- (7) A person to whom any amount is required, in pursuance of a direction under subsection (4) above, to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this section.
- (8) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (4) above.

182 Codes of practice with respect to work on private land

- (1) For the purposes of section 181 above it shall be the duty of every company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker—
 - (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Secretary of State for his approval a code of practice with respect to its exercise of any powers conferred by or by virtue of section 159 or 161(2) above; and
 - (b) if required to do so by the Secretary of State at any subsequent time, to submit proposed modifications of that code to the Secretary of State for his approval.
- (2) The Secretary of State, if he considers it appropriate to do so for the purpose of promoting what appear to him to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker, of any powers conferred by or by virtue of section 159 or 161(2) above, may at any time by order made by statutory instrument, in relation to that company—
 - (a) approve any code of practice with respect to the exercise of those powers which has been submitted to him (whether or not under subsection (1) above) by that company for his approval;
 - (b) approve any modifications of such a code which have been so submitted; or
 - (c) withdraw his approval for any such code or modification.
- (3) A contravention of a code of practice as for the time being approved under this section in relation to a company shall not—
 - (a) affect the powers conferred on that company as a relevant undertaker by this Part;
 - (b) of itself entitle any person to be paid any amount under subsection (4) of section 181 above; or
 - (c) give rise to any criminal or civil liability;
 but the Director shall take into account whether there has been any such contravention in determining whether to give a direction under that subsection to that company and in determining the amount to which any such direction relates.
- (4) The Secretary of State shall not make an order under subsection (2) above unless he has first consulted all such persons as he considers it appropriate to consult.

- (5) The duties of a relevant undertaker under subsection (1) above shall be enforceable under section 18 above by the Secretary of State.

Protective provisions

183 Protection for particular undertakings

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

184 Power of certain undertakers to alter public sewers etc

- (1) The NRA or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers or airport operator may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—
- (a) are vested in the undertaker; and
 - (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
 - (i) any watercourse or other works vested in or under the control of the NRA or that internal drainage board;
 - (ii) any property of the Civil Aviation Authority;
 - (iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;
 - (iv) the railway of the railway undertakers; or
 - (v) the airport in question.
- (2) In subsection (1) above “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.
- (3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker—
- (a) are or will be equally effectual; or
 - (b) entail or will entail additional expense for the sewerage undertaker,
- may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) In this section—
- “airport operator” means the person who is the airport operator for the purposes of Part V of the Airports Act 1986 in relation to an airport to which that Part of that Act applies; and
- “dock undertakers” has the same meaning as in Chapter II of Part IV of this Act.

185 Duty to move pipes etc. in certain cases

- (1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.
- (3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.
- (4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.
- (5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.
- (6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, 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.
- (7) An approval or determination by the Director for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.
- (8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by the Director.
- (9) In this section—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in section 158 above.

186 Protective provisions in respect of flood defence works and watercourses etc

- (1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—
 - (a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or

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- (b) with any such works used by any person for irrigating any land.
- (2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.
- (3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—
- (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
 - (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,
- without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.
- (4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.
- (5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.
- (6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (7) Any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;
 - (b) as to whether any consent for the purposes of this section is being unreasonably withheld;
 - (c) as to whether any condition subject to which any such consent has been given was reasonable; or
 - (d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,
- shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (8) In this section “relevant inland waters” means any inland waters other than any which form part of a main river for the purposes of Part IV of the Water Resources Act 1991.
- (9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

187 Works in tidal lands etc

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.
- (2) An approval for the purposes of subsection (1) above shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.
- (3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

188 Mineral rights

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

189 Power to sell minerals deriving from sewerage works

- (1) A sewerage undertaker may sell any materials which—
 - (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and
 - (b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.
- (2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.
- (3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

190 Saving for planning controls

Without prejudice to the operation of section 90 of the Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the Water Act 1989 relates to the functions of a relevant undertaker, nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

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191 Duties to make recreational facilities available when building reservoirs in Wales

- (1) Where a water undertaker carries out any works for or in connection with the construction or operation of a reservoir in Wales which—
 - (a) permanently affect one or more communities; and
 - (b) are not primarily intended by that undertaker to benefit the inhabitants of that or those communities,it shall be the duty of that undertaker to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.
- (2) It shall be the duty of every water undertaker, in performing its duty under subsection (1) above, to consult—
 - (a) the community councils of the communities affected, in the case of communities having such councils; and
 - (b) in any case, the council of any district in which any community affected is situated.
- (3) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Interpretation of Part VI

192 Interpretation of Part VI

- (1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under section 165 above.
- (2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of section 158 above) as the pipe replaced.
- (3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.
- (4) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—
 - (a) to maintain a pipe or a connection with it; or
 - (b) to alter a pipe only where certain conditions are satisfied,as are imposed on the undertaker by or under any enactment.
- (5) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.