



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART VII

#### LAND AND WORKS POWERS

### CHAPTER I

#### POWERS OF THE [<sup>F1</sup>APPROPRIATE AGENCY]

#### *[<sup>F1</sup>Restoration and improvement works for controlled waters*

#### Textual Amendments

- F1** Ss. 161-161AB substituted for s. 161 (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 5 (with reg. 7)

#### **161. Anti-pollution works and operations**

- (1) This section applies where it appears to the [<sup>F2</sup>appropriate agency] that any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters.
- (2) In a case where the matter appears to be or to have been present in the controlled waters, the [<sup>F2</sup>appropriate agency] shall be entitled to carry out works and operations for any of the following purposes—
  - (a) removing or disposing of the matter;
  - (b) remedying or mitigating any pollution caused by its presence in the waters; or
  - (c) restoring (so far as it is reasonably practicable to do so) the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.

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- (3) In a case where the matter appears to be likely to enter the controlled waters, the [F<sup>2</sup>appropriate agency] shall be entitled to carry out works and operations for the purpose of preventing it from doing so.
- (4) The [F<sup>2</sup>appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—
- (a) the nature of the matter,
  - (b) the source of the matter;
  - (c) the nature and effects of any pollution caused or likely to be caused by the presence of the matter; and
  - (d) the identity of any responsible persons.
- (5) Without prejudice to the power of the [F<sup>2</sup>appropriate agency] to carry out those investigations, the powers conferred by subsection (2) or (3) shall only be exercisable in a case where—
- (a) the [F<sup>2</sup>appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
  - (b) it appears to the [F<sup>2</sup>appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (6) In this section “responsible person” means a person who has caused or knowingly permitted the matter—
- (a) to be present in the controlled waters; or
  - (b) to be at a place from which it was likely, in the opinion of the [F<sup>2</sup>appropriate agency], to enter the controlled waters.

#### **Textual Amendments**

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### **Modifications etc. (not altering text)**

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

### **161ZA. Other works and operations in respect of harm to controlled waters**

- (1) This section applies where it appears to the [F<sup>2</sup>appropriate agency] that any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (and it is immaterial whether the source of potential harm has been identified).
- (2) In this section “harm” means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of the environmental objectives applicable to the controlled waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into or presence in those waters of any poisonous, noxious or polluting matter or waste matter.

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- <sup>F3</sup>(3) .....
- (4) The [<sup>F2</sup>appropriate agency] shall be entitled to carry out works and operations for any of the following purposes (so far as it is reasonably practicable to achieve them)—
- (a) removing the source of potential harm;
  - (b) preventing any harm or further harm being caused to the controlled waters;
  - (c) in a case where the controlled waters are being or have been harmed—
    - (i) remedying or mitigating the effects of the harm;
    - (ii) restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before any harm was caused.
- (5) The [<sup>F2</sup>appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—
- (a) the source of any harm or potential harm to the controlled waters;
  - (b) the nature and effects of any harm caused or likely to be caused to those waters; and
  - (c) the identity of any responsible persons.
- (6) Without prejudice to the power of the [<sup>F2</sup>appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable in a case where—
- (a) the [<sup>F2</sup>appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
  - (b) it appears to the [<sup>F2</sup>appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (7) In this section “responsible person” means a person who has caused or knowingly permitted—
- (a) any harm to be caused to the controlled waters; or
  - (b) a source of potential harm to exist that is likely, in the opinion of the [<sup>F2</sup>appropriate agency], to cause harm to the controlled waters.

#### Textual Amendments

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F3** [S. 161ZA\(3\)](#) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

### 161ZB. Works and operations for improving controlled waters

- (1) This section applies where it appears to the [<sup>F2</sup>appropriate agency] that—

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- (a) the condition of any hydromorphological quality element affecting any controlled waters is unsatisfactory; and
  - (b) it is possible to improve the hydromorphological quality element by carrying out works or operations.
- (2) For the purposes of this section the condition of a hydromorphological quality element affecting the controlled waters is unsatisfactory if (whether by itself or in combination with other factors) if it is likely to prevent the waters from achieving the applicable environmental objectives.
- <sup>F4</sup>(3) .....
- (4) The [<sup>F2</sup>appropriate agency] shall be entitled to carry out works and operations for the purpose of improving the condition of the hydromorphological quality element in question with a view to achieving (or contributing to the achievement of) the applicable environmental objectives.
- (5) The [<sup>F2</sup>appropriate agency] shall be entitled to carry out investigations for the purpose of establishing why the condition of the hydromorphological quality element in question is unsatisfactory.
- (6) Without prejudice to the power of the [<sup>F2</sup>appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable if it appears to the [<sup>F2</sup>appropriate agency] that it is unable to secure that the necessary works or operations are carried out by exercising its powers under section 161 or 161ZA or by serving a works notice on any responsible person.

#### Textual Amendments

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F4** [S. 161ZB\(3\)](#) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

### 161ZC. Sections 161 to 161ZB: supplementary

- (1) Nothing in sections 161 to 161ZB shall entitle the [<sup>F2</sup>appropriate agency] to impede or prevent the making of any discharge in pursuance of [<sup>F5</sup>an environmental permit].
- (2) Where the [<sup>F2</sup>appropriate agency] carries out any works, operations or investigations under any of the powers conferred by section 161 or 161ZA it shall, subject to subsection (3), be entitled to recover the expenses reasonably incurred in doing so from any responsible person (within the meaning of the section conferring the powers in question).
- (3) No expenses are recoverable from a person for any works, operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which

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that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [<sup>F2</sup>appropriate agency], to enter any controlled waters.

(4) Subsection (3) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

<sup>F6</sup>(5) .....

(6) Nothing in sections 161, 161ZA and 161ZB—

- (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under any of those sections; or
- (b) affects any restriction imposed by or under any other enactment, whether public local or private.

(7) In this section—

- “expenses” includes costs;
- “mine” has the same meaning as in the Mines and Quarries Act 1954;
- “works notice” means a notice under section 161A.

(8) In sections 161, 161ZA and 161ZB and this section “controlled waters” has the same meaning as in Part 3 of this Act <sup>F7</sup> ...

[<sup>F8</sup>(9) In sections 161ZA and 161ZB, “environmental objectives”, “hydromorphological quality element” and “Water Framework Directive” have the meanings given by section 93(7) of this Act.]

#### Textual Amendments

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F5** Words in s. 161ZC(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(a)** (with reg. 1(2), Sch. 4)
- F6** S. 161ZC(5) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(m), **Sch. 28** (with reg. 1(2), Sch. 4)
- F7** Words in s. 161ZC(8) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** S. 161ZC(9) inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C1** Ss. 161-161D modified by [S.I. 2010/675](#), Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

### 161A. Notices requiring persons to carry out works and operations

(1) Where it appears to the [<sup>F2</sup>appropriate agency] that—

- (a) any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters (so that section 161 applies), or

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- (b) any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (so that section 161ZA applies),
- the [F<sup>2</sup>appropriate agency] shall be entitled to serve a works notice on any responsible person.
- (2) In this section “responsible person” has the same meaning as in section 161 or 161ZA (as the case may be).
- (3) For the purposes of this section a works notice is a notice requiring the person on whom it is served to carry out such works or operations as may be specified in the notice.
- (4) The works or operations that may be so specified are works or operations which may be carried out under section 161(2) or (3) or section 161ZA(4) (as the case may be).
- (5) Where the [F<sup>2</sup>appropriate agency] has carried out any such investigations as are mentioned in sections 161(4) or 161ZA(5) and serves a works notice on a responsible person in connection with the matters to which the investigations relate it shall (unless the notice is quashed or withdrawn) be entitled to recover from that person the costs or expenses reasonably incurred in carrying out those investigations.
- (6) The appropriate national authority may, if it thinks fit in relation to any person, give directions to the [F<sup>2</sup>appropriate agency] as to whether or how it should exercise its powers under this section or section 161AA.
- (7) In this section and sections 161AA and 161AB “controlled waters” has the same meaning as in Part 3 of this Act.

#### Textual Amendments

**F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

#### 161AA.Works notices: form etc

- (1) A works notice—
- (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
- (b) is without prejudice to the powers of the [F<sup>2</sup>appropriate agency] to carry out any works or operations under section 161(5)(a) or 161ZA(6)(a).
- (2) Before serving a works notice on any person, the [F<sup>2</sup>appropriate agency] shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (3) The appropriate national authority may by regulations make provision for or in connection with—

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- (a) the form or content of works notices;
  - (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
  - (c) steps to be taken for the purposes of any consultation required under subsection (2) or regulations made by virtue of paragraph (b); or
  - (d) any other steps of a procedural nature which are to be taken in connection with or in consequence of the service of a works notice.
- (4) A works notice shall not be regarded as invalid or as invalidly served by reason only of a failure to comply with the requirements of subsection (2) or of regulations made by virtue of paragraph (b) of subsection (3).
- (5) In this section and section 161A, “appropriate national authority” means—
  - (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument subject—
  - (a) in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) in the case of regulations made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales.
- (7) In this section,—
  - (a) paragraph (1) of section 219 does not apply; and
  - (b) in paragraph (2) of that section, references to “the Ministers” or the “the Secretary of State” shall be taken to be references to the appropriate national authority.

#### Textual Amendments

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161AB. Works notices: exceptions etc

- (1) Nothing in section 161A shall entitle the [F<sup>2</sup>appropriate agency] to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of [F<sup>9</sup>an environmental permit] .
- (2) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [F<sup>2</sup>appropriate agency], to enter any controlled waters.

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- (3) Subsection (2) does not apply to the service of a notice on the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

<sup>F10</sup>(4) .....

- (5) In this section “mine” has the same meaning as in the Mines and Quarries Act 1954.]

#### **Textual Amendments**

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F9** Words in s. 161AB(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(b)** (with reg. 1(2), Sch. 4)
- F10** S. 161AB(4) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(n), **Sch. 28** (with reg. 1(2), Sch. 4)

#### **Modifications etc. (not altering text)**

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

#### **<sup>F11</sup>161B Grant of, and compensation for, rights of entry etc.**

- (1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.
- (2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.
- (3) Before serving a works notice, the [<sup>F2</sup>appropriate agency] shall reasonably endeavour to consult every person who appears to it—
- (a) to be the owner or occupier of any relevant land, and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,
- concerning the rights which that person may be so required to grant.
- (4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.
- [<sup>F12</sup>(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5), regulations by virtue of that subsection may—



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- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
- (b) without prejudice to the generality of paragraph (a) above, provide for compensation under this section to be payable in respect of—
  - (i) any effect of any rights being granted, or
  - (ii) any consequence of the exercise of any rights which have been granted;
- (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
- (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
  - (i) as to whether any, and (if so) how much and when, compensation under this section is payable, or
  - (ii) as to the person to or by whom it shall be paid,is to be determined;
- (e) provide for when or how applications may be made for compensation under this section;
- (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
- (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
- (h) make provision similar to any provision made by paragraph 8 of Schedule 19;
- (i) make different provision for different cases, including different provision in relation to different persons or circumstances;
- (j) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.]

(7) In this section—

“prescribed” means prescribed in regulations made by the Secretary of State;

“relevant land” means—

- (a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or
- (b) any land adjoining or adjacent to that land or those waters;

“works notice” means a works notice under section 161A above.

#### Textual Amendments

- F2** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 283](#) (with [Sch. 7](#))
- F11** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by [1995 c. 25, s. 120](#), [Sch. 22 para. 162](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1995/1983](#), [art. 3](#); [S.I. 1999/803](#), [art. 2](#); [S.I. 1999/1301](#), [art. 2](#)
- F12** S. 161B(6) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 1\(1\)\(b\)](#), [Sch. 21 para. 21\(6\)](#) (with [reg. 72](#), [Sch. 4](#))

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**Modifications etc. (not altering text)**

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)
- C3** S. 161B applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 4(3)(b)**, 105(3); S.I. 2006/984, art. 2(d)

<sup>F13</sup> **161C Appeals against works notices.**

- (1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.
- (2) On any appeal under this section the Secretary of State—
  - (a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but
  - (b) subject to that, may confirm the notice, with or without modification, or quash it.
- (3) The Secretary of State may by regulations make provision with respect to—
  - (a) the grounds on which appeals under this section may be made; or
  - (b) the procedure on any such appeal.
- (4) Regulations under subsection (3) above may (among other things)—
  - (a) include provisions comparable to those in section 290 of the <sup>M1</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - (b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
  - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;
  - (d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;
  - (e) make provision as respects—
    - (i) the particulars to be included in the notice of appeal;
    - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or
    - (iii) the abandonment of an appeal.
- (5) In this section “works notice” means a works notice under section 161A above.
- (6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

**Changes to legislation:** There are currently no known outstanding effects for the Water Resources Act 1991,  
Cross Heading: Restoration and improvement works for controlled waters. (See end of Document for details)

#### Textual Amendments

- F13** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

#### Modifications etc. (not altering text)

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by **The Environmental Permitting (England and Wales) (Amendment) Regulations 2011** (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C2** Ss. 161-161D modified (1.1.2017) by **The Environmental Permitting (England and Wales) Regulations 2016** (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)
- C4** S. 161C: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. **114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- C5** S. 161C applied (with modifications) (1.4.2006) by **Water Act 2003** (c. 37), **ss. 4(3)(b)**, 105(3); S.I. 2006/984, **art. 2(d)**

#### Marginal Citations

- M1** 1936 c. 49.

### <sup>F14</sup>161D Consequences of not complying with a works notice.

- (1) If a person on whom the [<sup>F15</sup>appropriate agency] serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to [<sup>F16</sup>a fine] or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the [<sup>F15</sup>appropriate agency] may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the [<sup>F15</sup>appropriate agency] in doing it.
- (4) If the [<sup>F15</sup>appropriate agency] is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the [<sup>F15</sup>appropriate agency] may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) In this section “works notice” means a works notice under section 161A above.

#### Textual Amendments

- F14** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**
- F15** Words in ss. 161D-164 substituted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013** (S.I. 2013/755), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Restoration and improvement works for controlled waters. (See end of Document for details)*

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**F16** Words in s. 161D(2)(a) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 24\(5\)](#) (with reg. 5(1))

**Modifications etc. (not altering text)**

- C1** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), [Sch. 1](#))
- C2** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

**162 Other powers to deal with foul water and pollution.**

- (1) Without prejudice to the powers conferred by <sup>F17</sup>[sections 161 to 161D] above and subsections (2) and (3) below, the <sup>F15</sup>[appropriate agency] shall have power, on any land—
- (a) which belongs to the <sup>F15</sup>[appropriate agency]; or
  - (b) over or in which the <sup>F15</sup>[appropriate agency] has acquired the necessary easements or rights,
- to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose of intercepting, treating or disposing of any foul water arising or flowing on that land or of otherwise preventing any such pollution as is mentioned in section 159(6)(b) above.
- (2) Subject to the following provisions of this Part, the <sup>F15</sup>[appropriate agency] 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 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) Subject to the following provisions of this Part, the <sup>F15</sup>[appropriate agency] 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 160 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.

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**Changes to legislation:** There are currently no known outstanding effects for the Water Resources Act 1991,  
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- (4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the [<sup>F15</sup>appropriate agency], 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.
- (5) Any dispute as to whether any consent for the purposes of subsection (4) 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.
- (6) In this section—
- “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;
- “service pipe” and “water main” have the same meanings as in the <sup>M2</sup>Water Industry Act 1991;
- “waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

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#### Textual Amendments

**F15** Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

**F17** Words in s. 162(1) substituted (29.4.1999) by [1995 c. 25](#), s. 120, **Sch. 22 para. 163** (with ss. 7(6), 115, 117); [S.I. 1999/1301](#), **art. 2**

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#### Marginal Citations

**M2** [1991 c. 56](#).

**Changes to legislation:**

There are currently no known outstanding effects for the Water Resources Act 1991, Cross  
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