

To Public and please the
regulators

CODE OF
PRACTICE
ON MATTERS
RELATING
TO LAND



NRA

*National Rivers Authority
Wessex Region*

A code for use where the Authority are proposing to carry out flood defence works on privately owned land.

Although other functions of the Authority will have regard to the code, their operational responsibilities may mean that they have to act contrary to the provisions.



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SECTION 1 LAND ACQUISITION AND COMPENSATION

1.1 INTRODUCTION

- 1 Acquisition of the legal interest will be undertaken only where it is considered absolutely essential and can be fully justified.
- 2 Adequate tenure should be acquired of land on which new and permanent structures are built.
- 3 All assessments of compensation require professional appraisal and will be conducted under the control of the Authority's Estates Officer other than where special arrangements are made by the Authority.

1.2 PLANNING

- 1 It is most important that detailed planning is undertaken and that this includes minimising the diminution in value of the adjacent interests held in the same ownership.

1.3 ACQUISITION

- 1 Compulsory purchase procedures will be resorted to only when all attempts at reasonable negotiations have failed.

1.4 PRINCIPLES OF ACQUISITION

- 1 In acquisition by agreement, the same considerations and principles of negotiation will apply as in the compulsory purchase procedures. It must be remembered that an individual has a right of objection and sufficient time must be allowed in the preplanning for this right to be exercised. A minimum planned period of 12 months prior to entry is essential so that, if negotiations prove abortive, necessary compulsory procedure can be pursued.
- 2 Unless prior approval has been granted, no public advertisements in respect of specific land holdings shall appear regarding any scheme until approaches have been made to affected owners and occupiers to explain the works and open negotiations. Where advertisements in respect of environmental assessments are required, there will be no requirement to notify the affected owners/occupiers first.

1.5 ADVICE TO OWNERS AND OCCUPIERS

- 1 All owners and occupiers will be advised of their rights of compensation at a preliminary meeting and their right to instruct a professional firm to represent them in negotiations. All professional fees and charges properly and necessarily incurred will be paid by the Authority.
- 2 Should a dispute arise between the Authority and an owner or occupier affected by the proposed works over compensation, the Parties have a right to have the dispute determined by the Lands Tribunal or in some cases by a single Arbitrator appointed between the parties. Fees in respect of a Lands Tribunal Hearing or arbitration will be awarded by the Chairman of the Lands Tribunal or the appointed arbitrator.

1.6 BASIS OF COMPENSATION

- 1 Any claimant who suffers any loss or damage in value of his legal interest as a result of the Authority's activities and has a statutory right to claim, is entitled to be compensated fully for his loss and will be entitled to payment for any rights or interest acquired in his land.
- 2 In some cases betterment will have to be assessed in accordance with the statutory requirements.

PAYMENT OF COMPENSATION

- 1 When compensation payments have been agreed, they will be paid promptly and not later than 21 days after agreement, subject to paragraph 1.7.2 below.
- 2 In the case of grant-aided projects Government grant regulations may require that formal approval of the compensation is given before payment can be made.
- 3 Purchase monies in respect of land purchased will be paid on the agreed due dates; any delays in effecting completion will entitle the Vendor to an interest payment based upon the statutory rates of interest for Compulsory Purchase.
- 4 Wherever possible, an appraisal of the compensation should be made by the Authority before entry and, if claimed, the Authority will make payments on account to claimants as soon as possible after entry, in appropriate cases.
- 5 The Authority are not permitted to pay interest upon compensation payments, unless land has been purchased. This is by direction as a result of case law where the Lands Tribunal ruled that they had no express power to award interest in respect of any period prior to the date of their award, in respect of claims made under the provisions of the Land Drainage Act 1976.

SECTION 2 ENTRY BY NOTICE, AGREEMENT OR RIGHT

2.1**STATUTORY POWERS**

- 1 In order to fulfil its statutory functions, Parliament has conferred upon the Authority, under specific Acts, powers of entry including powers to execute works.
- 2 As a statutory Authority, the National Rivers Authority cannot and will not enter into any agreement to derogate or detract from its statutory powers; such an agreement would be void as being contrary to public policy.
- 3 Whenever and wherever possible the National Rivers Authority will seek to consult with owners and occupiers of land and to agree terms for land entry for the execution of the works in question. The Authority will however serve a Statutory Notice in all cases involving land entry in order to safeguard both the claimant and the Authority.
- 4 Excluded from such agreements (although prior notice will be given if reasonably practicable and possible so to do, to all owners and occupiers directly concerned) are operations arising from or attributable to:
 - A work of an emergency nature.
 - B sampling operations.
 - C works of a general maintenance nature.
 - D survey and investigations.

2.2**STATUTORY NOTICES**

- 1 All statutory notices issued by the Authority will be of a standard form and will conform in every particular to the requirements of the relevant statutes.
- 2 The notices will:
 - define the type of work to be undertaken and its purpose.
 - quantify working areas required if on private land and include a land plan. (see 2.4)
 - define the powers under which the Notice is given and the work undertaken.
- 3 All statutory notices will be sent by recorded delivery to the last known address or to the authorised agent.

2.3

AGREEMENTS

- 1 Agreements to enter and execute works will inter alia:
 - A Identify the owner and occupier of the land;
 - B Identify any legal interest in, over or under the land if those interests are likely to be subject to interference from the operations of the Authority;
 - C Define the type of work to be undertaken, and its purpose;
 - D Attempt to quantify the time of occupancy of the land for the purposes of executing works, including reinstatement periods;
 - E Define the reinstatement of works;
 - F Define the area of working space required and any access routes on the land together with points of access and egress in respect of plant, machinery and labour;
 - G Confirm the statutory right to compensation - provided a legal injury has been sustained as a result of the operations of the Authority;
 - H Identify the Authority's nominated Officer to whom all enquiries and/or complaints regarding the execution of the works should in the first instance be directed;
 - I Specify safeguards agreed with landowner or occupier.
- 2 Prior to entry for physical execution of the works, the occupier of land will receive a formal notice confirming the proposed entry and indicating the dates of the proposed entry.

2.4

LAND PLANS

Each owner or occupier of land will be supplied with a Land Plan, for works other than maintenance works, showing the position and extent of permitted works and the area, if any, required for working space or other temporary use. The Plan will indicate the points of access and egress.

2.5

RIGHTS AND OBLIGATIONS

Entry under statutory notice or entry by agreement will at all times be subject to the rights of the landowner and occupier as well as the rights conferred upon the Authority, in order to execute its functions for the good of the community.

2.6

WORKING SPACE

The Statutory notice or the agreement entered into between the Authority and the land owner or occupier of land will define the working space that is required by the Authority for the purposes of the physical execution of the works but there will be provision for amending the area of working space required after the contractor has been appointed and his working methods are known.

2.7

IDENTIFICATION OF EMPLOYEES AND THEIR AGENTS/CONTRACTORS

When on private land whether in pursuance of a Statutory Notice or not, employees will carry their Personal Identification Cards, which shall be deemed to convey powers of entry and inspection for the purposes of the Water Act 1989. When requested, an employee must produce for the owner or occupier, or an agent or servant of the owner or occupier, his official identification.

Where agents or contractors of the Authority are entering onto private land, they shall have with them a letter of authorisation duly signed by an officer of the Authority, and shall produce for inspection, such a letter upon request of the owner or occupier or his/her duly authorised agent or servant.

2.8

RECORD OF CONDITION OR PLIGHT

- 1 Before entry is made on private land, the Authority will prepare Records of Condition of the land including all known land drains, fences, gates, ditches, roads, etc, and where appropriate the schedules should be supported by photographs.
- 2 Agreement to the record will be sought with the owner and occupier or their agents and a copy given to them.

2.9

MAINTENANCE WORK

- 1 The provisions set out in the first two Sections relate mainly to works of a Capital nature, and will not necessarily be adopted in relation to work of a maintenance nature.
- 2 In many areas throughout the Region, maintenance work is carried out by means of custom and practice, and the cost implications of formalising procedures would, in many instances, not make the work cost effective.
- 3 Where the Authority are undertaking weed cutting, and access is required over the river bank, Notices will be published in the local press advising owners and occupiers of the work required, and the anticipated cutting dates. Where the weed is to be cut by launch, no formal Notice will be given.
- 4 Maintenance work involving dredging operations will only be carried out after Statutory Notice of entry has been served upon the owners/occupiers of the length of river bank affected. In carrying out maintenance dredging operations, the Authority will have regard to the provisions of Section 33 of the Land Drainage Act 1976, in that the only legal requirement is to dig and place spoil upon the river bank with reasonable care, without payment of compensation or legal responsibility to reinstate the land. By agreement with the owners/occupiers, arrangements can be made for the dredge material to be spread on the river bank.

SECTION

3 ACCESS

3.1

PERMANENT ACCESS

- 1 Access to structures owned and operated by the Authority will generally be in the form of properly made stoned tracks. However, if pedestrian access only is required or vehicular access is for a temporary period, the Authority may elect not to harden the access.
- 2 When land is acquired for new structures, adequate access rights will be acquired at the same time, unless statutory powers of access are available.
- 3 In the case of existing structures, where present access rights are inadequate, these will be remedied by acquiring access rights.

3.2

TEMPORARY ACCESS

- 1 Temporary access required in connection with the construction of works will be negotiated by the Estates Officer.
- 2 The Authority's Standard Conditions of Contract will notify Contractors that only those access routes arranged by the Authority shall be used subject to the proviso contained in sub paragraph 3.
- 3 The contractor shall not negotiate directly on any matter arising out of the contract or relating to the contract work with the owners or occupiers of land through which the works are being constructed. In the event of the contractor requiring further land or special access to the site, he should contact the Engineer's Representative with his requirements, and the Engineer shall decide if it is necessary for the carrying out of the works. If it is deemed necessary, the Employer shall negotiate directly with the owner or occupier concerned for the additional land. Where it is not deemed necessary but is allowable and the contractor undertakes to pay all claims or compensation whatsoever, which may arise from the obtaining of the additional land, the Employer will negotiate for such additional land.

SECTION 4 ACCOMMODATION WORKS

4.1 AGREEMENT ON ACCOMMODATION WORKS

- 1 The Authority will, when negotiating with an owner, occupier or their agent on entry, and on the basis of purchase valuation or compensation, agree a schedule of Accommodation Works to be executed by the Authority, and Accommodation Works will be limited to those thus agreed.
- 2 If there is a dispute on Accommodation Works, the parties concerned may refer the matter to arbitration.

4.2 DISCHARGE CERTIFICATE

- 1 On completion of work, the Resident Engineer shall obtain, if possible, a signed discharge from the owner and/or occupier or agent to certify that the Authority has satisfactorily complied with all requirements in respect of reinstatement and Accommodation Works as far as can be ascertained. Where no discharge certificate has been obtained the Estates Officer will subsequently call on the owner/occupier to discuss the quality of reinstatement. A report will be made of the outcome of those discussions and a copy of that report will be handed to the owner/occupier/agent. (See Form 7).

4.3 RESTRICTIONS

- 1 Under no circumstances will Accommodation works be carried out which can impose a continuing liability on the Authority.

SECTION 5 MATTERS OF GENERAL ESTATE MANAGEMENT

- 5.1 The Authority will at all times comply with local byelaws and the principles of good husbandry and sound estate management.

SECTION 6 COMPLIANCE WITH MINISTRY GRANT REGULATIONS

6.1 INTRODUCTION

- 1 Certain operations of the Authority are grant-aided by the Government and any land transaction or payments arising related to those operations are subject to regulations which must be complied with. The following paragraphs cover such operations.
- 2 Government Department approval must be received before any expenditure is incurred as otherwise grant will be withheld.

6.2 GRANT-AID REGULATIONS

- 1 Most land drainage capital works receive grant-aid under one of the following Acts:
 - 1.1 Section 90 of the Land Drainage Act 1976
 - 1.2 Section 37(4) of the Agriculture (Miscellaneous Provisions) Act 1968
 - 1.3 Section 89 of the Agriculture Act 1970
- 2 The current memorandum relating to grants issued by the Ministry of Agriculture, Fisheries and Food sets out the statutory conditions subject to which grants are made. Section v of the memorandum deals with land purchase and compensation and the requirements therein must be observed.

SECTION 7 STATUTORY CONSULTATIONS

7.1

INTRODUCTION

This section defines the areas where a statutory obligation is imposed upon the Authority to consult with or notify a Local Authority or Statutory Water Undertaker prior to the commencement of specific works.

The obligation to consult with fishery interests is defined in Section 9 of this chapter. The duty to consult or notify is classified under:

- A** A general duty applicable to more than one specific function;
- B** A specific duty related to an individual function.

7.2

GENERAL DUTIES

- 1** Planning Legislation: The General Development Order 1988 as amended by S.I. 1590 1989 prescribes the categories of 'permitted development' that may be undertaken without specific reference to a Planning Authority. Works outside of that Order require planning approval.
- 2** There is a General Duty to consult with the Nature Conservancy Council and other Conservation bodies who may have an interest on possible implications of the Authority's operations.
The Authority's Conservation Officer must be consulted on all schemes undertaken by the Authority.
The Authority have adopted guidelines in relation to conservation issues in carrying out drainage schemes, and the engineers designing the scheme must have due regard to these.
- 3** The Authority's Catchment Control Manager should be consulted on all works where there is likely to be an affect on the maintenance of water quality or the maintenance of flows.
- 4** Public Utilities: Constraints are placed upon the operations of the Authority with regard to work which, whether directly or indirectly, interferes or will interfere with the operations of or with the use of operational land of specific public utilities. These public utilities are:
 - British Rail
 - Dock and Harbour Boards
 - Navigation Authorities
 - The Airport Authorities
 - Electricity Companies, British Gas Corporation and the National Coal Board
 - Post Office
 - Statutory Water Undertakers
- 5** Crown and Duchy Lands: No works can be undertaken on lands in the possession of the Crown or on Duchy lands except by and with the consent of the appropriate authority. (See 12.8)

7.3

SPECIFIC DUTIES

- 1** In accordance with the provisions of the Water Act 1989 and more particularly the Code of Practice on conservation, access and recreation, there are duties imposed upon the Authority in relation to carrying out their functions.
- 2** There is a statutory requirement that the consent of the Secretary of State for Trade and Industry must be obtained prior to undertaking Flood Defence works in coastal waters; Coast Protection Act 1949.

SECTION 8 COURTESY CONSULTATIONS

8.1 INTRODUCTION

- 1 The previous section deals with statutory consultations i.e. where there are mandatory requirements imposed upon the Authority to consult with specific bodies over matters relating to the functions of the Authority.
- 2 The objective of this section is to emphasise the need to discuss in the fullest possible terms future operations of the Authority in order to minimise their impact upon interested parties and to facilitate the execution of the particular project.

8.2 INTERESTED PARTIES

Interested parties fall into two broad categories, namely public authorities and the general public.

8.3 PUBLIC AUTHORITIES

- 1 Apart from the requirements listed in the previous section, public authorities should always be advised of the possible impact of any particular operation and where necessary account should be taken of the views expressed by those public authorities.
- 2 Public authorities primarily affected by the works of the Authority are the Police, Fire and Ambulance Services, Armed Services Establishments, Parish Councils, County and District Councils, the National Health Service if works are being carried out within the vicinity of a hospital or near or adjacent to local surgeries, and Civil Defence (in extreme emergencies). District Nursing and Midwifery Services should also be advised (from the point of view of access to private residences) and Public Transport Authorities where works are being undertaken on bus routes.
- 3 The Divisional Veterinary Officer of the Ministry of Agriculture, Fisheries and Food should be consulted if there is any doubt about precautions necessary to minimise the risk of spreading animal (including poultry) disease. In the case of major works he should always be consulted to ascertain whether any particular disease restrictions apply to the area.

8.4 THE GENERAL PUBLIC

- 1 It is essential that whenever possible the general public, either directly or through trade or industrial organisations, professional bodies etc, should be advised of planned future operations of the Authority that may in any way whatsoever affect directly or indirectly the rights of the public.
- 2 Where works are to be constructed in a specific area and it is possible to identify the impact of those operations upon the inhabitants of that area or upon the peaceful enjoyment of that area (e.g. the right to access and passage) it is desirable to hold public meetings, before commencement of the Works, to which residents and other members of the public affected by the scheme are invited. The objective of such a meeting would be to explain the purpose of the scheme fully and obtain the co-operation of the general public.
- 3 In addition to public meetings, wherever possible, keep trade or industrial or professional bodies aware of possible repercussions consequent upon the operations. It is most important that particular regard be paid to the National Farmers' Union, the Country Landowners' Association, local branches or societies representing legal, surveying or related professions.
- 4 It is also important to pay due regard to the amenity and recreational facilities within their area of operations and to notify angling and sporting clubs, the Sports Council, The Ramblers' Association, The County Naturalists Trust, Local Architectural Groups, Amenity Groups and other such bodies of the possible impact of a scheme upon the sporting, recreational and leisure activities.
- 5 After the contract has been let it may be advantageous to have additional Public meetings at which representatives of the contractor will be invited to be present to answer specific questions in respect of the execution of the work.

- 6 Good presentation can assist a case considerably. The Public Relations Manager may be able to assist with exhibition material, slides, leaflets, information sheets etc and contacting the media to give publicity to meetings and obtain opportunities for interviews.

SECTION 9 CONSULTATION WITH FISHERY INTERESTS

9.1 INTRODUCTION

- 1 The objective of this section is to underline the necessity to have the fullest consultations with all interested parties prior to undertaking any works which may affect fishery interests.
- 2 For the purposes of definition, fishing interests, i.e the right to fish in a particular place, are defined into two separate groups:
 - A public fisheries, or the public right of fishery in the sea and tidal waters where not appropriated as a several fishery, and
 - B private fisheries, comprising several fisheries and common of fishery.
- 3 A common fishery is the right of the public to fish in tidal waters and common of fishery is the right of one or more persons to fish in common with the owner of a fishery. In view of possible confusion over terms that are frequently used in describing fisheries. A glossary is attached (9.7).

9.2 THE RIGHT TO FISH

- 1 The public are entitled as of right (by virtue of the provisions of Magna Carta) to fish on the high seas, foreshore, or in creeks, estuaries and tidal rivers. This absolute right does not prevail however where the right was lost or restricted by a Crown Grant prior to 1215; in such circumstances the Crown has the power to regrant private or restricted fishery rights;

Neil -v- Duke of Devonshire (1881)

Restrictions on this right have been imposed by particular Acts of Parliament or in accordance with conventions with foreign States as confirmed by Statute.
- 2 The public have no right per se to fish in non-tidal waters; the Courts have held that no right of fishing can be obtained by custom or presumption;

Wells -v- Hardy (1964)

The public may fish by licence or on the indulgence of the property owner. It is a privilege, not a right.
- 3 The right of public navigation on non-tidal rivers does not carry with it the right to fish;

Smith - v - Andrews (1891)
- 4 A fishery is the right to fish in defined waters; such a right may exist either apart from or as incident to the ownership of the soil over which the water flows. Where the soil under the water and the right to fish in the water are in the same ownership the fishery is known as a corporeal or territorial fishery; if the fishery is severed from the soil the fishing right becomes a profit a prendre in alieno solo and is classified as an incorporeal hereditament. It is important to note that a person may be the legal owner of a corporeal fishery although he may not own any adjacent land.

9.3 DEFINITION OF TIDAL AND NON-TIDAL WATERS

- 1 Tidal waters have been defined by Statutes in respect of functions other than fishing. There are numerous cases where Courts have had to make a determination in respect of any particular river or stretch of water thereon. In general terms it would appear that a river would be regarded as non-tidal and consequently the right of public fishing would cease at the point where the water is unaffected by the action of ordinary sea tides. The normal limit of ordinary tides is indicated on large scale ordnance survey maps.

9.4

LEGAL CONSTRAINTS

- 1 The Water Act 1973 (Section 18) specifically imposes a duty upon the Authority to maintain, improve and develop the salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries in the area for which it exercises functions under the Salmon and Freshwater Fisheries Acts 1923 to 1975. Section 18, however, imposes a duty upon each Authority to establish Advisory Committees of persons who appear to the Authority to be interested in such fisheries within its area and to consult such an Advisory Committee as to the manner in which the Authority is to discharge its statutory duties within the meaning of Section 18.
- 2 In addition to the requirements of the Water Act 1973, the Land Drainage Act 1976 and the Control of Pollution Act 1974 impose an obligation upon the Authority to pay due regard to fishery interests. The Authority cannot do any act which prejudices or contravenes the provisions of the Salmon and Freshwater Fisheries Act 1975 or any rights, powers or duties conferred or imposed thereby.

9.5

OPERATIONAL PROCEDURES

- 1 Fishery Officers are to be kept advised of any proposed works that might affect fishing interests. It is the responsibility of the Fishery Officers to ensure that the Local Fishery Advisory Committee is kept advised of the possible affect of the Authority's operations as they affect fisheries; to advise the Flood Defences Manager of such effects and to make suggestions for countering them when this is possible.
- 2 It is the responsibility of the Fisheries, Recreation and Conservation Manager on information from Fisheries Officers, to bring to the attention of the Regional Fishery Advisory Committee proposals and operations which will, or may, have important affects on fishing interests or which raise matters of principle on which guidance on policy is required.
- 3 Particular attention must be paid to applications for licences to abstract or consents to discharge and to land drainage and water conservation schemes which may have adverse effects on fisheries.
- 4 When it is intended to treat aquatic weeds with herbicides the requirements of the Code of Practice on the Use of Herbicides in Water (issued by the Authority) will be followed.

9.6

IDENTIFICATION OF INTERESTED PARTIES

- 1 Prior to commencing works, the Authority will identify all parties with a legal interest in fisheries. It is not necessary for the Authority to obtain a consent of persons having an incorporeal interest only in the water but not on the banks or the bed of the watercourse.
- 2 If, however, the interested parties are tenants under a lease which takes the form of a lease of the bed and the banks of the river with such ancillary rights as may be necessary to enable the tenant to enjoy the premises, then consent would be required prior to entry on to land to undertake the works. An exception to this would be where entry is as a result of a statutory right of entry.

9.7

GLOSSARY OF TERMS IN RESPECT OF FISHERY INTERESTS

1 PUBLIC FISHERIES

- 1.1 Common Fishery: the right of public fishing in tidal waters.

2 PRIVATE FISHERIES

- 2.1 Common of Fishery: where two or more persons share the same right of fishing.
- 2.2 Corporeal Fishery: where the same person owns the soil and the fishing rights. It may be either a several fishery or a common of fishery.
- 2.3 Exclusive Fishery: another term for several fishery.
- 2.4 Fishery in Gross: a right of fishing not attached to the ownership of any land.

- 2.5 Franchise Fishery : right granted to a Subject to take Royal fish. Royal fish are sturgeon, porpoise, dolphins, riggs, whales taken in territorial waters. The Crowns privilege does not extend to fish taken from waters where the Crowns' right has been relinquished; it is also doubtful whether the Royal privilege extends to non-tidal waters.
- 2.6 Incorporeal Fishery: where the fishing rights and the soil owned by different persons. The fishing rights are then a 'profit a Prendre'.
- 2.7 Royal Fishery: the right of the Crown to royal fish in territorial waters.
- 2.8 Several Fishery: a sole and exclusive right of a person to the fishing whether or not he owns the soil.
- 2.9 Sole Fishery: another term for several fishery.
- 2.10 Territorial Fishery: another term for corporeal fishery.

SECTION 10 PUBLIC RELATIONS

- 1 The Authority, like most public bodies, has very wide powers to enter on to people's land or to obtain rights over it and indeed their land drainage powers are considerably wider than those of some Local Authorities.
- 2 Running through this Code of Practice it is the principle that these powers should be used fairly and as sparingly as possible and this must be right not only on the grounds of principle but also because such a policy is invariably more effective in gaining the Public's confidence and achieving results which again can save time in carrying out schemes and therefore, particularly in these times of inflation, money.
- 3 The main points to be emphasised in the field of public relations relating to land entry are as follows:
 - I Most schemes which will inevitably take people's land or rights over it should in their very concept take account of the impact they will have on the property rights so that the scheme can in the final analysis be justified if it has to be put to the public test of an Inquiry. In a large scheme consultation should take place in the formative stages so that those affected can influence its outcome.
 - II Once 'firmed up' a scheme should be explained to those immediately affected as fully as possible. The 'referencing' must be carefully done so that no-one is left out and the personal touch, such as site meetings and personal visits, is always preferable to the long legal letter or indeed the short curt one. Above all one should never allow those affected to learn of a project through the Press or by rumour. If this happens they will be alienated from the start.
 - III Most people if convinced that the scheme is necessary and there is no practical alternative will be reasonable but all will want proper and prompt compensation for the rights they are yielding up. Valuation principles should therefore be fair and above all, when agreed, payment should be prompt. Nothing is worse than payment being delayed until long after they have been agreed.
 - IV To the landowner or occupier the man who calls at the door, the workmen carrying out the job by direct labour, or the contractor's men working on the site are the National Rivers Authority. Each one of them is therefore a Public Relations Officer and great care should be taken by personal instruction as well as by provisions in contracts etc, to make sure that they are all made aware of their responsibilities in this field.
 - V Whilst every effort should be made to acquire land or rights over it by negotiation there will always be those who will object and this is their right. Once compulsion becomes inevitable the action of the acquiring Authority should be firm and correct but not inhuman.

- 4 Press publicity concerning those at the receiving end of public works schemes is something instinctively avoided by the public official but it must be recognised -- that the Jack and Giant killer situation, the individual being crushed by the overwhelming powers of the public authority, always makes good copy.
- There is a growing practice for people who think they are aggrieved or threatened by a public authority to go to the Press or their local radio station before or even instead of, doing what one would think would be the obvious thing....getting in touch with the Authority itself. It is therefore important to contact the Public Relations Manager as early in the process as possible so that preparations can be made in good time to include Press, Radio and Television in any consultation procedures. This applies particularly to schemes which will affect the general public in addition to individual owners. The media are not always an irritant. They can have a positive role in communicating with people affected by emergencies where there is no time to go to the individuals affected.
- 5 The Public Relations Manager is always readily available to help and advise on all aspects associated with dealing with the media. The Watchwords for public relations in this as in other spheres of public authority activity are good planning, fairness, courtesy and the prompt carrying out of promises made in the course of negotiations. If these precepts are observed the Authority will come to be known as a fair and reasonable body and its overall efficiency will at the same time be enhanced.

SECTION 11 SOME GENERAL LEGAL PRINCIPLES

11.1 LAND ACQUISITION

- 1 A legal interest in land can be acquired either by agreement to purchase, or by 'prescriptive right' (ie by free and uninterrupted usage for a specified minimum period of time) or by gift or as a result of the Authority exercising compulsory powers.

11.2 PRESCRIPTIVE RIGHTS

- 1 It is possible to acquire a legal interest through the free and uninterrupted use for a given period of time, based on the legal maxim - 'nec vi nec clam nec precario' - ie the right must not have been acquired as a result of 'strength, stealth or entreaty'.

The minimum period of time in respect of possible prescriptive rights that can accrue is as follows:

- A Land:** A squatter's title to land can be acquired through at least 12 years free and uninterrupted use.
- B Natural Watercourse:** A right to the use of water without taking fish can be acquired after a minimum period of 20 years.
- C Easement:** The minimum period for acquiring an easement such as a right of way, is 20 years.
- D Fishing Rights:** The minimum period to acquire fishing rights is 30 years.

In order to acquire a right by prescription, it is necessary to establish inter alia, that the right was not a temporary arrangement, but was of a continuous nature and was not acquired by any form of licence or grant.

ACQUISITION BY AGREEMENT

- 1 The Water Act 1989 confers certain powers on the Authority and the general principle is that where these powers may be invited by compulsory purchase the power can also be conferred to acquire land by agreement or under the powers relating to compulsory purchase for the performance of the specific functions under this Act.
- 2 Section 145 of the Water Act 1989 provides that:
The Authority shall have power to do anything which in the opinion of the Authority is calculated to facilitate or is conducive or incidental to the carrying out of the Authority's functions. The insertion of this permissive power could prevent an action being successfully brought against the Authority to restrain the Authority from pursuing any particular course of action in respect of its functions on the grounds that such a course of action was ultra vires; but 'the power to do anything' must be related to the discharge of the 'functions' of the Authority'.
This permissive power is in essence a statutory recognition of the Common Law rule that a Public Corporation may do whatever is reasonably incidental to its functions, either expressed or implied;
Attorney General -v- Great Eastern Railway Company (1880).
It is important to recognise that the words 'incidental to' are not the same as or equivalent to 'in connection with'. In *Amalgamated Society of Railway Servants -v- Osborne* (1910) the Courts held that the words have a far narrower meaning.
The act, for which no direct or implied authority can be found by statute, must be reasonably incidental to the carrying into effect of a statutory purpose;
Attorney General -v- Manchester Corporation (1906) and;
Attorney General -v- Smethwick Corporation (1932).
- 3 The Authority may acquire Land by agreement in anticipation of requirements. Likewise the Authority may by agreement purchase land which is likely to be surplus to requirements; for instance at the date of purchase the areas to be used for the specific purpose of the acquisition may not have been delineated.
- 4 The purchase price is a matter of negotiation and settlement between the vendor and the Authority. If the expenditure incurred in buying the land or property or other legal-interest is to be grant-earning (for instance land drainage works) then the purchase must conform to the Grant Regulations and the purchase price must be approved by the Minister.

AGREEMENTS

- 1 Constitutional Law imposes certain constraints upon Agreements executed by the Authority. The Authority cannot enter into an agreement that would enlarge the powers granted to it by Statute; such an agreement would be ultra vires and would therefore be void although not necessarily illegal;
Ashbury Carriage and Iron Co -v- Riche (1875) and;
Rhyl Urban District Council -v- Rhyl Amusements Limited (1959).
Likewise the Authority cannot enter into any form of contract which would be incompatible with the due exercise of its powers or discharge of its duties or which divests or detracts from its statutory powers or which obliges the Authority not to exercise certain specific powers. Such an agreement would be ultra vires;
York Corporation -v- Henry Leatham & Sons Limited (1924) re Staines Urban District Council's Agreement.
Triggs -v- Staines Urban District Council (1968).

1 It is important to note a constraint which is placed on what may be termed 'the Management Powers' of the Authority.

Section 38 of the Statute provides that any works proposed or constructed under the Salmon and Freshwater Fisheries Act 1975 on, over or under tidal lands below high-water mark of ordinary spring tides shall be constructed only in accordance with such plans and sections and subject to such restrictions and regulations as the Secretary of State approves in writing before they are commenced.

Section 38 further provides that:

- i any alteration or extension of any such works shall be subject to the like approval;
- ii if any such work is commenced or completed contrary to this section, the Secretary of State may abate and remove it and restore its site to its former condition at the cost of the person who commenced or executed it, or (if he is not the owner of the work) of the owner, and the cost shall be summarily recoverable by the Secretary of State;
- iii the powers of the section are in addition to and not in derogation of any local Act.

SECTION 12 LEGAL PROVISIONS

12.1

ACQUISITION OF LAND BY COMPULSORY PURCHASE

1 The legal power to effect dealings in land are derived from Sections, 151, 155 and 156 of the Water Act 1989.

The relevant provisions may be summarised as follows:

- A The Authority may acquire by agreement land required for the performance of any of its functions.
 - B Compulsory acquisition powers are granted subject to the authorisation of the appropriate Minister - Section 151
 - C The power of acquisition shall be construed as including references to any interest in or right over land or as references to the land in or over which an interest or right is to be acquired as the context may require.
 - D Interests in or rights over land may be acquired by way of the creation of new interests or rights as well as interests or rights already in existence prior to the acquisition. Such interests or rights so acquired (whether by agreement or by compulsory acquisition) may be in perpetuity or for a term of years certain or so as to be terminable by notice.
- 2 The power of compulsory acquisition under Sections 151 cannot except with the consent of the appropriate Authority, be exercised in respect of Crown Land - Section 123 (2) The Water Resources Act 1963.

12.2

LAND DISPOSAL

The Authority may sell, exchange or let land vested in it which is not required for the performance of any of its functions but the consent of the Minister is required for disposal of land where the following circumstances apply:

- A where the original acquisition was by means of compulsory purchase or where the acquisitions were by agreement at a time when the Authority was authorised by, or under statutory provision to, acquire it by virtue of a compulsory purchase order - Section 152.
- B where the price consideration or rent in respect of the proposed disposal is less than the best price, best consideration or best rent (as the case may be) that could reasonably be obtained having regard to any restrictions or conditions (including conditions as to the payment) subject to which the land is sold, exchanged or let - Section 152.

- C where the original purchase of land was grant-aided; the grant regulations of the Ministry of Agriculture, Fisheries and Food require the consent of the Minister prior to disposal - Paragraph 27 of the Ministry's Memorandum dated April 1971.

12.3

GENERAL RESPONSIBILITIES

- 1 The general responsibilities of the Authority as applicable to statutory main rivers are defined in Section 17 of the Land Drainage Act 1976:
 - A to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work;
 - B to improve any existing works, that is to say, to deepen widen, straighten or otherwise improve any existing watercourse, or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
 - C to construct new works, that is to say, to make any new watercourses or drainage work or erect machinery or do any other act required for the drainage of the area.
- 2 The powers of the Authority are permissive. If the Authority fails to exercise its powers or exercises those powers honestly but ineffectively, the Authority is not liable for damage sustained by reason of the failure or partial failure to so exercise such powers;

East Suffolk Rivers Catchment Board -v- Kent (1941).

In the exercise of its discretionary powers, the Authority would be liable if it exercises its powers in such a matter as to add to the damage that a member of the public would have suffered if the Authority had done nothing;

East Suffolk Rivers Catchment Board -v- Kent (1941).
- 3 It is important to bear in mind the distinction between a permissive or discretionary power given to a statutory Authority and a statutory duty imposed upon that Authority.
- 4 In the leading case of *Geddis -v- Bann Reservoir Proprietors* (1878) the proprietors had a statutory duty to maintain a reservoir, which was fed by and discharged into a neighbouring reservoir, and also a power to cleanse the channel of the river. The proprietors failed to cleanse the channel, with the result that the plaintiff suffered damage from the overflow. The House of Lords held that in the exercise of the power, needless injury must be avoided and that as the defendants could by taking due care have prevented the overflow, they were liable to the plaintiff. For similar reasons a Drainage Authority has been held liable for failing to maintain an adequate drainage system to carry off flood water (*Hawthorn -v- Kennulick* 1906); the mere failure to enlarge an existing system to meet changing circumstances has been held not actionable as negligence - *Hesketh -v- Birmingham Corporation*.
- 5 Where however a statutory Authority elects to exercise its discretion and embarks upon the execution of a power, the duty owed to a member of the public is not thereby to add to the damage which that person would have suffered if the Authority had done nothing. Thus in *East Suffolk Catchment Board -v- Kent*, the Board had power to repair a sea wall but carried out the work so inefficiently that the flooding of the respondent's land continued for nearly six months whereas it would have lasted only for a fortnight if reasonable skill had been used. The House of Lords held that the damage suffered by the respondent was due to natural causes and that in the consequence thereof the Board was not liable; in coming to this decision the House of Lords pointed out that the numerous and widespread nature of the responsibilities placed upon the Catchment Board as well as their limited financial resources 'should lead to the application of a somewhat less exacting standard than ordinarily prevails'.

6 The East Suffolk case was distinguished in the later case of Dutton -v- Bognor Regis UDC (1972) where the Court of Appeal held that in the later case the Public Health Acts had imposed a duty upon the defendant Council, and that the damage would not have occurred but for the negligence of the defendant council.

7 If damage is caused as a result of work done in a negligent manner, an action in the tort of negligence would lie against the Authority. If the Authority acts within the scope of its powers conferred by Section 17, a riparian owner whose legal rights have been violated has no right of action per se against the Authority and cannot succeed in bringing an injunction against the Authority, in the absence of negligence;

Ash -v- Great Northern Railway Co (1903).

8 Section 179 (5) of the Water Act 1989 provides that it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of the exercise by the designated person of that power or of any power to take any person or equipment with him when entering the premises. In the case of dispute the matter shall be referred to the Lands Tribunal or arbitration of a single arbitrator.

9 Section 33 (1) of the Land Drainage Act 1976 provides that the Authority may, without making payment for it, appropriate and dispose of any matter removed in the course of the execution of any work for widening, deepening or dredging any watercourse.

Where works are carried out under this Section there is no obligation to pay compensation provided the works are undertaken with reasonable care and any matter is deposited by mechanical means in one operation.

12.4

COMMUTATION OF OBLIGATIONS TO REPAIR

1 Statutory duty is imposed upon the Authority to take steps for the commutation of obligations imposed on persons by reason of any tenure custom, prescription or otherwise, to do any work (whether by way of repair of banks, maintenance of watercourses or otherwise), in connection with main river. The duty to commute is subject to the decision of the Minister (of Agriculture, Fisheries and Food) in the case of objection by the person on whom the obligation is imposed (Section 26 Land Drainage Act 1976).

The obligation of commutation does not operate to release any riparian owner or occupier from his obligation to which he was subject before the passing of the Land Drainage Act 1976; indeed Section 18 provides the power for the Authority to serve a notice on a person liable to do work to ensure the maintenance of flow of watercourses; if the necessary work of rectification is not commenced within the stated period the Authority may execute the works and all expenses reasonably incurred may be recovered by way of a civil debt.

12.5

DEFENCE AGAINST SEA WATERS AND TIDAL WATERS

1 The authority has power to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water, and this power is exercisable anywhere in the authority's region; whether or not the works are in connection with a main river. (Land Drainage Act 1976 - Section 17)

12.6

PROVISIONS FOR SAFETY OF NAVIGATION

1 Part II of the Coast Protection Act 1949 contains provisions restricting certain types of works that could be detrimental to navigation. Except with the consent of the Secretary of State for Trade and Industry (as being the statutory successor in title to the Minister of Transport and the Board of Trade for the functions under the Act) the Authority cannot carry out any of the following operations:

A construct, alter or improve any works on, under or over any part of the seashore lying below high water mark of ordinary spring tides,

B deposit any object or any materials on any such part of the seashore as aforesaid, or,

- C remove any object or any materials from any part of the seashore lying below low water mark of ordinary spring tides,

So that obstruction or danger to navigation is caused or is likely to result in respect of coastal and tidal waters, referred to as the foreshore, the Fourth Schedule to the Act defines waters specifically excluded from the definition of sea and seashore.

If the Secretary of State is of the opinion that any operation in respect of such restricted waters will cause, or is likely to result in obstruction or danger to navigation, he may either refuse his consent or give consent subject to such conditions as he deems fit.

- 2 Certain particular operations are excepted from the restraints of Section 34 thereto; the exceptions include:
 - A the carrying out of any coast protection work approved by the Minister as mentioned in the next following sub-section;
 - B the carrying out of any dredging operations (including the deposit of dredged materials) authorised by any local Act in accordance with the provisions thereof;
 - C any work which a conservancy authority or a harbour authority is empowered to carry out for the removal of any vessel sunk or stranded or of anything causing or likely to cause obstruction or danger to navigation;
 - I the Act requires that if the approval of the Secretary of State is not previously obtained to the work other conditions must be complied with and
 - II the said approval has been so obtained or the said conditions are complied with.

12.7

POWERS OF ENTRY

The Water Act 1989 Section 147 provides that any person duly authorised in writing by the Authority may enter any premises or vessel for the purpose of:

- A ascertaining whether any provision of an enactment to which this Section applies, of any subordinate legislation or other Instrument made by virtue of any such enactment or any byelaws made by the Authority is being or has been contravened.
- B determining whether and if so in what manner, any power or duty conferred or imposed on the Authority by virtue of any enactment to which this Section applies should be exercised or, as the case may be performed.
- C exercising or performing any power or duty which is so conferred or imposed.

This Section applies to any enactment contained in Part III of the Act, and to any Sections of the Water Resources Act 1963 and the Land Drainage Act 1976, which have not been repealed, or any other enactment not contained in the Act under or for the purposes of which the Authority carries out functions.

2 The Water Act 1989 Section 178 provides that:

A Justice of the Peace may grant a warrant authorising an employee of the Authority to enter premises - if need be by force - provided certain criteria are fulfilled, namely:

- I an authorised person has been refused entry, or that such refusal is reasonably apprehended, or that the premises is unoccupied, or that the occupier is temporarily absent, or that application for admission would defeat the object of the entry, and
- II that there are reasonable grounds for entry upon the the land for the purpose for which such entry is required.

Except in an emergency entry to premises used for residential purposes and admission with heavy equipment on to any other premises cannot be demanded as of right unless 7 days notice in writing of the intended entry has been given to the occupier.

An 'emergency' is not defined by the Act but should relate to a physical state of conditions where there is imminent prospect of damage to property or loss of life.

— Providing that the formal notice has been served, it is a statutory offence for anyone to obstruct or impede an employee of this Authority in the lawful execution of his duties.

Section 179 of the Water Act 1989 states that 'it shall be the duty of the relevant Authority to make full compensation to any person who has sustained loss or damage' by reason of the exercises of the Authority's powers. Where works are carried out under the provisions of Section 33 of the Land Drainage Act 1976 the right to pay compensation is at the discretion of the Authority. Any dispute as to the quantum of the right to compensation shall be determined by either a single Arbitrator or where the power to carry out works is derived from the Land Drainage Act 1976 by reference to the Lands Tribunal.

12.8

CROWN LANDS

Under the provisions of Section 192 of the Water Act 1989 the powers given to the Authority are exercisable against Crown Lands subject to satisfying certain provisions. Where the works to be undertaken are derived from the Land Drainage Act 1976 no work shall be undertaken without prior agreement and the Authority cannot use their Compulsory Purchase Powers.

Section 266 (7) of the Town and Country Planning Act 1971 defines 'Crown lands' as follows:

Land in which there is a Crown interest or a Duchy interest; 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and for the purposes of this section and section 267 of this Act 'the appropriate Authority', in relation to any land:

- A** In the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;
- B** in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
- C** in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
- D** in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.