



# Water Act 1945

## 1945 CHAPTER 42

### PART IV

#### POWERS AND DUTIES OF LOCAL AUTHORITIES AND WATER UNDERTAKERS.

##### *Construction of works and acquisition of land and water rights.*

#### **23 Orders of Minister conferring certain powers on water undertakers.**

- (1) The Minister may, on the application of any persons who are or propose to become statutory water undertakers, make an order—
- (a) authorising them to construct, acquire by agreement, alter or continue, and to maintain, waterworks and works connected therewith;
  - (b) if the applicants are not statutory water undertakers, authorising them to supply water in any area;
  - (c) authorising the applicants to raise capital or borrow money for any purposes of the water undertaking;

and the order may contain such incidental, consequential and supplementary provisions, including provisions for the amendment or repeal of any local enactment, as the Minister thinks necessary or expedient:

Provided that—

- (i) an order made under paragraph (a) of this subsection shall not empower the applicants to acquire compulsorily any land or water rights or vary compulsorily the quantity of compensation water required by any enactment to be discharged into any watercourse or the periods during which or the manner in which such compensation water is required to be discharged;
- (ii) no order shall be made under paragraph (b) of this subsection without the consent of the local authority for every district within which the applicants are to be authorised to supply water or, in a case where they are to be authorised to supply water within the limits of supply of any statutory water

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undertakers supplying water under a local enactment, without the consent of those undertakers.

A consent required for the purposes of this subsection shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister.

- (2) The provisions of Part I of the First Schedule to this Act, other than paragraph 8, shall apply to the making of applications and orders under this section.

**24 Power of statutory water undertakers to acquire land by agreement or compulsorily.**

- (1) Any statutory water undertakers shall have power under this section to acquire land by agreement, whether by way of purchase, lease or exchange, for any of the purposes of their undertaking, but no such agreement shall have effect without the approval of the Minister.
- (2) Without prejudice to the generality of the foregoing subsection, statutory water undertakers may acquire land thereunder for the purpose of erecting houses and other buildings thereon for the use of persons employed by them for the purposes of their undertaking, and may also acquire land thereunder to be used for recreation grounds for persons so employed.
- (3) The Lands Clauses Acts, except the provisions relating to the acquisition of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections ninety-nine to one hundred and seven and sections one hundred and twenty-seven to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845, are hereby incorporated with the foregoing provisions of this section, and in construing those Acts those provisions shall be deemed to be the special Act and the word "land" shall have the meaning assigned to it in this Act.
- (4) Any local authority or statutory water undertakers may be authorised by means of a compulsory purchase order made by them and confirmed by the Minister to purchase land compulsorily under this section for any of the purposes of their water undertaking or proposed water undertaking, but those purposes shall not be deemed to include the purposes mentioned in subsection (2) of this section.
- (5) The provisions of the Second Schedule to this Act shall have effect with respect to compulsory purchase orders made under this section.
- (6) Nothing in this section shall authorise the compulsory acquisition of land which is the site of an ancient monument or other object of archaeological interest, or any land which is the property of a local authority or has been acquired for the purposes of their undertaking by any persons authorised by any enactment to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking.
- (7) A compulsory purchase order made under this section may authorise the purchase of any land belonging to the National Trust notwithstanding that such land is held by the Trust inalienably, but where any such order authorises the acquisition of land so held inalienably or of any land forming part of a common, open space or allotment, the order shall, subject to the next following subsection, be provisional only and not have effect until it is confirmed by Parliament.

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- (8) So much of the last foregoing subsection as provides that any such order as aforesaid shall be provisional only and not have effect until it is confirmed by Parliament shall not apply where the order provides for giving in exchange for such land other land, not being less in area, certified by the Minister of Agriculture and Fisheries (in the case of a common or an allotment) or the Minister of Town and Country Planning (in the case of land held inalienably by the National Trust or an open space not being a common or an allotment) to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public:

Provided that—

- (a) before giving any such certificate, the Minister of Agriculture and Fisheries or the Minister of Town and Country Planning, as the case may be, shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if he thinks it necessary, hold a local inquiry; and
  - (b) the order shall provide for vesting the land given in exchange in the persons in whom the land acquired was vested, subject to the same rights, trusts and incidents as attach to the land acquired, and for discharging the land acquired from all rights, trusts and incidents to which it was previously subject.
- (9) In this section the expression " National Trust " means the National Trust for places of Historic Interest or Natural Beauty incorporated by the National Trust Act, 1907, the expression " held inalienably," in relation to land belonging to that Trust, means land which is inalienable under section twenty-one of the said Act or section eight of the National Trust Act, 1939, the expression " allotment" means an allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act, the expression " common " includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green, and the expression " open space " means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground.

## **25 Power of statutory water undertakers to hold and dispose of land.**

Notwithstanding anything in the Lands Clauses Acts, any statutory water undertakers may hold and use for the purposes of their undertaking for such time as they think fit any land for the time being belonging to them and may from time to time, with the consent of the Minister, sell, lease, exchange or otherwise dispose of any such land in such manner, for such consideration and on such terms and conditions as they think fit and, in particular, on any such disposition may reserve to themselves any water rights or other easements in, over or belonging to, the land disposed of and may make any such disposition subject to such other reservations, conditions, restrictions and provisions with respect to the use of water, the carrying on of noxious trades or the discharge or deposit of manure, sewage or other foul matter as they think fit:

Provided that the consent of the Minister shall not be required for the grant of a lease of any such land for a term not exceeding seven years.

## **26 Power of statutory water undertakers to acquire water rights.**

- (1) Statutory water undertakers may acquire by agreement rights to take water from any stream or other source, but no such agreement shall have effect without the approval of the Minister.

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- (2) The Minister may on the application of any local authority or statutory water undertakers, by order provide for the compulsory acquisition by them of such rights to take water from any stream or other source as may be specified in the order.
- (3) Where the acquisition of rights under this section will result in the impounding of any stream—
  - (a) the Minister shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement requires the undertakers to provide an adequate quantity of compensation water, and incorporates the appropriate provisions of Part III of the First Schedule to this Act subject to such modifications and adaptations as the Minister may approve; or
  - (b) the Minister shall in any order for the compulsory acquisition of such rights prescribe the quantity of compensation water to be provided by the undertakers and shall incorporate in the order the appropriate provisions of the said Part III subject to such modifications and adaptations as he thinks fit.
- (4) Where the acquisition of rights under this section will in the opinion of the Minister substantially reduce the flow of any stream—
  - (a) the Minister shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement contains adequate provisions for limiting the extent to which and the circumstances in which water may be taken from the stream and incorporates the appropriate provisions of Part III of the Third Schedule to this Act subject to such modifications and adaptations as the Minister may approve;
  - (b) the Minister shall in any order for the compulsory acquisition of such rights prescribe the extent to which and the circumstances in which water may be taken and shall incorporate in the order the appropriate provisions of the said Part III subject to such modifications and adaptations as he thinks fit.
- (5) In assessing the quantity of compensation water to be provided under any such agreement or order or in determining the extent to which and the circumstances in which water may be taken under any such agreement or order, the Minister shall have regard to all the circumstances of the particular case, including—
  - (a) the character and flow of the stream;
  - (b) the extent to which the stream is or may in the future be used for industrial purposes, fisheries, water supply by other undertakers, agriculture, transport or navigation;
  - (c) the effect on land drainage or on any canal or inland navigation of any alterations in the flow of the stream,and shall secure, as far as practicable, that the flow of the stream does not fall below the minimum quantity necessary to secure the interests of public health and the protection of the rights of riparian and other landowners.
- (6) The provisions of Part III of the First Schedule to this Act shall apply to the approval of agreements under this section and, if any catchment board for a catchment area or fishery board of a fishery district in which any source from which water is to be taken is situated, or any navigation authority for any river, canal or other inland navigation from which water is to be taken or which is fed by a stream from which water is to be taken to such extent as, in the opinion of the Minister, to affect the river, canal or other inland navigation duly object to the agreement in accordance with the provisions of the said Part III, and the objection is not withdrawn, the Minister shall give his approval

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by order and the order shall, in the circumstances specified in paragraph 23 of the said Schedule, be provisional only and not have effect until it is confirmed by Parliament.

- (7) The provisions of Part I of the First Schedule to this Act shall apply to the making of applications and orders under subsection (2) of this section, and any such order shall, in the circumstances specified in paragraph 8 of the said Schedule, be provisional only and not have effect until it is confirmed by Parliament.