



Water Industry Act 1991

1991 CHAPTER 56

PART VI

UNDERTAKERS' POWERS AND WORKS

CHAPTER I

UNDERTAKERS' POWERS

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;

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- (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 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

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- (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.
- (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.