ELIZABETH II



1972 CHAPTER xxxviii

An Act to confer further powers on the Devon River Authority in relation to the acquisition of lands, and the administration of the area of the Authority; to make further provision with regard to the finances of the Authority and for the welfare of their staff; and for other purposes. [9th August 1972]

WHEREAS the Devon River Authority (hereinafter in this Act referred to as "the Authority") were constituted in pursuance of the Water Resources Act 1963 (hereinafter in this Act referred to as "the Act of 1963"), as the authority responsible for water conservation, land drainage, prevention of pollution and the management and improvement of salmon, trout and freshwater fisheries within an area which comprises the greater part of the administrative county of Devon, parts of the administrative counties of Cornwall, Dorset and Somerset, the city and county of the city of Exeter and the county borough of Torbay (hereinafter in this Act referred to as "the Devon area"): 1963 c. 38.

And whereas as the authority responsible for water conservation within the Devon area the Authority are charged by the Act of 1963 with the duty of taking such action as they consider necessary or expedient for the purpose of conserving, redistributing or otherwise augmenting the water resources in the Devon area and of transferring water from that area to the area of another river authority:

And whereas the demand for water in the Devon area has increased and will further increase but the existing water resources are insufficient and it is the intention of the Authority to augment those resources by constructing one or more reservoirs:

And whereas as the construction of such reservoir or reservoirs will be facilitated by enabling the Authority to pay compensation to the owners and occupiers of the land required therefor in excess of that permissible under the general law and by other means to relieve hardship resulting from the acquisition of the land it is expedient and in the public interest that the Authority should be granted the powers in that behalf by this Act provided:

And whereas one of the reservoirs the Authority is proposing to construct is a reservoir at Wimbleball in the county of Somerset to meet the requirements of consumers both in the areas of certain statutory water undertakers supplying both within and outside the Devon area and also in other parts of that area:

And whereas the Authority are proposing to enter into agreements under section 81 of the Act of 1963 with three of the statutory water undertakers concerned and under those agreements the greater part of the cost of constructing the said reservoir will be met by the three undertakers in agreed proportions but in the case of the agreement with one of the undertakers, provision is also to be made whereby the undertakers shall make a contribution to the water resources account of the Authority in excess of that for which they would be liable by reason of the quantity of water abstracted from sources of supply in the Devon area but doubts have arisen as to whether this provision can be included in such an agreement and it is expedient that those doubts should be resolved so that the agreed contribution can be made:

And whereas it is expedient to confer further powers on the Authority for the administration of the Devon area and to make further provision with regard to the finances of the Authority and for the welfare of their employees:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

1. This Act may be cited as the Devon River Authority (General Powers) Act 1972. **Short title.**

2. This Act shall be divided into Parts as follows:— **Division of Act into Parts.**

Part I.—Preliminary.
Part II.—Lands.
Part III.—Administration.
Part IV.—Employees.
Part V.—Finance.
Part VI.—Miscellaneous.

3.—(1) In this Act, unless the subject or context otherwise requires, the several words and expressions to which meanings are assigned by the Act of 1963 shall have the same respective meanings and the following expressions shall have the meanings hereby respectively assigned to them:— **Interpretation.**

"the Act of 1963" means the Water Resources Act 1963; **1963 c. 38.**

"the Authority" means the Devon River Authority;

"apparatus" means—

(*a*) in the case of electricity undertakers, electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by or lawfully laid or erected by such undertakers; **1882 c. 56.**

(*b*) in the case of gas or water undertakers any apparatus belonging to or maintained by such undertakers; or

(*c*) in the case of the Post Office, any telegraphic line (as defined in the Telegraph Act 1878) belonging to or used by them; **1878 c. 76.**

and includes any structure for the lodging therein of apparatus;

"the clerk" means the clerk and chief executive of the Authority and includes any person authorised by the Authority to exercise the functions of the clerk of the Authority;

"the Devon area" means the area of the Authority;

"enactment" includes an enactment in this Act or in any general or local Act and any order, byelaw or regulation for the time being in force within the Devon area;

PART I —*cont.*

"land" includes any interest in or right over land and land covered with water;

"statutory undertakers" means any company, body or person authorised by any enactment to supply electricity, gas or water and includes the Post Office and the British Railways Board.

(2) Unless the subject or context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

PART II

LANDS

Provision of substituted sites.

4. The power of the Authority to purchase land by agreement shall include power to purchase land by agreement for the purpose of providing substituted sites or facilities for the owners, lessees and occupiers of land that may be acquired by the Authority under any enactment.

Power to reinstate occupiers of property.

5.—(1) The Authority may enter into and carry into effect an agreement or arrangement with the occupier of any land acquired or to be acquired by the Authority under any enactment with respect to his reinstatement.

(2) Any such agreement may provide for the exchange of land; and for that purpose the Authority may pay or receive money for equality of exchange.

Allowances for displaced persons.

6.—(1) The Authority may pay to the occupier of any land used for the purposes of agriculture which has been acquired by the Authority under the Act of 1963 for any purpose in connection with the performance of any of their new functions such reasonable allowances as they think fit towards any loss or in respect of any personal hardship which in their opinion he will sustain or be put to by reason of his having to quit the land.

(2) In estimating any such loss or personal hardship the Authority shall have regard to the period for which the land occupied by that person might reasonably have been expected to be available for occupation by him if it had not been acquired and the availability of other land suitable for occupation by him.

(3) The provisions of this section shall be in addition to and not in derogation of any enactment or any rule of law relating to compensation for disturbance.

PART II —*cont.*

Undertakings and agreements binding successive owners.

7.—(1) (*a*) Every undertaking given by or to the Authority to or by the owner of a legal estate in land, and every agreement made between the Authority and any such owner, being an undertaking or agreement—

(i) given or made in connection with the land; and

(ii) expressed to be given or made in pursuance of this section;

shall be binding upon the person or persons who entered into, or joined as a party to, such undertaking or agreement and all persons deriving title by, through or under him or them.

(*b*) The Authority shall send a copy of any such undertaking or agreement to the proper officer of the council of each county borough or county district in which the land to which the undertaking or agreement relates is situated and the proper officer shall cause it to be registered in the register of local land charges in such manner as may be prescribed by rules made in reference to local land charges under subsection (6) of section 15 of the Land Charges Act 1925; and the power conferred by the said sub-section (6) to make rules for giving effect to the provisions of the said section 15 shall be exercisable for giving effect to the provisions of this paragraph.

1925 c. 22.

(2) Any person against whom such an undertaking or agreement is enforceable shall be entitled to require from the Authority a copy thereof.

Suspension of restrictive covenants.

8.—(1) If the Authority—

(*a*) acquire land by agreement; or

(*b*) enter into an agreement to acquire land; or

(*c*) have acquired land by agreement before the passing of this Act;

for a purpose for which they are for the time being or could under any enactment for the time being in force be authorised to acquire the land compulsorily and the land is affected by any restriction arising under covenant or otherwise (other than a restriction imposed by or under any enactment) as to the user thereof or the building thereon the Authority may, subject to the provisions of this section, by resolution suspend the operation of such restriction.

(2) The resolution shall describe by reference to a map the land to which it applies.

(3) The Authority shall—

(*a*) in three successive weeks publish in one or more local newspapers circulating in the locality in which the land referred to in the resolution is situated a notice stating

PART II —*cont.*

that the resolution has been passed, describing the land and naming a place within the locality where a copy of the resolution and map may be inspected and specifying the time, not being less than three months from the date of the first publication of the notice, within which and the manner in which objections to the suspension of the restriction can be made;

(*b*) on or before the date of the first publication of the said notice—

(i) serve a copy of that notice by registered post or the recorded delivery service on every person who appears to them, after diligent inquiry, to be entitled to the benefit of the restriction to which the resolution relates; and

(ii) affix a copy or copies of that notice to some conspicuous object or objects on the land.

(4) Any person claiming to be entitled to the benefit of the restriction may object to the suspension of the restriction by sending notice of his objection and of the grounds thereof to the appropriate Minister and a copy thereof to the Authority within the period specified in the notice.

(5) If any objection is duly made as aforesaid and is not withdrawn the resolution shall be of no effect unless and until it is confirmed by the appropriate Minister and before confirming the resolution the appropriate Minister shall cause a public local inquiry to be held into the proposed suspension of the restriction and after considering the report of the person who held the inquiry may confirm the resolution.

(6) (*a*) If no objection is duly made under subsection (4) of this section or if all objections so made are withdrawn the restriction shall be suspended on and after the date of the expiration of the period specified in the notice or the date of the withdrawal of the objection or, if more than one, the last objection or the date on which the Authority acquire the land, whichever is the latest.

(*b*) If objection is duly made as aforesaid and the appropriate Minister confirms the resolution the restriction shall be suspended on and after such date as the appropriate Minister shall determine not being earlier than the date on which the Authority acquire the land.

(7) If in the opinion of the Authority there is doubt whether any such land as is mentioned in subsection (1) of this section is affected by any restriction to which that subsection relates or whether any such restriction is enforceable the Authority may—

(*a*) in three successive weeks publish in one or more local newspapers circulating in the locality in which the land

PART II —*cont.*

is situated a notice describing the land and stating generally the effect of this subsection and of subsections (8) and (9) of this section and specifying the time not being less than three months from the date of the first publication of the notice within which and the manner in which any person claiming to be entitled to enforce a restriction against the use of the land may intimate such claim to the Authority and shall produce to them his documents of title in support of his claim;

(*b*) on or before the date of the first publication of the notice referred to in paragraph (*a*) of this subsection—

(i) serve a copy of that notice by registered post or the recorded delivery service on every person who they consider after reasonable inquiry may reasonably be expected to claim to be entitled to the benefit of a restriction against the land; and

(ii) affix a copy or copies of that notice to some conspicuous object or objects on the land.

(8) If any person is entitled to the benefit of a restriction against the land but fails to comply with the requirements of such notice, the restriction shall, so far as concerns such person and his successors in title, be deemed to have been suspended under the foregoing provisions of this section, but without prejudice to any claim for compensation under subsection (9) of this section.

(9) The Authority shall pay compensation in accordance with the provisions of section 10 of the Compulsory Purchase Act 1965, in respect of any entitlement to the benefit of a restriction suspended under the powers of this section and loss suffered in consequence thereof and the amount of such compensation shall be determined in case of dispute in accordance with the Land Compensation Act 1961. 1965 c. 56. 1961 c. 33.

(10) If the Authority dispose of any land affected by a restriction suspended under the powers of this section they shall in two successive weeks publish notice thereof in one or more local newspapers circulating in the locality in which the land is situated.

(11) Nothing in this section shall apply to—

(*a*) any restriction arising under a covenant granted to the National Trust for Places of Historic Interest or Natural Beauty restricting the development or use of land;

(*b*) any restriction for—

(i) the protection of or for preventing interference with the use of or for securing access to operational land or apparatus of any statutory undertakers;

PART II —*cont.*

(ii) the prevention of pollution of water which any statutory water undertakers or the County Council of the administrative county of Devon as the owners of the Grand Western Canal are for the time being authorised to take;

contained in any deed, wayleave, agreement or other instrument.

In this paragraph—

" operational land " in the case of the Post Office has the same meaning as in paragraph 93 (4) of Schedule 4 to the Post Office Act 1969, and, in the case of any other statutory undertakers, has the same meaning as in section 222 of the Town and Country Planning Act 1971.

1969 c. 48.

1971 c. 78.

(12) In this section " the appropriate Minister " means the Minister of the Crown having power to authorise the compulsory purchase of the land for the purpose for which the Authority have acquired or agreed to acquire that land.

PART III

ADMINISTRATION

Provision of goods and services.

1970 c. 39.

9.—(1) The Local Authorities (Goods and Services) Act 1970, shall apply to the Authority as it applies to a local authority and accordingly the expression " local authority " as defined in that Act shall be deemed to include the Authority.

(2) Subsection (2) of section 2 of the said Act of 1970 as applied to the Authority by this section shall have effect as if—

(*a*) for the reference to subsections (4), (6) and (7) of section 283 of the Local Government Act 1933, there were substituted a reference to subsections (7) and (8) of section 110 of the Act of 1963; and

1933 c. 51.

(*b*) for the references to the abstract of accounts of a local authority there were substituted references to the accounts of the Authority.

Instruction lectures, etc., on functions of the Authority.

10. The Authority may make arrangements whereby the public may either at premises specially maintained for the purpose or otherwise obtain information concerning the services of the Authority and may, subject to conditions and restrictions to the like effect as any to which local authorities may from time to time be subject in the exercise of their powers under section 135 of the Local Government Act 1948—

1948 c. 26.

(*a*) arrange for the publication within the Devon area of information on questions relating to any of the functions of the Authority; and

(*b*) arrange for the delivery of lectures and addresses and the holding of discussions on such questions; and

PART III —*cont.*

(*c*) arrange for the display of pictures, cinematograph films or models or the holding of exhibitions relating to such questions; and

(*d*) prepare or join in or contribute to the cost of the preparation of pictures, films, models or exhibitions to be displayed or held as aforesaid.

PART IV

EMPLOYEES

Power to sell houses to employees.

11. The Authority may with the consent of the Secretary of State and subject to such terms and conditions as he may require sell to any person in their employment any house provided by them for such persons under section 69 of the Act of 1963 subject to such covenants and conditions as they think fit to impose in regard to the maintenance or use of the house and upon any such sale they may, if they think fit, agree to the price being paid by instalments or to the price or part thereof being secured by a mortgage of the premises.

Housing advances to employees.

12. In addition to the powers conferred on the Authority by section 69 of the Act of 1963 for the provision of housing accommodation for persons employed by them, the Authority shall have power to make advances to, and to guarantee the repayment of advances made to, persons who are in their employment or who propose to enter their employment for the provision of housing accommodation for such persons, and for this purpose the provisions of sections 43 and 45 of the Housing (Financial Provisions) Act 1958, as amended by section 3 of the House Purchase and Housing Act 1959, and Part II of the Housing Subsidies Act 1967, shall, subject to any necessary modifications, apply to the Authority as if they were a county council.

1958 c. 42.
1959 c. 33.
1967 c. 29.

PART V

FINANCE

Power to borrow by issue of stock or bonds.

13. The means by which the Authority may raise money which they are authorised to borrow shall include the issue of stock or the issue of bonds and accordingly subsection (5) of section 92 of the Act of 1963 shall have effect as if—

(*a*) paragraph (*b*) of subsection (1) of section 196 and section 204 of the Local Government Act 1933, were included among the provisions of that Act applicable

1933 c. 51.

PART V —*cont.*

to the borrowing of money under subsection (2) of the said section 92 and the said subsection (2) shall be construed accordingly; and

(*b*) section 7 of and Schedule 1 to the Local Government (Financial Provisions) Act 1963, were applicable to the borrowing of money under the said subsection (2).

1963 c. 46.

Consolidated loans fund.

14. The provisions of section 55 of the Local Government Act 1958, shall apply to the Authority as if they were the council of a county.

1958 c. 55.

Flood prevention reserve fund.

15.—(1) The Authority may establish a fund to be called " the flood prevention reserve fund ", and may pay in to that fund any receipts of the Authority (other than those received in connection with their new functions) not exceeding in any financial year an amount equal to the product of a rate of one-half of one new penny in the pound for the relevant areas of the councils of the county councils and county boroughs any part of which is comprised in the Devon area (calculated in accordance with section 121 of the Act of 1963) and the maximum amount standing to the credit of such fund shall from time to time be determined by the Authority.

(2) (*a*) Pending the application of any such fund as aforesaid for the purposes authorised by this section, the moneys in the fund shall (unless applied in any other manner authorised by any enactment) be invested and any income arising from the investment of those moneys, or otherwise from the application of the fund, shall be carried to the account into which the revenue moneys of the Authority are paid other than those paid into the water resources account established under section 83 of the Act of 1963.

(*b*) The provisions of subsections (2) and (3) of section 86 of the Act of 1963 shall apply to the investment of moneys in the flood prevention reserve fund as they apply to the investment of the moneys comprised in a reserve fund authorised by that section, and (subject to the limitations imposed by subsection (1) of this section) an amount equivalent to such income shall be credited to the flood prevention reserve fund.

(3) The flood prevention reserve fund shall be applicable to the construction of works as a defence against flooding (including inundation by the sea or other tidal waters) and to make good any damage, to meet any extraordinary claim or demand arising from accident to any of such works and for any other purpose which the Authority consider to be appropriate and which has

PART V —*cont.*

been approved by the Minister of Agriculture Fisheries and Food and so that if at any time the fund be reduced it may thereafter be again restored to the maximum sum determined by the Authority and so from time to time as often as such reduction happens.

(4) Resort may be had to the flood prevention reserve fund under the foregoing provisions although such fund may not at the time have reached or may have been reduced below the maximum sum determined by the Authority.

(5) This section shall be deemed to be included in Part VIII of the Act of 1963 and references in paragraph (*a*) of subsection (1) of section 87 and in subsection (2) of section 88 of that Act to amounts to be defrayed out of or receipts to be paid into any reserve fund or replacement fund maintained by a river authority shall in the application of those enactments to the Authority be construed as including amounts to be defrayed out of and receipts to be paid into the flood prevention reserve fund established under this section.

Agreements under section 81 of Act of 1963.

16. An agreement under section 81 of the Act of 1963 between the Authority and any statutory water undertakers may include provisions whereby the undertakers shall make payments to the Authority in relation to matters connected with those to which the agreement relates.

PART VI

MISCELLANEOUS

Power to improve amenities of inland waters.

17.—(1) In addition to the powers conferred on the Authority by section 80 of the Act of 1963 the Authority may in connection with the performance of any of their functions carry out such works and do such things as may appear to them necessary or expedient for improving the amenities (including use for the purpose of any form of recreation) of any inland water in the Devon area and any adjoining land:

Provided that this subsection shall have effect only for the purpose of removing any limitation imposed by law on the Authority by virtue of its constitution and shall not authorise any act or omission on the part of the Authority which apart from this subsection would constitute an offence or be actionable at the suit of any person on any ground other than such a limitation.

(2) (*a*) Before providing any recreational facilities under this section the Authority shall obtain the consent of the local planning authority.

PART VI —*cont.*

(*b*) The Authority may apply to the Secretary of State on the grounds that a local planning authority have unreasonably withheld such a consent and the Secretary of State, after affording to the local planning authority an opportunity of making representations, may if he thinks fit direct the local planning authority to give the consent to which the application relates. A local planning authority shall comply with any direction given by the Secretary of State under this subsection.

Temporary stoppage of footpaths and bridleways.

18. For the purpose of the execution of any works on or near a public footpath or bridleway in the Devon area the Authority may restrict or prohibit temporarily the use of that footpath or bridleway, or of any part thereof:

Provided that—

(*a*) the Authority shall not exercise the powers of this section so as to deprive persons bona fide going to or from any building or land of reasonable access to the building or land;

(*b*) the exercise by the Authority of the powers of this section in relation to any footpath or bridleway in the Devon area shall not prevent statutory undertakers from obtaining access to any apparatus nor prejudice or affect the right of any statutory undertakers—

(i) to lay, erect, maintain, inspect, repair, renew or remove any telegraphic line or other apparatus in, under, upon, over, along or across the footpath or bridleway or part thereof as the case may be; or

(ii) for the purpose of such laying, erection, maintenance, inspection, repair, renewal or removal, to enter upon or break open that footpath or bridleway or part thereof as the case may be.

Evidence of proceedings, appointments, etc.

19.—(1) In proceedings under any enactment, a document purporting to be certified by the clerk as a copy of a resolution passed, order made, or report received, by the Authority or a committee thereof on a specified date shall be evidence that that resolution, order or report was duly passed, made or received by the Authority or committee on that date.

(2) In proceedings under any enactment, a document purporting to be certified as aforesaid as a copy of the appointment of, or of an authority given to, an officer of the Authority or a committee

PART VI —*cont.*

thereof on a specified date shall be evidence that that appointment was duly made, or that that authority was duly given, by the Authority or committee on that date.

(3) In this section " officer " includes a servant and an agent.

Extension of section 120 of Act of 1963 to enactments relating to land drainage and pollution. 1930 c. 44. 1961 c. 48.

20. In its application to the Authority section 120 of the Act of 1963 shall have effect as if the reference in subsection (1) of that section to that Act included references to the Land Drainage Act 1930, the Land Drainage Act 1961, and the Rivers (Prevention of Pollution) Acts 1951 to 1961.

Protection of members and officers of Authority from personal liability. 1875 c. 55.

21. Section 265 of the Public Health Act 1875 shall apply to the Authority as if—

(*a*) references in that section to a local authority were references to the Authority or to a committee of the Authority;

(*b*) references in that section to a member of a local authority were references to a member of the Authority and included references to a member of a committee of the Authority;

(*c*) for the words " for the purpose of executing this Act " there were substituted the words " for the purpose of carrying out any of the functions of the Authority "; and

(*d*) for the words " out of the fund or rate applicable by such authority to the general purposes of the Act " there were substituted the words " by the Authority ".

Saving rights of Duchy of Cornwall.

22. In particular and without prejudice to the general law concerning the applicability of enactments to the Duchy of Cornwall nothing in this Act shall authorise the Authority to enter upon, take, use or interfere with any land, soil or water or take away, diminish, alter, prejudice or affect any property, rights, profits, privileges, powers or authorities belonging to or enjoyed by Her Majesty in right of the Duchy of Cornwall or to or by the Duke of Cornwall for the time being without (in the case of land, soil, water, property, rights, profits, privileges or authorities belonging to or enjoyed by Her Majesty in right of the said Duchy) the consent in writing of some two or more of such of the regular officers of the said Duchy or of such other persons as may be duly authorised under section 39 of the Duchy of Cornwall Management Act 1863 to exercise all or any of the rights, powers, privileges and authorities by the said Act made exercisable or otherwise for the time being exercisable in relation to the said Duchy or (in the case of land, soil, water, property, 1863 c. 49.

PART VI —*cont.*

rights, profits, privileges or authorities belonging to or enjoyed by the Duke of Cornwall for the time being) the consent of such Duke testified in writing under the seal of the Duchy of Cornwall first had and obtained for that purpose.

Costs of Act.

23. The costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto as taxed by the taxing officer of the House of Lords or of the House of Commons shall be paid by the Authority.

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CHAPTER xxxviii

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