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## SCHEDULE

### CITY OF EDINBURGH DISTRICT COUNCIL

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### SCHEDULE — Enactments repealed

*Provisional Order to repeal and re-enact with amendments certain local statutory provisions in force within the City of Edinburgh District; to confer further powers on the City of Edinburgh District Council; and for other purposes.*

Whereas by virtue of section 2 of the Local Government (Scotland) Act 1973 (hereinafter referred to as “the Act of 1973”) the City of Edinburgh District Council (hereinafter referred to as “the Council”) are vested with all the functions of a district council for the area of the City of Edinburgh District as the said area is described in column 3 of Part III of Schedule 1 to the Act of 1973:

And whereas in pursuance of the Act of 1973 certain powers and functions which, before the coming into force of the said Act, were exercisable by and vested in the former corporation of the city and royal burgh of Edinburgh by virtue of the Edinburgh Corporation Order 1958 and the Edinburgh Corporation Orders 1967 to 1973 (hereinafter referred to as “the Order of 1958 and the Orders of 1967 to 1973”) are now exercisable by and vested in the Council:

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And whereas in pursuance of section 225 of the Act of 1973 and Orders made thereunder the provisions of the Order of 1958 and the Orders of 1967 to 1973 would cease to have effect to the extent therein specified at the end of 1991:

And whereas for the good government of the citizens of Edinburgh and of persons resorting thereto it is expedient that certain provisions of the Orders of 1967 to 1973 should be re-enacted with amendments and applied to the City of Edinburgh District:

And whereas it is expedient that the other provisions of this Order should be enacted:

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the said Act of 1936 the Secretary of State orders as follows:—

## PART I

### PRELIMINARY

#### Short title

- 1 This Order may be cited as the City of Edinburgh District Council Order 1991.

#### Interpretation

- 2 In this Order the following words and expressions have the meanings hereby respectively assigned to them that is to say:—

“Act of 1963” means the Offices, Shops and Railway Premises Act 1963;

“Act of 1972” means the Town and Country Planning (Scotland) Act 1972;

“Act of 1973” means the Local Government (Scotland) Act 1973;

“Act of 1982” means the Civic Government (Scotland) Act 1982;

“building” has the same meaning as in the Building (Scotland) Act 1959;

“Council” means the City of Edinburgh District Council;

“common stair” means any stair or passage in a building leading to parts thereof separately occupied;

“courts” where by the context it applies to a space contiguous to buildings means a court or recess or area forming a common access to premises separately occupied, including any common passage or entrance there;

“district” means the City of Edinburgh District;

“drainage system” in relation to a building means the system of pipes and drains used for the drainage of the building including all other fittings, appliances and equipment so used but excluding subsoil water drains;

“dwelling-house” and “house” means a house used or constructed or adapted to be used, wholly or principally, for human habitation;

“enactment” includes an enactment contained in an order, regulation or other instrument having effect by virtue of an Act of Parliament;

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“factory” has the meaning assigned to it by section 175 of the Factories Act 1961;

“former corporation” means the former corporation of the former city and royal burgh of Edinburgh;

“general reserve fund” means the fund maintained by the Council in pursuance of section 36 (General reserve fund) of this Order;

“hotel” means an hotel as defined by section 139 of the Licensing (Scotland) Act 1976;

“notice” means a notice in writing;

“occupier” means the actual occupier or tenant or sub-tenant;

“operational land”, in relation to any statutory undertakers, has the meaning assigned to it by section 211 of the Act of 1972;

“owner”, in relation to any land or building, includes joint owner, fiar, liferenter, feuar, bondholder in possession or other person in actual possession of, or entitled to receive the rents of, such land or building, and the factor, agent or commissioner of such persons or any of them, and any other person who shall intromit with, or draw, the rents of such land or building;

“premises” includes any building, shed, tent, garden, shrubbery, yard, court, close and houseboat;

“proper officer” has the same meaning as in the Act of 1973;

“public building” means any building used or intended to be used as a place of public meeting, or as a place of public entertainment, or for holding large numbers of persons for any purpose whatsoever;

“reasonably practicable” means reasonably practicable in all the circumstances, including, in any case where works are involved, the expense of executing the works;

“repealed Acts” means the provisions of the Acts and Orders specified in the Schedule to this Order;

“road” has the same meaning as in the Roads (Scotland) Act 1984;

“sheriff” means the sheriff principal of the sheriffdom of Lothian and Borders and includes any sheriff of the Edinburgh sheriff court district;

“Sheriff Courts Acts” means the Sheriff Courts (Scotland) Acts 1907 and 1971;

“soil appliance” means a sanitary appliance for the collection and discharge of excreted matter;

“statutory undertakers” has the same meaning as in the Act of 1972;

“tenement” means a building constructed in flats or storeys and containing two or more dwelling-houses in separate occupation;

“waste appliance” means an appliance for the collection and discharge of water arising from ablutionary, culinary and other non-industrial purposes.

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## PART II

### GENERAL ADMINISTRATION

#### Execution of deeds by Council

- 3 (1) A deed to which the Council are a party shall be validly executed on their behalf if it is signed by a member of the Council and by the proper officer without the necessity of—
- (a) being sealed with the common seal; or
  - (b) the signatures being attested by witnesses.
- (2) Any plan, appendix, schedule or other annexation to a deed to which the Council are a party need only be signed on behalf of the Council by the proper officer.

## PART III

### LIBRARIES AND MUSEUMS

#### Definitions for Part III

- 4 In this Part of this Order—
- “article” includes—
- (a) any book, periodical or other literature;
  - (b) any picture, engraving, map, photograph, film strip, lantern slide, microfilm, machine-readable format or computer software;
  - (c) any gramophone, tape, video or any other form of sound or visual record;
  - (d) any other article appropriate to the libraries in the city; and
- “libraries” includes reading rooms, meeting rooms and mobile libraries.

#### Persons entitled to borrow articles

- 5 Notwithstanding anything in the Act of 1973 the persons who shall be entitled subject to the provisions of this Order to borrow any article (other than an article designated by the Council for reference only) in any of the libraries provided by the Council shall be persons who are registered as members of such libraries and who—
- (a) reside in the district; or
  - (b) reside outwith the district but who are employed in the district or are attending a university, college, central institution or school in the district:

Provided that the Council may lend any of such articles to any other person subject to such conditions as they may prescribe.

#### Charges, etc., in connection with certain articles reserved at, or borrowed from, libraries

- 6 The Council may—
- (a) require any person to whom any article, other than a book or periodical, is lent to deposit with them such sum as they may prescribe as security for the safe return of such article;
  - (b) make a charge for notifying a person that an article reserved by him has become available for borrowing; and

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- (c) charge for the borrowing of any article (other than a book or periodical) or the provision of any service which may from time to time be provided at the libraries in the district.

#### **Additional powers in relation to museums**

- 7 The Council may, in connection with their statutory power to provide museums—
- (a) lend any objects in the Council’s museum to any gallery, museum or exhibition; and
  - (b) do such other things as they consider expedient for furthering the utility of, and interest in, the Council’s museums.

### **PART IV**

#### **CEMETERIES AND CREMATORIA**

#### **Definitions for Part IV**

- 8 In this Part of this Order—
- “cemetery” includes a burial ground or any other place for the interment of the dead;
  - “Commission” means the Commonwealth War Graves Commission;
  - “Commonwealth war burial” means a burial of any officer, rating or other rank of the naval, military or air forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or any other person accepted by the Commission as falling within the terms of its founding royal charters;
  - “Commonwealth war grave” means any grave containing a Commonwealth war burial;
  - “grave” includes grave space;
  - “lair-holder” means a person for the time being having the exclusive right of burial in a grave and, where such right of burial has been exhausted, means the next of kin or the personal representative of the person whose remains were last interred in such grave;
  - “monument” includes a headstone, tombstone, memorial tablet, panel or plaque; and
  - “railing” includes any kerbstone, chain, wall or other material marking or enclosing a grave or a monument.

#### **Restrictions on interments except in cemeteries**

- 9 (1) A person shall not, without the consent of the Council, inter or deposit any human remains (other than the ashes of a body which has been cremated) in any place other than a cemetery.
- (2) Any person acting in contravention of the preceding subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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### **Extension of power to maintain cemeteries**

- 10 (1) The powers of the Council in relation to any cemetery vested in or administered by them shall include power— Extensions of power to maintain cemeteries.
- (a) to level any grave therein; and
  - (b) to remove the whole or part of—
    - (i) any monument which in their opinion is in an unsound or dilapidated condition; and
    - (ii) any railing; and
  - (c) to maintain any grave or monument.
- (2) (a) At least one month before exercising any of the powers conferred by paragraph (a) or (b) of the preceding subsection the Council shall give notice of their intention—
- (i) to the lair-holder of any grave affected by the proposals (unless that person cannot be found);
  - (ii) where a church is situated within the cemetery, to the authorities of that church; and
  - (iii) to the Commission.
- (b) If any monument or railing to which such proposal relates is in such a condition that, in the opinion of the Council, it constitutes an imminent danger to persons resorting to the cemetery it shall not be necessary for them to give such notice, but in that case they shall, as soon as possible after the exercise by them of the power conferred by the preceding subsection, give notice of such exercise to the persons and bodies referred to in the preceding paragraph.
- (3) A notice given under paragraph (a) of the preceding subsection shall—
- (a) contain brief particulars of the Council’s proposals and, if necessary, specify an address at which full particulars of the proposals can be obtained;
  - (b) state the effect of subsection (5) of this section; and
  - (c) be deemed to have been properly addressed to any person if it is sent to such person by letter addressed to his last known address.
- (4) The powers conferred by subsection (1) of this section shall not be exercised with respect to any Commonwealth war grave, or to any monument or railing pertinent to any such grave or provided by the Commission except with the consent of the Commission, and in accordance with such reasonable conditions with reference to such consent as the Commission may prescribe, including conditions to the effect that—
- (a) no other monument or railing shall be placed or erected over any such grave;
  - (b) the Council shall not interfere with, or disturb, any Commonwealth war burial in any such grave, or cause or permit any interference with, or disturbance of, any such burial other than interference or disturbance authorised by an order of a competent court or other lawful authority after prior notification to the Commission of the application for such order or authority; and
  - (c) in the case of any monument placed or erected by the Commission over any such grave, such monument shall be removed only in accordance with such arrangements and in such manner, including disposal of the monument, as shall be agreed in writing by the Commission.
- (5) (a) If notice of objection to the proposals is given to the Council by any lair-holder or authority of a church concerned within the period specified in subsection (2) (a) of this section and is not withdrawn the proposals to which the objection



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- relates shall not be carried out without the consent of the sheriff on summary application by the Council.
- (b) In any case where the Council apply to the sheriff for such consent they shall—
- (i) not later than the date on which the application is made to the sheriff give notice of such application to the lair-holder, or the authority of the church concerned, as the case may be, and where a Commonwealth war burial would be affected by a decision on such an application, they shall also give the like notice to the Commission; and
  - (ii) intimate the decision of the sheriff to such lair-holder, or authority of the church concerned.
- (c) The sheriff may impose such conditions as he considers appropriate with reference to any consent granted by him under paragraph (a) of this subsection, and where a Commonwealth war burial would be affected, he shall have regard to any representations thereanent made by the Commission within a period of 28 days from the receipt by the Commission of the notice referred to in paragraph (b) of this subsection.
- (6) If any monument or railing removed is not claimed within three months after the date of its removal the Council may put it to such use as they think fit, or they may destroy it.
- (7) The Council shall, so far as reasonably practicable, cause a record to be made of each monument removed under the powers of this section.
- (8) Nothing in this section shall derogate from the provisions of—
- (a) the Act of 1972 relating to buildings of special architectural or historic interest, buildings which are the subject of a building preservation notice and conservation areas; and
  - (b) the Ancient Monuments and Archaeological Areas Act 1979 relating to scheduled monuments and monuments in the guardianship of the Secretary of State.

## PART V

### PUBLIC HEALTH

#### Definitions for Part V

- 11 In this part of this Order—
- “basement” means a basement used in commons;
  - “cleansing and disinfecting” of premises includes—
    - (a) removing wallpaper or other covering of walls, and redecorating the interior surface of premises;
    - (b) papering or painting the interior surface of dwelling-houses; and
    - (c) disinfecting or destroying any household article in the premises;
  - “cleansing station” means any premises where the cleansing of persons or clothing may be carried out;
  - “communal toilet or laundry facilities” means a part of any premises containing water-closets, wash-houses, drying rooms or sinks used in common;
  - “dealer” means a person who trades or deals in any household article;

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“hairdressing” means the following:— shaving, cutting, shampooing, tinting, dyeing, bleaching, waving, curling, straightening, setting, removing or dressing of the hair, upon the scalp or face, with or without the aid of any apparatus or appliance, preparation or substance, or the hand or vibro-massage of the scalp or face;

“household article” means an article of furniture, bedding or clothing, or any similar article;

“lobby” means a lobby used in common;

“sanitary conveniences” means water-closets and urinals; and

“vermin”, in its application to insects and parasites includes their eggs, larvae and pupae, and “verminous” shall be construed accordingly.

### **Cleansing of courts, etc**

- 12 (1) Any person having the right to use any court or sunk area shall keep such court or sunk area, and the roofs of any outbuildings therein, in a clean state.
- (2) Subject to subsection (3) below, the Council may cause to be cleansed any court, sunk area or roof which is not being kept in a clean state and, notwithstanding anything in the Act of 1982, the expense reasonably incurred in so doing shall be recoverable by them from such persons or, if such court or area is unoccupied, from the owner.
- (3) Before exercising the power conferred by subsection (2) above, the Council shall give not less than seven days' notice to such person or owner (as the case may be).

### **Removal of obnoxious matter**

- 13 (1) Where, in the opinion of the Council, any accumulation of obnoxious matter in any premises should be removed, and it is not the duty of the Council to remove it, they may, by notice, require the occupier of such premises or, if the premises are unoccupied, the owner, to remove it within 48 hours.
- (2) A person who, without reasonable excuse, fails to comply with any requirement of a notice under the preceding subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and the Council may remove such matter and dispose of it, and the expense reasonably incurred in so doing shall be recoverable by the Council from such person.

### **Collection and disposal of garden refuse**

- 14 In its application to the Council, the definition of “household waste” contained in subsection (5) of section 124 of the Act of 1982 (collection and disposal of household and trade waste) shall be deemed to include garden refuse.

### **Hairdressers to be registered**

- 15 (1) A person shall not, by himself or with any other person, carry on the business of hairdressing in any premises occupied by him unless he is registered by the Council in respect of such premises.
- (2) (a) Any person who makes application for registration in respect of any such premises shall, subject as hereinafter provided, be registered by the Council

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- in respect of such premises and the Council shall issue to him a certificate of registration in respect of such premises.
- (b) For each application for registration under this section, the Council shall charge a fee of £5 or such other sum as they may from time to time consider appropriate.
- (3) (a) The Council shall be entitled to refuse an application for registration under this section only if the premises are unsuitable or inadequate for the business of hairdressing.
- (b) Any person aggrieved by a refusal to grant an application for registration under this section may appeal to the sheriff.
- (4) Any person who carries on the business of hairdressing in any premises occupied by him in respect of which there is not in force a certificate of registration under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Acupuncturists, tattooists, ear-piercers and electrolysis to be registered**

- 16 (1) As from the appointed day a person shall not, by himself or with any other person, carry on the practice of acupuncture or the business of tattooing, ear-piercing or electrolysis in any premises occupied by him unless he is registered by the Council in respect of such premises.
- (2) (a) Any person who makes application for registration in respect of any such premises shall, subject as hereinafter provided, be registered by the Council in respect of such premises and the council shall issue to him a certificate of registration in respect of such premises.
- (b) For each application for registration under this section, the Council Shall charge a fee of £5 or such other sum as they may from time to time consider appropriate.
- (3) (a) The Council shall be entitled to refuse an application for registration under this section only if the premises are unsuitable or inadequate for the practice of acupuncture or the business of tattooing, ear-piercing or electrolysis (as the case may be).
- (b) Any person aggrieved by a refusal to grant an application for registration under this section may appeal to the sheriff.
- (4) Any person who carries on the practice of acupuncture or the business of tattooing, ear-piercing or electrolysis in any premises occupied by him in respect of which there is not in force a certificate of registration under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section “premises” includes a stall.
- (6) Nothing in this section or the next following section shall apply to a person carrying on the business of tattooing, ear-piercing or electrolysis who is, or who is supervised by, a registered medical practitioner or to a person carrying on the practice of acupuncture who is, or who is supervised by, a registered medical practitioner or a dentist registered under the Dentists Act 1984.
- (7) For the purposes of this section “the appointed day” shall be the day commencing six months after the passing to the Act confirming this Order.

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### **Penalty for false statements in applications for registration**

- 17 Any person who in, or in connection with, any application for registration under section 15 (Hairdressers to be registered) or section 16 (Acupuncturists, tattooists, ear-piercers and electrolysis to be registered) of this Order—
- (a) makes any statement which he knows to be false in a material particular; or
  - (b) recklessly makes any statement which is false in a material particular; shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standards scale.

### **Display of hairdresser's, etc., certificate of registration**

- 18 (1) Every person registered under section 15 (Hairdressers to be registered) or section 16 (Acupuncturists, tattooists, ear-piercers and electrolysis to be registered) of this Order shall keep a copy of his certificate of registration exhibited in a conspicuous position in the premises in respect of which he is registered.
- (2) A person who, without reasonable excuse, acts in contravention of the preceding subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### **Cleansing of filthy or verminous premises**

- 19 (1) (a) Where the Council are of opinion that any premises other than a factory, or premises to which the Act of 1963 applies, are filthy or verminous the Council may by notice require the occupier of the premises, or, if the premises are unoccupied, the owner, to take any steps necessary for cleansing and disinfecting the premises.
- (b) A person who, without reasonable excuse, fails to comply with any requirement of a notice under this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and the Council may take the steps required by the notice, and the expense reasonably incurred in so doing shall be recoverable by the Council from such person.
- (2) (a) Where the occupier of any premises in respect of which a notice may be served under this subsection is unable through infirmity or mental incapacity to remedy the condition of the premises and his health is thereby endangered the Council may apply to the sheriff for an order under the succeeding paragraph.
- (b) On any such application the sheriff, if satisfied on oral evidence of the facts set forth in the application, and that it is expedient to do so, may make an order for the removal of the occupier to whom the application relates, by such officer of the Council as may be specified in the order, to a suitable institution or other premises, and for the detention and maintenance of such occupier therein for such period as the sheriff may by such order direct as being necessary to enable the Council to cleanse and disinfect the premises:
- Provided that the sheriff shall not make an order under this paragraph unless the Council have given not less than seven days' notice to the occupier of their intention to make the application.
- (c) On the removal of the occupier of any premises in pursuance of an order under the preceding paragraph a duly authorised officer of the Council may enter such premises and carry out any necessary cleansing and disinfecting:

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Provided that upon the completion of such cleansing and disinfecting the Council shall make provision for the return of such occupier to the premises.

### **Cleansing of verminous persons and clothing**

- 20 (1) The Council may, if satisfied that any person, or the clothing of any person, in verminous and if such person consents to be removed to a cleansing station, cause such person to be removed to a cleansing station and cleansed as to his person and clothing.
- (2) If such person does not so consent the Council may apply to the sheriff, and the sheriff, if satisfied, on oral evidence of the facts set forth in the application, and that it is expedient to do so, may make an order for the removal of such person to a cleansing station by such officer of the Council as may be specified in the order and for the detention of such person therein for such period, and subject to such conditions, as may be specified in the order, to enable him to be cleansed as to his person and clothing.
- (3) The cleansing of females under this section shall be carried out only by a woman registered medical practitioner or by a woman duly authorised by the Council.
- (4) Any consent required to be given for the purposes of this section may, in the case of a person under 16 years of age, be given on his behalf by his parent or guardian.
- (5) A charge shall not be made in respect of the cleaning of a person or his clothing, or his removal to, or maintenance in, a cleansing station.

### **Prohibition of sale of verminous articles**

- 21 (1) (a) A dealer shall not—
- (i) sell or offer or expose for sale; or
  - (ii) deposit for sale or preparation for sale;
- any household article if it is, to his knowledge, verminous, or if, by taking reasonable precautions, he could have known it to be verminous.
- (b) A person who acts in contravention of any provision of the preceding paragraph shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) If any household article which is verminous is on any premises—
- (a) being prepared or offered by a dealer for sale; or
  - (b) exposed by a dealer for sale or deposited by a dealer for sale or preparation for sale;
- the Council may cause the article to be disinfected or destroyed, as the case may require, and, if necessary for that purpose, to be removed from the premises, and the expense reasonably incurred in taking any action under this subsection shall be recoverable by the Council from such dealer.

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## PART VI

### BUILDINGS

#### Restrictions on buildings in certain parks

- 22 Subject to the provisions of this Order there shall not be constructed in any of the parks specified in the first column of the following table any permanent buildings other than buildings of the description specified in the second column of that table in relation to such park:—

| 1   | 2   |
|---|---|
| Park  | Description of buildings  |
| The Meadows, Bruntsfield Links, Leith Links | Bandstands, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity or gas.   |
| Princes Street Gardens                      | Lodges for gardeners and keepers, hothouses and conservatories, monuments, bandstands, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity or gas.                    |
| Calton Hill                                 | Monuments, observatory, churches, museum or other public buildings including facilities for a restaurant, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity or gas. |

#### Power in relation to public buildings in the event of danger

- 23 (1) (a) The Council may, by notice, require the owner of any public building to execute any works on such building necessary to minimise the risk to the public in the event of danger other than fire.
- (b) Where any public building in relation to which a notice under the preceding paragraph has been served is not occupied by the owner a copy of such notice shall be sent by the Council to the occupier as nearly as practicable at the same time as the notice is served on the owner.
- (c) Any person aggrieved by any requirement of a notice under this subsection may appeal to the sheriff.
- (2) If, in the opinion of the Council, immediate action should be taken in the case of any public building in order to minimise the risk to the public in the event of danger other than fire, the sheriff may, on the application of the Council, interdict the owner and occupier of such building from using it as a public building or permitting it to be so used.
- (3) In this section, “public building” does not include any building the use of which is authorised pursuant to a licence issued by the Council in accordance with any enactment.

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### **Repair, etc., of structure, etc., of buildings**

- 24 (1) When from decay, or in consequence of storm or otherwise, the structure of part of any building or anything affixed to any building, or any wall or fence connected with, or pertinent to, a building (including any part thereof so formed or maintained as to allow satisfactory drainage of its surface or subsoil to a proper outfall) has become insecure, worn out, or damaged or is in need of repair, the Council may, by notice, require the owner of such building to execute any works necessary for securing, restoring or repairing such structure, fixture, wall or fence.
- (2) Notwithstanding the provisions of subsection (1) of this section the Council may, in a case of emergency (of which they shall be the sole judge), execute without notice under section (1) of this section and the expense reasonably incurred in so doing shall be recoverable by the Council from the owner of such building.
- (3) This section shall not apply in relation to—
- (a) any advertisement to which regulations under section 61 of the Act of 1972 apply; or
  - (b) any building which is situated on operational land of the British Railways Board except to the extent that any such building abuts upon or adjoins a road.

### **Reduction of dust, etc., from building operations**

- 25 (1) This section applies to any civil engineering or building operation, including any work of demolition or the cleansing of any building or structure, which is either carried out in the open air or carried out in such circumstances that dust from the operation is emitted into the open air.
- (2) Without prejudice to any other remedy which may be available to the Council and except as provided in subsection (7) below, the Council may give notice to any person carrying out, or controlling the carrying out of, an operation to which this section applies in the district requiring him, within such time as is specified in the notice, to take such reasonably practicable steps as are so specified to reduce the emission of dust from the operation.
- (3) In considering what steps are reasonably practicable for the purposes of subsection (2) above, the Council shall have regard, amongst other matters, to the requirements of safety and safe working conditions and any relevant provisions of any code of practice approved under section 16 of the Health and Safety at Work etc. Act 1974.
- (4) Any person aggrieved by a notice under subsection (2) above may appeal to the sheriff and he may make such order, either confirming or quashing or varying the notice, as he thinks fit but shall not so vary the notice that it is more onerous than the notice given by the Council.
- (5) A notice given under subsection (2) above shall remain valid and in force pending any appeal to the sheriff under subsection (4) above.
- (6) (a) Subject to any order made on appeal under subsection (4) above, any person who fails to comply with a notice under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (b) In any proceedings under this subsection it shall be a defence to show that the quantity of dust emitted into the open air was not materially greater than would have been emitted if the notice had been complied with.

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- (7) (a) If, before the carrying out of any operation to which this section applies, the person who intends to carry it out applies to the Council for their consent to the operation giving particulars of=
- (i) the operation and the method by which it is to be carried out; and
  - (ii) the steps proposed to be taken to reduce the emission of dust from the operation;
- and the Council consider that, on the carrying out of the operation in accordance with the application, they would not serve a notice under subsection (2) above in respect of that operation, the Council may give their consent to the operation for the purposes of this section, either unconditionally or subject to such conditions as may be specified in the consent.
- (b) In acting under this subsection the Council shall have regard to the matters specified in subsection (3) above.
  - (c) If the Council do not, within 21 days from the receipt of an application under this subsection, give to the applicant a consent, with or without conditions, which is acceptable to the applicant, he may appeal to the sheriff.
  - (d) On any appeal under this subsection the sheriff may make such order either confirming the refusal of the consent or varying any conditions subject to which the consent has been given or ordering the giving of the consent with or without conditions as he thinks fit but shall not so vary any conditions that they are more onerous than those specified by the Council.
  - (e) Subject to any order made on appeal under this subsection any person who fails to comply with any condition subject to which a consent is given under this subsection shall be guilty of any offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In this section “dust” includes chemicals in solution and grit.
- (9) Nothing in this section shall apply to any works to which the provisions of the New Roads and Street Works Act 1991 apply or which are carried out by the British Railways Board under their statutory powers on any railway.

#### **As to execution of works required under Part VI**

- 26 If any works required to be executed by any owner in pursuance of a notice under this Part of this Order are not executed within the period specified therein, the Council may serve notice upon such owner requiring him to show cause to the Council why such works should not be executed by the Council, and if such owner fails to show cause as aforesaid such works may be executed by the Council and the expense reasonably incurred in so doing shall be recoverable by the Council from such owner.

#### **As to notices and allocation of expense for purposes of Part VI in relation to tenements**

- 27 (1) Where any building comprises a tenement the owner of every part of such building which is separately owned shall, for the purposes of this Part of this Order, be deemed to be the owner of such building, and notices shall, so far as is reasonably practicable, be served upon the owner of every such part accordingly.
- (2) Every owner of every such part of such building shall be liable in equal shares to the Council for any expense incurred by the Council in executing any works in pursuance of this Part of this Order but nothing in this section shall affect any right competent to any owner of any part of such building, under the conditions of his title or otherwise,



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to recover from the owner of any other part the amount, or any part thereof, paid by, or recovered from, him.

### **Appeals against notices under Part VI**

- 28 Any person aggrieved by any requirement of a notice under this Part of this Order may appeal to the sheriff.

## **PART VII**

### **DRAINS**

#### **Substance, matter, etc., not to be permitted to enter soil or waste appliances**

- 29 (1) A person shall not deposit in, or cause to enter, any soil appliance or waste appliance any substance or matter by which such soil appliance or waste appliance may be obstructed.
- (2) (a) A person who acts in contravention of the preceding subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale and the Council may execute any work necessary to remove such obstruction and the expense reasonably incurred in so doing shall be recoverable by the Council from the occupier of the premises in which such soil appliance or waste appliance is situated.
- (b) In the case of any such contravention the occupier of the premises in which such soil appliance or waste appliance is situated shall, in the absence of evidence to the contrary, be deemed to be the person offending.

#### **Emptying and cleaning of oil, etc., interceptors from garages, etc**

- 30 (1) The Council may, from time to time, by notice require the owner of any building for which a trap or tank has been provided to empty and clean out such trap or tank and dispose of the contents.
- (2) In this section—
- “tank” means an apparatus for the interception, collection and retention of the contents of the drainage system and includes a septic tank; and
- “trap” means a fitting so designed as to retain an adequate seal of water and so fitted as to prevent sewer gases from escaping from a building or into the atmosphere.

#### **Owners and occupiers to remedy defects in drains**

- 31 (1) If it appears to the Council that as respects any premises in their area a drainage system or any part thereof serving such premises is defective, they may by notice require the owners or occupiers of the premises, within a reasonable time therein specified, to remedy the defect.
- (2) If an owner or occupier is aggrieved by a notice under the foregoing subsection he may, within the time specified in the notice, refer the matter by summary application to the sheriff, who may issue such directions as he thinks fit, and whose decision on the matter shall be final.

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- (3) Where any owner or occupier fails to comply with the terms of a notice under subsection (1) above, or as modified under subsection (2) above, the Council may carry out the work necessary to remedy the defect and may recover the expenses reasonably incurred by them in so doing from the persons on whom the notice was served, but without prejudice to the rights and obligations, as between themselves, of the owners and occupiers:

Provided that the Council may, if they think fit, remit such part of the expenses as seems to them to be equitable.

- (4) The Council may in case of emergency (of which the Council shall be the sole judge) cause a drainage system to be repaired or scoured without notice having been given in pursuance of subsection (1) above (but in such a case notice of the repair or scouring which has been carried out shall be given by the Council to the owner or occupier as soon as possible thereafter) and the expense reasonably incurred in so doing shall be recoverable by the Council from the owners or occupiers of any premises to which such drainage system or any part thereof is connected.
- (5) (a) Where, pursuant to subsection (3) or subsection (4) of this section the Council have carried out work necessary to remedy a defect to a drainage system or any part thereof which serves several premises in different ownership or occupation, the expense of such work shall be recoverable in equal shares from each of such owners or occupiers.
- (b) A notice under subsection (1) of this section shall be deemed to be validly served if it is served on either the owners or occupiers of those premises which are connected to such drainage system.
- (c) Where a notice under the said subsection has been served on the owners or occupiers of any premises to which any drainage system is connected requiring them to remedy a defect in such drainage system, and the works required by such notice are executed by such owners or occupiers and it is ascertained, while such works are being executed or after they have been completed, that such drainage system is also connected to premises in the ownership or occupation of other persons (on whom notice was not served) such other persons shall be liable to contribute in equal shares to the expense of such works notwithstanding that notice was not served upon them.
- (d) Where the requirements of a notice under the said subsection are not complied with, and it is subsequently ascertained, while the works required by such notice are being executed by the Council or after they have been completed, that such drainage system is also connected to premises in the ownership or occupation of other persons (on whom notice was not served) such other persons shall be liable to contribute in equal shares to the expense (calculated in accordance with paragraph (a) of this section) of the works executed by the Council notwithstanding that notice was not served upon them.
- (6) Nothing in this section shall impose on the Council any liability in respect of injury to persons or damage to property resulting from the condition of any drainage system.

### **Inspection of drainage of buildings**

- 32 (1) Any duly authorised officer may, on producing (if required) his authority—
- (a) inspect, and apply such tests as he considers necessary to, the drainage system or any part thereof of any building; and
- (b) for that purpose—

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- (i) enter upon any lands with such other persons as may be necessary; and
  - (ii) cause the ground to be opened where he thinks fit, doing as little damage as may be.
- (2) If such drainage system or any part thereof is found to be in proper order and condition the person making the inspection or test shall reinstate any ground opened by him, and any damage done shall be made good by the Council.
- (3) If such drainage system or any part thereof is found to be in disrepair, the provisions of section 31 (Owners and occupiers to remedy defects in drains) of this Order shall apply in relation to the carrying out of any remedial works.

### **Summary power to remedy defective soil and waste appliances**

- 33 All soil appliances and waste appliances in or on any premises shall be maintained by the owners of such premises and if it appears to the Council that any soil appliance or waste appliance in or on any premises is stopped up, fractured or leaking, they may, by notice, require the owner of such premises to remedy the defect within 24 hours.

### **Saving for statutory undertakers in respect of entry for certain purposes under Part VII**

- 34 If any land to which section 32 (Inspection of drainage of buildings) of this Order applies is operational land held by statutory undertakers and those undertakers object to the exercise of the powers of such section with respect to such land on the ground that the exercise of such powers would be seriously detrimental to the carrying on of their undertaking, such powers shall not be exercised without the authority of the Secretary of State.

## **PART VII**

### **WAVERLEY MARKET**

#### **Special provisions as to Waverley Market**

- 35 (1) The Council may erect and maintain new buildings—
- (a) on the site of the Waverley Market;
  - (b) on the ground belonging to them lying between the said site and Waverley railway station; and
  - (c) over that rectangular piece of ground belonging to the British Railways Board and forming part of Waverley railway station extending to 662 superficial yards (602.42 metres) or thereby and shown coloured red on the plan annexed and signed as relative to the minute of agreement between the former corporation and the London and North Eastern Railway Company dated 7th and 19th July 1938 and registered in the Books of Council and Session on 28th July 1938 over which rectangular piece of ground the Council have right to erect the said new buildings by virtue of the said minute of agreement.
- (2) Notwithstanding anything contained in any Act or in any deed or other writing and without prejudice to any rights and powers otherwise competent to them the Council in altering, reconstructing or adapting the Waverley Market or in erecting any new buildings on and over the areas of ground specified in subsection (1) of this section may raise the height of the altered, reconstructed or adapted building or may erect any

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such new buildings to a height above the existing level of the south footpavement of Princes Street ex adverso such altered, reconstructed or adapted building or such new buildings of—

- (a) 15 feet (4.55 metres) in the case of that part of the buildings occupying that part of the areas of ground specified in subsection (1) of this section which is situated within the area bounded as follows, by a line commencing at a point on the east side of the Waverley Bridge 43 feet six inches (13.20 metres) south of the north boundary of the Waverley railway station, thence in a northerly or north-westerly direction along the east side of the Waverley Bridge to a point 55 feet (16.68 metres) north of the north boundary of the Waverley railway station thence in an easterly or north-easterly direction in a line parallel to the north boundary of the Waverley railway station to a point 60 feet (18.20 metres) west of the west wall of the North British Station Hotel thence in a southerly or south-easterly direction in a line parallel to the west wall of the North British Station Hotel for a distance of 55 feet (16.68 metres) to the north boundary of the Waverley railway station thence in a westerly or south-westerly direction along the north boundary of the Waverley railway station to a point 137 feet (41.56 metres) east of the Waverley Bridge, thence again in a southerly or south-easterly direction in a line parallel to the east side of the Waverley Bridge for a distance of 43 feet six inches (13.20 metres) to a point within the area of the Waverley railway station 137 feet (41.56 metres) east of the Waverley Bridge and thence in a westerly or south-westerly direction in a line parallel to the north boundary of the Waverley railway station for a distance of 137 feet (41.56 metres) to the point of commencement before mentioned;
- (b) four feet (1.21 metres) in the case of that part of the buildings occupying the remainder of the areas of ground specified in subsection (1) of this section:

Provided that the Council may erect or place such ornamental features as they may think fit on the roof of Waverley market as altered, reconstructed, adapted or rebuilt or on the roof of any new buildings erected under the powers of this section notwithstanding that such ornamental features rise above the four feet (1.21 metres) above mentioned.

- (3) Nothing in this section shall prejudice the provisions of the said minute of agreement between the former corporation and the London and North Eastern Railway Company.

## PART IX

### FINANCE

#### General reserve fund

- 36 (1) The Council may continue to maintain the general reserve fund, and may apply if in defraying any expenditure which might be met out of the district rate.
- (2) The Council may in any financial year pay into the general reserve fund such amount as they think fit, so however that the general reserve fund shall not at any time exceed one-tenth of the aggregate capital expenditure of the district fund.
- (3) This section shall cease to have effect on 1st January 1995.

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### **Expenditure of clerk of lieutenancy**

- 37 The expenditure reasonably incurred by the clerk of the lieutenancy shall be paid by the Council.

## **PART X**

### **TRUSTS AND ENDOWMENTS**

#### **Definitions for Part X**

- 38 In this Part of this Order—

“Corstorphine and Cramond endowments” means the funds of the following trusts:—

|  |   |
|--|---|
| (a) Sir William Ramsay Watson’s bequest (1843) | For behoof of persons in poor circumstances in the former parish of Corstorphine; |
| (b) Sir Alexander Keith’s bequest (1822)       |   |
| (c) John Watson of Saughton bequest            | For behoof of persons in poor circumstances in the former parish of Cramond;      |
| (d) The Tollcross Feuduty fund                 |   |

“Corstorphine wards” means the wards of Cramond, Parkgrove, Northwest Corstorphine, Northeast Corstorphine, Blackhall, Southwest Corstorphine, Southeast Corstorphine and Murrayfield as specified in the City of Edinburgh District (Electoral Arrangements) Order 1979;

“Leith trusts” means all trusts vested in the Council which were, before 2nd November 1920, administered by the town council, or by the provost and magistrates, of the then existing burgh of Leith;

“Leith wards” means the wards of Trinity, Newhaven, Fort, Lorne, Harbour and Links as specified in the said order of 1979;

“surplus fire fund” means the fund raised to relieve the sufferers by the great fire in the city in 1824; and

“trusts” includes all mortifications, endowments, trusts, charitable bequests or other grants, however constituted.

#### **Trusts vested in and administered by Council**

- 39 (1) Subject to the provisions of this Order, all trusts vested in the Council shall continue vested in, and be administered by, them.
- (2) (a) The functions of the Council in connection with the administration of the Leith trusts shall, by virtue of this Order, be delegated to the councillors for the Leith wards.
- (b) The Council may appoint committees for the administration of all or any of the other trusts vested in them and may refer or delegate to such committees any of their functions in connection with such administration.

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### **Representation of Council on trusts, etc., relating to former burgh of Leith**

- 40 The Council shall continue to appoint from among the councillors for the Leith wards the representatives to be appointed by them on any trust, or on the governing body of any charitable or other institution, on which the town council of the former burgh of Leith was entitled to appoint representatives.

### **Surplus fire fund**

- 41 The Council may apply the surplus fire fund—
- (a) for the relief of any persons suffering serious injury, or of the dependents of persons who have lost their lives or have suffered serious injury, in or in connection with fires within the district; and
  - (b) for making awards or grants to persons who have rendered meritorious services in connection with fires within the district.

### **Corstorphine and Cramond endowments**

- 42 (1) The Corstorphine and Cramond endowments shall be administered for the benefit of persons in poor circumstances in the Corstorphine wards.
- (2) The councillors for the Corstorphine wards shall be members of the committee of the Council dealing with the administration of the Corstorphine and Cramond endowments for the purposes of such administration.

### **Crambe Reid bequests**

- 43 Notwithstanding anything in the will of the late William Crambe Reid, 28 Blacket Place, Edinburgh, dated 27th November 1916, and registered, along with a relative codicil, dated 9th April 1919, in the Books of Council and Session on 18th March 1922, the funds of his bequest “To the Cabmen’s Shelter, Edinburgh” shall continue to form part of the funds of his bequest “For coals and blankets for the Poor in Edinburgh” and the last-mentioned bequest shall be administered by the Council in such manner as they think fit for behoof of the poor of the district.

## **PART XI**

### **MISCELLANEOUS**

#### **Abstraction of water from Water of Leith**

- 44 (1) The Council may, subject to the provisions of this Order, abstract and take for the purposes of their refuse disposal plant at Powderhall, Edinburgh and by means of their existing intake and pipeline the waters of the Water of Leith not exceeding 250,000 gallons (1,136,500 litres) per day.
- (2) The Council shall continue to maintain a suitable meter for the purpose of measuring the quantity of water abstracted from the said Water of Leith which meter shall be open to the inspection of all interested persons at all reasonable times.

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### **Restrictions on display of articles in areas, etc**

- 45 (1) (a) The Council may, by notice, prohibit the occupier of any premises from placing, hanging up or exposing for sale or hire any articles—
- (i) within, on or over any railing enclosing any area or space of ground fronting or adjoining any road, and forming part of such premises or of any adjoining premises; or
  - (ii) on any outside steps, platform or landing giving access from the road to any part of such premises or to any adjoining premises;
- or they may, by notice, require any such occupier to comply with such restrictions or conditions as they may prescribe with respect to the placing, hanging up or exposing for sale or hire of any articles and as shall be specified in such notice.
- (b) The preceding paragraph shall not apply in relation to—
- (i) the sale of newspapers, or the display of newspapers for sale;
  - (ii) the display of posters or bills relating to newspapers; or
  - (iii) the advertising of public passenger transport services.
- (c) In the exercise of their powers under this subsection the Council shall have regard only to—
- (i) the amenities of the locality in which such premises are situated; and
  - (ii) the possibility of danger, obstruction or inconvenience to the public.
- (d) Any person aggrieved by a prohibition effected by, or any requirement or, a notice under this subsection may appeal to the sheriff.
- (e) Any person failing to comply with a prohibition effected by, or any requirement of, a notice under this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) The preceding subsection shall also apply in relation to—
- (a) articles displayed as samples of, or advertisements for, articles available for sale or hire; and
  - (b) articles stored in connection with any business carried on in the premises or in any adjoining premises.

### **As to notice to quit Council houses**

- 46 Where the Council have served a notice to quit on a tenant of any house who is not a secure tenant in terms of the Housing (Scotland) Act 1987 the acceptance of rent by the Council for a period not exceeding three months from the date of the expiration of the notice to quit shall, notwithstanding any rule of law to the contrary, not be deemed to prejudice any right of the Council to the possession of such house.

## **PART XII**

### **GENERAL**

### **Service and validity of notices, authentication of documents, etc**

- 47 The provisions of sections 192, 193 and 196 of the Act of 1973 (which relate to the service of notices by a local authority or an officer of a local authority, to the authentication of documents, etc., under that Act), shall apply with respect to the

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service, authentication, and validity of any notice, order, demand, requisition or other such document by the Council, or by a duly authorised officer required or authorised by this Order.

#### **Power to cancel notices and to serve new notices**

- 48 The Council may cancel any notice served by the Council on any person in pursuance of any provision of this Order, and may serve a new notice on the same person or on any other person.

#### **Provisions as to Sunday, etc**

- 49 Notwithstanding anything in the Act of 1973 where the day or the last day on which anything is required or permitted to be done by or in pursuance of this Order or the Act of 1973 is a Sunday, Saturday, Christmas Day, New Year's Day, Good Friday, bank holiday or a public holiday, or a day appointed for public thanksgiving or mourning, the requirement or permission shall be deemed to relate to the first day thereafter which is not one of such days but, save as aforesaid, in reckoning a number of days for the purposes of this Order such days shall not be excluded.

#### **Appeals to sheriff**

- 50 (1) Where any provisions of this Order provides for an appeal to the sheriff against any order, requirement, refusal or other decision of the district court or of the Council (each of which is hereinafter referred to in this section as a “decision”), such appeal shall, subject to the provisions of this Order, be by way of initial writ under the Sheriff Courts Acts and shall be disposed of as a summary application as defined in those Acts.
- (2) The period within which such appeal may be brought shall, unless otherwise provided, be 14 days from the date on which the decision was intimated to such person.
- (3) In any case where such an appeal lies the document intimating the decision to the person concerned shall state the right of appeal and the period within which such appeal may be brought.
- (4) (a) The sheriff may confirm, vary or set aside the decision appealed against and, subject as hereinafter provided in this section, the Council shall give effect to the interlocutor of the sheriff, and in particular shall grant any consent or authorisation and make any necessary entry in any register.
- (b) If, and in so far as, an appeal is based on the ground of an informality, defect or error in, or in connection with, the decision appealed against, the sheriff shall dismiss the appeal if such informality, defect or error was not material.
- (5) (a) If the ground, or one of the grounds, of any decision appealed against is that any premises are not suitable for a particular purpose the sheriff may appoint an architect or surveyor or other professional person to examine and report to him upon the condition of the premises and their suitability for the purpose, and the report of such architect or surveyor or other professional person shall be final and conclusive with respect to the matter of the remit.
- (b) The expense of any such examination and report shall, in the first instance, be paid by the parties equally and, unless the sheriff otherwise directs, shall be treated as expenses in the cause.
- (6) Where any decision against which a right of appeal is conferred by this Order—



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- (a) involves the execution of any work, or the taking of any action; or
- (b) makes it unlawful for any person to carry on any business or practice which he was lawfully carrying on up to the time of the decision, or to use any premises for any purpose for which they were lawfully used up to that time;

then, until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or abandoned—

- (i) proceedings shall not be taken in respect of any failure to execute the work or take the action, and the Council shall not execute the work or take the action; and
- (ii) that person may carry on that business or practice and use those premises for that purpose.

- (7) On any appeal under this section the sheriff may, at any stage of the proceedings, and shall whether before or after the conclusion of the proceedings, at the request of any party to the appeal, state a case for the opinion of the Court of Session on any question of law arising in connection with the appeal.

### **Summary applications**

- 51 (1) Where any provision of this Order provides for an application to the sheriff, such application shall, subject to the provisions of this Order, proceed by way of initial writ under the Sheriff Courts Acts, and shall be disposed of as a summary application as defined in the said Acts.
- (2) The preceding subsection shall not apply in relation to applications to the sheriff under section 19 (Cleansing of filthy or verminous premises) or section 20 (Cleansing of verminous persons and clothing) of this Order.

### **Application for interdict**

- 52 Applications to the sheriff for interdict under any provisions of this Order shall proceed by way of initial writ under the Sheriff Courts Acts and shall proceed in all respects as if they were actions for interdict at common law.

### **Power to enter premises**

- 53 (1) A duly authorised officer shall, on producing (if required) evidence of his authority, have a right at all reasonable hours to enter any premises—
- (a) for the purpose of ascertaining whether there is, or has been, on or in connection with, the premises any contravention of any provisions of this Order or of any condition subject to which any consent or authorisation has been granted under this Order;
  - (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the Council to take any action or execute any work under this Order;
  - (c) for the purpose of taking any action or executing any work authorised or required by this Order to be taken or executed by the Council; and
  - (d) generally for the purpose of the performance by the Council of their functions under this Order:

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- (i) any duly authorised officer shall not enter any premises where he suspects that an activity in respect of which a certificate of registration is required under this Order being carried on in any premises and no such registration has been effected in relation to those premises; and
  - (ii) admission to any premises, not being a factory, shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.
- (2) A justice of the peace may, on the application of the Council, grant warrant to a duly authorised officer to enter any premises (using force if necessary) on being satisfied—
- (a) that admission to such premises has been refused, or that refusal is apprehended, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
  - (b) that there is reasonable ground for entry into the premises for any such purposes.
- (3) A duly authorised officer entering any premises by virtue of this section or of a warrant issued thereunder may take with him such other persons as may be necessary, and, on leaving any unoccupied premises which he has entered by virtue of such a warrant, shall leave them as effectually secured against unauthorised entry as he found them.
- (4) If any person who is admitted into any premises in compliance with this section or with a warrant issued thereunder, makes use of, or discloses to any person, any information obtained by him there with regard to any manufacturing process or trade secret he shall, unless such use or disclosure was made in the performance of his duty, be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) Every warrant granted under this section shall continue in force for one month or until the purpose for which the entry is necessary has been satisfied, whichever is the shorter.
- (6) Nothing contained in this section shall empower a duly authorised officer to enter any premises used only as a private dwelling except for the purposes of the following provisions of this Order:—
- section 19 (Cleansing of filthy or verminous premises);
  - section 20 (Cleansing of verminous persons and clothing); or
  - section 33 (Summary power to remedy defective soil and waste appliances).
- (7) Before entering on any railway or operational land of the British Railways Board under this section not less than 48 hours' notice of intended entry shall, except in case of emergency, be given to that board; and any person entering upon any such railway or operational land in pursuance of that notice or in any such emergency shall comply with the reasonable requirements of that board for the protection of their undertaking.

#### **Penalty for obstructing execution of Order, etc**

- 54 Any person wilfully obstructing any person acting in the execution of this Order, or of any order or warrant made or issued thereunder, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. etc.

#### **Interpretation for purposes of provisions relating to execution of works,**

- 55 Any reference in—

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section 56 (As to notices requiring execution of works, etc);  
section 57 (In default of owner, etc., Council may execute works, etc.); and  
section 58 (Title of owners to sue for expense of works, etc., executed by them);  
of this Order to the execution of works shall, unless the context otherwise requires, be deemed to include a reference to the carrying out of any operations, the taking of any steps or the provision of any equipment, fixture, apparatus or appliance.

#### **As to notices requiring execution of works, etc**

- 56 Any notice authorised or required to be given by the Council, or a duly authorised officer, in pursuance of any provision of this Order (however expressed) requiring the execution of any works shall, subject to any other provision of this Order relating to the requirements of any such notice, specify—
- (a) so far as necessary and as is reasonably practicable, the nature of the works to be executed, and, in the case of provision of any equipment, fixture, apparatus or appliance, the details (including siting) thereof; and
  - (b) the period (which shall be reasonable in relation to the requirements of the notice) within which the works shall be executed.

#### **In default of owner, etc., Council may execute works, etc**

- 57 (1) Where under this Order or any notice given in pursuance of this Order, any work is required to be executed by the owner or occupier of any lands or premises and such owner or occupier fails to execute the work in accordance with such requirements, and where apart from this section no provision is made for the Council executing the work, the Council may cause the work to be executed and the expense reasonably incurred by them in respect of the execution of the work shall, subject to any other provision of this Order relating to the recovery of any expense incurred by the Council under this Order, be recoverable by them from such owner or occupier, as the case may be.
- (2) (a) Where the Council have incurred, in respect of any work executed or caused to be executed by them, any expense which, under this Order, is recoverable by them from the owner or occupier of any lands or premises, such expense, together with interest thereon at such reasonable rate as they may determine from the date on which a demand for the expense is served, shall be recoverable by the Council from any of the following persons:—
- (i) the person failing to comply with the notice or order requiring him to execute the work; or
  - (ii) the owner or occupier, as the case may be, of such lands or premises at the date when the work was completed; or
  - (iii) the owner or occupier, as the case may be, of such lands or premises at the date when a demand for payment of such expense is first made by the Council.
- (b) Nothing in this subsection shall affect any right of relief competent to any person by whom the amount of such expense paid, or from whom such expense is recovered by the Council, against any other person in respect of the amount of such expense paid by or recovered from him.
- (3) Where more than one owner or occupier is liable for any expense to which this section applies, the amount shall be apportioned in equal shares.

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### **Title of owners to sue for expense of works, etc., executed by them**

- 58 Where under any provision of this Order (however expressed) any owner who has executed, or paid the expense, or any share of the expense, of executing any work, is entitled to recover the expense of the execution of such work, or any share thereof, from any other person, such owner shall, notwithstanding anything in any rule of law, have a title to sue such person for recovery of such expense or share thereof.

### **Questions on which appeals competent not to be raised in proceedings for recovery of expense**

- 59 It shall not be competent for any person, in any proceedings by the Council for the recovery of any expense incurred by them under this Order, to raise any question which might have been raised by him on an appeal under this Order.

### **Certificate by authorised officer of date of completion of works, etc., to be conclusive**

- 60 A certificate of the date of completion of any works executed or any operations carried out under this Order by or on behalf of the Council signed by a duly authorised officer shall be conclusive evidence of such date in the absence of evidence to the contrary.

### **Charges fixed under repealed Acts to continue until new charges fixed**

- 61 Any charges fixed by the Council in pursuance of any provision of the repealed Acts which is re-enacted, with or without modification, in this Order, may continue to be demanded and taken until charges have been fixed under the corresponding provision enacted in this Order.

### **Edinburgh Smokeless Zone Order (No. 1)**

- 62 The Edinburgh Smokeless Zone Order No. 1) 1955, made by the former corporation on 1st December 1955, and confirmed by the Secretary of State on 20th August 1956, shall be deemed to be an order made and confirmed under section 11 of the Clean Air Act 1956.

### **Offences by bodies corporate**

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

### **Repeal of Acts**

- 64 Subject to the provisions of this Order, the Acts and Orders specified in the Schedule to this Order (so far as not already repealed) are hereby repealed to the extent mentioned in the third column of that Schedule.

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- 65 As from the commencement of this Order, the Local Statutory Provisions (Postponement of Repeal) (Scotland) Order 1990 shall cease to have effect in so far as it applies to the district.

## Saving for certain enactments

- 66 Nothing in sections 23 to 25 of this Order shall prejudice or affect the operation of the Building (Scotland) Act 1959, the Act of 1982 or any regulations made under either of those Acts.

## Saving for Health and Safety at Work etc. Act 1974

- 67 (1) Subsection (1) of section 80 (Repeal or modification of certain provisions by regulations) of the Health and Safety at Work etc. Act 1974 shall apply to any provision of this Order as it applies to any provision to which it applies.
- (2) Nothing in the following sections of this Order shall prejudice or affect the operation of any of the relevant statutory provisions as defined in Part I of the said Act of 1974:—  
section 19 (Cleansing of filthy or verminous premises);  
section 23 (Power in relation to public buildings in the event of danger);  
section 30 (Emptying and cleaning of oil, etc., interceptors from garages, etc.);  
section 45 (Restrictions on display of articles in areas, etc.).

## SCHEDULE

Section 64.

### ENACTMENTS REPEALED

| Session and chapter | Short title of Act                                 | Extent of repeal   |
|---------------------|--|--|
| 7 & 8 Eliz. 2 c.v.  | Edinburgh Corporation Order Confirmation Act 1958. | Section 137 of the Order scheduled thereto.  |
| 1967 c.v.           | Edinburgh Corporation Order Confirmation Act 1967. | Sections 5 to 23, 50 to 115, 130 to 156, 158 to 168, 278, 300 to 306, 308, 310 to 325, 327 to 331, 363 to 454, 456 to 478, 481 to 485, 514 to 575, 597 to 601, 603 to 614 and 616 of the Order scheduled thereto and Schedules 1, 2, 3, 8, 9, 11 and 12 to that Order. |
| 1969 c. lxii.       | Edinburgh Corporation Order Confirmation Act 1969. | The whole Act and the Order scheduled thereto.   |
| 1970 c. lx.         | Edinburgh Corporation Order Confirmation Act 1970. | Sections 1 to 24 and 26 to 32 of the Order scheduled thereto.  |

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| Session and chapter             | Short title of Act   | Extent of repeal   |
|---------------------------------|--|--|
| <a href="#">1971 c. xxxvii.</a> | Edinburgh Corporation Order Confirmation Act 1971.         | Sections 1 to 35 and 37 to 42 of and Schedules 1 and 2 to the Order scheduled thereto. |
| <a href="#">1973 c. ii.</a>     | Edinburgh Corporation Order Confirmation Act 1973.         | The whole Act and the Order scheduled thereto.   |
| <a href="#">1973 c. xxxiv.</a>  | Edinburgh Corporation (No. 2) Order Confirmation Act 1973. | The whole Act and the Order scheduled thereto.”  |