

Drought Act 1976

1976 CHAPTER 44

An Act to confer fresh powers to meet deficiencies in the supply of water due to exceptional shortage of rain and for connected purposes. [6th August 1976]

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:—

Provision for meeting water shortages —general.

1.—(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the provisions of this section, he may by order make such provision authorised by this section as appears to him to be expedient with a view to meeting the deficiency.

(2) Subject to subsection (6) below, the power to make an order under this section in relation to any area shall only be exercisable where an application is made to the Secretary of State by a water authority or statutory water company who supply water in that area and in this section "the authority" means the water authority or statutory water company on whose application an order is made under this section.

(3) An order under this section may contain any of the following provisions, that is to say—

(*a*) provision authorising the authority (or persons authorised to do so by the authority) to take water from any source specified in the order subject to any conditions or restrictions so specified;

(*b*) provision authorising the authority to prohibit or limit the use of water for any purpose specified in the order being a purpose for the time being prescribed by the Secretary of State in a direction given to water authorities and statutory water companies generally as a purpose which may be specified by virtue of this paragraph in any order under this section;

(*c*) provision authorising the authority (or persons authorised to do so by the authority) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;

(*d*) provision authorising the authority to prohibit or limit the taking by any person (including other water authorities or statutory water companies) of water from a source specified in the order if the authority is satisfied that the taking of water from that source seriously affects the supplies available to the authority;

(*e*) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the authority or any person are or is subject as respects—

(i) the taking of water from any source;

(ii) the discharge of water;

(iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or

(iv) the filtration or other treatment of water;

(*f*) provision authorising the authority to suspend, vary or attach conditions to, any consent specified in the order for the discharge within the authority's area (whether by the authority or any other person) of sewage effluent or trade effluent;

and may also contain such supplemental, incidental and consequential provisions as appear to the Secretary of State to be expedient.

(4) An order under this section which contains a provision authorising the authority to prohibit or limit the use of water may authorise the authority to prohibit or limit its use by consumers generally or a class of consumer specified in the order and where the order specifies a class of consumer it may authorise the authority to apply the prohibition or limitation to any particular consumer within that class.

(5) Nothing in an order under this section shall affect the right of the authority, in the event of an interruption or diminution of the supply of water, to raise, charge and levy any water rate or minimum charge which might have been raised, charged and levied if there had been no such interruption or diminution.

(6) The Secretary of State may revoke or vary any direction given by him under subsection (3)(*b*) above by a further direction under that paragraph, but where any purpose which is prescribed under that paragraph will cease, by virtue of the variation or revocation, to be one which may be specified in an order under this section the Secretary of State shall (if he does not exercise his power of revocation) exercise his power to vary orders under this section as respects all orders which will be affected by the variation or revocation of the direction so as to make them conform to the variation or reflect the revocation and may do so without an application being made to him.

(7) The revocation or variation of a direction under subsection (6) above shall not affect the validity of anything done in pursuance of an order before the giving of the further direction or any obligation or liability accrued or incurred before the giving of the further direction.

(8) Subject to section 5(6) of this Act, no authorisation given, no prohibition or limitation imposed and no suspension or modification effected by or under an order under this section shall have effect for a period longer than six months beginning with the day on which the order came into operation.

(9) Schedule 1 to this Act shall have effect in relation to the procedure to be followed in connection with the making of orders under this section on the application of water authorities or statutory water companies.

(10) Part I of Schedule 2 to this Act shall have effect with respect to the payment of compensation by the authority to persons affected by orders under this section.

(11) Except as provided by Part I of the said Schedule 2, the authority shall not incur any liability to any person for damage suffered by reason of any thing done or omitted in pursuance of an order under this section.

Provision for meeting water shortages in an emergency.

2.—(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened and is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area then, subject to the provisions of this section, he may by order make such provision authorised by this section as appears to him to be expedient with a view to meeting the deficiency.

(2) The power to make an order under this section in relation to any area shall only be exercisable where an application is made to the Secretary of State by a water authority or statutory water company who supply water in that area and in this section "the authority" means the water authority or statutory water company on whose application an order is made under this section.

(3) An order under this section may contain any of the following provisions, that is to say—

(*a*) any provision which could be included under this Act in an order under section 1 except one authorised by subsection (3)(*b*) of that section;

(*b*) provision authorising the authority to prohibit or limit the use of water for such purposes as the authority think fit;

(*c*) provision authorising the authority to supply water in their area or in any place within their area by means of stand-pipes or water tanks, and to erect or set up and maintain stand-pipes or water tanks in any street in that area;

and may also contain such supplemental, incidental and consequential provisions as appear to the Secretary of State to be expedient.

(4) The Secretary of State may give such directions as he considers necessary or expedient to an authority on whom powers have been conferred by an order under this section as to the manner in which or the circumstances in which any power is or is not to be exercised.

(5) The following provisions apply where an order under this section contains a provision authorising the authority to prohibit or limit the use of water, that is to say—

(*a*) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;

(*b*) the authority shall take such steps as they think appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall—

(i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the authority's area which would be affected by the provision of the order, or

(ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply,

as the authority think appropriate;

(*c*) the prohibition or limitation shall not come into operation until the expiration of the period of 72 hours beginning with the day on which the notice is published or sent to the person in question, as the case may be.

(6) It shall be the duty of an authority to whom any direction has been given under subsection (4) above to comply with the direction.

(7) The giving of a direction under subsection (4) above in relation to any power shall not affect the validity of anything

done in the exercise of that power before the giving of the direction or any obligation or liability incurred before the giving of the direction.

(8) Subsection (5) of section 1 of this Act shall apply in relation to an order under this section as it applies in relation to an order under that section.

(9) Any works to be carried out under the authority of an order under this section shall be included in the definition of emergency works in section 39(1) of the Public Utilities Street Works Act 1950. 1950 c. 39.

(10) Subject to section 5(6) of this Act, no authorisation given, no prohibition or limitation imposed and no suspension or modification of any restriction or obligation effected by or under an order under this section shall have effect for a period longer than three months beginning with the day on which the order came into operation.

(11) Schedule 1 to this Act shall have effect in relation to the procedure to be followed in connection with the making of orders under this section.

(12) Part II of Schedule 2 to this Act shall have effect with respect to the payment of compensation by the authority to persons affected by orders under this section.

(13) Except as provided by Part II of the said Schedule 2, the authority shall not incur any liability to any person for damage suffered by reason of any thing done or omitted in pursuance of an order under this section.

Supplementary provisions as to the powers conferred under section 1 or 2.

3.—(1) This section has effect in relation to orders under section 1 or 2 of this Act and in it "the authority" has the same meaning as it has in those sections.

(2) In an order—

(*a*) authorising the taking of water from a source from which water is supplied to an inland navigation; or

(*b*) suspending or modifying—

(i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or

(ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation;

the Secretary of State may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which the navigation authority are subject as respects the discharge of water from the inland navigation.

(3) A prohibition or limitation on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.

(4) An order may authorise the authority, subject to any conditions and restrictions specified in the order, to execute any works required for the discharge of their functions under the order and—

(*a*) may authorise the authority for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the execution and maintenance of the works; and

(*b*) may apply in relation to the execution of the works such of the provisions of the waterworks code as appear to the Secretary of State to be appropriate, subject to such modifications and adaptations as may be specified in the order.

(5) In an order which authorises the authority to enter on land the Secretary of State shall include provisions requiring the authority to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than 7 days' notice of their intended entry on the land.

(6) The Secretary of State may require an authority on whom powers have been conferred by an order to furnish him with such information relating to the exercise by the authority of any of those powers as he considers necessary to enable him to discharge his functions under this Act.

Offences.

4.—(1) If any person—

(*a*) takes or uses water in contravention of a prohibition or limitation imposed by or under an order under section 1 or 2 of this Act or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or

(*b*) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order;

he shall be guilty of an offence under this section.

(2) If any person—

(*a*) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by an order under section 1 or 2 of this Act; or

(*b*) fails to allow some person authorised for the purpose by or under any such order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records;

he shall be guilty of an offence under this section.

(3) In any proceedings for an offence under this section it shall be a defence for the accused person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(4) A person who is guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400;

(*b*) on conviction on indictment, to a fine.

(5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members the preceding provisions of this subsection shall apply in relation to the acts and defaults of the member in connection with his functions of management as if he were a director of the body corporate.

General.

5.—(1) In this Act, except where the context otherwise requires—

"compensation water" means water which any water authority or statutory water company are under an obligation to discharge into a river, stream, brook or other running water or into a canal as a condition of carrying on their undertaking;

"drainage authority" means a water authority or internal drainage board;

"inland navigation" includes any canal or navigable river;

"obligation" includes an obligation imposed by an enactment, instrument or agreement and "restriction" has a corresponding meaning;

"take", in relation to water, includes the collection, impounding, diversion and appropriation of water;

"trade effluent" has the same meaning as it has in the Control of Pollution Act 1974; 1974 c. 40.

1945 c. 42.

"the waterworks code" means Schedule 3 to the Water Act 1945;

and any other expression which is used in this Act and is defined in section 59 of the Water Act 1945 shall have the same meaning in this Act as it is given in that section.

(2) Any reference in this Act to the area of an authority is, where the authority is a statutory water company, a reference to the limits of supply of the company and, where the authority is an internal drainage board, a reference to the district of the board.

(3) Any reference in this Act to an enactment shall be construed as a reference to that enactment as amended, applied or extended by or under any other enactment.

(4) The power to make an order under section 1 or 2 of this Act shall be exercisable by statutory instrument.

(5) The Secretary of State may by order in a statutory instrument revoke any order made by him under the said section 1 or 2.

(6) The power to make an order under section 1 or 2 of this Act includes power—

(*a*) from time to time to extend a period specified in a previous order, but not so as to extend beyond a year the period mentioned in section 1(8) of this Act or beyond 5 months the period mentioned in section 2(10) of this Act;

(*b*) to vary a previous order in any other respect.

1958 c. 67.

(7) The Water Act 1958 (which is superseded by this Act) is hereby repealed except in its application to Scotland subject, however, to the transitional and saving provisions contained in Schedule 3 to this Act.

(8) Any reference in any enactment to the Water Act 1958 in its application to England and Wales or to any provision of that Act shall be construed as a reference to this Act or, as the case may be, to the corresponding provision of this Act.

Short title and extent.

6.—(1) This Act may be cited as the Drought Act 1976.

(2) This Act does not extend to Scotland or Northern Ireland.

SCHEDULES

SCHEDULE 1

Sections 1(9), 2(11).

PROCEDURE FOR MAKING ORDERS

1.—(1) The authority who are applying for an order under section 1 or 2 of this Act shall cause notice in writing of the application to be served on the persons specified in the following Table—

All orders	Every local authority and every water authority or statutory water company whose area would be affected by the order.
Orders which suspend or modify an enactment.	Such persons (if any) as are specified by name in the enactment as being persons for whose protection it was enacted.
Orders concerning the taking of water from a source or the discharge of water or effluent to a place.	(*a*) Every local authority and every drainage authority (other than the applicants) in whose area the source, or the place at which water or effluent is to be discharged, is situated. (*b*) Every navigation authority exercising functions over any watercourse affected by the order. (*c*) If the order concerns any consent relating to the discharge of sewage effluent or trade effluent, the person to whom the consent was given.
Orders which authorise the execution of any works.	(*a*) Every local authority within whose area the works are situated. (*b*) If the order authorises the execution of works in, under or over a watercourse every drainage authority (other than the applicants) within whose area the works, or any part of the works, are situated.
Orders which authorise the occupation and use of land.	Every owner, lessee and occupier of the land.
Orders which prohibit or limit the taking of water.	Every named person to whom the prohibition or limitation applies.

(2) The authority shall also cause a notice of the application to be published—

(*a*) in one or more local newspapers circulating within that part of the area of the authority which would be affected by the order,

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(*b*) in one or more local newspapers circulating within that part of the area of any other water authority or statutory water company which would be affected by the order, and

(*c*) where the application is for an order concerning the taking of water from a source or the discharge of water or effluent to a place, in one or more local newspapers circulating within the area of every local authority within whose area the source or the place at which the water or effluent is to be discharged is situated.

(3) The authority shall in addition to the notices specified in sub-paragraph (2) above cause a notice of the application to be published in the London Gazette.

(4) A notice under this paragraph—

(*a*) shall state the general effect of the application, and

(*b*) shall specify a place within that part of the area of the authority which would be affected by the order where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable hours within a period of 7 days from the date on which it is served or, in the case of publication of a notice in pursuance of any of the foregoing provisions of this paragraph, from the date of the publication, and

(*c*) shall state that objections to the application may be made to the Secretary of State within 7 days from the date on which it is served or, in the case of publication of a notice in pursuance of any of the foregoing provisions of this paragraph, from the date of the publication, and

(*d*) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.

2. A notice which is required under this Schedule to be served on any person may be served either—

(*a*) by delivering it to the person on whom it is to be served, or

(*b*) by leaving it, or sending it in a pre-paid letter addressed to that person, at his usual or last-known residence, or

(*c*) in the case of an incorporated company or body, by delivering it to their clerk or secretary at their registered or principal office, or by sending it in a pre-paid letter addressed to him at that office, or

(*d*) in the case of a notice to be served on a person as being the owner of any land by virtue of the fact that he receives the rack rent thereof as an agent for another, or would so receive it if the land was let at a rack rent, by leaving it, or sending it in a pre-paid letter addressed to him, at his place of business, or

(*e*) in the case of a notice to be served on the owner, lessee or occupier of any land, if it is not practicable after reasonable inquiry to ascertain the name and address of the person on whom it should be served, or if the land is unoccupied, by addressing it to the person concerned by the description of "owner", "lessee" or "occupier" of

the land (describing it) to which it relates, and delivering it to some person on the land, or if there is no person on the land to whom it can be delivered, by fixing it, or a copy of it, to some conspicuous part of the land.

A notice sent in a letter in pursuance of paragraph (*b*), (*c*) or (*d*) above shall not be treated as having been properly served unless the sender takes such steps as are for the time being required to secure that the letter is transmitted in priority to letters of other descriptions.

3.—(1) If any objection is duly made with respect to the application and is not withdrawn, then, subject to the provisions of this paragraph, the Secretary of State shall before making the order either cause a public local inquiry to be held or afford to any person by whom any objections have been duly made and not withdrawn an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and if any person by whom an objection has been made avails himself of the opportunity to be heard, the Secretary of State shall afford to the authority applying for the order, and to any other persons to whom it appears to the Secretary of State expedient to afford it, an opportunity of being heard on the same occasion.

(2) Where it appears to the Secretary of State that the order is required to be made urgently if it is to enable the authority effectively to meet the deficiency of supplies of water in their area he may direct that the requirements of sub-paragraph (1) of this paragraph shall be dispensed with in relation to the application:

Provided that nothing in this sub-paragraph shall authorise the Secretary of State to disregard any objection which has been duly made and not withdrawn.

(3) Notwithstanding anything in sub-paragraph (1) of this paragraph, the Secretary of State may require any person who has made an objection to state in writing the grounds thereof, and may disregard the objection for the purposes of this paragraph if the Secretary of State is satisfied—

(*a*) that the objection relates exclusively to matters which can be dealt with on a reference under Schedule 2 to this Act or by any person by whom compensation is to be assessed, or

(*b*) in a case where the order is one confined to the extension of a period specified in a previous order, that the objection is one that has in substance been made with respect to the application for that previous order.

(4) Subject to the requirements of this paragraph, the Secretary of State, upon being satisfied that the proper notices have been published and served, may, if he thinks fit, make the order in respect of which the application is made with or without modifications.

(5) The Secretary of State may hold a public local inquiry on any application for an order under this Act notwithstanding that he is not required to do so by this paragraph and the provisions of section 250 of the Local Government Act 1972 shall extend to any local inquiry held by virtue of this paragraph subject to the modification that the reference in subsection (4) to a local authority shall

1972 c. 70.

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be taken to include a reference to any water authority or statutory water company concerned in the inquiry.

4. After an order under this Act has been made, the authority on whose application it was made shall cause to be published (in the manner in which notice of the application was required under sub-paragraphs (2) and (3) of paragraph 1 of this Schedule to be published) a notice stating that the order has been made and naming a place where a copy thereof may be inspected.

Sections 1(10) and 2(12).

SCHEDULE 2

COMPENSATION

PART I

SECTION 1 ORDERS

1. The following provisions of this Part of this Schedule have effect for providing compensation to persons who suffer damage by reason of things done or omitted in pursuance of an order under section 1 of this Act.

2.—(1) Compensation in respect of the taking of water from a source or its taking from a source otherwise than in accordance with a restriction or obligation which has been suspended or modified shall be made by the authority to the owners of and all other persons interested in the source of water or injuriously affected by the taking of the water for damage sustained by any of those persons by reason of the taking of the water.

(2) In assessing the compensation to be made under this paragraph, the Lands Tribunal may, if it thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the authority and other persons taking water from the source, may fairly be apportioned to the claimant.

3.—(1) Compensation in respect of water's being discharged or not discharged to any place or its being discharged otherwise than in accordance with a restriction or obligation (whether relating to the treatment or discharge of the water) which has been suspended or modified shall be made by the authority to the owners of and all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge for damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.

(2) In assessing the compensation to be made under this paragraph in respect of the lack of discharge of compensation water, the Lands Tribunal may, if it thinks fit, have regard to the amount of water which, under the conditions existing by reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water is continued, if the authority in relation to whom the obligation was imposed had never carried on their undertaking.

4. Compensation in respect of the imposition of a prohibition or limitation on the taking of water from a source shall be made by the authority to any persons to whom the prohibition or limitation applies for damage sustained by reason of the prohibition or limitation.

5. Compensation in respect of the discharge of sewage effluent or trade effluent otherwise than in accordance with any consent relating to its discharge shall be made by the authority to the person to whom the consent was given for damage sustained by that person by reason of the suspension or variation of the consent or the attachment of conditions to the consent.

6. Compensation in respect of the entry upon or occupation or use of land shall be made by the authority to the owners and occupiers of and all other persons interested in the land or injuriously affected by the entry upon, occupation or use of the land for damage sustained by reason of the entry upon, occupation or use of the land.

7.—(1) A claim for compensation under this Part of this Schedule shall be made by serving upon the authority a notice in writing stating the grounds of the claim and the amount claimed.

(2) A claim for compensation under this Part of this Schedule may be made at any time not later than six months after the end of the period for which the order authorises—

(*a*) the taking or discharge of water,

(*b*) the imposition of a prohibition or limitation on the taking of water,

(*c*) the suspension or modification of any restriction or obligation, or

(*d*) the suspension or variation of or attachment of conditions to any consent relating to the discharge of sewage effluent or trade effluent,

as the case may be.

(3) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall in default of agreement be referred to, and determined by, the Lands Tribunal.

(4) Where a claim is made during the continuance of an order, the Lands Tribunal may, if it thinks fit, award a sum representing the damage which is likely to be sustained by the claimant in respect of each day on which—

(*a*) water is taken or discharged,

(*b*) water is not discharged or is discharged otherwise than in accordance with an obligation or restriction, or

(*c*) sewage effluent or trade effluent is discharged otherwise than in accordance with a consent originally given,

as the case may be.

PART II

SECTION 2 ORDERS

8. The following provisions of this Part of this Schedule have effect for providing compensation to persons who suffer damage by reason of things done or omitted in pursuance of an order under section 2 of this Act.

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9. Compensation in respect of the entry upon or occupation or use of land shall be made by the authority to the owners and occupiers of and all other persons interested in the land or injuriously affected by the entry upon, occupation or use of the land for damage sustained by reason of the entry upon, occupation or use of the land.

10.—(1) A claim for compensation under this Part of this Schedule shall be made by serving upon the authority a notice in writing stating the grounds of the claim and the amount claimed.

(2) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall in default of agreement be referred to, and determined by, the Lands Tribunal.

Section 5(7).

SCHEDULE 3

TRANSITIONAL AND SAVING PROVISIONS

1958 c. 67.

1.—(1) The repeal by this Act of the Water Act 1958 in its application to England and Wales shall not affect the validity of an order under that Act which was in force immediately before the repeal took effect and—

(*a*) the order may be varied by a subsequent order made under and in accordance with that Act as if that Act were still in force in relation to England and Wales;

(*b*) any thing done or omitted after the repeal took effect which would have constituted an offence under that Act if that Act had remained in force shall constitute an offence under that Act and be punishable accordingly.

(2) Sub-paragraph (1) above applies also to an order which has been made under the Water Act 1958 but has not come into operation when the repeal takes effect.

2.—(1) Where an application for an order under the Water Act 1958 is pending when the repeal of that Act in its application to England and Wales by this Act takes effect then the application shall, according as it is an application for an order under section 1 or 2 of that Act, be deemed to be an application for an order under section 1 or 2 of this Act.

(2) Any thing duly done before the repeal takes effect for the purposes of the application under the Water Act 1958 shall be deemed to have been duly done for the purposes of an application under this Act and the proceedings on the application shall be continued accordingly.