

Review of CPO Legislation relating to Irish Water:

by Sabrina Joyce-Kemper

sabrina.joyce@gmail.com

The following document is without prejudice. I am not a qualified legal person.

A.) I have consolidated all of the legislation quoted in the Compulsory Acquisition newspaper notice published by Irish Water. I have over 20 years of experience with legislative interpretation and application. Having reviewed the quoted statutes, I have come to the concerning conclusion that Irish Water as the current Water Services Authority do not have the legislative capacity to Compulsory Purchase land that does not have pre-existing water services infrastructure already on it. The only bodies that are legislated that right of process are "local authorities" and "housing authorities". While the water services acts of 2007 and 2013 give Irish water the right to acquire land or purchase land without water service infrastructure, it is only for the purpose of vesting right of access or way-leaves in order to lay pipelines or sewers and associated services and access to maintain those services afterwards. It does not give them the right to COMPULSORY purchase land that has NO water service infrastructure in place, ie a site to be purchased for future major development.

B.) It appears that in transferring rights and creating rights in the Water Services act of 2007 and 2013 the legislation failed to make distinct provision for Irish water to compulsory purchase a site or land parcel for the sole purpose of water infrastructure development (waste water treatment works/ pumping stations). When Irish Water was created and the Council were functionally separated from their roles as water services authority the legislation was not written appropriately in transferring all functions and as aforementioned, only identified functions which relate to a local services authorities role as a "water Services authority" or "sanitary authority". A water services authority or a sanitary authority never had the Land acquisition rights that would be required to CPO development land. Only local authorities had these rights confirmed in Section XIV of the development Act 2000. However section XIV, in identifying functions that this act applies to never identifies sanitary services or water services in relation to land acquisition. It does mention housing, industrial development, Roads etc. Therefore section XIV could not be un-arbitrarily applied to Irish Water as that would give them the right to acquire land for housing etc , functions that do not apply to them, yet Section XIV does not identify functions that could be transferable to Irish water therefore there are none that can be transferred, meaning Section XIV cannot be used by Irish water.

3.) For this reason a limitation on section XIV had to be identified in part 7, section 93 of the Water Services Act 2007 as amended, which relates to the power to acquire land by a water authority was legislated as follows:

93(1) Subject to sections 95 and 96, a water services authority may acquire land for the purpose of performing any of its functions under this Act, and section 182 and Part XIV of the Act of 2000 shall apply to a water services authority as it applies to a local authority.

2) For the purposes of subsection (1), "acquisition of land" under the Act of 2000 shall include any—

(a) dam, weir or construction which interferes with the proper drainage or supply of water to its functional area, or the provision of water services by that water services authority,

(b) water, or right of access to water, or right to take or convey water,

(c) waterworks or part of a waterworks, or related accessories or right of access to them, or

(d) waste water works or part of a waste water works, or related accessories or right of access to them

The section was made 'subject to' or 'controlled by' sections 95 and 96 which state the following:

95.— *(1) A water services authority may by agreement take into public charge or acquire all or part of a waterworks or waste water works, or any rights connected to it, whether or not it is situated in its functional area, where not fewer than two thirds of those persons entitled to dispose of it agree to such transfer.*

(2) (a) Where a water services authority proposes to take into public charge all or part of the distribution network of a waterworks or the collection network of a waste water works, together with the accessories of the network concerned (in this section referred to as the "pipe network and accessories ") whether within or outside its functional area, and it cannot after reasonable enquiry establish the identity of those persons entitled to agree to such transfer, then the water services authority shall publish in one or more newspapers circulating in the area served by the waterworks or waste water works, and serve on the owner of every

premises which appears to it to be connected to the pipe network and accessories in question, a notice which

- (i) describes the pipe network and accessories in question, including a description of the area it serves,
- (ii) states the intention of the water services authority to take the pipe network and accessories into its charge,
- (iii) names the place where a map of the pipe network and accessories in question is deposited and the times during which it may be inspected, and
- (iv) specifies the manner and period within which (not being less than one month from the date of the notice) any person, claiming entitlement to agree to or disagree with such transfer, may register such a claim with the water services authority.

(b) Where no entitlement to agree to or disagree with the transfer referred to in paragraph (a) is claimed, or no claim to such entitlement is substantiated, then the water services authority shall hold a plebiscite to ascertain the wishes of the owners of the premises concerned in relation to the taking in charge of the pipe network and accessories by the water services authority.

(c) Where a simple majority of owners who vote in the plebiscite referred to in paragraph (b) indicate their agreement to the water services authority taking in charge the related pipe network and accessories, then the water services authority may by order declare such pipe network and accessories to be in its charge.

(d) Where a simple majority of the owners who vote in the plebiscite referred to in paragraph (b) indicate that they do not wish the water services authority to take in charge the related pipe network and accessories, then the water services authority may by order declare the pipe network and accessories to be a connection for the purposes of [section 43](#).

(e) Where a claim of entitlement to agree to or disagree with the transfer referred to in paragraph (a) is substantiated and a consequential direction to the claimant under [section 80](#) to apply for a licence under [section 79](#) is annulled by the District Court, then the water services authority may declare the pipe network and accessories to be a connection for the purposes of [section 43](#).

(3) A water services authority may not acquire or take in charge all or part of a waterworks or waste water works which is located, in whole or in part, outside its functional area unless with the agreement of the water services authority in whose functional area the waterworks or waste water works, or part of it is situated.

(4) The Minister may make regulations in relation to the procedures and notification requirements necessary for the purposes of this section.

96.— Where a compulsory acquisition by way of compulsory purchase order is made in respect of a waterworks or waste water works, or part thereof, a duly appointed arbitrator shall, to the extent that it can reasonably be ascertained, in determining the amount of compensation payable, have regard to any grant or subsidy that has been paid or provided in respect of all or any part of the waterworks or waste water works

C.) I reviewed the Pre planning consultation with An Bord Pleanála for a decision on whether the project came under the SID Process. During consultation The Bord also identified a potential issue with Irish Waters ability to CPO land for this project. The Inspectors report dated the 26th of February which can be found at <http://www.pleanala.ie/casenum/PC0152.htm> states the following: - "Some discussions arose in the early meetings as to if it was proposed to compulsorily acquire lands particularly for the proposed orbital pipe route, and whether or not Irish water had the legislative power to do so"

In fact the Board went so far as to request a 'Legal Opinion' from Fingal CC / Irish Water on this issue. From my enquiries with the Bord this legal opinion was not furnished as the Bord have been unable to produce it and if it had been furnished it would have been recorded as part of the pre planning process as per Aarhus convention guidelines on transparency in public consultation. Irish Waters future preplanning discussion with the board started referencing 'voluntary acquisition' as a preference, which also was a red flag. The relevant records from pre planning meetings state the following:

Record of Meeting 24th January, 2013 – it was discussed as follows:

In respect of CPO/wayleaves, the prospective applicant stated that it intends to submit applications by way of section 213 of the Planning and Development Act 2000, as amended. The local authority also referred to section 93 of the Water Services Act 2007. The Board drew the prospective applicant's attention to section 182 of the Planning and Development Act 2000, as amended, with respect to acquiring consent to lay pipes. The Board highlighted the

importance of co-ordination of the applications and stated that this can be addressed further later in the pre application consultation process.

Record of meeting 12th February 2014 – it was discussed at follows:

The Board's representatives queried if it is proposed to compulsorily acquire any lands relating to the proposed development and, if so, whether Irish Water would have the legislative power to do so. The prospective applicant stated that it is its understanding that all powers currently with a local authority relating to the provision of water services will be transferred to Irish Water, and this will include the power to compulsorily acquire lands. Irish Water will, in effect, become the water services authority. The prospective applicant confirmed that it will seek legal opinion on this matter in due course.

Record of meeting 9th July 2015 – it was discussed at follows:

The prospective applicant outlined progress in relation to the matters of land acquisition and wayleaves. There are a number of landowners it is engaging with.

Record of meeting 26th June 2017 – it was discussed at follows:

With regard to the CPO, the prospective applicant said that it is engaging with relevant landowners who number five in total.

Record of meeting 20th November 2017 – it was discussed at follows:

With respect to the Compulsory Purchase Order, the prospective applicant recapped by noting that there are six landowners in relation to the proposed wastewater treatment plant site. With regard to wayleaves, 35 are in private ownership and 21 in the ownership of statutory bodies. The prospective applicant said that on-going indepth discussions are continuing in relation to technical aspects and potential impacts on lands. It added that it is endeavouring to acquire lands and wayleaves on a voluntary basis if at all possible. The Board's representatives advised the prospective applicant to be as clear as possible with regard to what is required in terms of land acquisition and to set out the justification for this

Record of meeting 14th February 2018 – it was discussed at follows:

With regard to the compulsory acquisition element of the project, it stated that on-going discussions are continuing in relation to the technical aspects and potential impacts on lands; it repeated that it is endeavouring to acquire lands and wayleaves on a voluntary basis.

The Law review commission consultation document on CPO and land acquisition had an Appendix A which quoted all relevant acts their sections, the powers and the relevant body with power to invoke. It is noteworthy that this appendix appears to support my position in relation to Irish Water.

As shown above this would mean that Irish Water do not have the legislative powers to CPO land for purposes such as Waste Water Treatment plants and Pumping Stations. I suggest that in the first Instance An Bord Pleanala are made to seek an immediate legal opinion on same as there are major and far reaching legal consequences for not only Irish Water if they have not been legally compliant with enforcing past and present CPO's , but for An Bord Pleanla if they have been granting them while they had any doubts relating to Irish Waters legislative right to do so.

I believe that An Bord Pleanala should take action to protect their position and that the State solicitors office and the Law Review Commission should be consulted on above. An official and binding "legal opinion" must be obtained on this issue without delay.

Without Prejudice
Sabrina Joyce Kemper.

Legislation as quoted on CPO notice:

Addendum to a Notice of a Compulsory Purchase Order under the Water Services Acts, 2007 to 2013 (and, in particular, Sections 7 and 11 of the Water Services (No. 2) Act, 2013 and Part 2 and Sections 31 & 32 and Part 7 and Section 93 of the Water Services Act, 2007, as amended), The Planning and Development Acts, 2000 to 2014 (and, in particular, Part XIV and Sections 213 and 217 of the Planning and Development Act, 2000), Section 184(2) of the Local Government Act, 2001, The Housing Act, 1966 (and in particular Part V, Sections 76, 78 and the Third Schedule), Section 10 of the Local Government (No. 2) Act, 1960 (as substituted by Section 86 of the Housing Act, 1966 and as amended by Section 6 and the Second Schedule of the Roads Act, 1993 and by Section 222 of the Planning and Development Act, 2000), The Lands Clauses Acts, The Acquisition of Land (Assessment of Compensation) Act, 1919 AS RESPECTS ALL OR PART OF THE LAND TO WHICH THIS COMPULSORY PURCHASE ORDER RELATES TO BE PUBLISHED IN ACCORDANCE WITH

Consolidated Legislation is listed below.

Sections 7 and 11 of the Water Services (No. 2) Act, 2013

Transfer of functions from water service authorities to Irish Water

7. (1) Subject to [section 10](#), all functions conferred on water services authorities by the Act of 2007 (other than an excluded provision and section 22) shall, on the transfer day, stand transferred to Irish Water.

(2) References to a water services authority or relevant water services authority in—

(a) the Act of 2007 or in any instrument made under that Act, or

(b) any other enactment (other than the Act of 2013) or instrument under any other enactment,

in so far as they relate to any function transferred by this Act, shall on and after the transfer day, be construed as references to Irish Water.

(3) All functions of sanitary authorities deemed to be functions of a water services authority under section 39 of the Act of 2007 shall, on the transfer day, be transferred to Irish Water

4) References to a sanitary authority in any enactment or instrument under any enactment shall, on and after the transfer day, in so far as they relate to any function transferred by *subsection (3)*, be construed as references to Irish Water

Provisions consequent upon transfer of functions to Irish Water

11. (1) Anything commenced and not completed before the transfer day by or under the authority of a water services authority or a sanitary authority may, in so far as it relates to a function transferred to Irish Water on that day be carried on or completed on and after that day by Irish Water.

(2) Every instrument made under an enactment and every document (including any certificate) granted or made, in the performance of a function transferred by [section 7](#), shall, if and in so far as it was operative immediately before the transfer day, have effect on and after that day as if it had been granted or made by Irish Water.

(3) References to a water services authority in the memorandum or articles of association of any company in so far as they relate to a function transferred by [section 7](#), shall, on and after the transfer day, be construed as references to Irish Water.

(4) Any money, stocks, shares or securities designated by an order under [section 12](#) that immediately before the property vesting day appointed by that order were standing in the name of a water services authority shall, on the request of Irish Water be transferred into its name.

(5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in Irish Water pursuant to an order under [section 12](#) or [14](#) shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

31.—(1) For the purposes of this section “agglomeration” means an area where there is a population or there are economic activities that are sufficiently concentrated in order for—

(a) urban waste water to be collected and conducted to an urban waste water treatment plant or to a final discharge point, or

(b) treated water to be supplied.

(2) Subject to regulations made under *subsection (3)*, a water services authority may provide water services or supervise the provision of water services by other persons, in accordance with any prescribed standards, for domestic and non-domestic requirements in its functional area, taking full account of the following aspects of public policy, namely:

(a) proper planning and sustainable development in its functional area;

(b) protection of human health and the environment;

(c) relevant regulations and other statutory provisions made by the Minister or the Parliament and Council of the European Union;

(d) relevant regulations made by the Minister for Health and Children;

(e) relevant policy directions issued by the Minister under this Act or any other enactment;

(f) guidance provided or direction made by the Agency;

(g) sustainable management of water resources;

(h) relevant development plans, regional or spatial planning guidelines, housing strategies or special amenity area orders, as appropriate, made under the Act of 2000;

(i) a water quality management plan or a programme of measures made under the *Local Government (Water Pollution) Acts 1977 to 2007* for the area to be covered by the water services strategic plan;

(j) a waste management plan under the Act of 1996;

(k) a river basin management plan or a programme of measures under the EU Water Framework Directive; or

(l) such other criteria, standards or procedures as may be prescribed in relation to matters to which *paragraphs (a) to (k)* apply or as may be directed by the Minister.

(3) The Minister may make regulations to require water services authorities to provide specified water services to specified classes of agglomerations, areas or consumers and these regulations may include provision for—

(a) provision of collection systems for urban waste water,

(b) provision of waste water treatment facilities for urban waste water entering collection facilities,

(c) provision of water supplies, including water treatment facilities,

(d) specification of levels of treatment to be applied, and

(e) specification of exceptions to the application of the regulations.

(4) A water services authority may not provide water services or supervise the provision of water services if doing so is inconsistent with any of the public policy issues specified in *subsection (2)(a) to (l)*.

(5) Without prejudice to the [State Authorities \(Public Private Partnership](#)

Arrangements) Act 2002, for the purposes of fulfilling all or any of its functions under *subsection (2)*, a water services authority may make arrangements with another person, including entering into an agreement or arrangement with another person in relation to the provision of water services by another person or jointly with it in part or all of its functional area.

(6) Any plant, works, machinery or pipe provided under any arrangement under *subsection (5)* will be subject to the same obligations and duty of care by owners or occupiers of premises as if it was provided directly by a water services authority.

(7) The Minister may request a water services authority, whether by itself or jointly with another water services authority to provide a particular class of water services to a particular area, and the water services authority, shall comply with such a request.

(8) Notwithstanding *subsection (7)*, a water services authority may require that the provision of water services to any person (other than in the case of water services provided to a household for domestic purposes) shall be subject to that person entering into an agreement with the water services authority under *section 32 (1)(k)* in relation to reserving or assigning capacity for the provision of water services to that person.

(9) The obligation on a water services authority to comply with a request from the Minister under *subsection (7)* shall not apply where the water services in question cannot be provided due to climatic conditions or other circumstances beyond the reasonable control of the water services authority.

(10) A water services authority may provide assistance to any water services provider to facilitate the provision of water services.

(11) A water services authority may provide water services outside of its functional area, and for that purpose shall have all the powers and be subject to the same obligations under this Act, as if the services were provided within its functional area.

(12) (a) Notwithstanding any provision of this or any other enactment, a water services authority shall not enter into any agreement or arrangement with another person, other than with a group water services scheme or another water services authority, for the provision of water services jointly with or on behalf of the authority which—

(i) involves or may involve the transfer of the water services authority's assets or infrastructure, or any part of such assets or infrastructure, to that person, or

(ii) prohibits the transfer to the water services authority of assets or infrastructure, or any part of such assets or infrastructure, provided by the person as part of such agreement.

(b) In this subsection "group water services scheme" means a scheme which provides a private supply of water, or a private waste water collection, treatment or disposal service, to the members of the scheme by means of a common or shared source of supply, or related distribution or collection network.

(13) Subject to any regulations made under *section 79 (2)* or (3) a person shall not provide water services in the functional area of a water services authority without the agreement of that water services authority.

(14) A water services authority shall take the necessary measures to ensure that, whether through its own actions or the actions of other persons in accordance with its directions or other obligations under this Act, water intended for human consumption in its functional area meets such requirements relating to quality as may be specified in regulations made under *section 32 (2)*.

(15) A water services authority may prohibit or restrict a supply of water, or direct that such supply be restricted or cease to be provided, for the purpose of protecting human health or the environment, and it is an offence not to comply with such a prohibition, restriction or direction.

(16) Two or more water services authorities may, and shall at the request of the

Minister, jointly provide, or arrange for the provision of, water services in all or part of their joint or respective areas.

(17) The Minister may make regulations to provide for—

(a) criteria, procedures and standards, including standards in relation to economy, effectiveness and efficiency in the provision of water services,

(b) environmental protection and environmentally sustainable practices in relation to the provision of water services, and

(c) the avoidance of risk to public health, in relation to the operation, management and supervision of water services by water services authorities or such other person as may be prescribed.

(18) The Minister may issue guidelines to a water services authority for the purpose of the performance of its functions under this Act, and the water services authority shall be obliged to comply with them.

(19) A right to water services, which is provided for under, or may be construed from, this section, or any other section under this Act or any other enactment, whether enacted before or after this Act, shall not apply in relation to a premises which is an unauthorised structure, or the use of which constitutes an unauthorised use, under the Act of 2000.

(20) A person who contravenes a regulation made under *subsection (17)* commits an offence.

General functions of water services authorities in relation to provision of water services.

32.— (1) A water services authority may, and shall when directed by the Minister, take all necessary measures to ensure compliance with its obligations under [section 31](#) and for the purposes of carrying out its functions under [section 31](#), whether within or outside its functional area, including—

(a) the abstraction, impoundment, treatment, purchase or supply of water for drinking or any other purpose, in accordance with relevant provisions of this Act or any other enactment, or regulations made under this or any other enactment,

(b) the provision, operation or maintenance of sewers and waste water collection and treatment facilities, in accordance with relevant provisions of this Act or any other enactment, or regulations made under this or any other enactment,

(c) the construction or maintenance, or arrangement for the construction and maintenance of, waterworks or waste water works,

(d) the undertaking of such work as is necessary to provide such waterworks or waste water works as may be required,

(e) purchasing or obtaining premises or wayleaves,

(f) the installation and maintenance of meters, or otherwise measuring the volume or rate of flow of water supplies or discharges to waste water works,

(g) monitoring the quality of water supplies at any point or points,

(h) monitoring the quality of waste water at any point or points,

(i) treatment, reuse or disposal of by-products arising from the treatment of water or waste water,

(j) without prejudice to the [State Authorities \(Public Private Partnership Arrangements\) Act 2002](#), entering into an agreement with any person in relation to or for the provision of, whether by that person or jointly with that person, water services in part or all of its functional area or elsewhere as appropriate,

(k) without prejudice to the [State Authorities \(Public Private Partnership Arrangements\) Act 2002](#), entering into an agreement or arrangement with any person for the provision of water services to that person, including in relation to assigning capacity in a waterworks or reserving capacity in a waste water works for the provision of water services to that person,

(l) authorising, controlling, monitoring or supervising the provision of water services by any other person within its functional area,

(m) carrying out all such surveys, research, analysis, monitoring or undertaking any other action which may be necessary for the purposes of its functions under this section,

(n) the provision of guidance, advice or information to other persons in relation to water services,

(o) entering into such contracts or other arrangements as it considers necessary or expedient for the use, purchase, or lease of any buildings, premises, materials, services, machinery or other apparatus, or

(p) taking waterworks or waste water works provided by other persons in charge.

(2) The Minister may make regulations in relation to the undertaking by a water services authority of any of the functions in *subsection (1)*, or for the provision of water services by an authorised provider of water services or a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services.

(3) Without prejudice to the generality of *subsection (2)*, regulations under this section may make provision for any or all of the following:

(a) drinking water quality and waste water quality standards, including as the case may be, exemption or derogation from such standards in specified circumstances and subject to specified conditions;

(b) duties of persons providing water services;

(c) specifying the points at which compliance with standards under *paragraph (a)* will be measured, and limiting the obligations placed on any person by regulations under *paragraph (a)* in relation to the provision of drinking water to a specified quality standard in cases where non-compliance is as a result of defects in the internal distribution system of a premises, or specified classes of premises;

(d) provision of information or advice for the purpose of protecting human health or the environment;

(e) performance standards for the provision of water services;

(f) operational procedures;

(g) asset management planning;

(h) training requirements for staff;

(i) requirements in relation to the monitoring and supervision of water services to establish compliance with prescribed standards, including frequency of monitoring, monitoring standards and monitoring procedures, additional monitoring in specified circumstances, and, appropriate action where monitoring results indicate a failure to meet specified standards, and such action may include the immediate investigation of the cause of the failure, remedial measures to be taken, the provision of public information and advice, such restriction of services as may be necessary for the protection of human health and the environment, and the timescale for undertaking such action;

(j) standard methods of analysis;

(k) laboratory requirements;

(l) record keeping;

(m) supervision and control of the provision of water services and water services infrastructure;

(n) control of the supply of water;

(o) source protection;

(p) water conservation;

(q) the nature and form of any agreement entered into by a water services authority under *subsection (1)*;

(r) measures to facilitate the provision of water supplies for fire-fighting or other

public health and safety purposes including the provision of notices to assist in the location of fire hydrants;

(s) requirements to prevent risk to human health from contamination of water intended for human consumption by substances or materials, or associated impurities, in new installations for the treatment or distribution of water;

(t) requirements to ensure the efficiency or effectiveness of treatment systems or disinfection procedures for water, and to limit any residual effects on the quality of water intended for human consumption to specified limits consistent with ensuring fitness for human consumption without compromising the disinfection;

(u) requirements to ensure the efficiency and effectiveness of treatment systems or disinfection procedures for waste water;

(v) provision of adequate and up-to-date information on the quality of water intended for human consumption;

(w) procedures for dealing with consumer complaints;

(x) measures to protect public health or the environment; or

(y) related and ancillary matters.

(4) Measures taken to implement regulations under *subsection (2)* shall not have the effect of allowing, directly or indirectly, any—

(a) deterioration in the existing quality of water intended for human consumption, or

(b) increase in pollution of waters used for the production of water intended for human consumption.

(5) It is an offence to contravene a regulation made under *subsection (2)*.

(6) Measures taken in relation to failure to meet prescribed drinking water quality standards shall—

(a) be prioritised having regard, amongst other matters, to the extent to which the relevant parametric values have been exceeded and to the potential danger to human health arising, and

(b) in any event, be taken as soon as possible.

(7) Regulations under *subsection (2)* which provide for exemption of specified supplies from prescribed drinking water quality standards shall provide to the effect that—

(a) the population concerned shall be informed of the exemption, and of any action that can be taken to protect human health from adverse effects resulting from any contamination of the water supply, and

(b) where a potential danger to human health arising from the quality of a relevant water supply is apparent, the population concerned shall be given appropriate advice promptly,

and such regulations may provide for such measures as may be necessary to give full effect to those requirements.

(8) Regulations under *subsection (2)* which provide for a derogation from prescribed drinking water quality standards shall provide to the effect that—

(a) the population affected shall be informed promptly in an appropriate manner of the derogation and the conditions which govern it, and

(b) where necessary, advice is given to particular population groups for which a derogation could present a special risk,

and such regulations may provide for such measures as may be necessary to give full effect to those requirements.

(9) In so far as regulations under *subsection (2)* limit the obligation placed on any person in relation to the provision of water for human consumption which meets specified quality standards, such regulations shall provide that where there is

nevertheless non-compliance or a risk of non-compliance with such standards, then—

(a) either—

(i) appropriate measures shall be taken to ensure compliance or reduce or eliminate the risk of non-compliance, including advising premises owners affected of any possible remedial action they could take, or

(ii) other measures shall be taken, including appropriate additional treatment in order to change the nature or properties of the water prior to its supply so as to reduce or eliminate the risk of the water not complying with the specified quality standards,

and

(b) the consumers concerned shall be duly informed and advised of any possible additional remedial action which they should take,

and such regulations may provide for such measures as may be necessary to give full effect to those requirements.

(10) Regulations under *subsection (2)* may provide for their application to any person who, although not providing water services is nevertheless supplying water for human consumption as part of a commercial or public activity in circumstances where that water is from that person's own private supply and has not been supplied to him or her in the first instance—

(a) by a water services authority,

(b) by an authorised provider of water services,

(c) by a person providing water services jointly with or on behalf of a water services authority or an authorised provider of water services, or

(d) in bottles or containers,

and references to “water services” in this section may, where the context permits, include such water supplied for human consumption by such persons.

(11) For the purposes of *subsections (7) and (8)*, and notwithstanding [section 19](#), the population concerned may also be informed by means of—

(a) an advertisement in a newspaper circulating in the area,

(b) an announcement broadcast on a radio or television channel generally available in the area,

(c) an announcement made available on the internet, or

(d) such other manner as the Minister may direct.

(12) In this section “derogation” and “population” have the same meaning as they have in Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption 14 .

Part XIV and Sections 213 and 217 of the Planning and Development Act, 2000

213.—(1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.

(2) (a) A local authority may, for the purposes of performing any of its functions

(whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under [section 94](#), do all or any of the following:

(i) acquire land, permanently or temporarily, by agreement or compulsorily,
(ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

(iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

and the performance of all or any of the functions referred to in *subparagraphs (i), (ii) and (iii)* are referred to in this Act as an "acquisition of land".

(b) A reference in *paragraph (a)* to acquisition by agreement shall include acquisition by way of purchase, lease, exchange or otherwise.

(c) The functions conferred on a local authority by *paragraph (a)* may be performed in relation to—

(i) land, or

(ii) any easement, way-leave, water-right or other right to which that paragraph applies,

whether situated or exercisable, as the case may be, inside or outside the functional area of the local authority concerned.

(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required by the authority for that purpose in the future.

(b) The acquisition may be effected by agreement in respect of any land which, in the opinion of the local authority, it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land.

(c) *Paragraphs (a) and (b)* shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.

(4) A local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in *subsection (2)* of this section and section 10 (as amended by [section 86](#) of the [Housing Act, 1966](#)) of the [Local Government \(No. 2\) Act, 1960](#), shall be construed so as to apply accordingly and the reference to "purposes" in section 10(1)(a) of that Act shall be construed as including purposes referred to in *subsection (2)* of this section.

217.—(1) Where an objection is made to a sanitary authority in accordance with [section 6](#) of the [Water Supplies Act, 1942](#), and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to the Board for a provisional order in accordance with section 8 of that Act.

(2) Where an objection is made to a sanitary authority in accordance with [section 8](#) of the [Local Government \(Sanitary Services\) Act, 1964](#), and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to the Board for its consent to the compulsory acquisition of the land in accordance with that section.

(3) Subject to [section 216](#), where a local authority complies with the notification provisions in relation to a compulsory purchase order under paragraph 4 of the Third Schedule to the [Housing Act, 1966](#), it shall, within 6 weeks of complying with those provisions, submit the compulsory purchase order to the Board for confirmation.

(4) Where a road authority complies with the notification provisions in relation to a scheme in accordance with [section 48](#) of the [Roads Act, 1993](#), it shall, within 6 weeks of complying with those provisions, submit the scheme to the Board for approval.

(5) A notice of the making of a confirmation order to be published or

served, as the case may be, in accordance with [section 78 \(1\)](#) of the [Housing Act, 1966](#), shall be published or served within 12 weeks of the making of the confirmation order.

(6) Notwithstanding [section 123](#) of the [Lands Clauses Consolidation Act, 1845](#), where a compulsory purchase order or provisional order is confirmed by a local authority or the Board and becomes operative and the local authority decides to acquire land to which the order relates, the local authority shall serve any notice required under any enactment to be served in order to treat for the purchase of the several interests in the land (including under [section 79](#) of the [Housing Act, 1966](#)) within 18 months of the order becoming operative.

(7) (a) A decision of the Board made in the performance of a function transferred to it under [section 214](#) or [215](#) shall become operative 3 weeks from the date on which notice of the decision is first published.

(b) Subsections (8) and (9) of [section 52](#) of the [Roads Act, 1993](#) (as inserted by [section 5](#) of the [Roads \(Amendment\) Act, 1998](#)) and subsections (2) to (4) of [section 78](#) of the [Housing Act, 1966](#), shall not apply in relation to decisions of the Board under this Part.

Section 184(2) of the Local Government Act, 2001

184.—(1) Without prejudice to the generality or application of section 210, 211 or 213 of the Act of 2000, the functions conferred on a local authority by [section 11](#) (7)(a) shall—

(a) as regards the acquisition of land be construed in accordance with section 213 of the Act of 2000,

(b) as regards the disposal of land be construed in accordance with section 211 of the Act of 2000,

and section 210 of the Act of 2000 shall apply as regards the appropriation of land.

(2) For the avoidance of doubt it is hereby declared that the functions conferred on a local authority by section 213(2)(a) of the Act of 2000 may be performed in relation to any easement, way-leave, water right or other right to which that paragraph applies granted by or held from the local authority acquiring the land and “acquisition of land” shall be construed accordingly for the purposes of that Act.

The Housing Act, 1966 (and in particular Part V, Sections 76, 78 and the Third Schedule)

76.—A housing authority acquiring land compulsorily for the purposes of this Act may be authorised to do so by means of a compulsory purchase order made by the authority and submitted to and confirmed by the Minister in accordance with the provisions contained in the [Third Schedule](#) to this Act.

78.—(1) As soon as may be after the Minister has made a confirmation order confirming a compulsory purchase order, whether in respect of all or part of the land to which the compulsory purchase order relates, the housing authority shall publish in a newspaper circulating in their functional area a notice in the prescribed form stating that the compulsory purchase order has been confirmed as respects all or part of the land, as the case may be, and naming a place where a copy of the compulsory purchase order as so confirmed and of the map referred to therein may be seen at all reasonable times and shall serve a like notice on every person having an interest in the land as respects which the compulsory purchase order has been confirmed who, having given notice to the Minister of his objection to the compulsory purchase order, appeared at the local public inquiry in support of his objection.

(2) If any person aggrieved by a compulsory purchase order which has been confirmed by

the Minister (whether in respect of all or part of the land to which the compulsory purchase order relates) desires to question its validity he may, not later than three weeks after the publication of notice of the confirmation order, make an application for the purpose to the High Court, and where any such application is duly made the court—

(a) may by interim order suspend the operation of the compulsory purchase order as so confirmed either generally or in so far only as it affects any property of the applicant until the final determination of the proceedings;

(b) if satisfied upon the hearing of the application that the compulsory purchase order as so confirmed is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act not having been complied with, may quash the order as so confirmed either generally or in so far only as it affects any property of the applicant.

(3) A compulsory purchase order as confirmed by a confirmation order shall—

(a) as respects the land to which the confirmation order relates;

(i) in case no application mentioned in subsection (2) of this section is made or in case such application is withdrawn—become operative at the expiration of the period ending twenty-one days after the notice required by subsection (1) of this section is published, or the withdrawal of the application, or

(ii) in case such an application is made and is not withdrawn, and the court decides neither to quash the order as confirmed as aforesaid, nor to quash the order in so far only as it affects any property of the applicant—become operative on the date of the determination of the application,

(b) in case an application mentioned in subsection (2) of this section is made and is not withdrawn, and the court decides to quash the order in so far only as it affects any property of the applicant—become operative, on the date of the determination of the application, in so far as it affects any property other than the said property of the applicant.

(4) Subject to the provisions of subsection (2) of this section, a person shall not question a compulsory purchase order by prohibition or *certiorari* or in any legal proceedings whatsoever.

(5) So soon as may be after a compulsory purchase order has become operative, the housing authority shall serve a copy thereof on every person on whom a notice was served by them of their intention to submit the order to the Minister for confirmation.

THIRD SCHEDULE

Provisions Applicable As Respects Compulsory Purchase Orders

Section 76.

1. A compulsory purchase order shall be in the prescribed form and shall describe by reference to a map the land to which it relates and shall incorporate, subject to the modifications hereinafter mentioned and any necessary adaptations—

(a) the Lands Clauses Acts (except sections one hundred and twenty-seven to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845, and article 20 of the Second Schedule to the Act of 1890);

(b) the Acquisition of Land (Assessment of Compensation) Act, 1919.

2. The modifications subject to which the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall be incorporated in a compulsory purchase order shall be as follows:

(a) where the purchase money or compensation payable to a person claiming any interest in land does not exceed the sum of five hundred pounds, and the claimant gives *prima facie* evidence that he is a person having power to sell under the Land Purchase Acts or the Lands Clauses Acts, and satisfies the housing authority that, for not less than six years immediately preceding, he, or his immediate predecessor in title, has been personally, or by an agent, in receipt of the rents or profits of the land, or in actual occupation thereof, the claimant may be dealt with by the authority as the absolute owner of the interest in respect of which he claims, and the purchase money or compensation may be paid to him;

(b) where any interest in land, in respect of which purchase money or compensation not exceeding the sum of five hundred pounds is payable, is subject to any mortgage or charge, the amount of the purchase money or compensation may be paid to the person entitled to the mortgage or charge, or if there is more than one such mortgage or charge, then to the person entitled to the mortgage or charge which is first in priority, and the amount so paid shall be received in reduction of the principal sum for the time being owing in respect of the mortgage or charge, notwithstanding any direction, proviso, or covenant to the contrary contained in any instrument;

(c) where a housing authority have, pursuant to paragraph (a) or (b) of this article, paid purchase money or compensation, not exceeding the sum of five hundred pounds, to any person, the person shall give the authority a receipt in the prescribed form for the purchase money or compensation and, except in the case of land to which a vesting order applies, the receipt shall, where it is given by a person who may be dealt with as absolute owner or by a person entitled to a mortgage or charge on the interest of any such person be effectual to vest absolutely in the authority, free from encumbrances and all estates, rights, titles and interests of whatsoever kind (other than a public right of way) the fee simple of the land in respect of which the purchase money or compensation was paid;

(d) a memorandum of the amount paid under paragraph (b) of this article shall, where practicable, be endorsed on the instrument creating the mortgage or charge, and shall be signed by the person receiving the purchase money or compensation, and a copy of the memorandum shall be furnished by the housing authority to all persons appearing to the authority to be entitled to any interest in the land subject to the mortgage or charge;

(e) a copy of the receipt mentioned in paragraph (c) of this article shall, on the request of any person entitled to any estate or interest in the land in respect of which the purchase money or compensation was paid, be furnished by the housing authority to that person;

(f) any person claiming to be entitled to any purchase money or compensation paid to another person under this article, may, within six years after the payment has been made, make an application to the Circuit Court and on the hearing the court may, as it thinks proper, either dismiss the application or make a decree against the housing authority for the amount found due in respect of the claim and the amount for which any such decree is made shall be a debt due to the authority by the person to whom the money was paid by them;

(g) if—

(i) it appears to the housing authority that the person making any claim for purchase money or compensation in respect of land, or any estate or interest in land, is not absolutely entitled to the land, estate or interest, or

(ii) the title to such land, estate, or interest is not satisfactorily shown to the housing authority,

and the purchase money or compensation does not exceed twelve hundred pounds, the authority may pay it into the Circuit Court and the court shall thereupon have with respect thereto all the jurisdiction exercisable by the High Court under the Lands Clauses Acts and the authority shall thereupon have with respect to the land, estate or interest all the like rights and powers as if the purchase money or compensation had been paid into the High Court;

(h) [section 72 of the Lands Clauses Consolidation Act, 1845](#), shall have effect as if "five hundred pounds" were substituted therein for "twenty pounds";

(i) notwithstanding the repeal by this Act of the [Housing \(Miscellaneous Provisions\) Act, 1931](#), "two" shall continue to be substituted for "three" in article 6 of the Second Schedule to the Act of 1890;

(j) article 24 of the Second Schedule to the Act of 1890, as amended by section 31 of the Act of 1948 (repealed by this Act) shall have effect as if "at which, on the date of such entry the local authority could borrow from the local loans fund" was substituted for "of three pounds per centum per annum";

(k) the compensation shall be assessed in accordance with such of the provisions of this Act relating to the assessment of compensation in respect of land acquired compulsorily as are applicable to the particular case;

(l) the arbitrator shall not take into account—

(i) any interest in land created after the date on which notice of the order having been made is published in accordance with article 4 of this Schedule, or

(ii) any building erected or any improvement or alteration made after the said date if, in the opinion of the arbitrator, the erection of the building or the making of the improvement or alteration was not reasonably necessary and was carried out with a view to obtaining or increasing compensation.

3. If the compulsory purchase order relates to land which includes a house and the house is, in the opinion of the housing authority, unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense, the house shall be described in the prescribed manner in the order.

4. Before submitting the compulsory purchase order to the Minister the housing authority shall—

(a) publish in one or more newspapers circulating in their functional area a notice in the prescribed form stating the fact of such an order having been made and naming a place where a copy of the order and of the map referred to therein may be seen at all reasonable hours; and

(b) serve on every owner, lessee and occupier (except tenants for a month or a less period than a month) of any land to which the order relates a notice in the prescribed form stating the effect of the order and that it is about to be submitted to the Minister for confirmation and specifying the time within which and the manner in which objections can be made thereto.

5. (1) Where a compulsory purchase order has been submitted to the Minister, he may, if he thinks fit, and subject to the following provisions of this article—

(a) annul the order by an annulment order, or

(b) confirm the order with or without modification by a confirmation order, as respects all or part of the land to which the compulsory purchase order relates and in case the Minister makes an annulment order or a confirmation order in respect of part of such land, the Minister may make an annulment order or a confirmation order or a further annulment or confirmation order, as the case may be, in respect of any part of such land to which neither a previously made annulment order nor a previously made confirmation order relates.

(2) The Minister shall not confirm a compulsory purchase order in so far as it relates to any land in respect of which an objection is duly made by any of the persons upon whom notices of the making of the order are required to be served until he has caused to be held a public local inquiry into such objection and until he has considered such objection and the report of the person who held the inquiry, unless—

(a) such objection is withdrawn, or

(b) the Minister is satisfied that such objection relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation may have to be assessed.

(3) An order made by the Minister shall not—

(a) authorise the housing authority to acquire compulsorily any land which the relevant compulsory purchase order would not have authorised them so to acquire if it had been confirmed without modification;

(b) authorise the housing authority to acquire as being a house unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense any house not so described in the original order.

(4) If the Minister is of the opinion that a house described in a compulsory purchase order as being unfit for human habitation and not capable of being rendered fit at reasonable expense

ought not to have been so described, he shall annul the order in so far as it relates to the house, unless he is of the opinion that the house may properly be acquired by the housing authority, in which case he shall modify the order so as to authorise the authority to acquire the house and to pay compensation in respect thereof assessed in accordance with Part II of the [Fourth Schedule](#) to this Act.

(5) In construing any enactment incorporated in a compulsory purchase order—

(a) any reference to the special Act shall be construed as a reference to this Act together with the order;

(b) any reference to the confirming authority shall be construed as a reference to the Minister;

(c) any reference to a local authority or the promoters of the undertaking shall be construed as a reference to a housing authority;

(d) any reference to Part I or Part II of the Act of 1890, shall be construed as a reference to this Act;

(e) any reference to land shall be construed as including a reference to any interest or right over land granted by or held from the authority by whom the compulsory purchase order is made.

Section 10 of the Local Government (No. 2) Act, 1960 (as substituted by Section 86 of the Housing Act, 1966 and as amended by Section 6 and the Second Schedule of the Roads Act, 1993 and by Section 222 of the Planning and Development Act, 2000),

86.—(1) The following section shall be substituted for section 10 of the Act of 1960—

“10. (1) Where—

(a) a local authority intend to acquire compulsorily any land, whether situate within or outside their functional area, for purposes for which they are capable of being authorised by law to acquire land compulsorily,

(b) those purposes are purposes other than the purposes of the Housing Act, 1966, or are purposes some only of which are purposes of that Act, and

(c) the local authority consider that it would be convenient to effect the acquisition under that Act,

the local authority may decide so to effect the acquisition.

(2) Where—

(a) a local authority consider that any land, whether situate within or outside their functional area, would, if acquired by them, be suitable for the provision of halls, buildings and offices for the local authority, and

(b) the local authority consider that it would be convenient to effect the acquisition under the Housing Act, 1966,

the local authority may decide so to effect the acquisition.

(3) (a) Where a local authority make a decision under subsection (1) or (2) of this section, they may be authorised to acquire the land compulsorily by means of a compulsory purchase order as provided for by section 76 of the Housing Act, 1966, and the Third Schedule thereto and for the purposes of this paragraph any reference to a housing authority in the said section 76 or the said Third Schedule shall be construed as a reference to a local authority.

(b) For the purposes of paragraph (a) of this subsection, ‘the Minister’, wherever that expression occurs in section 76 of the Housing Act, 1966, and the Third Schedule thereto shall be construed as referring to the appropriate Minister.

(4) (a) The provisions of sections 78, 79, subsection (1) of section 80, sections 81, 82 and 84 of the Housing Act, 1966, and the Fourth Schedule thereto, shall apply in relation to an order made by virtue of this section and any reference in the said sections and subsection and in the said Fourth Schedule as so applied to a housing authority or the Minister shall be construed as a reference as to the local authority or the appropriate Minister, respectively.

(b) The provisions of sections 3, 4, 5 and 49 of the Housing Act, 1966, are hereby extended so as to have effect for the purposes of this section, and any reference in the said sections as so extended to a housing authority or, except in the said section 5, to the Minister shall be construed as a reference to the local authority or the appropriate Minister, respectively.

(c) The provisions of subsection (2) of section 83 of the Housing Act, 1966, shall apply in relation to land acquired by means of an order made by virtue of this section.

(d) Where—

(i) an order is made by virtue of this section, and

(ii) there is a public right of way over the land to which the order relates or any part thereof, the order may authorise the local authority, by order made by them after they have acquired such land or part, to extinguish the right of way.

(e) Where—

(i) an order made by virtue of this section authorises the extinguishment of a public right of way, and

(ii) apart from this paragraph, it would not be obligatory on the Minister to cause a public local inquiry to be held pursuant to the Third Schedule to the Housing Act, 1966, it shall be obligatory on the Minister to cause the inquiry to be held save where he thinks fit not to confirm the order.

(5) A local authority may, in a case in which they have made a decision under subsection (1) of this section, be authorised to acquire land compulsorily by means of a single order made by virtue of this section irrespective of the number of the purposes for which the land is required.

(6) In this section, 'land' includes any interest or right over land granted by or held from the local authority acquiring the land."

(2) In construing a compulsory purchase order made by virtue of the said section 10, the reference in any enactment incorporated therein which, but for this subsection, would by virtue of sub-article (5) of article 5 of the [Third Schedule](#) to this Act be construed as a reference to a housing authority, shall be construed as a reference to a local authority.

222.—Section 10 (inserted by [section 86](#) of the [Housing Act, 1966](#)) of the [Local Government \(No. 2\) Act, 1960](#) , is hereby amended—

(a) by the deletion of subsection (2), and

(b) in subsection (4), by the substitution for paragraph (d) of the following paragraph:

"(d) Where—

(i) an order is made by virtue of this section, and

(ii) there is a public right of way over the land to which the order relates or any part thereof or over land adjacent to or associated with the land or any part thereof, the order may authorise the local authority, by order made by them after they have acquired such land or part, to extinguish the right of way."

The Lands Clauses Acts (too large to copy)

The Acquisition of Land (Assessment of Compensation) Act, 1919 (too large to copy)