APPENDIX

SANITARY LAW

In the foregoing pages there have been many references already to the powers given by Parliament under which so great an improvement in the sanitation and living conditions of the people has been accomplished. While it is essential for an Inspector to possess a knowledge of the provisions of Sanitary Law sufficient to enable him to carry out his assigned duties, he should not forget that much, and often a greater, improvement can be effected without reference to the powers he may exercise. As a result of nearly a century's work the relationship between Sanitation and the Health of the people is now so well recognised that most persons are prepared to acknowledge the need of sanitary improvement and will not wilfully delay accomplishment of work towards this end. The untimely insistence on the requirements of the law is often likely to raise needless opposition from those whose help and co-operation might otherwise be secured. The role of the Sanitary Inspector should in the first instance always be that of a technical officer and adviser, and only later that of an administrative and executive officer.

Sanitary Law has become so voluminous that no one can trust to his memory on any of its details, and the aim of this Appendix is to indicate its scope so that reference can be made easily to sources of exact information. Much of the new legislation has originated in different Government departments: references and cross references are therefore more than usually numerous in the statutes and in the orders, regulations and circulars which follow; and those, together with the defective draftsmanship which is bound to arise in the breathless haste of the legislative machine, make the subject exceedingly complicated and difficult to understand. The Inspector must therefore, if in any doubt whatever, never hesitate to consult with the Medical Officer of Health or the legal adviser of his Authority before committing himself to a definite course of action.

Sanitary Law has its origin in Acts of Parliament which only other Acts of Parliament can alter. An Act of Parliament may apply to the whole country (e.g. Housing Act, 1936) or it may apply only to a part of the country (e.g. London Public Health Legislation), or it may apply only to a particular area as in the case of many local Acts promoted by Local Authorities and passed by Parliament. The practice of Parliament to pass adoptive Acts to become operative in certain areas after certain procedures have been taken has been
gradually dying out. Acts of Parliament frequently give power to a Minister of the Crown to make Orders or Regulations on certain matters and, provided these Orders or Regulations are properly made and are within the powers given to the Minister, they have the force of Law. Such Orders and Regulations may be altered by the Minister in the same way as they were originally made.

Acts of Parliament may give power to Local Authorities to make Byelaws on certain subjects, and such Byelaws, when properly made, have the force of Law within the area of the Local Authority. Byelaws (1) must not impose restrictions or duties not authorised by the Statute, that is, they must be within the powers given to the Local Authority by the Act; (2) must be certain in their terms so as to make it clear what is required to be done; (3) must not be repugnant to the general law; (4) must be reasonable; and (5) must have been made, following the exact procedure set out in Statutes.

Byelaws must be made under the common seal of the Authority, and be confirmed by the Ministry of Health. Notice of intention to apply for confirmation must have been given at least one month previously in a local newspaper, during which time a copy of the proposed Byelaws must be kept at the office of the Local Authority available for public inspection without payment, and the Local Authority must supply a copy on payment of 6d. per hundred words in the copy. The Minister may confirm, or refuse to confirm, any Byelaw, and may fix a date when it is to come into operation, and if no date is fixed, the Byelaws come into operation one month after the date of confirmation. Byelaws when confirmed, must be printed, and a copy deposited at the offices of the Authority for public inspection free, and a copy supplied on application on payment of a sum not exceeding one shilling. If no sums are stated as penalties for infringement in the Byelaws or in the Statutes under which they are made, the maximum penalties are five pounds on summary conviction and forty shillings for each day for an offence which continues (Local Government Act, 1933, Sections 250 and 251).

Local Authorities are also sometimes given power to make Regulations, which are less formal than Byelaws, and do not usually, unless they provide for a penalty in their breach, require confirmation by a confirming authority. Local Regulations are to be carefully distinguished from the Regulations mentioned above made by a Minister under powers given in an Act of Parliament.

The central body mostly concerned in the health activities of the country is the Ministry of Health, which took the place of the Local Government Board (Ministry of Health Act, 1919). The Home Office and Ministry of Labour, through the Factory Department, the Ministry of Agriculture and Fisheries, the Ministry of Food, and the
Board of Education, are interested in special departments of health work. For purposes of local administration, the whole country is divided into units independent of one another called administrative counties and county boroughs. The county boroughs, which are the great towns of the country, are not subdivided. The counties are divided into districts of two kinds, urban and rural. The urban sanitary districts may be either municipal boroughs (that is, non-county boroughs) or merely urban districts, but rural districts are only of one kind. The main functions of county councils are supervisory, and the Local Government Act, 1929, requires them to review, at ten-yearly intervals, the circumstances of the county districts and make proposals to the Minister as to any changes in their boundaries or status, and the Minister is empowered to make an Order, if he sees fit, to give effect to these proposals. London is generally treated by the Legislature as a special case, the London County Council functioning as a county council with certain sanitary powers for the whole area, and the Metropolitan Borough Councils, as borough councils. The Appendix will deal mainly with the sanitary law of England and Wales, London excepted.

Sanitary Legislation, for purposes of study, may be grouped into four classes, (a) Public Health generally, (b) Housing, (c) Food and (d) Miscellaneous matters. These groups are not well defined from one another, the first containing many matters dealt with specially in the others. In most Acts of Parliament there is what is termed an interpretation, or definition section or sections, which may be found at the beginning, often at the end, and occasionally, where the Act is divided in parts, in the part affected. These definitions are always important, and should not be neglected. Where no definition is found in any Act, it may be given in the previous Act of the same series, or it may be that no special definition, apart from the well recognised ordinary English meaning of the word, is necessary.

(a) PUBLIC HEALTH

THE PUBLIC HEALTH ACT, 1936

This Act consolidated those general enactments relating to the Public Health of most interest to the Inspector, and the references here are made to it, unless otherwise stated.

Local Administration

The Local Authorities under the Act are the councils of boroughs (including county boroughs) or urban districts or of rural districts. The county council is not a Local Authority but is, nevertheless, concerned in the manner of the administration of the Act in its area; the parish council has still a few remaining health functions.
The Minister of Health may, by order, constitute a Port Health Authority, defining its district, functions and duties, when the Local Authority ceases to exercise the specified functions in that part of its district which is part of the Port. Further, the Minister may, by order, unite districts or parts of districts, to discharge through a Joint Board for the united district, any specified functions under the Act, which then cease to be exercised by the Local Authority in the area concerned, unless the Minister authorises concurrent administration, or special agreements are made with the Minister's approval. The Minister, with the consent of the councils concerned may, by order, set up a Joint Board representing councils of counties and county boroughs, to discharge certain specified functions, but here concurrent administration is permitted.

On the other hand, an urban authority may divide their district into parts for all, or any, of the purposes of the Act, and a rural authority may, with the Minister's approval, constitute any part of their district a special purpose area for sewerage, sewage disposal, water supply or other works. The Minister, on application made by the council of a rural district, a parish or a county, or by a number of electors, may invest a rural district council with specified urban powers to operate in the whole district, or in a specified part of it known as the "contributory place." (Sections 1 to 10.)

Definitions

"Authorised Officer," as regards matters in their particular provinces, includes the Medical Officer of Health, Surveyor and Sanitary Inspector and means an officer authorised in writing by the Council.

"Owner" means the person receiving, or if not let, the person who would receive, the rack rent of the premises, whether on his own account, or as agent or trustee for some other person. (Compare this with the definition under the Housing Act, page 243.)

"Rack Rent" means rent not less than two-thirds full net annual value of the property; hence an owner receiving a nominal rent is not the owner under this Act.

"House" means a dwelling house, private or otherwise. "Building" is not defined, but it is held to mean a building of any type, while "Premises" is the most general term of all covering both buildings and land (Section 343). Note, however, that for the purposes of sanitation and building byelaws, the "erection of a building" means also (i) the re-erection of any part where an outer wall is pulled or burnt down to within ten feet of the surface of the ground adjoining, (ii) the re-erection in the case of a frame building where only the framework of the lowest storey stands after pulling
down or burning down, and (iii) the roofing over of an open space between walls of buildings (Section 90 (2)).

"Drain" means a drain used for the drainage of one building, or of any buildings or yards appurtenant to buildings within the same curtilage. "Sewer" does not include a drain as defined, but includes all sewers and drains used for the drainage of buildings and yards appurtenant thereto. "Public sewers" are sewers vested in the Local Authority, except private sewers of property belonging to the Authority. "Private sewers" are all other kinds of sewer. "Street" includes roads, lanes, footpaths, squares, courts, alleys or passages, whether thoroughfares or not. "Dustbin" means a movable receptacle for the deposit of ashes or refuse. "Workplace" does not include a factory or workshop, but includes any place in which persons are employed otherwise than in domestic service (Section 343).

"Sanitary Conveniences" means closets and urinals; a "closet" includes a privy; an "earth closet" has a movable receptacle and a means of deodourisation with earth, ashes or chemical material or otherwise, while a "water closet" has a separate fixed receptacle connected to the drainage system and separate provision for flushing by clean water by mechanical or automatic action. (Note that waste water closets are now no longer regarded as water closets.) "Cesspool" includes a settlement tank. "Vermin" includes the eggs, pupae and larvae of insects and parasites (Section 90 (1)). "Prejudicial to Health" means injurious, or likely to cause injury to health (Section 343).

Drains and Sewers

It is the duty of every Local Authority to provide such public sewers as may be necessary for effectively draining their district and to make provision, by means of sewage disposal works or otherwise, for dealing with the contents of their sewers (Section 14). The following are public sewers vested in the Local Authority:—Sewers so vested before the commencement of the Act and combined drains which would have been vested in the Local Authority but for the provisions of a special enactment or scheme or order; sewers constructed or acquired by the Local Authority, or constructed to their satisfaction, under any enactment relating to the sewerage of private streets, and sewers with respect to which a vesting declaration has been made (Section 20). Sewers of Corporation property, e.g. housing estates, do not become public sewers, however, until so declared by the Authority. Sewers completed after the commencement of the Act may be vested in the Local Authority by declaration, and an owner of such a sewer may make application to the Local Authority requesting them to make such a declaration; in either case there is
an appeal to the Minister of Health. The chief considerations which weigh in the matter of whether a sewer should be taken over or not are (a) adaptability to general sewerage system of the Authority, (b) number of buildings the sewer might serve, (c) the state of repair of the sewer, and (d) its position, e.g. under a street or proposed street or highway. Special provision is made where a sewer of one Local Authority is in the area of another (Section 17). A Local Authority can agree with an owner proposing to construct a sewer, to take it over when completed (Section 18) and such an owner, without agreement, may be required to construct the sewer in such a manner as to form a suitable part of the general sewerage system of the area, but in this case the Authority must repay the extra expenses reasonably incurred by the requirements, both in construction and maintenance (Section 19).

Mutual agreements may be made between county councils and Local Authorities as to the use of highway drains and sewers (Section 21) and a Local Authority has power to alter public sewers or close them where an equally effective sewer is provided, the work of re-connecting drains and sewers being carried out at the expense of the Authority (Section 22).

It is the general duty of a Local Authority to maintain, cleanse and empty all public sewers (Section 23) but in two cases, the Local Authority has a right to recover in whole or in part, the expenses incurred in maintaining a length of public sewer. These cases are (a) a length for which before the commencement of the Act owners of property were responsible for maintenance by virtue of an order made under some enactment relating to combined drains, or by an agreement made between the owners and the Authority, and (b) a length not constructed at the expense of the Authority lying in private land or under any building belonging to any of the premises served, or common to any two of them, or lying in any roadway, footpath, passage or alley, not a highway, and affording access to the premises (Section 24). Before the Act of 1936, where two or more houses belonging to different owners were connected with a public sewer by a single private drain, the maintenance of this combined drain, though technically a sewer, could be made the responsibility of the different owners served by it. The new Act of 1936, therefore, continues to make such owners responsible for the maintenance of such lengths of public sewers. Unless the matter is urgent, the Local Authority must give seven days' notice of the work they propose to do, to the owners of the houses served by these lengths of sewers, and consider any representations made by them on the matter. Maintenance here, means repair, renewal and such improvement as is necessary to make the length of sewer adequate.
for draining the original premises served by it. If, however, the Local Authority improve or enlarge the sewer so as to make it suitable for serving other premises, then only such a proportion of the expenses can be recovered from the owners as was reasonably necessary for the owners’ purposes, and the length of sewer so enlarged or improved, ceases to be maintainable at the owners’ expense. A right of appeal to a Court of Summary Jurisdiction is given to owners on any question arising as to the applicability of the procedure to the length of sewer, the necessity of the work, and the reasonableness of the apportionment of the expenses (Section 24). Buildings must not be erected over sewers or drains without the consent of the Local Authority, who may impose conditions in their consent (Section 25).

A Local Authority is required to afford facilities to manufacturers to drain their factories into a public sewer, but not into a public sewer carrying surface water only, and not into a sewer, if the liquid from the factory will prejudicially affect the sewer or the system of the sewage disposal, or would cause a nuisance by temperature or otherwise, and not in any case where the sewers are only sufficient for the requirements of the district (Section 26). It is illegal to throw or pass into, or permit, or suffer to be thrown or passed into any public sewer or drain communicating with it (a) any matter likely to injure the sewer, or interfere with the free flow of sewage, or (b) any chemical refuse or waste steam or any liquid above 110°F. or a liquid when so heated either alone or in combination with the sewage which is dangerous or a nuisance prejudicial to health, or (c) any petroleum spirit or carbide of calcium. Petroleum spirit here means crude petroleum or oil or a mixture containing petroleum and giving off an inflammable vapour at 73°F. (Section 27). A Local Authority must not create a nuisance with its sewers or sewage disposal works (Section 31); it must not convey foul water into streams, canals, ponds, or water courses before such foul water is treated and purified (Section 30). It must keep a map of its sewers which shall be available for inspection free at all reasonable hours, but only sewers vested or to be vested in the Authority since the commencement of the Act and those sewers vested before this which were reserved for foul water only, or surface water only, need be shown on it (Section 32). An Authority may, by agreement, cause its sewers to communicate or discharge into sewers or sewage disposal works of another Authority (Section 29).

The owner or occupier of any premises in the district has a right to cause his drains or sewer to be made to communicate with the public sewer of the Authority. If the owner desires his drains to be so connected, he must give the Authority notice, and the Authority may by notice within 21 days, refuse to allow the junction because
of the mode of construction or condition of the drain or sewer, and in order to satisfy themselves on this, they may require the drain to be laid open. The Authority may give notice that they will make the junction themselves, but it is then not obligatory upon them to make the communication until the estimated cost of the work, including the breaking open of a street, if necessary, has been paid to them, or security given (Section 36). Otherwise, the person making the junction must give the Local Authority reasonable notice so that the work may be inspected in progress (Section 34 (4)). Note that this right to join up with public sewers does not extend (a) so as to permit manufacturing effluents entering the sewer (already referred to) or other liquids otherwise prohibited, (b) so as to permit foul water entering a surface water sewer, or surface water entering a foul water sewer, and (c) so as to permit any junction with a storm-water over-flow sewer (Section 34).

The owner or occupier of premises outside the district has a similar right to drain into the sewers of an Authority, but the Authority here has power in addition to demand a reasonable periodical contribution towards the expenses of their drainage system, and this contribution may be made by the Local Authority of the outside district (Section 35).

The Local Authority must reject a plan of any new buildings, or building extension, if they are not satisfied with the provision made for the drainage, which expression includes the conveyance by means of a sink and any other necessary appliance of refuse water, and the conveyance of rain water from roofs (Section 37 (1)). A drain is not to be deemed satisfactory unless it connects with a sewer or cesspool or some other place as the Local Authority require, provided that a drain shall not be required to join a sewer unless that sewer is within one hundred feet of the site of the building or its extension, and at a reasonable level, and the intervening land is land through which the person constructing has a right of drainage. The Authority may undertake to bear the cost of a drain from the sewer to within 100 feet of the building, and require a connection to be made to this drain which, of course, is maintained by the Authority (Section 37 (3) and (4)). As an alternative to making each owner connect each building with a sewer, the Authority may require two or more buildings to be drained in combination to an existing sewer by means of a private sewer to be constructed either by the Local Authority on behalf of the owners, or by the owners according to the Authority's directions. This can only be done when it is more economical or advantageous to do so, and cannot be done for buildings, the plans of which are already passed, unless the owners consent. The Local Authority must make apportionment of expenses in constructing,
maintaining and repairing this private sewer between the different owners, subject to an appeal to a Court of Summary Jurisdiction. This private sewer remains a private sewer despite the fact that it may have been constructed by, or partly paid for by, the Local Authority (Section 38).

In existing buildings, if it appears to the Local Authority that (a) the provision of drainage as defined in Section 37 (1) (see above) is unsatisfactory, or (b) any cesspool, private sewer, drain, soil pipe, rain water pipe, spout, sink or other necessary appliance, is insufficient, or a private sewer or drain communicating directly or indirectly with a public sewer is so defective as to admit sub-soil water, or (c) any cesspool, work or appliance as aforesaid is in such a condition as to be prejudicial to health or a nuisance, or (d) any cesspool, private sewer or drain no longer in use as such is prejudicial to health or a nuisance, the Local Authority may by notice require the owner to do such work as will make the condition satisfactory. Here again, the Local Authority cannot compel an owner to join a sewer more than 100 feet away from the site or at an unreasonable level, or carry a drain through another owner's land (Section 39). If it appears to the Local Authority that a rain water pipe is used for carrying sewage, a surface water pipe is used as a ventilating shaft to a foul water drain or sewer, or a soil pipe from a water closet is not properly ventilated, then the Local Authority may by notice require the owner or occupier to execute such work as may be necessary to remedy the matter (Section 40). In urban districts or rural districts and contributory places invested with special powers, 24 hours' notice must be given to the Local Authority by any person proposing to repair, re-construct or alter the course of any drain which communicates with a sewer, cesspool or other receptacle for drainage, except in a case of emergency, when any work done to the drain or sewer must not be covered over without giving 24 hours' notice to the Authority. The penalty for non-compliance is £5. The surveyor or sanitary inspector must have free access to the work for inspection purposes (Section 41).

A Local Authority may, at their own expense, alter a private drainage system connected to a public sewer or cesspool which is not adapted to the general sewerage system of the district or otherwise objectionable, but they must provide an equally effective arrangement communicating with a public sewer (Section 41).

Sanitary Conveniences

The Local Authority shall reject the plans of any new buildings or extensions to existing buildings which do not show such sufficient and satisfactory closet accommodation, consisting of water closets or
earth closets, as the Authority decide to be necessary, but unless a sufficient water supply and sewer is available, they may only require earth closets. If the plans are for buildings likely to be used as factories or workshops employing persons of both sexes, the Authority shall require sufficient and satisfactory separate accommodation to be provided for each sex, unless the Authority is otherwise satisfied (Section 43). In existing buildings, a Local Authority may require that any buildings without sufficient closet accommodation or with any closets in such a structural state as to be prejudicial to health or a nuisance, should have such additional closets, or such reconstruction of the closets, as the Authority may deem necessary, provided that the Authority shall not require a substitution of a water closet for an earth closet, unless a sufficient water supply and sewer are available (Section 44). This does not apply to shops, which are dealt with under the Shops Act, 1934 (see p. 290), nor to factories which are dealt with under Section 7 of the Factories Act, 1937 (see p. 285). In workplaces which are not factories in areas in which the Public Health Acts Amendment Act, 1890, applied, the matter is now governed by Section 46 of the Public Health Act, 1936, which requires sufficient and satisfactory accommodation to be provided, regard being had to the number employed, with proper separate accommodation for each sex, and if it appears to the Authority that this is not done, the Authority by notice shall require such alteration and additions as may be necessary. It will be noticed that no numerical standard is here required, the word used being "sufficient," but in practice the standard of the Sanitary Accommodation Regulations is usually regarded as sufficient.

If any building has a sufficient water supply and sewer available, the Local Authority may require any closets other than water closets to be replaced by water closets, notwithstanding the fact that the existing closets are sufficient in number, not a nuisance, or prejudicial to health. The Local Authority may require that the work be done by themselves or by the owner. In any case the owner is responsible for only half of the reasonable cost of such conversion and any notice requiring such a conversion must state this fact. If, without a notice, an owner makes such a conversion, the Local Authority may, if they think fit, pay an amount not exceeding half the reasonable cost of conversion (Section 47). If it appears to a Local Authority that any closets are prejudicial to health or a nuisance, but not structurally bad, the Authority may require the owner, or occupier, to take such steps, by cleansing or otherwise, as may be necessary. This does not apply to shops or factories (Section 45).

When there are reasonable grounds for believing that a sanitary convenience, drain, private sewer, or cesspool, is prejudicial to health
or a nuisance, or that a drain or private sewer communicating directly, or indirectly, with a public sewer, is so defective as to admit sub-soil water, a Local Authority may examine its condition and apply any test, other than a pressure test, and if necessary, open the ground, which must be reinstated and damage made good if the drains, etc., are in proper condition (Section 48).

Rooms, in whole or part, immediately over any closet other than a water closet or earth closet, or over a cesspool, midden or ashpit, shall not be occupied as living, sleeping or workrooms (Section 49). If a cesspool is allowed to overflow or leak, the Local Authority may, by notice, require the person in default to take steps by periodical emptying, or otherwise, to prevent it, but this does not apply to a properly constructed tank for sewage treatment with a satisfactory effluent, satisfactorily disposed of (Section 50). Water closets must be kept by the occupier with the flushing apparatus properly supplied with water, and earth closets with a sufficient supply of earth or other suitable deodorant (Section 51).

When sanitary conveniences are used in common by two or more families, it is illegal to injure or foul improperly the convenience, or anything in connection therewith, or willfully or negligently to cause an obstruction in the drain. If the convenience, or the approach thereto, is uncleanly or in want of attention, or insanitary, the person in default, or, in his absence, each of the tenants using the convenience in common, is liable to a fine (Section 52).

Note that the Public Health Act, 1936, does not permit privies or slop water closets to be repaired or substituted for existing ones, and only recognises water closets or earth closets as suitable for the purpose.