



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART VI **E+W**

#### UNDERTAKERS' POWERS AND WORKS

### CHAPTER III **E+W**

#### SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

##### *Protective provisions*

#### **183 Protection for particular undertakings. **E+W****

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

#### **184 Power of certain undertakers to alter public sewers etc. **E+W****

- (1) The [<sup>F1</sup>Environment Agency] or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers [<sup>F2</sup>, airport operator or licence holder] may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—
- (a) are vested in the undertaker; and
  - (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
    - (i) any watercourse or other works vested in or under the control of the [<sup>F1</sup>Environment Agency] or that internal drainage board;
    - (ii) any property of the Civil Aviation Authority;
    - (iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;

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- (iv) the railway of the railway undertakers; <sup>F3</sup> . . .
  - (v) the airport in question. [<sup>F4</sup>; or
  - (vi) any property of a licence holder which is used by the licence holder for the purpose of carrying out activities authorised by the licence.]
- (2) In subsection (1) above “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.
- (3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker—
- (a) are or will be equally effectual; or
  - (b) entail or will entail additional expense for the sewerage undertaker,
- may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) In this section—
- “airport operator” means the person who is the airport operator for the purposes of Part V of the <sup>M1</sup> Airports Act 1986 in relation to an airport to which that Part of that Act applies; <sup>F5</sup> . . .
- “dock undertakers” has the same meaning as in Chapter II of Part IV of this Act. [<sup>F6</sup>; and
- “licence holder” means a person who holds a licence under Chapter I of Part I of the Transport Act 2000 and “licence” shall be construed accordingly.]

#### Textual Amendments

- F1** Words in s. 184(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 119** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F2** Words in s. 184(1) substituted (21.12.2001) by S.I. 2001/4050, **art. 2, Sch. Pt. II para. 8(a)**
- F3** Word in s. 184(1)(b)(iv) omitted (21.12.2001) by virtue of S.I. 2001/4050, **art. 2, Sch. Pt. II para. 8(b)(i)**
- F4** S. 184(1)(b)(vi) and word “or” immediately preceding inserted (21.12.2001) by S.I. 2001/4050, **art. 2, Sch. Pt. II para. 8(b)(ii)**
- F5** Word in s. 184(4) omitted (21.12.2001) by virtue of S.I. 2001/4050, **art. 2, Sch. Pt. II para. 8(c)(i)**
- F6** S. 184(4): definition of “licence holder” and word “and” immediately preceding inserted (21.12.2001) by S.I. 2001/4050, **art. 2, Sch. Pt. II para. 8(c)(ii)**

#### Marginal Citations

- M1** 1986 c. 31.

## 185 Duty to move pipes etc. in certain cases. **E+W**

- (1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe

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or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

- (2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.
- (3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.
- (4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.
- (5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.
- (6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, the undertaker shall pay interest at such rate as may be determined either—
  - (a) by the undertaker with the approval of the Director; or
  - (b) in default of a determination under paragraph (a) above, by the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (7) An approval or determination by the Director for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.
- (8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by the Director.
- (9) In this section—
 

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in section 158 above.

## 186 **Protective provisions in respect of flood defence works and watercourses etc.** E

+W

- (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) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have

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effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.

(3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

- (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
- (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.

(5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.

(6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.

(7) 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;
- (c) as to whether any condition subject to which any such consent has been given was reasonable; or
- (d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,

shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) 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.

(8) In this section “relevant inland waters” means any inland waters other than any which form part of a main river for the purposes of Part IV of the <sup>M2</sup>Water Resources Act 1991.

(9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

#### **Marginal Citations**

**M2** 1991 c. 57.

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### 187 Works in tidal lands etc. **E+W**

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker 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 a relevant undertaker by the service on that undertaker of a notice containing the approval.
- (3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

### 188 Mineral rights. **E+W**

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers 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 <sup>M3</sup>Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

#### Marginal Citations

M3 1981 c. 67.

### 189 Power to sell minerals deriving from sewerage works. **E+W**

- (1) A sewerage undertaker may sell any materials which—
  - (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and
  - (b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.
- (2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.
- (3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

### 190 Saving for planning controls. **E+W**

Without prejudice to the operation of section 90 of the <sup>M4</sup>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 <sup>M5</sup>Water Act 1989 relates to the functions of a relevant undertaker, nothing

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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.

#### Marginal Citations

**M4** 1990 c. 8.

**M5** 1989 c. 15.

### 191 Duties to make recreational facilities available when building reservoirs in Wales. **E+W**

- (1) Where a water undertaker 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 that undertaker to benefit the inhabitants of that or those communities,

it shall be the duty of that undertaker 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 every water undertaker, 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 [<sup>F7</sup>county or county borough] in which any community affected is situated.
- (3) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

#### Textual Amendments

**F7** Words in s. 191(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 2(1)** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**

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