



# Public Health Act 1936

## 1936 CHAPTER 49

### PART XII

#### GENERAL.

##### *Savings.*

**328 Powers of Act to be cumulative.**

All powers and duties conferred or imposed by this Act shall be deemed to be in addition to, and not in derogation of, any other powers and duties conferred or imposed by Act of Parliament, law or custom, and, subject to any repeal effected by, or other express provision of, this Act, all such other powers and duties may be exercised and shall be performed in the same manner as if this Act had not been passed.

**329 Saving for certain provisions of the Land Charges Act, 1925.**

Nothing in this Act with respect to the recovery of expenses from owners of premises affects the provisions of the Land Charges Act, 1925 (as amended by any subsequent enactment), with respect to local land charges.

**330 Power of railway companies, dock undertakers and land drainage authorities to alter sewers, and &c. vested in a local authority.**

Any railway company, dock undertakers or land drainage authority may, after giving reasonable notice to the local authority concerned, at their own expense and on substituting other sewers, drains, culverts and pipes which will be equally effectual and will entail no additional expense on the local authority, take up, divert or alter the level of any sewers, drains, culverts or pipes vested in the local authority which pass under, or interfere with, or interfere with the improvement or alteration of, the railway of the railway company, or, as the case may be, any river, canal, towing path or works forming part of the undertaking of the undertakers, or any watercourse or other works vested in or under the control of the land drainage authority.

**331 Works affecting water rights.**

Nothing in this Act shall authorise a local authority injuriously to affect any reservoir, canal, watercourse, river or stream, or any feeder thereof, or 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, if this Act had not been passed, 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.

**332 Arbitration as to alteration of sewers, and &c, or injurious affection of water rights.**

Any difference of opinion which may arise under either of the two last preceding sections between a local authority and any person as to whether—

- (a) any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of a local authority are or will be equally effectual, or entail or will entail additional expense on the authority; or
- (b) 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 this Act,

may, at the option of the party complaining, be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

**333 Protection for works of dock undertakers and for railways.**

- (1) Subject to the provisions of this section, nothing in this Act shall authorise a local authority without the consent of the dock undertakers concerned—

- (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path, so as to interrupt the traffic thereon;
- (b) to interfere with any bridges crossing any river, canal, dock, harbour or basin;
- (c) to execute any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to dock undertakers and is held or used by them for the purposes of their undertaking;
- (d) to execute any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir, or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof;

or without the consent of the railway company concerned, to execute any works along, across or under any railway of a railway company:

Provided that consent under this section shall not be unreasonably withheld, and if any question arises as to whether or not consent is unreasonably withheld, either party may require that it shall be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers,

- (2) Upon an arbitration under this section, the arbitrator shall determine—

- (i) whether any works which the local authority propose to execute are such works as under the last preceding subsection they are not entitled to execute without the consent of the statutory undertakers; and

- (ii) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and
- (iii) if the works are of such a nature, the conditions subject to which the local authority may execute the works, including the amount of the compensation, if any, to be paid by them to the undertakers.

If the arbitrator should determine that the proposed works are such works as the local authority are not entitled to execute without the consent of the undertakers and that the works would cause injury to the undertakers of such a nature as not to admit of being fully compensated by money, the local authority shall not proceed to execute the works, but in any other case they may execute the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.

- (3) For the purposes of this section, dock undertakers shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking, or if they have statutory rights of navigating on or using it, or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (4) Nothing in this section shall be construed as hmiting the powers of a local authority under any of the foregoing provisions of this Act in respect of the opening and breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

### **334 Protection for works of land drainage authorities, and &c.**

Nothing in this Act shall authorise a local authority to use, injure or interfere with any sluices, floodgates, sewers, groynes, sea defences or other works, whether made before or after the date of commencement of this Act, which are vested in or under the control of a land drainage authority, or are used by any person for draining, preserving or improving land under any local or private Act of Parliament, or for irrigating land, without the consent, as the case may be, of that authority or that person:

Provided that consent under this section shall not be unreasonably withheld, and if any question arises as to whether or not consent is unreasonably withheld, either party may require that it shall be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

### **335 Saving for works, powers, and &c. of London County Council.**

Nothing in, or done under, this Act shall affect any outfall or other works of the London County Council executed, whether within or outside London, under the Metropolis Management Act, 1855, and the Acts amending that Act, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction or privilege of the London County Council.

### **336 Saving for powers and duties of Middlesex County Council as sewerage and sewage disposal authority.**

Nothing in this Act shall affect the powers and duties of the County Council of Middlesex with respect to main sewers and sewage disposal under the Middlesex County Council Act, 1931, or impose on local authorities of that county any

obligations with respect to sewers or sewage disposal from which they were relieved by the said Act:

Provided that, on the application of the county council, the Minister may by order amend the said Act by making therein such adaptations and modifications as appear to him to be necessary in consequence of the amendments made by this Act in the general law relating to public health, and, in particular, by applying to the county council, by way of substitution but with any necessary adaptation, such of the provisions of this Act as appear to him to correspond to any provisions of the Public Health Acts, 1875 to 1932, which were applied to the council by the said local Act.

**337 Saving for certain payments in respect of drainage into sewers of another district.**

Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of the Public Health Act, 1875, in pursuance of the Local Government Act (1858) Amendment Act, 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district:

Provided that any such sum shall cease to be payable if the connection between the drain and the sewer is discontinued, but shall again become payable if thereafter the connection is re-established.

**338 Sewers or drains of collegiate and other corporate bodies and Government departments.**

Any collegiate or other corporate body required or authorised by or in pursuance of Act of Parliament to divert its sewers or drains from any river or to construct new sewers, and any Government department, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as, or similar to, those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, shall apply in substitution for the provisions of those Acts.

**339 Saving for existing rights of drainage.**

Nothing in this Act affects any right of drainage acquired by any person by prescription or otherwise before the commencement of this Act:

Provided that nothing in this section shall be construed as limiting the powers conferred on local authorities by sections twenty-two and forty-two of this Act.

**340 Works below high-water mark.**

Nothing in this Act shall authorise the execution of any works on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections and subject to such restrictions and regulations as may, before the works are commenced, be approved by the Board of Trade in writing under the hand of one of the secretaries, under-secretaries or assistant secretaries of the Board.

### **341 Power to apply provisions of Act to Crown property.**

- (1) The provisions of this section shall apply: in relation to any house, building or other premises being property belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a Government department, or held in trust for His Majesty for purposes of a Government department.
- (2) The authority which in relation to any such property is for the purposes of this section the appropriate authority and the council of the county, or the local authority of the district, in which that property is situate may agree that any provisions of this Act specified in the agreement shall apply to that property and, while the agreement is in force, those provisions shall apply to that property accordingly, subject however to the terms of the agreement.

Any such agreement as aforesaid may contain such consequential and incidental provisions, including, with the approval of the Treasury, provisions of a financial character, as appear to the appropriate authority to be necessary or equitable.

- (3) In this section the expression " the appropriate authority " means—
  - (a) in the case of property belonging to His Majesty in right of the Crown, the Commissioners of Crown Lands or other Government department having the management of the property in question;
  - (b) in the case of property belonging to His Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (c) in the case of property belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - (d) in the case of property belonging to a Government department or held in trust for His Majesty for purposes of a Government department, that department;and, if any question arises as to what authority is the appropriate authority in relation to any property, that question shall be referred to the Treasury, whose decision shall be final.