



Water Industry Act 1991

1991 CHAPTER 56

PART VI

UNDERTAKERS' POWERS AND WORKS

CHAPTER I

UNDERTAKERS' POWERS

Other works powers

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—

Changes to legislation: Water Industry Act 1991, Section 161 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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 [^{F1}the Environment Agency][^{F2}or the NRBW] or any water undertaker or from which [^{F1}the Environment Agency][^{F2}or the NRBW] or any water undertaker is authorised to take water;
 - (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by [^{F1}the Environment Agency][^{F2}or the NRBW] or any water undertaker or which [^{F1}the Environment Agency][^{F2}or the NRBW] 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 [^{F1}the Environment Agency][^{F2}or the NRBW] 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 ^{M1}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 [^{F1}the Environment Agency][^{F3}, where the proposed works will affect any watercourse in England, and the NRBW, where the proposed works will affect any watercourse in Wales,] 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.

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(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.

Textual Amendments

- F1** Words in s. 161(3)(4) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 117](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186, art. 3](#)
- F2** Words in s. 161(3)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 250\(2\)](#) (with [Sch. 7](#))
- F3** Words in s. 161(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 250\(3\)](#) (with [Sch. 7](#))

Modifications etc. (not altering text)

- C1** S. 161 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), [reg. 1\(1\)\(b\)](#), [Sch. 1 para. 12\(3\)](#) (with [reg. 1\(1\)\(c\)](#))

Marginal Citations

- M1** [1991 c. 57.](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DA inserted by [2021 c. 30 s. 81](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)
- s. 207D(5) words inserted by [2014 c. 21 Sch. 5 para. 52\(b\)](#)

- s. 213(1ZA) inserted by [2014 c. 21 Sch. 7 para. 119\(3\)](#)
- s. 213(1ZA) repealed by [2014 c. 21 Sch. 5 para. 53](#)