MINISTRY OF HEALTH

SECOND REPORT OF THE CENTRAL ADVISORY WATER COMMITTEE

Consolidation and Amendment of the Law relating to Public Water Supply

Presented by the Minister of Health to Parliament by Command of His Majesty, April, 1939

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CENTRAL ADVISORY WATER COMMITTEE.

Terms of reference:—

(*a*) to advise the Government Departments on questions relating to the conservation and allocation of water resources;

(*b*) to advise the Government Departments on any questions which may be referred by them to the Committee with respect to any matter arising in connection with the execution or any proposed amendment of the enactments relating to water; and

(*c*) to consider the operation of the enactments relating to water and to make to the Government Departments such representations with respect to matters of general concern arising in connection with the execution of those enactments, and with respect to further measures required, as the Committee think desirable.

Members.

Field Marshal The Lord Milne, G.C.B., G.C.M.G., D.S.O.—Chairman.
Sir Albert Atkey, J.P.
Mr. E. T. L. Baker, O.B.E., M.A.
Mr. H. K. Beale.
Mr. R. Beddington, O.B.E.
Mr. E. W. Cemlyn-Jones.
Mr. John Chaston, F.C.I.S., F.S.S.
Lieutenant-Colonel E. J. Clarke.
Mr. A. E. Cornewall-Walker, M.Inst.C.E.
Sir Robert Doncaster, O.B.E., J.P.
Lieutenant-Colonel A. P. Heneage, D.S.O., D.L., J.P., M.P.
*Mr. G. R. Hill, C.B.
Captain R. T. Hinckes, D.L., J.P.
Mr. S. R. Hobday, O.B.E., F.R.S.A., M.Inst.T., Barrister-at-Law.
Mr. J. E. James.
*Sir Frederick F. Liddell, K.C.B., K.C.
Sir David Owen.
Mr. B. Verity.

Assessors.

Mr. I. F. Armer, M.C., Ministry of Health.
Mr. A. T. A. Dobson, C.B., C.V.O., C.B.E., Ministry of Agriculture and Fisheries.
Mr. D. B. Toye, O.B.E., Ministry of Agriculture and Fisheries.
Captain V. R. Brandon, C.B.E., R.N., Board of Trade.
Mr. T. Shirley Hawkins, O.B.E., M.Inst.C.E., F.R.San.I., Ministry of Transport.
Dr. A. Parker, F.I.C., M.I.Chem.E., Department of Scientific and Industrial Research.

* Mr. Hill and Sir Frederick Liddell confined themselves to the preparation of the Bill and the Sub-Committee's Report.

Note.—The following abbreviations are used in the Report:—

Act of 1847—Waterworks Clauses Act, 1847.

Act of 1863—Waterworks Clauses Act, 1863.

Waterworks Code—Acts of 1847 and 1863.

Act of 1870—Gas and Water Works Facilities Act, 1870.

Act of 1873—Gas and Water Works Facilities Act, 1870, Amendment Act, 1873.

Act of 1887—Water Companies (Regulation of Powers) Act, 1887.

Act of 1921—Water Undertakings (Modification of Charges) Act, 1921.

Act of 1930—Reservoirs (Safety Provisions) Act, 1930.

Act of 1933—Local Government Act, 1933.

Act of 1934—Supply of Water in Bulk Act, 1934.

Act of 1936—Public Health Act, 1936.

Act of 1938—Fire Brigades Act, 1938.

Special Acts—Acts and Orders (provisional or otherwise) of a local character for the purposes of water supply.

CENTRAL ADVISORY WATER COMMITTEE.

SECOND REPORT.

PART I.

To the Rt. Hon. WALTER ELLIOT, P.C., M.C., M.P.,
Minister of Health.

SIR,

We have the honour to submit to you herewith the Second Report of our proceedings.

1. Lieut.-Col. A. P. Heneage, D.S.O., M.P., has acted as our Chairman in the absence of Field Marshal The Lord Milne, who was unable to take part in the Committee's work in the preparation of the Report, but presided at the meetings when the broad principles of the recommendations contained therein were considered. The membership of the Committee has been increased by the inclusion of Mr. G. R. Hill, C.B., and Sir Frederick Liddell, K.C.B., K.C., who were appointed to the Committee for the purpose of assisting in the consideration of the consolidation and amendment of the law relating to water supply. These gentlemen were also appointed as members of the Sub-Committee dealing with those questions.

2. We informed your predecessor in our First Report that the Sub-Committee which we had appointed to consider proposals for the modernisation of the law relating to water supply had made substantial progress and were preparing a Bill for the purpose. The Sub-Committee have now completed the drafting of this Bill and have submitted a Report which has been endorsed by the Committee. The Report and the draft Bill are subjoined to this Report.

The proposed Bill deals with the consolidation and amendment of the various general Acts regulating the supply of water by local Act water undertakers, and provides also for the simplification of the procedure to which those undertakers must conform if additional powers are required.

Procedure for obtaining new powers.

3. The principal amendment of the law suggested by the Committee is that, provided there is agreement by all interests concerned, statutory water undertakers (except local authorities) should be enabled in future to obtain new powers by Order of the Minister of Health, instead of by Provisional Order as under the existing law.

In paragraph 9 of their Report and in their notes on Clause 1 of the proposed Bill, the Sub-Committee explain the drawbacks

of the existing system, including the cumbersome procedure with which the water undertakers must comply if they find it necessary to obtain new powers for the carrying on of their undertakings. The simplification of this procedure is very desirable, and the measures suggested for the purpose will tend to improve public water supplies by reducing the expense and trouble which has to be incurred now before authority for necessary improvements can be obtained. It should be emphasised in this connection that although the amendments we have recommended will provide a more economical and much more expeditious method of procedure from the point of view of water undertakers, the safeguards for local authorities and persons likely to be affected under the new procedure are no less adequate than those of the existing law, since the proposed powers do not extend to the compulsory acquisition of land or water rights, applications for alterations or amalgamations of undertakings can be made only if the interested undertakers are in agreement, and, finally, the right of appeal to Parliament is preserved if opposition by any interested person to an Order is not withdrawn.

Consolidation and amendment of the Waterworks Code.

4. The need for a new Waterworks Code is well established. It is nearly a century since the provisions embodied in the Act of 1847 came into common use and although these provisions have since been freely amended by subsequent local legislation, there has been no general revision of the Code since 1863, and no comprehensive revision since the Code was first formed. Our main concern has been on the one hand to provide uniform powers, as far as this is possible, for all water undertakers, and on the other hand to secure that Special Act provisions adopted for the purpose shall be both suited to the requirements of the undertakers and fair to the general body of consumers. It is apparent that with a subject like water supply, with its many ramifications and the numerous local undertakings of varying character, it would be impossible to achieve complete uniformity of legal powers. It is considered, however, that the new Code will achieve a substantial measure of uniformity, and that most of the existing anomalies will be removed when it becomes incorporated with the water undertakers' Special Acts. It is apparent, also, that the consolidation of the general statutes governing the supply of water by Special Act water undertakers into one Act of Parliament will be to the advantage of all persons concerned with the administration of water supplies.

Compensation Water.

5. The suggested amendments of the existing law are fully explained in the Report made by the Sub-Committee. We desire, however, to call especial attention to Clause 14 of the First Schedule of the proposed Bill, which deals with the

question of compensation water when streams are to be impounded under Special Acts. This subject has been much debated in recent years, and there has been considerable difference of opinion between water undertakers and other river interests as to whether the present practice is equitable.

The question was reviewed by the Joint Committee on Water Resources and Supplies in their Final Report of 1936. They pointed out that the practice is to take the average of the river flow for three consecutive dry years, to deduct from it an allowance for the loss due to evaporation, absorption, percolation and other causes, and to provide that a proportion of the flow of the stream equivalent to one-third of the result so obtained should be sent down the stream as compensation to riparian owners. They stated that this rough and ready method had been unsatisfactory, and was open to certain objections. They expressed the opinion in paragraph 33 of their Report that although immediate steps should be taken to remedy the lack of statistical information and other reliable data, the following considerations must apply both now and in the future, viz.:—

(*a*) The amount of compensation water should be determined on the merits of each particular case.

(*b*) In assessing the amount, regard should be had to—

(i) the character and flow of the stream;

(ii) the extent to which it was used for industries, fisheries, etc.;

(iii) the probability of future industrial development;

(iv) the protection of the rights of riparian and other landowners;

(v) the minimum proportion of the flow below which compensation ought not to be fixed in the interests both of public health and riparian owners.

We are in full agreement with the Joint Committee on this question, and we suggest that Parliament should be recommended to consider whether the time has not come for the existing practice to be revised, and whether Standing Orders should not be amended to provide that regard should be had to the foregoing considerations when proposals entailing the assessment of compensation water are under consideration. We suggest, also, that it should be made clear that the interests of agriculture, land drainage, the prevention of pollution and navigation should be taken into account.

6. We have emphasised the need for the consolidation and amendment of the law relating to water supply. We suggest that it would be in the interests of all who are concerned with

public water supplies, whether water undertakers or consumers, if a Bill for the purpose could be introduced into Parliament at the first practicable opportunity.

We have the honour to be
Sir,
Your obedient Servants,

ARTHUR P. HENEAGE, *Chairman.*
A. R. ATKEY.
E. T. L. BAKER.
H. K. BEALE.
*REGINALD BEDDINGTON.
*E. W. CEMLYN-JONES.
JOHN CHASTON.
E. J. CLARKE.
A. E. CORNEWALL-WALKER.
ROBERT DONCASTER.
R. T. HINCKES.
S. R. HOBDAY.
J. E. JAMES.
DAVID J. OWEN.
B. VERITY.

A. TITHERLEY,
Secretary.

5th April, 1939.

* Signed subject to attached reservation.

Reservation by Mr. Reginald Beddington.

I am in general agreement with the Committee's Report, but I do not endorse the recommendations regarding the recovery of fines for breaches of provisions as to compensation water (see paragraph 20 of the Sub-Committee's Report).

Fishery boards are often empowered now by local Water Acts to take proceedings and to recover penalties for breaches of these provisions. The power to take proceedings is continued by Clause 14 (4) of the First Schedule of the proposed Bill, but it is proposed that penalties shall in future be treated as fines. While I agree that it is generally desirable that penalties should be dealt with in this way, I consider that fishery boards are in a special position, and that an exception should be made in their favour, at any rate so long as their existing obligations continue. The boards incur considerable expenditure on policing the rivers within their jurisdiction and on ensuring that the statutes relating to those rivers are complied with—in many instances they are the only authorities employing staff for this purpose. On the other hand, they receive no contributions from local rates towards their expenses, notwithstanding that much of the work is of direct or indirect benefit to interests other than fisheries.

The special position of fishery boards was recognised by Parliament in Section 73 of the Salmon and Freshwater Fisheries Act, 1923, which provides that subject to the provisions of Section 5 of the Criminal Justice Administration Act, 1914, any fines or moneys recovered on the complaint of a board, or officer or person authorised by a board, shall (unless the court for some special reason otherwise order) be paid to the board and applied by them for the purposes of the Act. I recommend that this principle be extended to the fines proposed in Clause 14 of the First Schedule of the Bill.

REGINALD BEDDINGTON.

Reservation by Mr. E. W. Cemlyn-Jones.

I am in agreement with the Sub-Committee's reasons for deciding not to consider major alterations of the existing Code as between water undertakers and highway authorities. I am definitely of the opinion, that, in view of the recent appointment by Parliament of the Joint Committee on the Breaking up of Streets by Statutory Undertakers, it would be unappropriate to proceed with the provisions of Part VI of the First Schedule to the proposed Bill until the Joint Committee has reported and their recommendations have been considered by the Government. The Bill should then be reviewed in the light of the decisions taken.

E. W. CEMLYN-JONES.

4th April, 1939.

PART II.

REPORT BY CONSOLIDATION SUB-COMMITTEE.

The Members of the Sub-Committee were:—Sir Albert Atkey (*Chairman*), Mr. H. K. Beale, Mr. J. Chaston, Lieut.-Col. E. J. Clarke, Sir Robert Doncaster, Mr. G. R. Hill, Mr. S. R. Hobday, Mr. J. E. James, Sir Frederick Liddell and Mr. B. Verity.

REPORT.

1. We were appointed by the Committee to review the Waterworks Clauses Acts of 1847 and 1863, provisions in Special Acts amending and extending the powers of those Acts, and the other general Acts from which statutory water undertakers derive the powers to carry on their undertakings; and to prepare a Bill for the consolidation of the law.

2. In an interim report of progress made to the Committee in November, 1937, we submitted details of clauses based on the Acts of 1847 and 1863 and on local legislation, with other amendments of the law, which we considered should be embodied in the Bill. Since then, we have completed our review of the relevant statutes, and have prepared a draft Bill, which is appended to this Report, embodying the amendments already approved by the Committee and the other alterations of the law which we consider desirable.

Introduction.

3. Approximately four-fifths of the public water supplies of England and Wales is afforded by local authorities, joint boards and companies acting under powers obtained from Parliament in Local Acts or Provisional Orders. It is the usual practice for these Acts and Orders to prescribe the works which may be carried out and the lands which may be acquired, the sources of supply which may be drawn upon, the limits within which the water undertakers may supply water, the rates and charges to be made, the borrowing powers, and, in the case of companies, the amount of capital which may be raised and the profits which may be made. In addition, nearly all the Acts or Orders incorporate the provisions of the Waterworks Clauses Acts of 1847 and 1863—the general code of clauses regulating the conditions of public water supply—and include also special provisions modifying and extending those Acts.

4. The remainder of the public water supply of the country is supplied by local authorities and joint boards under the powers of the Public Health Act, 1936, which lays down a

separate and distinct procedure for carrying on water undertakings (the powers being prescribed in the Act, and being exercisable in certain respects with the consent of the Minister of Health), but is similar to the Waterworks Code to the extent that the Act incorporates the Act of 1863 (except Section 15) and, with some important modifications, the sections of the Act of 1847 relating to the breaking up of streets, the laying of pipes, the waste or misuse of water, the fouling of water and the payment and recovery of the water rates.

5. The powers of the Public Health Acts in relation to water supply were reviewed as recently as 1936, but the provisions of the Acts of 1847 and 1863 incorporated with the Act of 1936 were not then revised, pending a comprehensive examination of the Waterworks Clauses Acts and amending local legislation. Our Report is directed, in the main, therefore, to the consolidation and amendment of the general statutes affecting water undertakers who supply under powers derived from Special Acts, although it is recommended that certain of the clauses of the proposed Bill replacing or extending sections of the Acts of 1847 and 1863 shall be incorporated with the Act of 1936, to take the place of the parts of the existing Code now so incorporated.

Form of the proposed Bill.

6. The general Acts which we have reviewed fall into two categories:—

(*a*) The Waterworks Clauses Acts of 1847 and 1863, which do not come into operation in local areas unless they are incorporated with the Special Acts of the water undertakers supplying those areas;

(*b*) Acts which are in force without the necessity for incorporation with Special Acts.

It was considered necessary for this distinction to be preserved, as some provisions of the Acts in the former category might not be applicable to every undertaking, or should not be brought into operation until the undertakers had had sufficient opportunity of reviewing the financial and other circumstances of their undertakings. It was considered also that it would be advantageous if the Acts in the latter category were included, as far as practicable, in one general Act. The proposed Bill is divided, therefore, into two main parts:—

(i) Provisions to be of general application, without the necessity for incorporation with existing general or Special Acts, which are included in the main body of the proposed Bill;

(ii) The First Schedule, containing provisions for incorporation with future Water Acts and Orders, which, it is

intended, shall be a new Waterworks Code to supersede the Acts of 1847 and 1863.

We have also suggested that some parts of the new Code should be incorporated with the Act of 1936, to replace provisions of the Acts of 1847 and 1863 now incorporated.

PART I.

Scope of the Proposed Bill.

The Waterworks Code.

7. Having reached these conclusions, we turned to the question of the provisions which should be embodied in the proposed Bill. The principal Acts are the Waterworks Clauses Acts of 1847 and 1863, which were based upon provisions adopted in Special Acts of the period, and are, as we have indicated, incorporated, with or without modification, with the great majority of Special Acts and in part with the Act of 1936. Nearly a century has passed since the clauses in this Code were first formulated. In the meantime, the conditions of public water supplies have changed so greatly that the scope of the Acts is now altogether inadequate, while many of the provisions have become obsolete by reason of later general and special legislation on water supply or on other subjects. To some extent, the inadequacy of the Code has been met by the undertakers themselves, who have obtained powers by Special Acts to suit their individual requirements, with the result that there has grown up a large body of provisions amending the Code which are now recognised by Parliament as common form clauses. As may be expected, the wording of similar clauses often varies very much, while the practice of leaving the initiative to local interests has sometimes produced anomalies, both in powers and in procedure, for which it is difficult to find justification. Although the practice has enabled the water undertakers, at considerable trouble and expense, to obtain the powers necessary for the carrying on of their undertakings, it has not been conducive to the uniformity and continuity of practice that is desirable for a service which is essential for public health and for the carrying on of industry and commerce, and has thus a great influence on the welfare of the community; it is probable, moreover, that the wide variations in the language of the common form clauses included in Special Acts, which often refer to earlier Acts for full interpretation, do not help the consumer to comprehend the extent of his rights and liabilities in connection with the supply of water. It is clearly in the interests of all concerned that the existing Code should be revised, and that the new provisions should be applied as uniformly as possible to all water undertakings.

8. With these objects in view, we have examined the Waterworks Clauses Acts in detail, the House of Lords' Model Bill and Clauses and a great variety of the provisions which are usually allowed in local legislation; we have also reviewed the report made by the Advisory Committee on Water in 1929; finally, we have compared, where feasible, the various provisions examined with similar provisions approved by Parliament in the Act of 1936. The clauses submitted in the First Schedule of the proposed Bill comprise the most suitable of the provisions contained in the sources to which we have referred. The principal amendments proposed are explained in detail in Part II of the Report.

The Gas and Water Works Facilities Act, 1870, and the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873.

9. The Acts empowered the Board of Trade to make Provisional Orders enabling companies or persons to construct and maintain gas and water works and supply gas and water; to raise additional capital; to furnish joint supplies or amalgamate their undertakings; and to do other things incidental to the carrying on of those undertakings. By Order in Council dated 9th November, 1920, the powers of the Acts in relation to water supply were transferred to the Minister of Health. Having regard to the wider powers contained in later general Acts the Acts, so far as they relate to gas, are now practically superseded. It should be emphasised that the Acts do not authorise the acquisition of land (including easements) or water rights unless the owners concerned (including riparian owners if water rights are in question) have agreed to the terms of acquisition, and do not confer compulsory powers for the acquisition of water undertakings. Subject to these qualifications, the Minister is empowered to make Provisional Orders for most of the powers which water companies can obtain by Special Acts. Local authorities and persons who object to the provisions of a Provisional Order can, if they think fit, carry objections which have not been met to Parliament, as in the case of private Bills. It is the Minister's practice, we understand, not to include special powers for the carrying on of undertakings unless similar powers have been granted by Parliament in Special Acts. We understand, also, that of the 61 Provisional Orders made since the powers of the Acts were transferred to the Minister, four only were opposed in Parliament. The provisions of the Acts governing such matters as notices, advertisements, deposit of documents and publication of Provisional Orders are rigid and expensive: there are the further drawbacks that applications for Provisional Orders must be made at a prescribed period, which cannot be varied, and that the various stages of the proceedings, both before and after a

Provisional Order is made, are conditioned by prescribed dates, which allow but little room for variation.

10. The necessity for a Provisional Order, whether there is opposition or not, and the procedure of the Acts are out of keeping with the requirements of modern water supply. The Committee were of opinion that the new powers recommended in their First Report should be exercisable by Order, after a local Inquiry, but that Orders should be provisional if opposed by interested persons. This procedure is very well suited to the purposes covered by the Acts of 1870 and 1873, and we recommend that in future Orders for any of the purposes mentioned should be provisional only if they are opposed, and the opposition has not been withdrawn. In this instance, the broad effect of the procedure recommended would not be very different from the existing position. We have no doubt that the Minister's practice, to which reference has already been made, of granting special powers only when similar powers have been approved by Parliament would be continued, more especially if there is a new Waterworks Code; the Orders would still be made on the initiative of the water undertakers; the acquisition of land and water rights would be impracticable, unless the agreement of interested owners was obtained before application for an Order was made; there would be an opportunity for appeal to Parliament if any of the provisions (including those authorising the acquisition of land or water rights by agreement) were not acceptable to any interest concerned after the Order had been made; it would be only where there was full agreement that Orders would become operative without the necessity of confirmation by Parliament. As we have indicated, the great majority of the Provisional Orders made since 1920 have been unopposed in Parliament. We think it undesirable that water undertakers should be required to incur the expense of Provisional Orders in such circumstances: we are satisfied also that the requirements we have outlined will afford adequate safeguards for consumers and other interests. Clause 1 of the proposed Bill gives effect to the procedure recommended.

Water Companies (Regulation of Powers) Act, 1887.

11. Section 74 of the Act of 1847, which is also incorporated with the Act of 1936, authorises water undertakers, whether local authorities or companies, to cut off the water if the rate for domestic purposes is not paid when due. The Act of 1887 makes it illegal for a water company to exercise this power if the owner of the house is liable for payment of the water rate.

Section 74 of the Act of 1847 and the Act of 1887 are reproduced, with some amendments, in Clause 6 of the proposed Bill. We have extended the prohibition against cutting off

the water, where the owner is responsible for payment of the water rate, to all water undertakers, but with the important exception that it should not apply if the owner is in occupation.

Under Section 4 of the Act of 1887, the undertakers are empowered to charge the water rate due, together with interest, on the house in priority to all other charges. It is very doubtful whether sums due for water rates should take priority over all other charges, including charges enforceable by local authorities under the Public Health Acts or other general Acts, and we have recommended, therefore, that the power should be repealed.

The Metropolitan Water Board are required by Section 98 of the Public Health (London) Act, 1936, to notify the sanitary authority if they cut off the water from any inhabited house in the County of London. We consider that, in the interests of public health, a similar obligation should be imposed on all statutory water undertakers, and that the requirement should be made of general application (Clause 7).

Water Undertakings (Modification of Charges) Act, 1921.

12. The Act authorises the Minister to make Orders modifying water charges and awards or agreements determining such charges, to meet increases in the cost and charges of undertakings attributable to circumstances arising since the outbreak of the Great War where these are beyond the control of, or could not have been reasonably avoided by, the undertakers. Orders can be made on the application of the undertakers; they are provisional if opposed by a local authority of an affected area (or if the local authority are the undertakers, by twenty consumers) or if the Minister thinks desirable. Orders can be amended on the application of the undertakers, interested local authorities, or consumers. The Minister is empowered to make rules as to the procedure to be followed, and is required to hold a local inquiry if objections are made and not withdrawn. We understand that 174 Orders have been made, of which four were provisional, and that the last Order was made on the 23rd May, 1934. The conditions which the Act was designed to meet have now become stabilised, and we consider that specific powers to meet them are no longer required. We have recommended that the Act should be repealed, but that there should be a general power for the Minister to vary rates and charges: detailed reference is made in paragraphs 41 and 42 of the Report to the latter recommendation.

Reservoirs (Safety Provisions) Act, 1930.

13. The Act imposes precautions to be observed in the construction, alteration and use of reservoirs designed to hold, or

capable of holding, more than five million gallons of water above the natural level of adjoining land, including requirements that qualified civil engineers shall design them and supervise their construction and alteration, and inspect them at regular intervals to ensure that they are safe. Also, that subject to an appeal to a referee appointed, in default of agreement, by the Secretary of State, the undertakers shall carry out such measures as are recommended by the responsible engineer in the interests of safety. As the Act applies to reservoirs other than those constructed for the purpose of public water supply, it would be impracticable to embody the provisions in the proposed Bill.

Supply of Water in Bulk Act, 1934.

14. The Act empowers statutory water undertakers, with the consent of the Minister of Health, to enter into agreements with any other statutory water undertakers for the giving or taking of supplies of water in bulk. We have reproduced the provisions of the Act in the proposed Bill (Clause 2). It has been customary in recent local legislation to allow undertakers to take supplies of water in bulk from persons other than water undertakers: Sub-clause (1) of Clause 2 includes this additional power. Section 1 (4) of the Act of 1934 contains special savings for the protection of highway authorities, railway companies, and canal and inland navigation authorities. We understand that a Joint Committee of Parliament is considering the law in relation to the breaking-up of streets by public utility undertakings, and we have deferred consideration of the question whether any revision of the special saving for highway authorities is required. As regards the other savings, we suggest that the clause should embody the provisions we recommend for the laying of mains and the breaking open of streets in paragraph 22 of the Report.

Prevention of Pollution.

15. The existing general powers for the prevention of pollution are contained in Section 61 of the Act of 1847, under which it is an offence to bathe in any stream, reservoir or other waterworks belonging to the undertakers; to wash or cause animals to enter therein; to throw polluting matter or wash materials therein; to cause the water of any sink, sewer, drain, steam engine, boiler or other filthy water to run or to be brought therein; or to do any other act whereby the water is fouled. The provisions afford no protection against polluting matter placed in the subsoil in the vicinity of springs or underground sources. It has been customary in modern Special Acts for Parliament to allow additional powers whereby the undertakers may acquire land for the protection of water supplies, carry out works on the land, enter into agreements with landowners for the carrying out of works on their land, and make byelaws for preventing the pollution of water in the catchment area.

Modern transport facilities attract large numbers of people to areas which were formerly remote from populous centres, and also encourage building development, sometimes without adequate facilities for the disposal of sewage, in areas which were agricultural in character a relatively short time ago. In view of these considerations the Committee recommended in paragraphs 15 and 16 of Part II of their First Report that undertakers should be given additional powers for the protection of public water supplies from pollution, and that for this purpose the powers of Section 61 of the Act of 1847 should be extended to underground supplies; tar and oil should be brought within the scope of that section; and provisions based on Special Acts, on the lines mentioned above, in regard to the purchase of land, the execution of drainage works and the making of byelaws for the protection of gathering grounds should be available for all water undertakers. Effect to these recommendations is given in Clauses 9 to 12 of the proposed Bill. It is very desirable that water undertakers who derive supplies from underground sources should have adequate powers for protecting the supplies from the risk of pollution, and we have accordingly provided that the powers should be brought into operation forthwith, without the need for incorporation with Special Acts, and that they should be available for all statutory water undertakers.

PART II.

Revision of the Waterworks Code.

Part I—Preliminary.

Supply for domestic purposes.

16. The principal duty of water undertakers is to secure that there is a sufficient and wholesome supply for the domestic purposes of their consumers. The existing Code does not define "domestic purposes," although Section 12 of the Act of 1863 excepts from those purposes a supply of water for cattle; for horses or washing carriages where these are kept for sale or hire or by a common carrier; for trade, manufacture or business; and for gardens, fountains and ornamental purposes. Local legislation on this subject has varied greatly—at one time for instance it was common practice to allow additional charges for water-closets and baths. This practice has been varied in more recent Special Acts by the omission of additional charges for any water-closets, or for the first fixed bath of ordinary capacity (this is usually not more than fifty gallons); it was again varied by Section 126 (3) of the Act of 1936, which does not allow an additional charge for any fixed bath of ordinary capacity. It has been customary also in Special Acts to allow additional

charges for certain uses of water in private houses, e.g. for refrigerators and water softeners, and for the watering of gardens or cleansing of vehicles by means of hosepipes or similar apparatus.

We have suggested that instead of following the practice of the Act of 1863 and of the Special Acts of excluding certain defined purposes from the scope of the domestic rate, it is preferable to indicate clearly what purposes are included. The definition proposed for this purpose is in Clause 1 of the First Schedule. We have followed the precedent of the Act of 1936, by including all fixed baths of ordinary capacity in the domestic charge. There has been some doubt, with consequent litigation, as to whether or not the use of water by an occupier of a house in the course of his profession was covered by the water rate. We have provided that there shall be no additional charge for water so used in a private house, of which part is used for professional purposes. A minor alteration is the inclusion of watering of gardens, provided that the water is taken from a tap inside the house and a hosepipe or similar apparatus is not used. While the Act of 1863 authorises an additional charge for water so used, it is very doubtful whether charges are in fact made or could be enforced; and the usual practice, which it is suggested in Clause 51 of the first Schedule should be continued, is to allow an additional charge if hosepipes, etc., are used, or water is taken from a tap outside the house. Similarly, the definition makes it clear that water used for horses or for the washing of vehicles kept for private use comes within the scope of domestic purposes only if it is drawn from a tap inside the house, and no hosepipe or similar apparatus is used.

Part II—Works and lands.

17. Sections 6 to 17 of the Act of 1847 deal with the conditions to which the undertakers must conform in connection with the construction of works authorised by Special Acts. We refer below in some detail to Section 6. Sections 7 and 9 have been omitted from the Bill. They provide that errors in or omissions from the plans and book of reference deposited in connection with Acts authorising the compulsory acquisition of land may be corrected or restored, after notice has been given to interested owners, etc., on application to two justices, and for the deposit of amended plans and documents, the effect being that the compulsory powers of the Special Act are extended to the lands affected. It is considered that the sections are pertinent to the acquisition of land rather than to waterworks, and that provisions authorising the compulsory acquisition of land must be contained in the Special Act. A new clause following modern Special Act provisions has been substituted for Section 11, which provides for deviations from the approved plans during the course of the work (Clause 3, First Schedule); Section 12 is now

obsolete, and has been replaced by new clauses (Clauses 5 and 101 of the First Schedule); Section 14, which provides for a forfeit to the undertakers, with a continuing forfeit of five pounds a day, from any person illegally taking or diverting water from streams or supplies authorised by the Special Act, is omitted, in view of the very similar provision of Clause 70 (2) of the First Schedule and in accordance with the general recommendations of paragraph 36 of the Report; Section 15 which contains savings for owners and occupiers whose water rights are affected, or for compensation in lieu thereof, and Sections 16 and 17 as to accommodation works are also omitted, as it is usual for the Special Act to provide for these matters. We have included new clauses supplementing the Act of 1847 by additional powers to the undertakers for the acquisition of land by agreement and the use and retention of land (Clauses 8 to 13, First Schedule).

Part III—Compensation water.

18. Section 6 of the Act of 1847 provides for compensation to be made to any person injuriously affected by the compulsory acquisition of land or water rights. The section has now been largely superseded by the invariable practice of incorporating the Lands Clauses Acts with Special Acts authorising the compulsory acquisition of land, and, if streams are impounded by provisions in the Special Acts based on Clause 5 of the House of Lords' Model Water Bill. This clause provides that where a stream is impounded, the undertakers shall deliver from the reservoir a prescribed quantity of water in every working day of 24 hours in a continuous flow at the point specified in the Special Act; that gauges shall be installed for measuring the water so delivered; and for penalties for breaches of the conditions. Provision is also made for measuring the flow of the water during the construction of the reservoir; and for the undertakers to be prohibited from taking water from the stream so long as the flow is less than the rate prescribed in the Special Act. The foregoing provisions are to be accepted as full compensation for all water taken, except in respect of lands between the foot of the embankment of the reservoir and the point of discharge of the compensation water. The Special Act practice as to penalties for breaches of these conditions varies considerably. The more common provisions contain continuing penalties, payable to all persons affected; other examples provide for payment of a continuing penalty to a river authority, e.g., the fishery or catchment board; there are instances of a penalty payable to a river authority, with compensation for damage to persons affected; and there are examples of a continuing penalty but with no mention of the persons by whom it may be recovered. The amounts of the penalties in the Acts we have examined cover a wide range, being as low as £5 and as high as £250.

19. Clause 14 of the First Schedule follows recent Special Act provisions with the undermentioned alterations. In Sub-clauses (2) and (4) it is provided that the position, type and size of gauges shall be approved by the Minister of Agriculture and Fisheries, the object being to obviate the use of unsatisfactory types, and to ensure that regular records are kept of the flow of the stream, as well as of the quantity of water delivered to the stream, where this is practicable and reasonable. A minor amendment in Sub-clause (3) provides that any records made shall be kept and shall be open to the inspection of all persons interested. In Sub-clause (4) it is made clear that catchment and fishery boards are interested bodies for all purposes of the clause: they are thus empowered to institute proceedings for breaches of the prescribed conditions.

20. The principal amendments relate to penalties for breaches of the conditions prescribed by the Special Act. The Committee has already endorsed the principle of these recommendations, but we think it desirable to recapitulate the considerations which have influenced us, viz.:—that a riparian owner has limited rights of property only in the water of a river; and, on the other hand, that there may be a temptation under the existing procedure for the undertakers to keep back compensation water with the knowledge that complaints can be met by the payment of small sums to those owners who voice their objections, or even to a single river authority.

The conclusions reached were that the interests of river users as a body would be best served if penalties were heavy enough to be a deterrent, but that it would be clearly impracticable to allow recovery of penalties by any or every interested person if large penalties were to be prescribed; it was considered, moreover, that it was undesirable in principle that persons should be entitled to recover penalties irrespective of whether or not they have actually sustained damage. With these considerations in mind, we have provided for continuing fines not exceeding £500 for breaches of the conditions as to compensation water, and £50 for breaches of the conditions as to gauges, and for the penalties not to be recoverable in future by any particular authority or interest, but to be regarded as fines for breaches of the law. The former penalty would be too large to warrant proceedings being taken in a court of summary jurisdiction, which is the procedure we have generally recommended; it is provided, therefore, that if the full penalty is sought to be enforced the proceedings must be by indictment, and that if proceedings are taken in a court of summary jurisdiction, the maximum fine shall be £50. It is considered also that the usual requirement that the undertakers shall be liable by civil process for any loss or damage sustained by persons affected by default on their part should be continued.

Part IV—Minerals underlying waterworks.

21. Sections 18 to 27 of the Act of 1847 regulate the position of the undertakers in relation to mining interests and enable them, subject to payment of compensation, to prevent the working of minerals under or near their works; or when mines are worked, provide safeguards against working in an unusual manner. Any question of a revision of these provisions should be considered only in conjunction with similar protection afforded to local authorities and other public utility undertakers, and with mining law generally. Such an investigation is, in our opinion, outside the scope of a revision of the Waterworks Code; it is recommended, therefore, that the powers should be re-enacted (Clauses 15 to 22, First Schedule).

Part V—Power to lay mains, etc.

Part VI—Breaking open streets, etc.

22. Section 29 of the Act of 1847, prohibits undertakers from entering on private land, except for the repair or replacement of existing authorised works, unless the consent of owners and occupiers is obtained. The Committee recommend in paragraph 9 of Part III of their First Report that this prohibition was no longer desirable in the interest of public water supplies, and that Special Act water undertakers, whether local authorities or companies, should be given the powers (already vested in local authorities supplying water under the Act of 1936) of laying their mains in, on or over private land, the power being subject to the payment of compensation for any damage caused, or suffered, and to the savings of the Act of 1936 in favour of land and streets belonging to railway companies and other statutory undertakers. Effect has been given to this recommendation in Clauses 23, 24 and 29 of the First Schedule of the proposed Bill, which apply provisions similar to those of the Act of 1936 amending the Act of 1847, to all statutory water undertakers, and in Clause 1 of that Schedule, in which the definition of " street " refers to the definition in the Public Health Act, 1936, and so covers private streets. We have suggested, however, that the power to enter on private land should not be exercisable unless the owner's consent is obtained, but that consent should not be unreasonably withheld. We have provided, also, that compensation to landowners should be assessed by an arbitrator, appointed in default of agreement by the Minister, in accordance with the procedure of the Act of 1936, but have not applied the provisions as to betterment in Section 278 (4) of that Act, as these are not considered suitable for Special Act undertakers (Clause 23).

In view of the enquiry instituted by a Joint Committee of both Houses of Parliament into the powers of public utility undertakers to break up public streets, we have decided not to

consider major alterations of the existing Code as between water undertakers and highway authorities. Sections 28 and 30 to 34 of the Act of 1847 are accordingly reproduced, with some minor alterations, in Part VI of the First Schedule.

Obligation to Supply.

(a) *Part VII—Supply of water for domestic purposes.*

23. The undertakers are required by Section 35 of the Act of 1847 to maintain a sufficient supply of pure and wholesome water for the domestic use of those consumers who are entitled to demand a supply and are willing to pay the authorised water rates. A requisition for a supply is binding on the undertakers (who must lay necessary mains and pipes) if the aggregate water rates which will be payable by the persons demanding a supply will amount to not less than one-tenth of the initial cost of providing and laying the pipes, and those persons agree severally to take the supply for at least three consecutive years. The obligation of the undertakers to lay the necessary mains, if required to do so by prospective consumers, is reproduced, but we have recommended that one-eighth shall be substituted for one-tenth (Clause 32, First Schedule). This amendment has been approved by Parliament on many occasions in local legislation since the War, and is now generally accepted as meeting the altered conditions of water undertakings. The requirements of Section 35 of the Act of 1847 as to sufficiency and purity are reproduced in Clause 34.

24. Under Section 123 of the Act of 1936, local authorities have power to agree with water undertakers that if the aggregate amount of the water rate is not sufficient for consumers to demand a supply, they will guarantee the payment of any deficiency in consideration of the mains being extended to the areas in need of a supply. There is, however, no obligation on the water undertakers to enter into such an agreement. We consider that water undertakers should not be in a position to refuse to furnish a supply for domestic purposes to any property within their limits of supply if they receive a guarantee that the authorised return on their capital outlay will be forthcoming. We have provided that where the local authority undertake to pay any deficiency until such time as the undertakers receive from the consumers the amount that would have enabled a requisition to be made, the undertakers shall be required to lay necessary mains and pipes and afford the supply, and that the obligation shall be of general application (Clause 4).

(b) *Part VIII—Supply of water for public purposes.*

25. Section 37 of the Act of 1847 requires the undertakers, where fire plugs are provided, to supply water on agreed terms

and conditions for cleansing sewers and drains, cleansing and watering streets, and for supplying public pumps, baths and washhouses: Section 42 of the Act requires them in similar circumstances to supply water, free of cost, for extinguishing fires. The obligation to supply for the foregoing public purposes is continued in Part VIII of the First Schedule. We have considered whether it should be of general application, and have come to the conclusion that the requirements are not suited to the supply of water in most rural districts.

(c) *Supply of water for other purposes.*

26. While there are examples in Special Acts of a requirement to supply for trade and other purposes, the usual practice is not to impose any obligation, but to allow the undertakers to supply on such terms and conditions as they think fit, subject, however, in the majority of cases to a maximum charge for metered supplies. It has been represented to us that it would be desirable if the obligation to supply for domestic and public purposes were extended to non-domestic purposes; and that the question whether the terms and conditions required by the undertakers were reasonable should be decided, in the event of dispute, by an impartial tribunal. Industries using large quantities of water often rely very largely upon supplies afforded by statutory water undertakers—in areas where alternative sources have already been appropriated this may be the only course open to a new industry or to an existing firm requiring additional supplies. The tendency to rely on statutory water undertakings for industrial supplies is likely to be increased if effect is given to the recommendations of the Committee in their First Report on underground water, as it would no doubt be impracticable in some districts for a new industrial undertaking to abstract water from underground without interfering with the yield from existing boreholes. We are agreed that it is reasonable that persons requiring water for trade and similar purposes should be able to demand a supply on reasonable terms and conditions, but we consider that the supply for domestic requirements must be the first charge on the resources of the undertaking, and that the undertakers should not, therefore, be obliged to afford a supply for non-domestic purposes if there is a likelihood, regard being had both to existing and probable future demands, that the supply for domestic requirements would be endangered. We consider that in all the circumstances the Minister of Health would be best able to decide this question and whether terms and conditions were reasonable, and we have provided, therefore, for an appeal to him if it is represented that the undertakers have acted unreasonably in refusing to supply for non-domestic purposes, or if there is any dispute as to the terms and conditions (Clause 5). This provision also is made of general application.

Part X—Laying and maintenance of supply pipes and communication pipes.

Part XI—Stopcocks.

27. Sections 48 to 52 of the Act of 1847 deal with the laying of pipes from the consumer's property to the mains of the undertaker. Broadly speaking, a new consumer requiring a supply for domestic purposes has the right, on payment of the portion of the water charge payable in advance, to open up the ground and lay a pipe of such bore, strength and material as may be prescribed by regulations of the undertaker, to connect his premises with the main of the undertaker, and to obtain a supply of water, provided that he has given the undertaker fourteen days' notice of his intention and, if there is any land belonging to other persons between his premises and the main, he has obtained the consent of the owner; he is expressly authorised for the purpose to break up so much of any street as lies between the main and his premises, but must do as little damage as possible, and pay compensation for any damage done. The connection with the main must be made under the superintendence of the water undertakers, subject to appeal to two justices in cases of dispute. The consumer who has laid the pipe, or who has become the proprietor of it, is responsible for its maintenance, and he may remove it, after due notice to the undertakers and subject to compensation for damage sustained by them, but is not expressly authorised to break up streets for these purposes.

These provisions were amended, in respect to Public Health Act water undertakings, by Section 121 of the Act of 1936, which empowers consumers to break open streets for the purpose of maintaining and renewing communication pipes, and gives local authorities, if they so desire, the exclusive right to lay new communication pipes, with power to recover the cost from the consumer.

28. In the case of Special Act undertakings, the consumer's responsibility for laying and maintaining the pipe between his premises and the main remained unaltered until comparatively lately, though many of the Special Acts provided for the undertakers having the sole right of making the actual connection between the pipe and the main. In 1932, however, the Metropolitan Water Board initiated a system by which the responsibility was divided between the Board and the consumer, the former becoming liable for laying down at the latter's expense, and keeping in repair at their own expense, so much of the service pipe as lay between the main and the stopcock, or if there was no stopcock, between the main and the premises supplied. This system, with modifications, has since been adopted by several large water undertakers, the broad effect

being that the undertakers are responsible for work involving the breaking up of streets (the initial cost of the communication pipe being recovered from the consumer), and that the consumer is relieved of the responsibility for maintaining the part of the service pipe under the street.

This division of responsibility is well suited to modern conditions. So far as the work itself is concerned, the higher standard of modern highway construction entails greater expense and difficulty in opening and reinstating the road, with the risk of permanent damage to the road structure if this work is not carried out by expert labour; the damage to the water mains from connections made by inexperienced workmen is avoided; there is usually less interference with traffic when local authorities or statutory undertakers are solely responsible; finally, it is to be expected that the work will be better executed, and that the materials used will be more durable and standardised. As regards the cost of maintenance, the consumer is responsible, both under the Act of 1847 and under the Act of 1936, for damage caused by heavy modern traffic, a risk which varies greatly as between one road and another according to the amount of traffic, the nature of the surface of the highway, the position of the main and other factors. It is clearly inequitable that the individual consumer should be made responsible for repairing damage arising from considerations of this kind, which he cannot control and may not be able to foresee, and the fairer method is to spread the cost over the whole body of consumers, by placing the responsibility on the undertakers. The Advisory Committee on Water recommended in their Report of 1929 that the cost of providing communication pipes, as well as maintenance, should be borne by the undertakers. We consider that it would be unfair to the general body of consumers, of whom the great majority have defrayed the cost of laying the whole service pipe between the mains and their premises, if owners of new houses were relieved of the initial cost, and that the fairer course is to follow the precedent of private street works, under which the first cost is borne by the frontagers, and the cost of maintenance thereafter by the general body of ratepayers. Clauses 43, 44 and 47 of the First Schedule give effect to these recommendations. The Second Schedule incorporates the clauses with the Act of 1936.

The foregoing recommendations relate only to service pipes for domestic supplies. A person taking a supply for non-domestic purposes would usually have no statutory right now to break up the street, and as the terms and conditions of the supply would be matters for agreement, the undertakers would be able, therefore, to secure that they were exclusively responsible for the work, both in the first place, and if repairs were required. We have provided in Clause 5 (3) of the proposed

Bill that Clauses 43, 44 and 47 of the First Schedule shall apply to non-domestic supplies in areas where they are applicable to domestic supplies.

Sections 44 to 47 of the Act of 1847, empowering the undertakers in consideration of a rental to lay communication pipes to small houses; and Sections 48 to 52 of that Act, which enable the consumer to break up the street and connect with the mains for the purposes of a domestic supply are no longer required, and have not been reproduced.

29. It is the modern waterworks practice to provide a stopcock on the service pipe between the main and the premises supplied, so that the water can be turned off without severing the pipe if repairs are necessary, or the house is unoccupied. The practice increases somewhat the initial cost of providing a supply, but this drawback is outweighed by the other advantages afforded to the consumer. In view of these considerations, we have recommended in the First Schedule that every new service pipe should include a stopcock (Clause 48); and that the cost should be recoverable from the consumer (Clause 44). It is also considered that the undertakers should be empowered to fix stopcocks on existing service pipes, if they think fit, but that it would be unreasonable, in that event, for the cost to be recoverable from the consumer (Clause 48).

Although it is common practice for Special Acts to empower the undertakers to require a stopcock, the position in which it may be fixed varies considerably. It is more usual for the position to be in the street, as near the boundary as practicable, but an alternative course in some recent Acts has been for the stopcock to be fixed, where practicable, in the premises supplied, as near as possible to the boundary of the street, or if this is not feasible, in the street, as near to the boundary as practicable. We have adopted the latter course as being less likely to give rise to accidents or interference by unauthorised persons; and have endeavoured to secure as far as possible that the stopcock is part of the communication pipe, and that that pipe shall be the portion of the service pipe between the main and a point as near as practicable to the point where the service pipe enters the premises supplied.

The effect of the recommendations is that the stopcock will usually be fixed in the premises supplied, as near the boundary of the street as practicable, and will be the termination of the communication pipe, of which it will form part: stopcocks on existing pipes complying with this requirement will also be deemed to be part of the communication pipe. It has been necessary, however, to provide for the following exceptional conditions. Where there is no garden or forecourt, the service pipe will enter a building through an outer wall and

it will be impracticable to fix the stopcock in the premises. In such cases, it will be in the street, as near to the boundary as possible, and the communication pipe will terminate at the boundary of the street. There is another type of property, where the service pipe enters the premises through a cellar which is partly under the street. It would be unreasonable to regard the cellar wall as the boundary of the premises supplied, or to require the undertakers to fix the stopcock in the street, at a point near the point of entry, which might be in the roadway. It is provided that in such cases the stopcock shall be in the cellar, but part of the communication pipe. There may be cases, also, where the stopcock is in the premises, but some distance from the boundary of the street, or where the premises do not abut on the street in which the main is laid and there is thus a long length of service pipe in a street. It would be clearly unreasonable, in such circumstances, to require the undertakers to maintain the whole length of service pipe; it is provided that in these cases the communication pipe shall be deemed to terminate at the boundary of the street or part of a street in which the main is laid, and that in the former case the stopcock shall not be deemed to be part of the communication pipe. Finally, there is the example of an existing service pipe with no stopcock, or with a stopcock in the footpath. In both contingencies the communication pipe will be deemed to terminate at the boundary of the street in which the main is laid; in the latter, the existing stopcock will be deemed to be part of the pipe. (See the definition of " communication pipe " in Clause 1 of the First Schedule; and Clause 48 of that Schedule.)

The effect of the foregoing recommendations is that the consumer will no longer require to break up the street for the purpose of laying his communication pipe—the work being done by the undertakers at his expense—and that he will be relieved of all responsibility for maintaining the pipe.

There will be cases, however, particularly in rural areas, where houses are sometimes considerable distances from the streets in which the mains are laid, of a consumer desiring to repair an existing supply pipe under the highway, or to lay a new supply pipe in the highway. We have indicated that it would be unreasonable to require the undertakers to bear the responsibility of maintaining such pipes, and that it is undesirable, on the other hand, that the consumer should be empowered to carry out works entailing the breaking up of the highway. We have provided, in the circumstances, that the undertakers should be exclusively responsible for the laying and maintenance of the part of the supply pipe under the highway, but should be able to recover the reasonable expenses incurred from the consumer (Clauses 44 (1), 46 (2) and 47 (2)).

It may also happen that in the interests of good water administration the undertakers would rather lay a branch main than a small bore supply pipe to a house which is some distance from the street in which the service main is laid. They would be entitled to do so under the existing law, but would be unable, in the absence of agreement, to obtain any contribution from the consumer, notwithstanding that he would be relieved of the expense of providing the part of the supply pipe under the highway. To meet such cases, it is provided that if the undertakers elect to lay a branch main in lieu of any part of a supply pipe under the highway, they may do so and recover from the consumer the expenses which would have been incurred if a supply pipe had been laid (Clause 44 (1) and (3)).

Part XII—Water Rates and Charges.

30. Sections 68 to 74 of the Act of 1847 and Section 21 of the Act of 1863 deal with the payment and recovery of rates for the supply of water for domestic purposes. Except for the powers for recovery (including a power to cut off the water) of the two latter sections, they have been virtually superseded in recent years by special provisions of Water Acts. These sections are reproduced in Sub-clauses (3) and (4) of Clause 6 of the Bill, which, however, prohibits the cutting off of the water if the owner is liable for the rate and is not in occupation (see paragraph 11 of the Report).

There are no express powers in the existing Code for the undertakers to afford a supply for non-domestic purposes, although, as we have stated in paragraph 16 of the Report, Section 12 of the Act of 1863 excludes certain purposes from the scope of the domestic rate, while other sections of the same Act, such as 14 and 15, which give powers for the hiring of meters and of entry for inspecting them, demonstrate clearly that non-domestic supplies were then customarily authorised by the Special Acts.

31. Broadly speaking, the usual practice for charging for water in modern Special Acts is to provide for (*a*) a supply for domestic purposes with a maximum rate, and sometimes with scales of charges differing according to the value of premises—there is usually provision also for a minimum charge; (*b*) maximum additional charges for purposes connected with private houses which are outside the scope of the domestic rate, e.g., the use of hosepipes for watering gardens; (*c*) charges by meter with a minimum flat rate for quasi-domestic supplies to properties using large quantities of water, or if apparatus requiring considerable quantities of water is installed; (*d*) a power to furnish metered supplies by agreement for domestic purposes; (*e*) a power to supply by meter for non-domestic purposes on such terms and conditions as the undertakers think

fit, coupled usually with a maximum price per thousand gallons. It is clearly impracticable for a general Act to prescribe maximum or minimum rates and charges which would apply to the varying circumstances of the large number of water undertakings in the country, but certain of the common powers for the purposes we have outlined are suitable for general application, and these are included in the proposed Bill (Clauses 49 to 54, First Schedule). A general power to supply for non-domestic purposes is contained in Clause 5.

Under Section 68 of the Act of 1847 the domestic water rate is payable according to the annual value of the tenement supplied, any dispute as to the value being determined by two justices. Past practice in local legislation on this subject has varied very much, and although the majority of undertakers have now adopted a basis which is readily ascertainable from the valuation list in force for the time being in the area supplied, this is sometimes " net annual value " and sometimes " gross annual value," while there are still areas, we are informed, in which the water rate is chargeable on the rack rent or on an estimated rental. We consider that there should be uniformity of practice in this respect in future, and have followed the Act of 1936 by providing that the water rate should be chargeable on the net annual value of the premises supplied, as appearing in the valuation list in force at the beginning of the rating year, or where the value is not stated, that it should be determined, in case of dispute, by a court of summary jurisdiction (Clause 49, First Schedule).

We have also considered it desirable to provide for domestic supplies to premises used for business, trade or manufacturing purposes, which are required to provide sanitary and washing facilities for their employees, and use water for cleaning and sometimes for cooking purposes. Clause 33 of the First Schedule provides that a supply may be demanded if water is required for domestic purposes in such premises. The parts of the premises used for these purposes are often a relatively small portion of the whole of the property, and it would be unreasonable to charge the water rate on the full net annual value of the whole of the premises supplied. It is provided, therefore, in Clause 49 (2) of the First Schedule that the net annual value shall be deemed to be an apportioned fraction of the total net annual value, and that in default of agreement, the question shall be determined by a court of summary jurisdiction. Where considerable quantities of water are used in trade premises for domestic purposes, the water undertakers may prefer to supply by meter. Provision is made for this in Clause 52 of the First Schedule, which provides that they shall not be bound to supply otherwise than by meter, and that they may make a minimum quarterly charge not exceeding one-fourth of the amount which would

be payable if a water rate were charged on the net annual value of the part of the premises in which water is used for domestic purposes.

Part XIII—Provisions for preventing waste, etc., of water and as to meters and other fittings.

32. Increased consumption of water due to waste is one of the most acute problems of the water undertaker, and may even necessitate, in the absence of adequate powers of control, additional capital expenditure on new works for the improvement of pressure or for the augmentation of resources. The Acts of 1847 and 1863 contain very few powers for control. To meet the lack of general powers, water undertakers have obtained a number of special powers, the result being that although certain provisions are now commonly allowed in local legislation, the language of sections conferring the same powers often varies considerably. It is desirable in the interests both of the undertakers and of the consumers that the powers for the purpose should be standardised as much as possible.

The existing general provisions for the control of the waste or misuse of water are Sections 54 to 60 of the Act of 1847 and Sections 16 to 20 of the Act of 1863. Section 16 of the Act of 1863 which enables the undertakers to cut off the water if there is waste or misuse has not been reproduced (see paragraph 35 of the Report); we have reproduced the other sections in the First Schedule of the Bill with amendments to which detailed reference is made in the Appendix to the Report. In addition, we have included provisions in the First Schedule, based on Special Acts and the Act of 1936, empowering the undertakers to make byelaws for preventing waste (Clause 64); to supply water fittings (Clause 66); and to provide meters and other apparatus for detecting waste (Clause 75).

Part XIV—Pollution of water by manufacture, etc., of gas.

33. Sections 62 to 67 of the Act of 1847 deal with this question. Under Section 62, it is an offence if gas undertakers allow gas washings or other substances produced in making or supplying gas to be brought or flow into any waterworks belonging to the undertakers: under Section 64 it is an offence if water supplies of the undertakers are fouled by the gas of any person making or supplying gas. The Committee recommended in paragraph 15 of Part II of their First Report that the provisions of Section 62 should be made applicable to underground water. Effect is given to this recommendation in Clause 76 of the First Schedule. The other sections are reproduced in Part XIV of that Schedule.

Part XV—Financial provisions applicable to water companies.

34. We have recommended that Sections 75 to 82 of the Act of 1847 should be replaced by Clauses 79 to 81 of the First

Schedule, which are based on modern Special Acts. The effect of those sections is that the dividend payable by a statutory water company trading for profit must not exceed the rate prescribed in the Special Act, or, if no rate is prescribed, 10 per cent. of the paid-up capital, unless a larger dividend is required to make up deficiencies on previous years. The excess over the amounts required for this purpose is to be devoted to the formation of a reserve fund, the limit to which may be prescribed in the Special Act, or, if none is prescribed, is one-tenth of the nominal capital. This fund is available for the equalisation of dividends and to meet any extraordinary claims certified by justices. In addition, Section 122 of the Companies Clauses Consolidation Act of 1845, which applies to most statutory water companies, empowers the directors to set aside, without limitation, sums for contingencies or for enlarging, improving and repairing works.

The clauses which we have substituted for these Sections follow provisions which are now commonly allowed in Special Acts. The principal alterations are—

(*a*) the maximum dividend on future capital is not to exceed 7 per cent. (Clause 79 (*b*));

(*b*) the undertakers to have a discretionary power to form a reserve fund, whether clear profits are sufficient or not for the payment of dividend at the prescribed rate (Clause 80 (1) (*a*));

(*c*) a power to set up a contingency fund to be included in the new Code (Clause 80 (1) (*b*));

(*d*) the two funds to be treated collectively, and a limit set on their aggregate total—the suggested limit is 15 per cent. of the capital expended (Clause 80 (3));

(*e*) subject to this limit, the aggregate amount carried to the two funds in any one year not to exceed 1½ per cent. of the expended capital (Clause 80 (4));

(*f*) the amount to be carried forward in any one year not to exceed the sum required for payment of authorised dividends and interest not paid in that year; the maximum amount which can lawfully be distributed in dividends on the preference and ordinary capital for the following year; and an amount equal to the total sum due for the following year as interest on mortgages or debenture stock (Clause 81 (1));

(*g*) any balance of profit after this carry forward to be applied towards the reduction of water rates or charges in future years (Clause 81 (2)).

The amendment suggested in (*b*) strengthens the hands of the undertakers in building up reserves which, when coupled with the provision for payment of dividends in arrears, assists to put undertakings on a sounder financial footing than is possible in

many cases under the existing Code, under which a reserve may not be created until the full dividends, including arrears, if any, have been paid. It is considered, also, that the limit on the annual amounts which can be carried to the reserve and contingency funds, and the restriction on the amounts which can be carried forward, while enabling the undertakers to make sufficient provision for all purposes of the undertaking, will provide, at the same time, a safeguard against excess profits being devoted otherwise than to the early benefit of the consumer.

General Amendments.

Power to cut off water.

35. Under the existing Code and local legislation, the undertakers are empowered for certain offences of the consumer, or for failure on his part to pay sums due, to turn off or cut off the water at his expense. In the Act of 1847, the power is given, by Section 54 if cisterns are not provided or kept in good repair in houses to which there is no obligation to furnish a supply under constant pressure, under Section 57 if an authorised officer of the undertakers is refused entry for the purpose of examining whether there is waste or misuse of water, and under Section 74 if the water rate is not paid at the time due; by Section 16 of the Act of 1863, it is extended to consumers who wrongfully do or cause or permit to be done, anything in contravention of any Special Act, or wrongfully neglect to do anything which ought to be done under Special Act provisions, for the prevention of waste, misuse, undue consumption, and contamination of the water; in many Special Acts recovery of sums due to the undertakers for work done on behalf of the consumer (e.g., the provision or repair of pipes and apparatus), is enforceable in the same manner as the water rate, which includes a power to cut off the water if the rates are not paid.

Cutting off the water, and the consequent failure of sanitary arrangements may very well lead to injury to the health of persons in the house concerned, who have no responsibility for the failure to pay the sums due or for the offences committed; the effects may spread to other consumers who have fulfilled all their obligations to the undertakers. We consider that the powers referred to in the preceding paragraph, which were formulated before the importance of water supply in relation to public health was fully appreciated, are now obsolete, and we have adopted the principle throughout the proposed Bill that the water should be cut off only when a consumer who is responsible for payment of water rates or charges fails to pay. We have recommended that all other sums due to the undertakers should be recoverable as civil debts, and that offences

under the Act, the Special Act, or byelaws made thereunder, should be dealt with as breaches of the law, punishable by fines.

Penalties.

36. There are varying provisions in the existing Code, as amended by local legislation, for the imposition of penalties and fines, but, broadly speaking, they fall into the following categories:—

(*a*) Provisions for forfeits to the undertakers, coupled sometimes with continuing forfeits, for breaches of conditions imposed by the Special Acts. Examples of simple forfeits in the Act of 1847 are to be found in Section 55 (penalty for suffering cisterns, etc., to be out of repair); Section 58 (for allowing unauthorised use of water); Section 59 (for taking water without agreement): examples of continuing forfeits are to be found in Section 61 (for causing the water to be fouled); and Sections 62 and 63 (fouling of water by gas undertakers). Whether these forfeits were intended, in the first place, to be commuted damages is not clear, but there is only one example in the Act of 1847 (Section 14) of express provisions saving the right of the undertakers to take proceedings for damages in addition to the recovery of a forfeit.

(*b*) Provisions for forfeits by the undertakers to consumers or aggrieved persons. Examples of these in the Act of 1847 are to be found in Section 36 (neglect to lay pipes or provide a sufficient supply); Section 43 (neglect to provide and maintain fire plugs or occasional failure of supply of water); and Section 45 (neglect to lay communication pipes to small houses) of the Act of 1847. There is usually also a continuing forfeit, but here again the sections contain no express savings for recovery of damages.

(*c*) Penalties recoverable summarily by virtue of Section 85 of the Act of 1847. In the Act of 1863, among other examples are Sections 17 (waste due to non-repair of pipes, etc.), and 18 (application of water contrary to agreement). In certain cases the undertakers are empowered also to institute proceedings for the recovery of the value of the water wasted or mis-used.

(*d*) Penalties under Special Acts, in which it is the modern practice to provide that proceedings may be taken in courts of summary jurisdiction and, in some instances, that proceedings may also be instituted by the undertakers or by persons aggrieved for the recovery of damages or loss incurred.

Provisions of the type we have described in (*a*) and (*b*) are now obsolete, and we have recommended that the opportunity should be taken of bringing the sections which have been reproduced or amended, and new clauses based on Special Act provisions, into line with the general trend of modern legislation, so as to provide that breaches of the law shall be punishable by fines, and that persons who have sustained damage may seek redress in the civil courts.

Security of Reservoirs.

37. Sections 3 to 10 of the Act of 1863 provide that two justices, on complaint from any interested person or on their own initiative, may make enquiry into the security of any reservoir constructed by the undertakers. If they are satisfied that there is imminent danger, they may order any person they think fit to lower the water and carry out any remedial measures required; if the reservoir is unsafe, but danger is not imminent, they may, after the undertakers have been heard, order them to do the works required in the interests of safety. There is power also for the recovery of the costs incurred from the undertakers, who can appeal to quarter sessions if they are aggrieved by any order made. The undertakers are relieved of any liability for claims for breaches of conditions to supply occasioned by any orders made. In view of the Act of 1930 (see paragraph 13 of the Report), these provisions no longer apply to large reservoirs.

The procedure is obsolete in many respects, and it is doubtful, whether, in view of the great improvements in engineering practice in relation to waterworks since 1863, the powers are required any longer. The whole question of safety of reservoirs was reviewed before the Act of 1930 was introduced. Moreover, we have been unable to find a recorded case of the powers conferred by Sections 3 to 10 of the Act of 1863 having been exercised. In all the circumstances, the conclusion has been reached that the powers should not be continued.

PART III.

Procedure for Bringing a New Waterworks Code into Operation.

38. In the Second Schedule we have indicated the provisions of the First Schedule that we recommend should be incorporated with the Act of 1936 to replace corresponding provisions of the Acts of 1847 and 1863 now incorporated with that Act. It is not expected that any serious difficulties would arise if the necessary amendments were effected forthwith, as the only provisions in the substituted clauses likely to transfer expense from the consumers to the local authorities would be those relating to the repair of communication pipes, which will not, in our view, be

a serious liability. The Act of 1936, moreover, gives local authorities a free hand to adjust water rates and charges if this should be found to be necessary, or enables local authorities to apply to the Minister for a revision of charges for metered supplies in cases in which he has fixed maximum charges under the powers of Section 127 of that Act. We have recommended, therefore, that the clauses should be incorporated forthwith with the Act of 1936 (Clause 20).

39. The question of Special Act undertakings presents more serious difficulties. To provide that the new provisions should come into operation and supersede at once the provisions of the Special Acts might put some undertakers in an unfair position. The recommendations, for example, as to the inclusion of charges for baths and water-closets in the domestic charge, and the adoption of a uniform basis of net annual value for the water rate might transfer financial liabilities from the consumer to the undertakers, with consequent loss of revenue to the latter. At the same time, many of the Special Acts would prohibit revision of rates or charges without the approval of Parliament, and a Bill or Provisional Order—an expensive matter for the smaller undertakings—would be required if increases proved necessary. We estimate that more than 450 water undertakings would be affected. The existing system of requiring undertakers to obtain new powers by local Act or Provisional Order would thus be a heavy strain on the time of Parliament, apart from the considerable expenditure which the undertakers would have to incur; on the other hand, to wait until a new Code is incorporated in the ordinary course of local legislation would defeat one of the primary objects of the proposed Bill, namely, that there should be as great a degree of uniformity as possible in the law governing public water supply. In view of these considerations, we recommend that water undertakers should be given a reasonable opportunity of reviewing the circumstances of their undertakings, and that the Minister should then be empowered to put the new Code into operation by Order, on the application of the undertakers, who should be given an opportunity of revising their rates and charges before the Order comes into operation.

It has been represented to the Committee that the abolition of additional charges for water closets and baths would impose a very heavy burden on the water undertakers in some areas, and that it might be impracticable to revise water rates in those areas without increasing the rates of small houses, many of which would not benefit by the remission of the additional charges. We have accordingly provided that the Minister should have regard to these considerations before making an Order putting the new Code into force (Clause 19 (4)).

Clause 19 (1) provides for the incorporation of the new Code with Special Acts. It is anticipated that the water undertakers

will be required, as now, to show cause if they desire to except any provisions from incorporation with the Special Act, or to modify sections.

We anticipate that notice of the intention to apply to the Minister for an Order incorporating the Code would be given in one or more newspapers circulating in the areas affected, with an intimation of the parts of the Code to be incorporated, that notice would also be given to local authorities of areas within the limits of supply and that representations by interested persons could be made to the Minister. Provision is made for this in Clause 19 (3), which also provides for notice to be published in the London Gazette. We do not expect that there would be need for a local inquiry into the majority of applications, unless there is also an application for revision of rates and charges, as the Code would have been approved by Parliament as generally suited to the requirements of water undertakings and consumers. A general power is provided, however, for the Minister to hold inquiries into these and other matters if the need arises (Clause 17).

40. It has already been stressed that the undertakers should have a reasonable opportunity of reviewing the circumstances of the undertaking before the new Code is adopted. We consider that a period of five years should be sufficient for every undertaker to carry out this survey. We have provided, therefore, that if by the end of that period the new Code has not been put in force in any area, the Minister should be empowered by Order to incorporate it with the relevant Special Acts on his own initiative (Clause 19 (2)).

Revision of Rates and Charges.

41. The existing procedure for revision of charges varies very much from area to area. Under Sections 80 to 82 of the Act of 1847, a Court of Quarter Sessions, on the petition of two water ratepayers within the limits of supply, may direct an inquiry into the financial position of the water undertaking and, if they are satisfied that the profits for the preceding year have exceeded the prescribed rate, that the maximum authorised amount of the Reserve Fund is invested, and the full authorised dividends have been paid, may order the undertakers to make such reduction in the water rates as they think proper, provided that the reduced rate is sufficient to ensure a profit as near as possible to that authorised by the Act. These provisions are rarely, if ever, used and we have suggested that they should be repealed. There are general powers for local Act undertakers, whether local authorities or companies, to obtain revision of rates and charges by Provisional Order procedure, and reference has already been made to the power for revising charges under the Act of 1921 (see paragraph 12). It is common practice also

for Special Acts to empower the Minister by Order to revise rates and charges on the application of the undertakers or of local authorities of areas in the limits of supply—in some examples, an application may also be made by twenty consumers. Another type of common form provision empowers the Minister to make Orders revising rates if the circumstances of the undertaking have altered by reason of the quinquennial revaluations of property under the Rating and Valuation Act, 1925. Some Special Acts provide that the revised rates and charges in the case of companies shall be sufficient to enable the undertakers to continue to pay dividends at the rates authorised, after allowance has been made for the running and overhead expenses of the undertaking, and the contributions which the undertakers are authorised to carry to their reserve and contingency funds; in the majority of cases, it is usual also to provide that there shall be no further revision of rates and charges for a prescribed period—usually five years.

42. It is clearly desirable that there should be a uniform procedure for the revision of charges: it is essential also, in view of the many applications which may be expected for Orders incorporating the new Code, that the undertakers should not be required to incur the expense and delay of procedure by Provisional Order. We recommend that power, now commonly included in Special Acts, for the Minister to revise rates and charges by Order on the application of the undertakers, an interested local authority or twenty consumers should be made general (Clause 8).

APPENDIX.

NOTES ON CLAUSES.

Clauses of the Proposed Bill.

Clause 1.—The clause will re-enact and amend the Acts of 1870 and 1873, which do not apply to local authorities.

Sub-clause (1) enables the Minister to make Orders, on the application of any persons, except local authorities, authorising them to construct, alter or continue and maintain waterworks; to form and carry on water undertakings; to furnish joint supplies or amalgamate their undertakings; to vary limits of supply; and to purchase or sell an undertaking or part of an undertaking.

In accordance with the recommendation of paragraph 10 of the Report, it is provided that the powers shall not extend to the compulsory acquisition of land or water rights; that the acquisition, amalgamation and alteration of undertakings, and the furnishing of joint supplies shall be subject to the approval of the proprietors of the affected undertakings (Sub-clause (1)); and that Orders shall be provisional only where there is opposition which is not withdrawn (Sub-clause (6)).

Apart from the substitution of Orders for Provisional Orders in cases where there is no opposition, or opposition is withdrawn, the principal amendments proposed are in Sub-clauses (3) to (5). Under Section 5 of the Act of 1870, the promoters of a Provisional Order must give notice by the 1st November to every company, corporation or person supplying water within the district to which the proposed application refers; in October or November notice of the application containing details of its objects, a general description of any new works, the names of the places in which they will be constructed, the times and places at which documents and plans will be deposited, and the office where copies of the draft Provisional Order and the Provisional Order when made can be obtained, must be published for two successive weeks in a local newspaper and once at least in the London Gazette; while in the same month, notice must be given, if water is to be abstracted from a stream, to owners and occupiers of mills, etc., using water from the stream for a distance of twenty miles below the proposed point of abstraction or, if the stream joins a navigable stream at less distance, as far as the junction. Before the end of November, copies of the advertisement and of any plans required by the Minister must be deposited at the Ministry of Health and with the clerk of the county council. By the 23rd December a memorial praying for a Provisional Order, a printed draft of the Provisional Order and an estimate of the cost of any new works must be deposited with the Minister, and copies of the draft Provisional Order must be available for sale to interested persons at the places indicated in the original advertisement. Under Section 8 of the Act, the Provisional Order, when made, has to be deposited at the place named in the original advertisement and with the clerk of the county council; and the full Order has to be published once in the local paper in which the preliminary advertisement appeared, not later than the 25th April. The Act does not permit of any variation of this lengthy and expensive procedure; if any step to be taken is even one day out of time a whole year's delay is entailed.

Under the alternative procedure provided in Sub-clause (3) the application for an Order has to be advertised in the London Gazette and locally, adequate notices have to be given to all interested local authorities and the plans and draft Order have to be deposited locally and to be open for inspection free of charge. Sub-clause (4) ensures that interested persons can obtain a copy of the draft Order at a reasonable cost; Sub-clause (5) provides for any modifications of the draft Order to be brought to the notice of all persons concerned. Protection is afforded in Sub-clause (2) for the shareholders of companies. The amended procedure has the additional advantage that application for necessary powers can be submitted at any period of the year.

Sub-clause (7) as to the costs of Orders, reproduces the third part of Section 7 of the Act of 1870.

Provision is made in Sub-clause (8) (which replaces Section 12 of the Act of 1873) for the amendment of Orders made under the clause by subsequent Orders made by the Minister in accordance with the procedure of the clause. The sub-clause extends the proposed power to Provisional Orders made under the Act of 1870, and to local authorities who have exercised the powers of the Act of 1936 of acquiring water undertakings governed by such Provisional Orders. In the latter cases, the Provisional Orders would still be in force, notwithstanding that the local authorities were supplying under the Act of 1936. Under Section 116 (6) of that Act, a local authority in this position may obtain necessary amendments of the Provisional Order by means of a further Provisional Order made under Section 303 of the Public Health Act, 1875. It is provided in the sub-clause that the local authority should have the same powers as water companies for the amendment of any Provisional Orders regulating the undertaking.

Sub-clause (9) reproduces the first part of Section 13 of the Act of 1870.

The following sections of the two Acts have not been reproduced:—

Section 4 of the Act of 1870 requires the undertakers to obtain the consent of the local authority if powers are required for the construction of works, and of the road authority if power is sought to break up any road, unless the Minister is of opinion, after inquiry, that consent should be dispensed with, in which case he is required to make a special report to Parliament stating the grounds for his decision. As the local authority and the road authority will be in a position to oppose the Order, in which case it would become provisional, the power is no longer required.

Section 9 of the Act of 1870 deals with the confirmation of Provisional Orders by Parliament; the procedure is now covered by Standing Orders and by Section 285 of the Act of 1933. Section 10 of the Act of 1870 recites the general Acts which are to be incorporated with Provisional Orders; the section is considered to be unnecessary in view of the suggested powers of Sub-clause (1) and of Clause 19 (1) of the Bill, which requires the new Code to be incorporated with Orders authorising or regulating the supply of water. Section 11 of that Act imposes time limits for the commencement and completion of works; the period requisite for this purpose varies according to the extent of the work and other factors, and it is considered that, in accordance with the modern practice in relation to the construction of waterworks, the date for completion should be prescribed by the Order. Section 12 of the Act of 1870 empowers the undertakers to charge the rents and rates authorised by the Provisional Order; the question is covered by Sub-clause (1). Section 13 of the Act of 1873 provides that the Minister may appoint commissioners for the purposes of holding inquiries and the procedure to be followed; the section has been replaced by Clause 17 of the proposed Bill, which extends the Minister's general powers under the Act of 1933 for holding inquiries. Section 14 of the Act of 1873 empowers the Minister to make rules for carrying the Acts into effect; the power would no longer be required under the amended procedure.

Clause 2 reproduces the Act of 1934, and extends the powers of undertakers to the taking of a supply of water in bulk from any person (see paragraph 14 of the Report). The opportunity has been taken to bring the powers into line with the provisions of Section 116 (2) of the Act of 1936 (which enable a local authority to supply water in their district with the consent of the authorised water undertakers, or with the Minister's approval if such consent is unreasonably withheld), by providing that consent to the taking of a bulk supply shall not be unreasonably withheld if the undertakers to whom a supply is to be given are a local authority, and the area to be supplied is within the limits of supply of another statutory water undertaker (Clause 2 (1) (*b*)). Sub-clause (2) applies the provisions of Parts V and VI of the First Schedule of the proposed Bill to mains laid for the purposes of giving or taking bulk supplies. Under Clause 24 of that Schedule local inquiry by the Minister is necessary if a main is laid in a street outside the limits of supply unless the county borough council, or county district council, as the case may be, and the highway authority, if they are a different authority consent; Clause 29 affords similar protection for streets, bridges, etc., belonging to or under the control of railway companies and other statutory undertakers. The remainder of Clause 2 reproduces similar provisions in the Act of 1934, except that it is provided that notice shall be given in the London Gazette and to any interested fishery board.

Clause 3 is new. The provisions will facilitate the supply of water to areas which by reason of their distance from existing mains could be supplied by the authorised undertakers or responsible local authority only at prohibitive cost. The procedure frequently adopted in Special Acts to meet this difficulty has been to empower the Minister by Order to authorise the undertakers of an adjacent district, if they can afford a supply at a reasonable cost, to take over the responsibility for the area concerned until the authorised undertakers or the responsible local authority are in a position to supply. This course was also followed in Sections 113 and 117 of the Public Health Act of 1936. Such a procedure is clearly in the interest of good administration, and we recommend that a general power should now be given for the purpose. The clause provides that if the Minister is satisfied that owners or occupiers outside the limits of supply of statutory water undertakers desire those undertakers to afford a supply, that the giving of a supply is not likely to interfere with the supply to the remainder of the area within the limits of supply and that the consent of the local authority and of any undertakers within whose limits the area is situated has been obtained (which consent shall not be unreasonably withheld), he may authorise them to supply the area in question. Provision is made also for the Special Acts of the supplying undertakers to apply to the area, and for the retransfer of the obligation of supplying the area to the authorised undertakers or responsible local authority, if they are able to supply the premises, and reimburse the supplying undertakers for the expenditure incurred for the purpose of supplying the area.

Clause 4 is new (see paragraph 24 of the Report). In Sub-clause (3) provision is made for joint action by local authorities for the purpose of giving an undertaking under the clause.

Clause 5. Sub-clause (1) enables statutory water undertakers to furnish supplies for non-domestic purposes. A similar power is usually included in modern Special Acts. Although there are some Special Act precedents for an obligation to supply for non-domestic purposes, the proposed general obligation to supply on reasonable terms and conditions, if the ability to meet existing or probable future requirements for domestic purposes without having to incur unreasonable expenditure in constructing new waterwoks for the purposes is not thereby endangered, is new, as is the provision for determination of differences by the Minister (see paragraph 26 of the Report). Sub-clauses (3) and (4) are also new. The former applies the provisions relating to the laying and maintenance of pipes for domestic purposes (if they apply in the area concerned) to pipes laid for non-domestic supplies. (See Clauses 43 to 45 and 47, First Schedule.) Under the latter, the undertakers, if they fail to give or maintain a supply for non-domestic purposes will be liable, in the absence of agreement to the contrary, to the penalties for failure to give or maintain a supply for domestic purposes. The general savings in Section 13 of the Act of 1863 which, unless there is express agreement to the contrary, relieve the undertakers from liability for failure to supply for non-domestic purposes, if such failure is due to frost, &c., are thus no longer required and have not been reproduced. (See Clause 33 (2) of the First Schedule which includes similar savings). The power in Sub-clause (5) to recover charges in the manner in which water rates may be recovered follows Special Act provisions.

Clause 6. The clause provides a general power for payment and recovery of water rates. Section 68 of the Act of 1847, which is incorporated with the Act of 1936, and with most Special Acts, provides for the water rate to be paid by and recoverable from the person requiring, receiving or using the supply of water. The clause substitutes the occupier of the premises supplied, unless the owner is responsible by express statutory provision or by agreement with the undertakers. The powers for recovery in Sub-clause (3) follow those of Section 74 of the Act of 1847 and Section 21 of

the Act of 1863, but the language has been simplified, and it is provided that water shall not be cut off, in case of non-payment of the water rate, if there is any dispute as to the amount due, or as to the liability to pay the rate.

The remainder of the clause reproduces the Act of 1887, which provides that a water company may not cut off the water if rates are in arrears and the owner is responsible for payment. This is extended to all water undertakers; but it is provided in Sub-clause (4) that the prohibition shall not apply if the owner is in occupation of the premises. The power of the Act of 1887 to charge an instalment of the rate due on the premises in priority to all other charges is omitted (see paragraph 11 of the Report).

Clause 7 is new. It is based upon Section 98 of the Public Health (London) Act, 1936 (see paragraph 11 of the Report).

Clause 8 is new but is based on powers frequently allowed in Special Acts (see paragraphs 41 and 42 of the Report). It is provided that water rates and charges may be reduced or increased by Order of the Minister on the application of the undertakers, an interested local authority or twenty consumers. Similar procedure is provided in modern Special Acts, which sometimes require that in the case of water companies the Minister shall endeavour to secure that the revised rates and charges shall be sufficient to ensure, after allowance has been made for all proper expenses and outgoings and contributions to reserve and contingency funds, that the undertakers can continue to pay dividends upon the paid-up capital at the authorised rates. The clause follows Special Act precedent in this respect, except that it was considered that it would be undesirable to require the Minister to ensure in every case that the undertakers were able to pay dividends at the rates authorised (which might be considerably in excess of the rate now allowed in modern Acts) if they had not been paying such rates in the past. It is provided, therefore, that the undertakers shall be enabled to pay dividends at a rate not less than the average of the rate paid on the class of capital in question during the preceding five years.

Clause 9 reproduces Section 61 of the Act of 1847, but has been brought into conformity with the language used in modern Acts. The Committee recommended in paragraph 15 of Part II of their First Report that the section should be extended to oil and tar, and to the pollution of the subsoil in the vicinity of springs, wells or adits used for water supply. The clause gives effect to this recommendation, and also extends the powers to persons paddling or washing in streams, etc., belonging to the undertakers. Section 61 of the Act of 1847 provides that persons committing offences shall forfeit to the undertakers sums not exceeding £5 for the first offence and £1 per day for continuing offences. The Committee recommended that the first sum should be increased to £20. In view of the risk of danger to public health from the offences covered by the section, we recommend that the decision should be reconsidered, and that the offences should be punishable by fines not exceeding £50 for the first offence and £5 for continuing offences.

Clause 10 is new, but is based on provisions frequently allowed in Special Acts. Complaint is often made that water supplies, particularly where they are derived from underground and there are occupied buildings on the catchment areas, may become polluted from sources which the undertakers cannot control. The proposed power for the water undertakers to enter into agreements with owners and occupiers of land for the carrying out of works for drainage and other purposes would assist materially in removing potential sources of pollution from the catchment area, and so safeguard the purity of supplies in cases where acquisition of the land is impracticable, either on account of cost or for other reasons.

Clause 11 is new, but follows Special Act provisions. There is an increasing tendency for water undertakers to acquire the gathering grounds of their sources of supply in order to prevent the risk of pollution from unrestricted use of the land; where circumstances permit, this course is considered to be one of the best methods of protecting supplies from pollution. Sub-clause (2) enables the undertakers to carry out protective works on land thus acquired. The Special Acts usually provide that if the highway authority refuses consent to the carrying of drains, sewers, etc., across or along any street or road, the question whether or not consent has been unreasonably withheld should be referred to an arbitrator appointed, in default of agreement, by the President of The Institution of Civil Engineers. The clause provides for the arbitrator to be appointed by the Minister, if the parties do not reach agreement. This follows the precedent of the Act of 1934.

Clause 12 is new. The usual Special Act powers authorising undertakers to make byelaws for the protection of their water supply provide that the byelaws may require owners and other interested persons to construct and maintain drains and similar works, and may make provision for the prevention of things tending to pollution of the water. Compensation is payable where legal rights are curtailed or injuriously affected, or owners and occupiers have to incur expenditure which would not otherwise be necessary. The powers of the clause are based on the usual Special Act practice, but we consider that it is undesirable, in principle, that persons should be required by byelaws to do things which they are not required to do by the general law. We have accordingly made provision for the limits of control to be defined in the byelaws; that within such limits the byelaws may prohibit the doing of any act which may tend to pollute the water; and that where an area has been defined, the undertakers may, under the general powers of the clause, require owners and occupiers to carry out necessary drainage, etc., works in that area. The usual requirements as to compensation are contained in Sub-clause (3) which contains a special definition of " legal rights " following the definition usually adopted in Special Acts. Sub-clause (4) provides that byelaws shall be confirmed by the Minister, and extends the provisions of the Act of 1933 to water undertakers who are not local authorities. It is desirable that proposals for byelaws of this character should receive full publicity. Provision is made, therefore, in Sub-clause (5) for the undertakers to send a copy of the byelaws to every interested local authority, to exhibit a notice in affected local government areas, to publish notice of their intention to apply for confirmation in the London Gazette, and, where owners or occupiers require, to furnish them free of charge with a copy of the byelaws and a statement of the effect of the clause. We have also modified Section 250 of the Act of 1933 by providing that persons interested may obtain a copy of the draft byelaws for the sum of one shilling instead of a price not exceeding sixpence for one hundred words.

In view of the wide powers of the clause, we have modified the usual Special Act procedure by providing that there shall be an appeal to the Minister if an owner or occupier considers the undertakers' requirements to be unreasonable. (Proviso to Sub-clause (2), which is new.)

Clause 13 is new, but is based on provisions commonly included in Special Acts. The power to discharge water into rivers and watercourses may be essential when reservoirs or other works are being constructed, repaired or cleaned, or if they have to be emptied in case of emergency, and it is proposed that it should be made of general application. Sub-clause (2) provides that except in an emergency, the undertakers shall give direct notice to interested catchment boards, fishery boards and navigation authorities, and public notice by advertisement in a local newspaper

before the powers of the clause are exercised, the intention being that the responsible authorities and riparian owners shall be in a position to make preparations if large quantities of water are to be discharged, and that the undertakers shall also give due regard to any representations made as to the time and mode of discharge, so as to obviate, as far as possible, the risk of damage. These requirements are new. Paragraph (*c*) of Sub-clause (2) and the proviso are based on Special Act provisions. It is clearly reasonable that an inland navigation authority should not only have notice, but should also have control of the discharge of water into an artificial navigation so that damage to banks or locks, or interference with traffic may be obviated. In Sub-clause (3), which is new, penalties are provided for failure on the part of the undertakers to take reasonable steps to ensure that the water is free from substances liable to cause damage to riparian owners or injury to fish or fisheries. Failure to take these precautions may render the river water temporarily unfit for valuable industrial processes and for waterworks purposes, or may cause serious injury to fisheries; it is considered reasonable that the undertakers should take all practicable steps to avoid such damage, and should be liable to a penalty if they fail to do so. In view of the large amount of the maximum penalty, it is provided for proceedings to be taken by indictment, but that they may be taken in a court of summary jurisdiction if the exaction of a smaller penalty is sought. Sub-clause (4) embodies savings, based on Special Acts, for railways, docks, inland navigations and canals. Sub-clause (5), which also follows Special Acts provides for payment of compensation for any damage caused. It is considered that the undertaker should be subject to liability for payment of compensation for damage caused, though he has acted in accordance with the statutory requirements, and that he should not be relieved of the liability because, by having contravened these requirements, he is liable to a fine.

Clause 14 is new, but is based on Special Act provisions. Water undertakers frequently obtain special powers to provide offices for their undertakings and houses for their employees; in some instances the powers have been extended to the provision of recreation grounds. The clause gives general powers for the purposes, with power for the undertakers to acquire land by agreement for any of the purposes stated.

Clause 15 is new, but is based on Special Act provisions. The clause would enable water companies to issue and redeem redeemable stock, and when stock is to be redeemed, to exceed temporarily the authorised amount of stock during the necessary interval between the creation or issue of new stock and the redemption of the old stock. Stock includes preference shares and preference and debenture stock. We recommend that the powers should be applied generally to water companies.

Under Section 113 of the Stamp Act, 1891, stamp duty is payable on the nominal capital of the water company; if the nominal capital has been fully issued, the temporary excess allowed under the clause would involve further liability to this duty. Paragraph 8 of the First Schedule of the Gas Undertakings Act, 1934, relieves gas companies of this liability and Section 46 (4) of the Companies Act, 1929, gives the same relief for limited companies; we have suggested that similar relief should be extended to water companies.

Clause 16 is new. It follows Section 298 of the Act of 1936.

Clause 17 is new. It empowers the Minister to hold any inquiries necessary in the discharge of any of his functions with respect to water undertakings, and extends the provisions of Section 290 of the Act of 1933 to undertakers who are not local authorities.

Clause 19 provides for the incorporation of the provisions contained in the First Schedule with future Special Acts, and for their incorporation with existing Special Acts by Order of the Minister on the application of water undertakers or, at the expiration of five years, on his own initiative. The Minister is empowered, also, to repeal or amend any existing provisions in Special Acts affected by his Orders which are rendered unnecessary by the provisions applied, or are inconsistent with them. (See paragraphs 39 and 40 of the Report.)

Clause 21 provides for the general repeal of provisions in Special Acts or Orders which are inconsistent with the provisions of the First Schedule, when the latter come into force.

Clause 22. The Acts of 1847 and 1863 extended to England and Wales, Scotland and Ireland; the Acts of 1870 and 1873 to those countries, except the Metropolis; the Acts of 1887, 1921 and 1934 to England and Wales only. It is proposed that the Bill shall extend to England and Wales only.

Clauses in the First Schedule to the Proposed Bill.

Part II—Works and lands.

Clause 2 reproduces Section 8 of the Act of 1847, but provision is made for deposit of amended plans and sections with the officials with whom the originals were required to be deposited by Standing Orders, instead of with the clerk of the county council. The requirement that extracts shall be deposited with parish clerks is omitted, as being no longer required.

Clause 3 replaces Section 11 of the Act of 1847, which has now been largely superseded by provisions in Special Acts similar to those of the clause.

Clause 4 is new. It is now the usual practice (following the House of Lords' Model Water Bill) for Special Acts to prohibit the construction of new works for taking or intercepting water from lands belonging to the undertakers, unless such works are expressly authorised; local authorities who supply water under the Act of 1936 must obtain the consent of the Minister to the use of new sources. It is considered that the Special Act requirement should be incorporated with the new Code, and that water undertakers should thus be required in every case to obtain express approval of the acquisition of fresh sources of supply.

Clause 5 replaces Section 12 of the Act of 1847, but has been redrafted to conform with the language of modern Acts. In view of the prohibition of Clause 4, the power in Section 12 to construct wells and shafts has been omitted. The clause is based on Special Act provisions.

Clause 6. It may be necessary in the case of large undertakings to provide telephonic or similar communication between the undertaker's offices and works, and powers for this purpose are now commonly allowed in Special Acts. The clause follows Special Acts provisions.

Clause 7 reproduces Section 13 of the Act of 1847.

Clause 8 is new. It is the common practice in Special Acts authorising the construction of underground works to empower the undertakers to acquire easements in lieu of acquiring the lands scheduled in the Acts. The clause follows Special Acts provisions.

Clauses 9, 10 *and* 11 are new. Similar powers are commonly allowed in Special Acts. It is desirable that they should be included in the Code instead of being expressly re-enacted in each individual case.

Clause 12 is new. It is now common practice for Special Acts to allow undertakers to acquire additional lands by agreement. A limit of quantity is usually prescribed, with a provision that it shall be exceeded only with the consent of the Minister. The clause follows Special Act provisions.

Clause 13 is new. It affords undertakers a greater margin of discretion in retaining or disposing of lands acquired under Special Act powers than is permitted by the Lands Clauses Acts. Similar powers are commonly allowed in Special Acts. It is recommended that the powers should be included in the Code, instead of being expressly re-enacted in each individual case.

Part III—Compensation water.

Clause 14 (see paragraphs 18 to 20 of the Report).

Part IV—Minerals underlying waterworks.

Clauses 15 *to* 22. These clauses, with drafting alterations to bring them into conformity with the language used in modern Acts, reproduce Sections 18 to 27 of the Act of 1847, which regulate the position of undertakers in relation to mining interests. It is provided in Clause 16 (1) that the scale of the maps required to be prepared by the undertakers shall be not less than six inches to the mile instead of one foot, as required by Section 19 of the Act of 1847; and in Clause 16 (2) that copies of the maps shall be deposited with the interested local authorities, instead of with the clerks of county councils, as provided by Section 20 of the Act of 1847. The requirement of the same section that maps should be deposited with parish clerks is considered to be no longer necessary, and has been omitted.

Part V—Power to lay mains, etc.

Clause 23 is new but follows the Act of 1936. It empowers the undertakers to lay mains in any street and in, on, or over any land, and to repair, alter or remove them. The requirements that mains shall not be laid in any land not forming part of a street unless the consent of the owner and occupier is obtained, and that any question whether such consent has been unreasonably withheld shall be determined by the Minister, are new. (See paragraph 22 of the Report.) The provision in Sub-clause (2) that notice shall be given to the land drainage authority follows the similar provision of Section 15 of the Act of 1936. Sub-clause (3) provides for payment of compensation to owners of private land who sustain damage or injurious affection from the exercise of the undertakers' powers. We have followed the procedure of the Act of 1936 that compensation shall be assessed by an arbitrator appointed, in default of agreement, by the Minister, but, as indicated in paragraph 22 of the Report, have not adopted the provisions of Section 278 (4) of that Act relating to betterment.

Clause 24 is new but follows the Act of 1936. It provides for public advertisement of proposals to lay mains outside the limits of supply, and for notice to be served on the interested local authority; and, if there is objection by an affected local authority or owner or occupier of land, that the undertakers shall not proceed until all objections have been withdrawn or the Minister, after local inquiry, has approved the proposals. In Sub-clause (3) it is provided that the requirements of the clause as to notices and as to objections to the Minister shall not apply if a main is to be laid in a highway maintainable at the public expense and the undertakers have obtained the consent of the local authority and highway authority of the area concerned. The clause follows Section 16 of the Act of 1936, except that the consent of the highway authority, as well as that of the local authority, is required. It is considered reasonable that the highway authority should have the opportunity of objecting to a proposal to lay mains outside the undertakers' limits of supply.

Clause 25 is new. The clause enables the undertakers to lay service pipes and other works in any street within the limits of supply for the

purpose of connecting individual premises with service mains, and to maintain any pipes lawfully laid in private land if the need should arise. In view of the definition of " street " in Clause 1 of the First Schedule, the powers will extend to private streets, as well as to highways, whether maintainable at the public expense or not.

Part VI—Breaking open streets, etc.

Clause 26 reproduces Section 28 of the Act of 1847, which applies only to the breaking up of streets within limits of supply. It is often necessary to break up streets for the purpose of laying mains between the sources of supply and the limits of supply, and the clause gives this power.

Clauses 27 and 28 reproduce Sections 30 and 31 of the Act of 1847. There are some minor drafting alterations to bring the clauses into conformity with the language used in modern Acts. In particular the length of notice to the highway authority is increased from three to seven clear days. This extension is common in Special Acts.

Clause 29 is new. It extends similar savings of Sections 279 to 281 of the Act of 1936.

Clause 30 reproduces Section 32 of the Act, 1847, but has been redrafted to bring it into conformity with the language used in modern Acts.

Clause 31 reproduces Sections 33 and 34 of the Act of 1847, but has been redrafted. A penalty of £5 for the first offence, with a continuing penalty of £5, has been substituted for the forfeits of similar sums in Section 33 of the Act of 1847 (see paragraph 36 of Report). It is also made clear that the penalties do not interfere with the undertakers' civil liability, if any, to a person suffering injury by reason of their default.

Part VII—Supply of water for domestic purposes.

Clause 32 reproduces the similar obligations of Section 35 of the Act of 1847, for the undertakers to lay necessary mains and bring water to any area in the limits of supply, if the aggregate amount of water rates payable is not less than the prescribed return on their capital outlay on laying the mains, and the consumers severally agree to take a supply for three years at least. In accordance with modern practice, a return of one-eighth of the capital outlay has been substituted for the return of one-tenth prescribed by Section 35. The clause is also extended to the laying of mains for the purpose of affording a domestic supply to any premises.

Under Section 36 of the Act of 1847 provision is made that if the undertakers fail within twenty-eight days of the receipt of such a requisition to lay mains and provide a supply, they shall forfeit to each consumer the amount of the rate for which he is liable and a sum of forty shillings for every day the supply is not provided, with a proviso that they shall not be liable if the want of supply is due to frost, unusual drought or other unavoidable cause or accident. It is considered that the period of twenty-eight days does not allow the undertakers sufficient time in every case, and we have accordingly extended it to three months. We have increased the maximum fine to £50 in view of the fact that the clause relieves the undertakers from the liability to pay a forfeit to every aggrieved consumer.

Clause 33. Sub-clause (1) gives the consumer the right to demand a supply for domestic purposes to any premises if he has complied with the provisions of Part X of the Schedule. Sub-clause (2) provides a fine of £5 for the first offence and a continuing penalty of £2 if the undertakers fail to maintain the supply, but it is considered that the imposition of a small fine should not relieve the undertakers from civil liability for damage caused by their default, and provision has accordingly been made that the liability to the fines shall be without prejudice to the undertakers' civil liability, if any, to the person aggrieved. The proviso reproduces the similar proviso

of Section 36 of the Act of 1847, with the addition that the undertakers shall not be responsible if the failure to give or maintain a supply is due to the non-compliance of the consumer with their byelaws. It is clearly desirable that the undertakers should not be responsible in such circumstances.

Clause 34 reproduces the first part of Section 35 of the Act of 1847.

Part VIII—Supply of water for public purposes.

Clause 35. Section 38 of the Act of 1847 as amended by Section 2 of the Act of 1938, requires the undertakers, at the request of the fire authority, to provide fire plugs at convenient distances not less than those prescribed in the Special Act, or if distances are not prescribed, not more than 100 yards from each other; and for disputes to be settled by an inspector appointed for superintending works connected with paving, drainage, or water supply of the area, or if no inspector has been appointed, by two justices. Section 2 of the Act of 1938 provides that the Minister may by Order modify the provisions of Section 38 of the Act of 1847 in their application to any rural district, so as to extend the distances at which fire-hydrants are required to be placed. The procedure of the Act of 1847 is now obsolete; and we recommend that in accordance with the Act of 1938 the Minister should be responsible in all areas for deciding any differences which may arise between the fire authority and the undertakers as to the distances at which fire-hydrants should be placed. The clause also continues the obligation of the water undertakers to maintain fire-hydrants (see Section 39 of the Act of 1847). The cost of providing and maintaining fire-hydrants is recoverable from the fire authority under Clause 37.

Clause 36 reproduces the remainder of Section 39 of the Act of 1847, but has been redrafted to conform with the Act of 1938, the fire authority being substituted for the town commissioners.

Clause 37 reproduces Section 40 of the Act of 1847, but the fire authority has been substituted for the town commissioners. It is also made clear that the undertakers may recover the cost of affixing and maintaining notices from the fire authority.

Clause 38 reproduces Section 41 of the Act of 1847.

Clause 39. The obligation on the undertakers in this clause to provide water for extinguishing fires without payment reproduces the requirement imposed by Section 42 of the Act of 1847, which also requires them to keep their mains charged with a supply of water under pressure for the purpose, unless prevented by frost, unusual drought or unavoidable cause or accident, or during necessary repairs. The latter requirement has been merged in Clause 42, with the similar obligation of Section 35 of the Act of 1847 in regard to supplies for domestic purposes.

Clause 40 reproduces the obligation to supply water at agreed rates for public purposes (or at rates to be settled by two justices if there is disagreement) imposed by Section 37 of the Act of 1847. We have recommended, however, that in conformity with the procedure of Clause 5 of the Bill, disputes should be determined in future by the Minister.

Clause 41. Section 43 of the Act of 1847, as amended by Section 2 of the Act of 1938, provides for a penalty of £10 and a continuing forfeit of £2 payable to the fire authority, the town commissioners or to persons aggrieved if the undertakers neglect or refuse except when prevented by frost, drought, unavoidable cause or accident or repairs:—

(*a*) to provide and maintain public fire plugs, or to provide a sufficient supply under pressure for public purposes;

(*b*) to supply under pressure where fire plugs are provided;

(*c*) to supply any owner or occupier entitled to a supply during any part of the time rates have been paid or tendered.

Fines for failure to provide and maintain fire-hydrants or to furnish a sufficient supply for public purposes are contained in this clause, but we have recommended that as the undertakers will be relieved of the liability to pay a forfeit to every person aggrieved the maximum fines should be increased to £50, and £5 per day for a continuing offence.

A fine for failure to afford a constant supply under pressure is included in Clause 42 (2). Fines for neglect to supply for domestic purposes are included in Clause 33 (2).

Part IX—Constancy and pressure of supply.

Clause 42 reproduces the obligation imposed by Sections 35 and 42 of the Act of 1847 for the undertakers to supply under constant pressure for domestic and public purposes, but the proviso is new. A supply under constant pressure to houses built on land above the level of the service reservoir may entail considerable expenditure for pumping, and it is now common for Special Acts to provide that water need not at any time be delivered at a greater height than can be reached by gravitation from the service reservoir from which the supply is taken; and to leave it to the undertakers to determine the reservoir or tank from which supplies to particular zones are to be taken. It is considered reasonable that this proviso should be attached in future to the requirement to supply under pressure.

Part X—Laying and maintenance of supply pipes and communication pipes.

Clause 43 is new. In view of the amended procedure for the laying and maintenance of service pipes (see paragraphs 27 to 29 of the Report) it is necessary to define the requirements with which the consumer must comply before he can demand a supply for domestic purposes. The clause provides that he shall give fourteen days' notice in writing of his intention to lay his supply pipe, pay or tender the water rate, lay the part of the pipe on private land at his own expense, having first obtained any necessary consent from owners or occupiers of intervening land, and comply with the undertakers' byelaws (or if there are no byelaws with their requirements) as to the bore, strength and material of the pipe, any dispute as to requirements being determined by a court of summary jurisdiction. Supply pipe is defined in Clause 1 of the First Schedule.

Clause 44 is new. The undertakers are required to lay the communication pipe and any part of the supply pipe which may be in a highway (they may, if they elect, lay a branch main in lieu of the part of the supply pipe in a highway, but in that case must not charge the consumer more than the expense of a supply pipe) and to connect the supply pipe with the communication pipe within fourteen days after the consumer has carried out his obligations under Clause 43, the reasonable expenses incurred being recoverable from the consumer. They are made liable for a fine of £5 for default, and a fine of £2 for each day on which default continues. Communication pipe is defined in Clause 1 of the First Schedule.

Clause 45 is new. It is intended to facilitate the supply of water to houses inside the limits of supply which abut on or are near streets which form the boundary of those limits, by extending the powers of the undertakers for breaking up streets to those streets, although they may as to the whole or part of their width be outside the limits of supply. In the absence of such a power, the undertakers would have no right to lay pipes in the street for supplying the houses or to break up the street for the purpose. The clause is based on provisions now frequently allowed in Special Acts.

Clause 46 is new. The supply of several houses by a common service pipe often leads to difficulties in regard to pressure if the pipe becomes defective, or the recovery of rates if the rates due from the owners or

occupiers of any of the houses are in arrears. To meet these difficulties, a power for the undertakers to require separate service pipes where two or more houses are supplied by the same service pipe is now frequently allowed in Special Acts. It is considered that a general requirement to this effect would be onerous if a satisfactory supply is being afforded to existing houses by a common pipe and rates are not in arrears. Under the clause, the requirement will not apply to existing buildings, unless an existing supply pipe becomes defective, or water rates are not paid, or a house is to be divided into two or more tenements (Sub-clause (6)). Sub-clause (7) is intended to meet the case of buildings divided into several tenements, e.g., blocks of flats; it would be clearly undesirable to require separate service pipes in such cases if the owner is willing to pay the water rates. In Sub-clauses (2) to (5) provision has been made for the laying of a separate supply pipe by the consumer (or by the undertakers at his expense if part of the pipe is in a highway) and of a separate communication pipe by the undertakers in the cases where it is found necessary to enforce the requirements. Power is given also for the undertakers to execute the work of laying the supply pipe, if the owner neglects to do so, and to recover the cost from him, while on the other hand the undertakers are made liable to a fine of £5 and a continuing fine of £2 if they fail to lay the communication pipe or any part of the supply pipe which may be in a highway.

Clause 47 is new. Under the procedure recommended in paragraph 28 of the Report the undertakers will be responsible in future for the repair of communication pipes. Sub-clause (1) vests communication pipes in the undertakers and imposes on them the liability for repair, renewal, etc. Sub-clause (2) requires the undertakers to carry out similar work in respect of so much of any supply pipe as is laid in a highway, but empowers them to recover the cost from the owner of the property supplied. Sub-clause (3) imposes a penalty of £5 with a continuing penalty of £2 for failure to carry out necessary work of repair, etc.

Part XI—Stopcocks.

Clause 48 is new. See paragraph 29 of Report.

Part XII—Water rates and charges.

Clause 49 is new. Sub-clause (1) gives express power for the undertakers to charge a water rate, and where no minimum annual charge is prescribed in the Special Act, to charge a minimum sum of one pound per annum. The rate will be chargeable on the net annual value of the premises supplied, or, where the premises are used solely for business, trade, or manufacturing purposes, on such fraction of the net annual value as may be agreed, or, in default of agreement, may be determined by a court of summary jurisdiction (see paragraph 31 of the Report). The net annual value is to be taken from the valuation list in force at the beginning of the rating period, or, if that value is not stated in the valuation list, is to be determined, in default of agreement, by a court of summary jurisdiction (Sub-clause 2). This follows Section 126 of the Act of 1936.

Sub-clause (3) makes provision for the rating of two or more properties in one occupation connected by an internal means of communication. Under the existing Code, an occupier paying the water rate on one property only could supply water from that property to persons living or working in the other buildings, notwithstanding that no water rate was being paid in respect of those buildings. A provision that buildings within the same curtilage and in the same occupation shall be regarded as one for the purpose of water rates is now common in Special Acts, which usually make it obligatory for the undertakers to treat the various properties as one building. The latter requirement may hinder supplies being afforded to houses where they are urgently required, e.g., to cottages

within the curtilage of a factory deriving its supplies for trade purposes from a private source which is unfit for domestic purposes. We have recommended, therefore, that persons aggrieved should have the right of appeal to a court of summary jurisdiction.

Clause 50 is new. It follows provisions commonly allowed in Special Acts.

Clause 51 is new. The clause follows Special Acts provisions. The undertakers are enabled to make charges not exceeding the prescribed maxima for water used for the watering of gardens or cleansing of vehicles or horses if hosepipes or taps outside the house are used, instead of supplying by meter for the purposes. The definition of " a supply of water for domestic purposes " in Clause 1 of this Schedule would exclude these purposes in future from the scope of the domestic rate, as is customary now in Special Acts.

Clause 52 is new. Sub-clauses (1) to (3) are based on Section 127 (2) of the Act of 1936 and provisions commonly included in Special Acts, but the provision in paragraph (*d*) of Sub-clause (2) is new. Where premises of the kind covered by the clause use large quantities of water it is in the interests both of the individual consumer and of the general body of consumers that the supplies should be metered. The practice secures a more equitable distribution of the cost of providing supplies among consumers, and tends also to restrict the excess consumption and waste which might follow if an unmetered supply were given at the rate chargeable for domestic purposes. Provision is made in Sub-clause (4) for a minimum charge to meet cases where stand-by supplies only are required.

Clause 53 is new. It enables the undertakers to require consumers taking a supply for domestic purposes who install apparatus consuming large quantities of water to take the additional water required by meter. It would be unfair to the general body of consumers if the large additional quantities of water required for the purposes indicated were afforded at the ordinary domestic rate. Paragraph (i) of the clause and the proviso as to small water softeners follow the Act of 1936; similar provisions have been allowed also in recent Special Acts. The object of paragraph (ii) of the clause is to ensure that a fair price is paid by the consumer if charges are not prescribed in the Special Act.

Clause 54 is new. It is based on provisions commonly allowed in Special Acts.

Clause 55. The supply of water to temporary structures for domestic purposes presents considerable difficulties. It is undesirable to require the undertakers to afford supplies on the conditions applicable to permanent buildings to structures capable of being removed without notice, which are sometimes of a type that does not afford security for sums due. It is equally undesirable, if reasonable security is forthcoming, that the occupants of structures which satisfy the local authority's requirements should be without a proper supply of water. The clause follows provisions of modern Special Acts.

Clause 56 reproduces Section 69 of the Act of 1847, but the powers are extended to buildings other than houses.

Clause 57 is new, but is based on Special Act provisions. It replaces Sections 72 and 73 of the Act of 1847, which make the owner instead of the occupier liable for the water rate if the rent of the house does not exceed £10. The new prescribed figure of £13 corresponds with the similar provisions in the Rating and Valuation Act, 1925, but provision is made that where a higher figure is in force under that Act, that figure shall be deemed to be substituted for the figure of £13.

Clause 58 replaces Section 70 of the Act of 1847, which requires water rates to be paid in advance by equal instalments on the usual Quarter Days. The clause provides that water rates shall be made annually, alters the dates for payment to correspond with the more usual divisions of the financial year in England and Wales, and follows Section 130 of the Act of 1936 by giving the undertakers the option of demanding rates half-yearly in advance. The power, subject to the safeguard that no instalment shall be recoverable until two months of the half-year have elapsed, facilitates the joint collection of water rates and other rates where the local authority is the water undertaker. Sub-clause (2) (*b*) relieves the consumer of liability for the rate in respect of any period of the half-year for which he is not in occupation of the premises.

Clause 59 is new, but is based on Section 131 of the Act of 1936 and Special Act provisions. It ensures that effect is given, so far as the water rate is concerned, to alterations in the net annual values of properties made during the rate period, and that amounts due or paid are adjusted accordingly.

Clause 60 is new. It is common for Special Acts to authorise the undertakers to allow discounts or rebates for prompt payments of water rates. The procedure is desirable, providing that there is a limit to the amount of the discount, and all consumers are treated alike, and we have suggested that it should be extended to water charges. The limit of 5 per cent. follows Special Act precedent.

Clause 61 is new. In Clause 6 of the Bill a general power is provided for the recovery of water rates. It has been customary in recent local legislation to provide additional powers to meet the case where there is reason to believe that a consumer intends to quit a house and evade payment of the rate due before the undertakers can take proceedings for recovery, and to provide that in such cases a justice may, in addition to issuing a summons for non-payment of the water rate due, issue a distress warrant. The clause follows Special Act provisions.

Clause 62 is new. It is based on Section 136 of the Act of 1936 and similar provisions commonly allowed in Special Acts. It is clearly desirable, both in the interests of the undertakers and of the consumers, that there should be an established practice for the settlement of disputes as to the correctness of meters.

Clause 63 is new, but similar provisions are usually allowed in Special Acts. It is desirable, both in the interests of the undertakers and of consumers, that there should be written notice of discontinuance of supply.

Part XIII—Provisions for preventing waste, etc., of water, and as to meters and other fittings.

Clause 64 follows Section 132 of the Act of 1936, but we have provided in Sub-clause (2) that bye-laws in relation to the matters indicated in paragraph (*a*) shall apply only to supplies for domestic purposes, as we consider that industrial users of water should not be obliged to conform to bye-laws which might hinder the carrying on of industry. This consideration does not apply to the waste, misuse, contamination, etc., of water, and we have provided, therefore, that bye-laws in relation to the purposes of paragraph (*b*) shall apply to all supplies. Paragraph (*c*) of Sub-clause (8) is also new. There are no powers corresponding to this clause in the Acts of 1847 or 1863, but the principle that the use of meters and other fittings should be regulated by bye-laws is now well established, and powers for the purpose are commonly allowed in Special Acts.

Clause 65. Sub-clause (1) reproduces the similar powers of Section 54 of the Act of 1847 which applies only where the undertakers are not required to supply under pressure. The powers are extended to all

buildings. In recent Special Acts it has been customary, even though the undertakers may be obliged to supply under pressure, to empower them to require the owner of a new house erected at a higher level than fifty feet below the level of the service reservoir from which the supply is to be taken to provide a cistern with a capacity sufficient for a day's supply. To afford a constant supply under pressure to houses in such circumstances may entail considerable expenditure for pumping, while, on the other hand, the lack of adequate storage capacity, if there is an intermittent supply, may cause hardship to consumers in the house. It is considered that similar powers should be included in the new Code. (Sub-clause (1) (*b*)).

In Sub-clause (2) the powers of Section 54 of the Act of 1847 for cutting off water if there is default on the consumer's part to provide a cistern, or to keep it in proper repair, are omitted. (See paragraph 35 of Report.) The power in Section 56 of the Act of 1847 for the undertakers to repair cisterns and recover the cost from the person responsible is continued, and extended to the provision of the cistern.

Clause 66. Section 14 of the Act of 1863, which is incorporated with the Act of 1936, empowers undertakers who are authorised by their Special Act to supply water by measure, to let for hire, to consumers so supplied, meters for measuring the water, and pipes or other apparatus for its conveyance, storage or reception. The clause extends the powers to the letting, sale and repair of any water fittings and to all consumers. Undertakers are, however, prohibited from manufacturing fittings. Similar provisions are commonly allowed in Special Acts. We do not consider that local authorities supplying under the Act of 1936 should be given the wide powers of this clause, and we have provided in the Second Schedule that it shall apply in such cases only in relation to metered supplies, so continuing the position under Section 14 of the Act of 1863.

Clause 67 is new. It follows Section 133 of the Act of 1936, except that we have provided that in the case of industrial supplies, the powers shall not extend to any fittings beyond the meter used by the undertakers for measuring water. We have provided also in the Second Schedule that the new clause shall replace Section 133 of the Act of 1936.

Clause 68 reproduces Section 17 of the Act of 1863, but the clause has been redrafted to conform with the definition of water fittings (Clause 1, First Schedule). It is also provided that the consumer is liable for the continuation of an offence, to meet the difficulty that the original offence is sometimes not discovered until it is too late for proceedings to be taken.

Clause 69. The powers of Section 56 of the Act of 1847 for the undertakers to repair cisterns, pipes, balls or stopcocks, so as to prevent waste, and to recover the cost from the persons responsible, are extended to all water fittings and to defects that may cause injury to person or property. The clause is based on Special Act provisions. In Sub-clause (2) provision is made for the recovery of expenses incurred by the undertakers on the repair, maintenance or renewal of supply pipes affording a common supply to more than one house. This also follows Special Act provisions.

Clause 70. Sub-clause (1) reproduces Section 58 of the Act of 1847, but a penalty not exceeding £5 has been substituted for the forfeit to the undertakers provided in the Section. Sub-clause (2) reproduces Section 59 of the Act of 1847 and 20 of the Act of 1863, but a penalty not exceeding £5, to correspond with penalties for similar offences, has been substituted for the maximum forfeit of £10 to the undertakers in the former section. Sub-clause (3) reproduces the first part of Section 18 of the Act of 1863: that section also provides that a consumer shall not use water supplied for non-domestic purposes for any other purposes. As the water would

normally be taken by meter, and the charge made would correspond with the quantity measured, this prohibition seems unnecessary, and has therefore been omitted.

Clause 71 follows Section 135 of the Act of 1936. There are no corresponding provisions in the Acts of 1847 and 1863, but similar powers are commonly allowed in Special Acts.

Clause 72. Section 60 of the Act of 1847 provides for a forfeit to the undertakers of a sum not exceeding £5, by any person breaking, damaging or opening apparatus belonging to them, illegally taking water from their works, or wilfully doing anything to cause waste of their water. The clause, which follows Special Act provisions, strengthens the undertakers' powers for preventing unauthorised interference with their works or supplies, and enables them also to recover the amount of any damage sustained. A fine not exceeding £5 has been substituted for the forfeit provided by the Act of 1847. It is made clear that the provisions do not apply to a consumer turning off or on a stopcock on his service pipe in case of emergency, e.g., if a house is temporarily unoccupied or repairs are required.

Clause 73 reproduces Section 19 of the Act of 1863, but it is provided that the provisions shall apply, in the case of a metered supply for trade purposes, only to the pipe between the main and the meter used by the undertakers for measuring the water supplied. Sub-clause (2) is also new. It is designed to meet the difficulty that the original offence is sometimes not discovered until it is too late to take proceedings.

Clauses 74 and 75 are new. Similar provisions are frequently allowed in Special Acts, but the restriction of the powers of Clause 74 to meters used for the measurement of water for the purposes of payment to the undertakers is new.

Part XIV—Pollution of water by manufacture, etc., of gas.

Clause 76 reproduces similar provisions in Sections 62 and 63 of the Act of 1847, but in accordance with the recommendation of the Committee in paragraph 15 of Part II of their First Report, the powers have been extended to the escape of washing or other liquid produced in making or supplying gas into the subsoil in proximity to any spring, well or adit of the water undertakers: it is made clear also that the provision applies to residual products of gas, some of which may cause serious pollution of water. We have substituted a maximum fine not exceeding £200 for the first offence and £20 for a continuing offence for the forfeit of similar sums to the undertakers in the Act of 1847; but we have provided that if proceedings are taken in a court of summary jurisdiction, the maximum penalty for the first offence shall be £50.

Clause 77 reproduces Section 64 of the Act of 1847, but fines not exceeding £20 for the first offence and £10 for a continuing offence have been substituted for the forfeits to the undertakers of similar amounts in the Act of 1847.

Clause 78 reproduces Sections 65 to 67 of the Act of 1847.

Part XV—Financial provisions applicable to water companies.

Clauses 79 to 81 are new, but are based on Special Act provisions. (See paragraph 34 of the Report.)

Clause 82 is new. Paragraphs (*a*) and (*b*) are based on Special Act provisions. Local authorities who are also water undertakers already have a general power to pay superannuation and other allowances to employees and to establish contributory schemes for the purpose. The power in paragraph (*c*) to give donations and subscriptions to charitable institutions,

sick and benevolent funds, and other objects for the benefit of employees is also based on Special Act provisions. It is suggested in paragraph (*d*) that undertakers should also be empowered to make contributions for furthering research into matters concerning their undertakings. This is new.

Clause 83 reproduces Section 83 of the Act of 1847, but has been redrafted to conform with the language used in modern Acts.

Part XVI—General and miscellaneous.

Clause 84 is new. The clause is based on Section 275 of the Act of 1936 and on similar powers commonly allowed in modern Special Acts. It is to the consumer's advantage that the undertakers should be empowered to carry out works in connection with the provision or repair of supply pipes if he so desires. The work is often done more efficiently and at less cost than would otherwise be the case.

Clause 85 is new. Similar powers are contained in Section 297 of the Act of 1933 in regard to extracts from lists of annual values prepared for the purposes of Income Tax under Schedule A.

Clause 86 is new. It follows Section 283 (1) of the Act of 1936.

Clause 87 is new. The clause is based on Section 284 of the Act of 1936.

Clause 88 is new. It is based on Section 286 of the Act of 1936, suitably amended to apply also to companies.

Clause 89 is new. The clause is based on Section 285 of the Act of 1936, with amendments to meet the requirements of water companies.

Clause 90 is new. Section 57 of the Act of 1847 empowers any authorised officer of the undertakers, to enter premises supplied between 9 a.m. and 4 p.m. to ascertain whether there is waste or misuse of water, and, if admission is refused, or there is obstruction, to turn off the water. Section 15 of the Act of 1863 provides a power of entry into any property to which water is supplied by measure for inspecting meters and other fittings, for ascertaining the quantity of water used and for removing any fittings which are the property of the undertakers, any person obstructing the authorised officer being liable to a penalty not exceeding £5; except with the consent of a justice or the sheriff, the power is to be exercised only between the hours of 10 a.m. and 4 p.m. Modern Special Acts have extended the period for entry for examination of meters to the period between 9 a.m. to 5 p.m. A special power is also frequently given for entry between 7 a.m. and sunset or 9 p.m. whichever is earlier, in order to examine whether there is waste or misuse of water, with power sometimes to withdraw the supply, or to exact a penalty if admission is refused or the authorised officer is obstructed in making the examination. We have recommended that there should be a general power of entry for any purposes of the undertaking, and that the provisions of Section 287 of the Act of 1936 should be adopted for the purpose. The right of entry at all reasonable hours so provided, with the fine not exceeding £5 for obstruction in Clause 91, is considered sufficient to meet the need for a special power of entry to detect waste or misuse of the water. We have recommended, therefore, that the power to cut off water if there is obstruction should not be continued. Section 287 of the Act of 1936 excludes factories and workshops from the requirement that entry shall not be demanded as of right unless 24 hours' notice of the intended entry is given to the occupier. It is considered that there are no grounds for distinguishing between such premises and other premises supplied with water, and the clause omits this distinction.

Clause 91 is new. It follows Section 288 of the Act of 1936.

Clauses 92 to 98 are new. They are based on similar provisions in the Act of 1936 and in Special Acts.

Clause 99 is new. We have followed the precedent of Section 303 of the Act of 1936.

Clause 100 is new. It follows Section 304 of the Act of 1936; similar provisions are commonly allowed in Special Acts.

Clause 101 embodies the similar provisions of Sections 6 and 12 of the Act of 1847 requiring the undertakers to make compensation in respect of lands or streams taken or used for the purposes of the undertaking and for all damage sustained by interested persons by reason of the exercise of the powers of the Special Act in relation to those lands and streams.

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