



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART VII

#### LAND AND WORKS POWERS

### CHAPTER I

#### POWERS OF THE AUTHORITY

##### *Provisions in relation to land*

#### **154 Compulsory purchase etc**

- (1) The Authority may be authorised by either of the Ministers to purchase compulsorily any land anywhere in England and Wales which is required by the Authority for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of each of the Ministers 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 the Authority of any rights over land which is to be or has been acquired by the Authority, to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which the Authority 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 182 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Authority; and

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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 18 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, by virtue of any provision of this Act (including section 4 above) or otherwise, on the Authority as if—
  - (a) any reference in those provisions to the acquiring authority were a reference to the Authority; and
  - (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

## **155 Accretions of land resulting from drainage works**

- (1) If the relevant Minister certifies that, as the result of—
  - (a) any drainage works carried out or improved, or proposed to be carried out or improved, by the Authority in connection with the tidal waters of a main river; or
  - (b) any drainage works transferred from a drainage body to the Authority in pursuance of this Act or the Land Drainage Act 1991,
 there has been or is likely to be any accretion of land, the powers of the Authority by virtue of this Act, for the purpose of carrying out its functions, to acquire land or any interest in or right over land by agreement or compulsorily shall include power so to acquire the land mentioned in subsection (2) below.
- (2) The land mentioned in subsection (1) above is—
  - (a) the accretion of land or the land to which the accretion will, if it takes place, be added, together with any right to reclaim or embank the accretion; and
  - (b) such other land as is reasonably required for the purpose of reclamation of the accretion or for the enjoyment of it when reclaimed.
- (3) An agreement or order with respect to the acquisition of any land or rights by virtue of this section may provide for the transfer to the Authority of any liability for the upkeep, maintenance and repair of any bank or drainage work or of any other like liability.
- (4) Where the value of any land or right is increased by the carrying out or proposed carrying out of drainage works by the Authority the amount of the increase shall not be taken into account in assessing the compensation in respect of the compulsory acquisition of it.
- (5) Where, by reason of a certificate having been given by the relevant Minister under this section in relation to any drainage works, the Authority has acquired any land or right and a grant has been made out of public moneys for defraying the cost or part of the cost of the carrying out of the works, the Authority shall—
  - (a) on being so required by the Crown Estate Commissioners; and
  - (b) on payment by the Commissioners to the Authority of the sum paid by the Authority in respect of the acquisition of the land or right, together with

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the amount of any costs incurred by the Authority in connection with the acquisition,

transfer the land or right to the Commissioners or to any person nominated by them.

- (6) If the Authority, on being so required by the Crown Estate Commissioners in pursuance of subsection (5) above, fail to transfer to the Commissioners any land or right, the relevant Minister may by a vesting order transfer the land or right to the Commissioners or to a person nominated by them; and, for the purposes of this subsection, the relevant Minister shall be deemed to be a competent authority within the meaning of section 9 of the Law of Property Act 1925.

- (7) In this section—

“banks” has the same meaning as in Part IV of this Act;

“drainage body” has the same meaning as in section 108 above;

“the relevant Minister”—

(a) in relation to England, means the Minister; and

(b) in relation to Wales, means the Secretary of State.

## **156 Acquisition of land etc. for fisheries purposes**

- (1) Without prejudice to section 4 above, the powers conferred on the Authority by that section and section 154 above include power to purchase or take on lease (either by agreement or, if so authorised, compulsorily)—

- (a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;
- (b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 of the Salmon and Freshwater Fisheries Act 1975; and
- (c) for the purpose of erecting and working a fixed engine, any fishery land or foreshore together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.

- (2) Without prejudice to section 4 above, the Authority may—

- (a) either alter or remove an obstruction acquired in the exercise of the powers mentioned in subsection (1) above; or
- (b) by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired,

subject, in the case of an obstruction or fishery acquired by way of lease, to the terms of the lease.

- (3) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

## **157 Restriction on disposals of compulsorily acquired land**

- (1) The Authority shall not dispose of any of its compulsorily acquired 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, one of the Ministers.

- (2) A consent or authorisation for the purposes of this section—

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- (a) shall be set out in a notice served on the Authority by the Minister who is giving the consent or authorisation; and
  - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the Water Industry Act 1991 (restrictions on disposals of land by a water or sewerage undertaker).
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Minister who is giving it considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, the conditions of a consent or authorisation for the purposes of this section may include 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 to such person as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- (5) A requirement under subsection (4) above may require the opportunity 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 in question.
- (6) In this section “compulsorily acquired land”, in relation to the Authority, means any land of the Authority which—
  - (a) was acquired by the Authority compulsorily under the provisions of section 154 above or of an order under section 168 below;
  - (b) was acquired by the Authority at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (c) being land which has been transferred to the Authority in accordance with a scheme under Schedule 2 to the Water Act 1989, was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or
  - (d) being land which has been so transferred, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in paragraph (c) above.

*Works agreements for water resources purposes*

**158 Works agreements for water resources purposes**

- (1) Without prejudice to the generality of the powers of the Authority by virtue of section 4 above but subject to subsection (2) below, those powers shall include power to enter into an agreement with any water undertaker, with any sewerage undertaker, with any local authority or joint planning board, or with the owner or occupier of any land, with respect to any one or more of the following matters, that is to say—
  - (a) the carrying out by any party to the agreement of works which the Authority considers necessary or expedient in connection with the carrying out of any of the Authority’s functions by virtue of Part II of this Act;
  - (b) the maintenance by any party to the agreement of works carried out in pursuance of the agreement;
  - (c) provision for the Authority to use, or have access to, any land for any purpose connected with the carrying out of any of those functions;
  - (d) the manner in which any reservoir is to be operated.

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- (2) The Secretary of State may by a direction to the Authority direct that, in such cases or classes of cases as are specified in the direction, the Authority shall not enter into any such agreement as is mentioned in subsection (1) above except with his consent.
- (3) An agreement such as is mentioned in subsection (1) above may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the Authority necessary or expedient for the purposes of the agreement.
- (4) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land, other than registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
  - (a) the agreement may be registered as a land charge under the Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D;
  - (b) the provisions of section 4 of that Act (which relates to the effect of non-registration) shall apply as if the agreement were such a land charge; and
  - (c) subject to the provisions of section 4 of that Act, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (5) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land which is registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
  - (a) notice of the agreement may be registered under section 59(2) of the Land Registration Act 1925 as if it were a land charge (other than a local land charge) within the meaning of that Act;
  - (b) the provisions of that Act shall apply accordingly as if the agreement were such a land charge; and
  - (c) where notice of the agreement has been so registered, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (6) In this section—
  - “registered land” has the same meaning as in the Land Registration Act 1925; and
  - “successor”, in relation to an agreement with the owner of any land, means a person deriving title or otherwise claiming under that owner, otherwise than in right of an interest or charge to which the interest of the owner was subject immediately before the following time, that is to say—
    - (a) where the land is not registered land, the time when the agreement was made; and
    - (b) where the land is registered land, the time when the notice of the agreement was registered.

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### *General pipe-laying powers*

#### **159 Powers to lay pipes in streets**

- (1) Subject to the following provisions of this Part, the Authority 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, the Authority 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) 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 pipe which is conferred by this section.
- (5) In this section references to a relevant pipe are references to a resource main or discharge pipe and references to laying such a pipe shall include references—
  - (a) to the laying of any drain or sewer for any of the purposes specified in subsection (6) below; and
  - (b) to the construction of a watercourse for any of those purposes.
- (6) The purposes mentioned in subsection (5) above are—
  - (a) intercepting, treating or disposing of any foul water arising or flowing upon any land; or
  - (b) otherwise preventing the pollution—
    - (i) of any waters, whether on the surface or underground, which belong to the Authority or any water undertaker or from which the Authority 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 the Authority or any water undertaker or which the Authority 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 Authority 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 this Act.

- (7) References in this section 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 as the pipe replaced.

## **160 Power to lay pipes in other land**

- (1) Subject to the following provisions of this Part, the Authority 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) 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.
- (3) Subject to subsection (4) 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 (2) 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.
- (4) In this section references to a relevant pipe are references to a resource main or discharge pipe; and subsection (7) of section 159 above shall apply for the purposes of this section as it applies for the purposes of that section.

### *Anti-pollution works*

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

- (1) Subject to subsection (2) below, where it appears to the Authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Authority shall be entitled to carry out the following works and operations, that is to say—
- (a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so; or
  - (b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—
    - (i) of removing or disposing of the matter;
    - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
    - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment

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of the waters, to their state immediately before the matter became present in the waters.

- (2) Nothing in subsection (1) above shall entitle the Authority to impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.
- (3) Where the Authority carries out any such works or operations as are mentioned in subsection (1) above, it shall, subject to subsection (4) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—
  - (a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the Authority, to enter any controlled waters; or
  - (b) caused or knowingly permitted the matter in question to be present in any controlled waters.
- (4) No such expenses shall be recoverable from a person for any works or operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in subsection (3) above or to enter any controlled waters.
- (5) Nothing in this section—
  - (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this section; or
  - (b) affects any restriction imposed by or under any other enactment, whether public, local or private.
- (6) In this section—
 

“controlled waters” has the same meaning as in Part III of this Act; and

“mine” has the same meaning as in the Mines and Quarries Act 1954.

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

- (1) Without prejudice to the powers conferred by section 161 above and subsections (2) and (3) below, the Authority shall have power, on any land—
  - (a) which belongs to the Authority; or
  - (b) over or in which the Authority 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 Authority 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;



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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 Authority 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.

- (4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the Authority, 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 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.

#### *Powers to discharge water*

### **163 Discharges for works purposes**

- (1) Subject to the following provisions of this section and to section 164 below, where the Authority—

- (a) 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 the Authority for the purposes of, or in connection with, the carrying out of any of its functions; or
- (b) is exercising or about to exercise any power conferred by section 159, 160 or 162(2) or (3) above,

the Authority 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 company or navigation authority; or

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- (b) floods or damages any highway.
- (3) If the Authority 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,
 it 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—
  - “railway company” means the British Railways Board, London Regional Transport or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway; and
  - “relevant pipe” has the same meaning as in section 159 above.

#### **164 Consents for certain discharges under section 163**

- (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 163 above except with such consent as may be prescribed.
- (2) Where the Authority makes an application to any person for a consent for the purposes of this section—
  - (a) that application shall be accompanied or supplemented by all such information as that person may reasonably require; and
  - (b) the Authority shall serve a copy of the application, and of any consent given on that application, on every person who—
    - (i) is registered with the Authority 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) the Authority, having made an application to any person 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 person; and
  - (b) that requirement was made by that person at such a time before the end of the period within which he is required to determine the application as gave the Authority a reasonable opportunity to provide the required information within that period,

that person 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 163 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the Authority 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 the Authority would have been required to serve the application for that consent or any copy of that application.
- (8) If the Authority 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.

### *Flood defence and drainage works*

## **165 General powers to carry out flood defence and drainage works**

- (1) The Authority shall have power, in connection with a main river—
  - (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or any drainage work;
  - (b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams,

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- weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
- (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land.
- (2) The Authority shall also have power, irrespective of whether the works are in connection with a main river, to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
- (3) The Authority may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.
- (4) The Authority may by agreement with any person carry out, improve or maintain, at that person's expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include the amount of any grant paid under section 149(3) above in respect of the works in question.
- (5) The Authority may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work in connection with a main river which the Authority is authorised to carry out.
- (6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (7) In this section "watercourse" has the same meaning as in Part IV of this Act; and subsections (2) and (3) of section 113 above shall apply for the purposes of determining any question arising under this section as to—
- (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work, as they apply for the purposes of that Part.

## **166 Power to carry out works for purpose of providing flood warning system**

- (1) Without prejudice to its other powers by virtue of section 4 above, Part IV of this Act and this Part, the Authority shall have power—
- (a) to provide and operate flood warning systems;
  - (b) to provide, install and maintain apparatus required for the purposes of such systems;
  - (c) to carry out any other engineering or building operations so required.
- (2) Subsection (1) above shall not be construed as authorising, on the part of the Authority, any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the Authority by virtue of its constitution.
- (3) The Authority may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—

- (a) its functions in relation to the areas of the regional flood defence committees whose areas are adjacent to Scotland were functions in relation to that area in Scotland; and
- (b) that area in Scotland were included in the areas of each of those committees; but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

(4) In this section “flood warning system” has the same meaning as in section 148 above.

#### **167 Power to dispose of spoil in connection with flood defence works**

- (1) Subject to subsection (2) below, the Authority may—
  - (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and
  - (b) deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.
- (2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the Environmental Protection Act 1990.
- (3) The Authority and the council of any district or London borough may enter into an agreement providing—
  - (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
  - (b) for the payment by the Authority to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.
- (4) In this section “banks” and “watercourse” have the same meanings as in Part IV of this Act.

#### *Compulsory works orders*

#### **168 Compulsory works orders**

- (1) Where the Authority 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 Authority may apply to either of the Ministers for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Ministers shall each have power, on an application under subsection (1) above, by order made by statutory instrument—
  - (a) to confer such compulsory powers; and
  - (b) to grant such authority,

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*Status: This is the original version (as it was originally enacted).*

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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 19 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 19 to this Act, a compulsory works order may—

- (a) without prejudice to section 154 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 the Authority of any rights over land which is to be or has been acquired by the Authority, 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 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 Minister making the order considers appropriate;

and section 156(1) above shall apply in relation to the powers conferred by virtue of this section as it applies in relation to the power conferred by section 154 above.

(5) Without prejudice to any duty imposed by virtue of section 184 below, where—

- (a) either of the Ministers makes a compulsory works order authorising the Authority to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on the Authority; 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 the Authority from any restriction imposed by Chapter II of Part II of this Act.

(7) It is hereby declared that a compulsory works order may grant authority for discharges of water by the Authority where the Authority 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 155 to 158 and 165 to 167 above.

## CHAPTER II

### POWERS OF ENTRY

#### **169 Powers of entry for enforcement purposes**

- (1) Any person designated in writing for the purpose by either of the Ministers or by the Authority may—
  - (a) enter any premises or vessel for the purpose of ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the Authority is being or has been contravened; and
  - (b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as that Minister or the Authority—
    - (i) considers appropriate for the purpose mentioned in paragraph (a) above; and
    - (ii) has authorised that person to carry out or take away.
- (2) The powers which by virtue of subsection (1) above are conferred in relation to any premises for the purpose of enabling either of the Ministers or the Authority to determine whether any provision made by or under any of the water pollution provisions of this Act is being or has been contravened shall include power, in order to obtain the information on which that determination may be made—
  - (a) to carry out experimental borings or other works on those premises; and
  - (b) to install and keep monitoring and other apparatus there.
- (3) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Authority carries out functions.

#### **170 Power of entry for certain works purposes**

- (1) Any person designated in writing for the purpose by the Authority 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 Authority to exercise any relevant works power; or
    - (ii) how any such power should be exercised;
  - (b) the exercise of any such power.
- (3) The power by virtue of subsection (1) above of a person designated by the Authority 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 Authority considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above and has authorised that person to take away and analyse.

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- (4) In this section “relevant works power” means any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 above.

## **171 Power to carry out surveys and to search for water**

- (1) Without prejudice to the rights and powers conferred by the other provisions of this Chapter, any person designated in writing under this section by the Authority 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 Authority 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 Authority to apply for an order under section 168 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 Authority 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 representation 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
    - (ii) have not been withdrawn.



## **172 Powers of entry for other purposes**

- (1) Any person designated in writing for the purpose by either of the Ministers or the Authority may enter any premises or vessel for the purpose of—
  - (a) determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers or on the Authority by virtue of any enactment to which this section applies (including a power of either or both of the Ministers to make subordinate legislation) should be exercised or, as the case may be, performed; or
  - (b) exercising or performing any power or duty which is so conferred or imposed.
- (2) Any person designated in writing for the purpose by either of the Ministers or the Authority may—
  - (a) carry out such inspections, measurements and tests on any premises or vessel entered by that person under this section or of any articles found on any such premises or vessel; and
  - (b) take away such samples of water or effluent or of any land or articles, as that Minister or the Authority considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.
- (3) The powers which by virtue of subsections (1) and (2) above are conferred in relation to any premises for the purpose of enabling either of the Ministers or the Authority to determine whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under the water pollution provisions of this Act shall include power, in order to obtain the information on which that determination may be made—
  - (a) to carry out experimental borings or other works on those premises; and
  - (b) to install and keep monitoring and other apparatus there.
- (4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Authority carries out functions.

## **173 Powers of entry: supplemental provisions**

Schedule 20 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by the preceding provisions of this Chapter.

## **174 Impersonation of persons exercising powers of entry**

- (1) A person who, without having been designated or authorised for the purpose by the Authority, 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 the Authority.

### CHAPTER III

#### PROVISIONS SUPPLEMENTAL TO LAND AND WORKS POWERS

##### *Vesting of pipes in the Authority*

#### **175 Vesting of pipes in the Authority**

- (1) Subject to any provision to the contrary contained in an agreement between the Authority and the person in whom an interest in the pipe is or is to be vested, every pipe which—
  - (a) is a relevant pipe for the purposes of section 159 or 160 above; and
  - (b) has been laid, in exercise of any power conferred by Chapter I of this Part or otherwise, by the Authority,
 shall vest in the Authority.
- (2) Subsection (1) above is without prejudice to the vesting of anything in the Authority by virtue of the exercise by the Authority of any power to acquire property by agreement or compulsorily.

##### *Offence of interference with works etc.*

#### **176 Offence of interference with works etc**

- (1) Subject to subsection (2) below, if any person without the consent of the Authority—
  - (a) intentionally or recklessly interferes with any resource main or other pipe vested in the Authority or with any structure, installation or apparatus belonging to the Authority; 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 Authority—
  - (a) attaches any pipe or apparatus to any resource main or other pipe vested in the Authority; or
  - (b) 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 (b) 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) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the Authority; and any such breach of duty which causes the Authority to sustain loss or damage shall be actionable at the suit of the Authority.
- (6) The amount recoverable by virtue of subsection (5) 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.
- (7) In this section “service pipe” and “stopcock” have the same meanings as in the Water Industry Act 1991, and “consumer” has the same meaning as in Part III of that Act.

*Compensation etc. in respect of exercise of works powers*

**177 Compensation etc. in respect of exercise of works powers**

Schedule 21 to this Act shall have effect for making provision for imposing obligations as to the payment of compensation in respect of the exercise of the powers conferred on the Authority by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.

*Protective provisions*

**178 Protection for particular undertakings**

Schedule 22 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by the Authority.

**179 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
  - (b) with any such works used by any person for irrigating any land.
- (2) Where the Authority proposes, otherwise than in exercise of any compulsory powers—
  - (a) to construct or alter any such inland waters in any internal drainage district as do not form part of a main river; or
  - (b) to construct or alter any works on or in any such inland waters,the Authority shall consult the internal drainage board for that district before doing so.

*Status: This is the original version (as it was originally enacted).*

- (3) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) 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; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
 shall be referred 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.
- (5) The provisions of this section shall be without prejudice to the provisions of Schedule 22 to this Act.

## **180 Power of navigation authorities etc to divert the Authority's watercourses**

- (1) Where any watercourses under the control of the Authority pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—
  - (a) take up, divert or alter the level of those watercourses; and
  - (b) do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.
- (2) If any question arises under this section between the Authority and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.
- (3) In this section—
  - “relevant authority” means any navigation authority, harbour authority or conservancy authority; and
  - “watercourse” has the same meaning as in Part IV of this Act.

## **181 Works in tidal lands etc**

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the Authority 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 the Authority by the service on the Authority of a notice containing the approval.

- (3) Section 38 of the Salmon and Freshwater Fisheries Act 1975 (tidal lands etc.) shall apply to any proposed construction, alteration or extension under section 156 above as it applies to any proposed construction, alteration or extension under that Act.
- (4) Section 74 of the Land Drainage Act 1991 (application to Crown and tidal lands), so far as it relates to lands below the high-water mark of ordinary spring tides shall apply, as it applies in relation to that Act, to the flood defence provisions of this Act.
- (5) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of sections 159, 160, 162(2) and (3) and 163 above.

## **182 Mineral rights**

Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the Authority 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).

## **183 Saving for planning controls etc**

- (1) 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 the Authority, 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.
- (2) Nothing in the flood defence provisions of this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the Ancient Monuments and Archaeological Areas Act 1979.

## **184 Duties to make recreational facilities available when building reservoirs in Wales**

- (1) Where the Authority 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 the Authority to benefit the inhabitants of that or those communities,it shall be the duty of the Authority 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 the Authority, 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.

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*Status: This is the original version (as it was originally enacted).*

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*Savings in respect of existing drainage obligations*

**185 Savings in respect of existing drainage obligations**

- (1) Nothing in the flood defence provisions of this Act shall operate to release any person from an obligation to which section 21 of the Land Drainage Act 1991 applies.
- (2) The functions of the Authority as respects the doing of any work under the flood defence provisions of this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.

*Interpretation of Part VII*

**186 Interpretation of Part VII**

- (1) In this Part—
  - “discharge pipe” means a pipe from which discharges are or are to be made under section 163 above;
  - “resource main” means any pipe, not being a trunk main within the meaning of the Water Industry Act 1991, which is or is to be used for the purpose of—
    - (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
    - (b) giving or taking a supply of water in bulk.
- (2) In subsection (1) above—
  - “source of supply” shall be construed without reference to the definition of that expression in section 221 below; and
  - “supply of water in bulk” has the same meaning as in section 3 above.
- (3) The powers conferred by Chapter I of this Part shall be without prejudice to the powers conferred on the Authority by any other enactment or by any agreement.