



Edinburgh Corporation Order Confirmation Act 1964

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ELIZABETH II



1964 CHAPTER xli

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the Edinburgh Corporation. [17th December 1964]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has after inquiry held before Commissioners been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936 c. 52, and it is requisite that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed. Confirmation of Order in schedule.

2. This Act may be cited as the Edinburgh Corporation Order Confirmation Act 1964. Short title.

SCHEDULE

EDINBURGH CORPORATION

Provisional Order to make provision as to the constitution, powers, duties and finances of the Edinburgh Sheriff Court House Commissioners and to consolidate with amendments the Acts and Orders of or relating to the Corporation of the city of Edinburgh with respect to the Dean of Guild Court of the said city, buildings, streets, etc., sewers and drains, the Water of Leith, watercourses and other matters and for other purposes.

Whereas the lord provost, magistrates and council of the city and royal burgh of Edinburgh (hereinafter referred to as "the Corporation") are vested with the municipal government and administration of the said city and royal burgh (hereinafter referred to as "the city") and are the local authority therein:

And whereas it is expedient that the provisions contained in this Order as to the constitution of the Edinburgh Sheriff Court House Commissioners and as to their powers, duties and finances should be enacted:

And whereas the Acts and Orders relating to the several other matters and things mentioned in this Order are very numerous and in many cases have been superseded by subsequent legislation and ought to be repealed and it would be of public and local advantage if such of the provisions of the said Acts and Orders as it is expedient to retain were consolidated and that the powers of the Corporation with regard to such matters should be enlarged and extended as provided in this Order:

And whereas it is expedient that the further provisions contained in this Order should be enacted:

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

1936 c. 52.

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

PART I

PRELIMINARY

Short title.

1. This Order may be cited as the Edinburgh Corporation Order 1964.

Commencement of Order.

2.—(1) Except where otherwise expressly provided, this Order shall come into operation on the 1st May, 1965, which date is referred to in this Order as "the commencement of this Order".

(2) At any time after the passing of the Act confirming this Order and before the coming into operation of this Order or any of the provisions thereof—

PART I
—cont.

- (a) the Corporation may, by resolution, refer or delegate any of their functions under this Order to committees in pursuance of section 115 of the Act of 1947; and
- (b) applications for any licence, certificate of registration, permit, consent or other authorisation under this Order may be made and determined, and the provisions of this Order with respect to the making of fees or charges in respect thereof shall have effect in relation to such applications.

3.—(1) Terms, words and expressions to which meanings are assigned by the city Acts, or by any public general Act affecting the municipal government and administration of the city or any of the undertakings of the Corporation shall, subject to the provisions of this Order, and unless there is something in the subject or context inconsistent with or repugnant to such construction, have the same respective meanings in the provisions of this Order in which such terms, words and expressions are used. Interpretation.

(2) Unless there is something in the subject or context repugnant to such construction, the following words and expressions in this Order have the meanings hereby respectively assigned to them, that is to say:—

- “ Act of 1946 ” means the Water (Scotland) Act 1946; 1946 c. 42.
- “ Act of 1947 ” means the Local Government (Scotland) Act 1947; 1947 c. 43.
- “ Act of 1950 ” means the Public Utilities Street Works Act 1950; 1950 c. 39.
- “ Act of 1959 ” means the Building (Scotland) Act 1959; 1959 c. 24.
- “ apparatus ” in relation to the electricity board, means any electric lines or works (as respectively defined in the Electric Lighting Act 1882), belonging to the said board; and, in relation to the gas board, means mains, pipes or other apparatus belonging to or maintained by that board; and in relation to each of the said boards, includes works constructed for the lodging of apparatus therein; 1882 c. 56.
- “ building ” includes any structure or erection of whatsoever kind or nature, whether temporary or permanent, or any part thereof;
- “ building line ” means a frontage line in relation to either side of a street beyond which no building may be constructed or brought forward nearer to the centre line of the street without consent;
- “ carriageway ” means the part of the street between the footways on either side thereof, or between the adjoining lands or buildings where there is not a footway, and used or intended to be used for the passage of vehicles;

PART I
—cont.

- “city” means the city and royal burgh of Edinburgh;
- “city Acts” means the local Acts and Orders of the Corporation;
- “city chamberlain” means the city chamberlain of the city;
- “city engineer” means the city engineer of the city;
- “common stair” means any stair or passage in a building leading to parts thereof separately occupied;
- “construct” includes alter, erect, extend and fit, and “construction” shall be construed accordingly;
- “contravention” in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;
- “Corporation” means the Corporation of the city;
- “court” 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 thereto;
- “dean of guild court” has the meaning assigned to “court” by section 25 (Definitions for Part III of Order) of this Order;
- “drain” in relation to a building, means any pipe forming part of the drainage system of that building and which is either—
- (a) wholly below ground; or
 - (b) a continuation, in the direction of flow, of part of a drainage system that has been below ground;
- “dwellinghouse” and “house” means a house used or constructed or adapted to be used wholly or principally for human habitation;
- “electricity board” means the South of Scotland Electricity Board;
- “enactment” includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act of Parliament;
- “footpath” means any way or path (other than a footway) open to be used by the public for passage on foot only;
- “footway” means the footway (however formed or constructed) forming the part of the street between the carriageway and the adjoining lands or buildings;
- “foul water” includes soil water, trade effluent and waste water;
- “fronting” includes abutting on, and “front” and “frontage” shall be construed accordingly;
- “gas board” means the Scottish Gas Board;
- “high-water mark” means the level of mean high-water springs;
- “in”, in a context referring to apparatus of the Postmaster General or statutory undertakers in a street or other land, includes a reference to apparatus under, over, across, along or upon it;
- “maintenance” includes repair, and “maintain” shall be construed accordingly;

- “ master of works ” means the person holding the office of master of works for the city in pursuance of section 21 of the Act of 1959;
- “ new street ” means any street constructed after the commencement of this Order;
- “ new street order ” means an order authorising the construction of a street made by the Corporation under section 92 (Disposal of applications for authority to construct new streets) of this Order;
- “ notice ” means a notice in writing;
- “ occupier ” includes the actual occupier or tenant or sub-tenant;
- “ operational land ” in relation to any statutory undertakers, means land of those undertakers which is operational land within the meaning of the Town and Country Planning (Scotland) Act 1947;
- “ Order of 1958 ” and “ Order of 1961 ” mean respectively the Edinburgh Corporation Order 1958, and the Edinburgh Corporation Order 1961;
- “ 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;
- “ paving ” includes all methods of making a carriageway or footway;
- “ premises ” includes any building, shed, tent, garden, shrubbery, yard, court, close and houseboat;
- “ private sewer ” means a sewer other than a public sewer;
- “ private street ” means a street other than a public street;
- “ 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;
- “ Public Health Acts ” means the Public Health (Scotland) Act 1897, and any Acts amending or extending the same;
- “ public sewer ” has the meaning assigned to it by section 125 (General duty of Corporation to provide for drainage of city) of this Order, but does not include the sewers referred to in section 158 (Definitions for Part VIII of Order) of this Order;
- “ public street ” means any street or part thereof which is wholly maintained by the Corporation at the commencement of this Order or of which the Corporation may undertake the maintenance after the commencement of this Order;
- “ railways board ” means the British Railways Board;

1947 c. 53.

1897 c. 38.

PART I
—cont.

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

“repealed Acts” means the provisions of the Acts and Orders which are repealed by this Order;

“river” means:—

(i) the Bavelaw Burn downstream from a point opposite the upper end of the old Malleny Mills Bleach Work; and

(ii) the Water of Leith downstream from its confluence with the Bavelaw Burn to a point 100 yards downstream of the centre of the bridge carrying Bowling Green Street across the Water of Leith, and includes the tributaries of the Water of Leith below that confluence;

“sheriff” means the sheriff of the Lothians and Peebles and (except for the purposes of Part II (Sheriff court house) of this Order) includes his substitutes;

“Sheriff Courts Acts” means the Sheriff Courts (Scotland) Acts 1907 to 1939;

“soil pipe” means a pipe for conveying soil water to a drain;

“soil water” means water containing excreted matter, whether human or animal;

“statutory meeting of the Corporation” means the meeting of the Corporation held in pursuance of section 31 of the Act of 1947;

1947 c. 53.

“statutory undertakers” has the same meaning as in the Town and Country Planning (Scotland) Act 1947;

“street” (other than for the purposes of Part VII (Sewers and drains) of this Order) means any highway, road, bridge, square, lane, footpath (not being or forming part of any harbour, dock, quay, wharf, or canal, or any station or depot of the railways board, or operators of public service vehicles) or any part thereof open to be used by the public and whether it is a thoroughfare or not;

“street works” means any works for the sewerage, levelling, paving and making good of a street;

1878 c. 76.

“telegraphic line” has the same meaning as in the Telegraph Act 1878;

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

“town clerk” means the town clerk of the city;

“trade effluent” means any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade, industry or research carried on at premises used or intended to be used for carrying on such trade, industry or research;

“waste pipe” means a pipe for conveying waste water to a drain;

“waste water” means used water other than soil water or trade effluent;

“ waterways board ” means the British Waterways Board; and
“ width ” in relation to a street means the width of the carriageway
and footways taken together.

PART I
—cont.

(3) Any reference in this Order to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Order.

4. Except where otherwise provided, or where the context otherwise requires, the provisions of this Order, other than Part II (Sheriff court house), and Part VIII (Water of Leith), shall apply only to the city.

Limits of
Order.

PART II

SHERIFF COURT HOUSE

A. Definitions for Part II of Order

5. In this Part of this Order—

“ burgh ” means the burgh of Musselburgh;

“ clerk ” means the clerk to the commissioners;

“ commissioners ” means the persons holding office as commissioners for the purposes of this Part of this Order and of the Sheriff Court Houses Acts;

“ county council ” means the county council of the county of Midlothian; and “ county councillor ” and “ county clerk ” mean respectively a county councillor of the county of Midlothian and the clerk to the county council;

“ Sheriff Court Houses Acts ” means the Sheriff Court Houses (Scotland) Acts 1860 to 1884; and

“ town council ” means the town council of the burgh.

Definitions for
Part II of
Order.

B. Constitution, meetings and proceedings of sheriff court house commissioners

6.—(1) (a) The commissioners shall consist of thirteen persons, namely:—

(i) the sheriff;

(ii) the convener of the county of Midlothian and the provost of the burgh;

(iii) seven members of, and to be appointed by, the Corporation; and

(iv) three members of, and to be appointed by, the county council.

(b) The sheriff shall be chairman of the commissioners.

(c) The commissioners shall annually appoint one of their members to be vice-chairman of the commissioners.

Constitution of
sheriff court
house
commissioners

(2) (a) The commissioners elected by the Corporation under the repealed Acts in office immediately before the commencement of this Order shall cease to hold office as commissioners on the 6th May, 1965, but shall be eligible for appointment under this Part of this Order.

PART II
—cont.

(b) The commissioners to be appointed by the Corporation under sub-paragraph (iii) of paragraph (a) of the preceding subsection shall be appointed annually at the statutory meeting of the Corporation, or at any adjournment thereof, and shall hold office until the next statutory meeting of the Corporation.

(3) (a) The commissioners elected by the county council under the repealed Acts in office immediately before the commencement of this Order shall continue to hold office as commissioners until the first meeting of the county council held after the election of county councillors in 1967, but shall be eligible for appointment under this Part of this Order.

(b) The commissioners to be appointed by the county council under sub-paragraph (iv) of paragraph (a) of subsection (1) of this section shall be appointed at the first meeting of the county council held after the election of county councillors in 1967 and shall hold office until the first meeting of the county council held after the next ensuing election of county councillors.

(4) Any appointed commissioners ceasing to hold office shall, if qualified, be eligible for re-appointment.

Sheriff court
house
commissioners
to be a body
corporate and
a joint board.

7.—(1) The commissioners shall be a body corporate by the name of the “Edinburgh Sheriff Court House Commissioners” with a common seal, with power to hold and dispose of land, and to borrow money, and to sue or be sued, and with all other rights, powers and privileges of a body corporate.

1948 c. 26.

(2) The commissioners shall be a joint board within the meaning and for the purposes of the Act of 1947 and of Part VI of the Local Government Act 1948 (which relates to allowances to members of local authorities and other bodies) notwithstanding the variation of their constitution effected by this Part of this Order, or by any variation effected by an order made by the Secretary of State in pursuance of section 14 (Alteration of constitution of sheriff court house commissioners) of this Order.

Resignation
of sheriff court
house
commissioners

8.—(1) Any commissioner appointed by the Corporation or the county council may at any time resign the office of commissioner by a notice signed by him and delivered to the clerk, and the resignation shall take effect upon the expiration of three weeks after the date of delivery of the notice or upon such earlier date, if any, as may be stated in the notice as the date on which the resignation is to take effect.

(2) Where any commissioner resigning, his office is a commissioner appointed by the county council the clerk shall forthwith notify the county clerk of the resignation of such commissioner.

Filling of casual
vacancies
among sheriff
court house
commissioners.

9. A casual vacancy among the commissioners appointed by the Corporation or the county council, whether caused by death or resignation or any other cause, shall be filled by the Corporation or the county council, as the case may be, as soon as may be after the occurrence of such vacancy.

PART II

—cont.

10. Any deed to which the commissioners are a party shall be deemed to be validly executed on their behalf if it is signed by two commissioners and the clerk, with or without the common seal being adhibited.

Execution of
deeds by
sheriff court
house
commissioners.

11.—(1) (a) At all meetings of the commissioners the chairman, if present, shall preside.

Proceedings of
sheriff court
house
commissioners.

(b) In the absence of the chairman from any meeting the vice-chairman shall preside, and in the absence of the chairman and vice-chairman the commissioners present shall appoint a chairman of such meeting from their own number.

(2) At all meetings of the commissioners five shall be a quorum.

(3) The commissioners may make standing orders for the regulation of their business.

(4) Paragraphs 1, 2, 3, 4, 5, 6 and 8 of Part IV of the Third Schedule to the Act of 1947 shall, with any necessary adaptations, and subject to the provisions of this Part of this Order, apply with respect to the commissioners and to any sub-committee of the commissioners as if the commissioners were a local authority and as if the clerk was the clerk to the local authority:

Provided that any omission to send notice to any commissioner shall not affect the validity of a meeting.

12. Section 337 of the Act of 1947 (which relates to the protection of members and officers of local authorities in relation to obligations etc.) shall, with any necessary adaptations, apply with respect to the persons holding office as commissioners under this Part of this Order and to the officers of the commissioners.

Application of
section 337 of
Act of 1947 to
sheriff court
house
commissioners.

13.—(1) The town clerk shall be clerk to the commissioners and the city chamberlain shall be the financial officer of the commissioners.

Officers of
sheriff court
house
commissioners

(2) Any person holding office as a depute town clerk or a depute city chamberlain shall be a depute clerk to the commissioners or a depute financial officer of the commissioners, as the case may be, and all things required or authorised by law to be done by or to the clerk or the financial officer respectively may be done by or to any such depute.

(3) The commissioners may appoint such other officers and servants as they consider necessary for the efficient discharge of their functions.

14.—(1) The Secretary of State may from time to time, after consultation with the sheriff, the Corporation, the county council and the town council, by order alter the constitution of the commissioners in such manner as may appear to him to be expedient, and any such order may make all such amendments of the provisions of this Part of this Order relative to the constitution and appointment of the commissioners as may be necessary or desirable.

Alteration of
constitution of
sheriff court
house
commissioners.

PART II
—cont.

(2) The power to make orders conferred on the Secretary of State by this section shall be exercisable by statutory instrument, and no such order shall be made unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament.

(3) Any such order may be amended or revoked by a subsequent order made in like manner and subject to the like conditions.

Minutes of meetings, accounts, etc., of sheriff court house commissioners to be supplied to town clerks of Edinburgh and Musselburgh and to county clerk.

15.—(1) The clerk shall send to the town clerk, the county clerk, and the town clerk of the burgh a copy of—

- (a) minutes of all meetings of the commissioners and sub-committees thereof;
- (b) the final estimates of the commissioners; and
- (c) the abstract of the accounts of the commissioners, duly audited.

(2) The copies of such minutes and final estimates shall be sent as nearly as practicable at the same time as they are sent to the commissioners, and the copies of the abstract of accounts shall be sent as soon as reasonably practicable:

Provided that any omission to send copies of such minutes, final estimates or abstract of accounts shall not affect the validity of any action of the commissioners.

C. Powers and duties of sheriff court house commissioners, and management of sheriff court house

Powers and duties of sheriff court house commissioners.

16. Subject to the provisions of this Part of this Order there shall be vested in the commissioners the powers and duties under the Sheriff Court Houses Acts of the Corporation, the county council, and the town council.

Management of sheriff court house.

17. The commissioners shall, in relation to the sheriff court house, have all the functions with regard to the provision, management, control, superintendence and disposal of sheriff court houses conferred on commissioners of supply by the Sheriff Court Houses Acts.

Acquisition and disposal of land and provision of buildings by sheriff court house commissioners

18.—(1) The commissioners may, with the consent of the Secretary of State, acquire by agreement, whether by way of purchase, feu, lease or excambion, any land which they require for any purpose connected with the exercise of their functions.

(2) (a) The commissioners may be authorised by the Secretary of State to purchase compulsorily any land which they require for any such purpose, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act.

(b) Nothing in this subsection shall authorise the compulsory acquisition of operational land of any statutory undertakers.

PART II
—cont.

(3) The commissioners may, with the consent of the Secretary of State, sell or otherwise dispose of any land vested in them which is not required for any purpose connected with the exercise of their functions.

(4) Section 164 of the Act of 1947 (which relates to the erection of buildings, etc. by local authorities) shall, with any necessary adaptations, apply with respect to the commissioners as it applies with respect to local authorities.

19. The commissioners may, with the consent of the Secretary of State, construct, purchase, or take on lease dwellinghouses for any persons employed by them.

Dwelling-
houses for
persons in
employment of
sheriff court
house
commissioners.

D. Financial provisions

20. This head of this Part of this Order shall come into operation on the 16th May, 1965.

Commencement
of head D of
Part II of
Order.

21. The financial year of the commissioners shall be the year commencing on the 29th May.

Financial year
of sheriff court
house
commissioners.

22. The provisions of Part IX of the Act of 1947, so far as relating to the accounts of local authorities, shall, with any necessary adaptations, apply with respect to the accounts of the commissioners.

Accounts of
sheriff court
house
commissioners.

23.—(1) (a) The expenditure of the commissioners in each financial year of the commissioners, so far as not met by government grant and any other income, shall be defrayed by—

Net expenditure
of sheriff court
house
commissioners
to be met by
local authorities.

- (i) the Corporation;
- (ii) the county council; and
- (iii) the town council;

according to the product of a rate of one penny in the pound or the standard penny rate product, whichever is the higher, for the city, the county of Midlothian and the burgh respectively for that year, and the commissioners shall issue requisitions in accordance with the provisions of Part XI of the Act of 1947 (which relates to the levy and collection of rates by rating authorities and requisitions for payment by other local authorities) to the Corporation, the county council and the town council for payment of the sums to be paid by each of them respectively in pursuance of this subsection.

(b) In this subsection the expression “product of a rate of one penny in the pound” and “product of a standard penny rate product” in any year in relation to the city, the county of Midlothian and the

PART II
—cont.

1963 c. 12.

burgh respectively shall be the amount calculated, determined or estimated, as the case may be, for each of the said areas for the year in accordance with the provisions of the Local Government (Financial Provisions) (Scotland) Act 1963, or by any rules made thereunder.

(2) For the purposes of the preceding subsection the county of Midlothian shall be deemed to include the burghs of Bonnyrigg and Lasswade, Dalkeith, Loanhead and Penicuik, and for the purposes of the said Part XI of the Act of 1947, payment by the county council of the amount due under a requisition in pursuance of the preceding subsection shall be deemed to be expenditure by them on a function within the landward area of the county and within the said burghs of Bonnyrigg and Lasswade, Dalkeith, Loanhead and Penicuik.

Borrowing
powers of
sheriff court
house
commissioners.

24.—(1) (a) The commissioners may borrow temporarily, by way of overdraft or otherwise, such sums as they may require—

- (i) for the purpose of defraying current expenditure of an annual nature pending the receipt of revenue receivable by them in respect of the period of account to which such expenditure is chargeable and taken into account in the estimates made by them for that period; and
- (ii) for the purpose of defraying, pending the raising of money which they have been authorised to raise under the succeeding subsection, expenditure intended to be defrayed out of that money.

(b) All sums borrowed under sub-paragraph (i) of the preceding paragraph shall be repaid as nearly as may be at or before the end of the financial year of the commissioners in which such sums were borrowed.

(2) The commissioners may, with the consent of the Secretary of State, borrow money for all or any of the following purposes:—

- (a) the acquisition of land or the construction of buildings;
- (b) the execution of any permanent work, or the doing of any other thing the cost of which ought, in the opinion of the Secretary of State, to be spread over a term of years;
- (c) the repayment of any money borrowed by them temporarily under sub-paragraph (ii) of paragraph (a) of the preceding subsection.

(3) Sections 260 and 296 of the Act of 1947 (which relate to borrowing by local authorities) shall, with any necessary adaptations, apply with respect to any such borrowing.

PART III

DEAN OF GUILD COURT

A. Definitions for Part III of Order

Definitions for
Part III of
Order.

25. In this Part of this Order—

“appointed member” means a member of the court other than the lord dean of guild;

“ court ” means the dean of guild court of the city constituted in pursuance of the succeeding section; and

PART III
—cont.

“ the Leith wards ” means the Wards XVIII (West Leith), XIX (Central Leith) and XX (South Leith).

B. Constitution, proceedings, jurisdiction, etc., of dean of guild court

26.—(1) The dean of guild court shall consist of fifteen members, as follows:—

Constitution of dean of guild court.

(a) the lord dean of guild appointed by the guildry of the city as use is; and

(b) fourteen members appointed by the Corporation, being—

(i) seven town councillors, of whom not less than two shall be councillors for the Leith wards; and

(ii) seven persons other than town councillors, of whom not less than five shall be persons carrying on, or who have carried on, business in the city as architects, civil engineers, surveyors or builders.

(2) The appointed members shall be appointed annually at the statutory meeting of the Corporation, or at any adjournment thereof, and shall hold office until the next statutory meeting of the Corporation.

(3) The members of the court appointed by the Corporation under the repealed Acts in office immediately before the commencement of this Order shall cease to hold office on the 6th May, 1965, but shall be eligible for re-appointment.

27.—(1) Any appointed member who—

(a) intimates in writing to the town clerk his resignation of office; or

(b) fails throughout a period of three consecutive months (counting from the sitting of the court from which he was first absent) to attend any sitting of the court without leave of absence from the court;

Casual vacancies among appointed members of dean of guild court.

shall be held to have vacated office.

(2) Any member appointed under sub-paragraph (ii) of paragraph (b) of subsection (1) of the preceding section shall cease to hold office if he is elected a town councillor of the city.

(3) As soon as may be after the occurrence of any casual vacancy among the appointed members the Corporation shall appoint a duly qualified person to fill such vacancy.

28.—(1) A quorum of the court shall be five, and the court may act notwithstanding any vacancy if a quorum is present.

Proceedings in dean of guild court.

(2) The court shall sit as often as may be necessary at such convenient place within the city as they may appoint.

PART III
—cont.

(3) At all sittings of the court the lord dean of guild, if present, shall preside.

(4) If the lord dean of guild is absent from any sitting of the court the members present shall appoint one of their number to preside at such sitting and act as interim dean of guild.

(5) The lord dean of guild, or other member presiding at any sitting of the court, shall have a casting vote as well as a deliberative vote in all proceedings before the court.

(6) The proceedings of the court shall not be invalidated by any defect in the election, appointment or qualification of any member.

(7) A member of the court shall not sit as such when any matter in which he is personally interested is under consideration.

(8) The procedure in the court in respect of any business which is not conjoined with business relating to the functions of the court under the Act of 1959 shall be conform to the rules of procedure set forth in Schedule 1 to this Order.

Jurisdiction and
functions of
dean of guild
court.

29. In addition to the jurisdiction and functions of the court under the Act of 1959 as buildings authority for the city, and to any other jurisdiction and functions exercisable by the court, the court shall have the powers conferred on them by the following sections of this Order:—

Section 37 (Public buildings);

Section 40 (As to execution of works required under head C of Part IV of Order); and

Section 47 (New building overreaching adjoining chimneys).

Committees of
dean of guild
court.

30.—(1) The court may appoint committees, consisting wholly of members of the court, and may delegate to any committee so appointed any of their jurisdiction and functions—

(a) under section 6 of the Act of 1959, not being functions delegated by virtue of section 7 of that Act to the clerk of the court or to the master of works;

(b) under any of the sections referred to in the preceding section;

(c) relating to the inspection of buildings; or

(d) relating to the disposal of incidental questions (including questions as to expenses) arising in proceedings on any application to them.

(2) Notwithstanding anything in the preceding subsection—

(a) an application shall not be dealt with under a delegation made by virtue of paragraph (a) of the preceding subsection unless it is shown in the manner prescribed in pursuance of the Act of 1959 that there is no objection to the granting of the application on the part of the master of works or any other

person on whom the application is required, by regulations made under section 2 of the Act of 1959, to be served, and in any case where it is not so shown the application shall be dealt with by the court; and

PART III
—cont.

(b) any person aggrieved by a refusal of a committee of the court to grant, under a delegation made by virtue of paragraph (a) of the preceding subsection, an application made by him may require his application to be referred to, and dealt with by, the court.

(3) The convener of any such committee shall be appointed by the court, and the convener (or other member presiding at any meeting of a committee in the absence of the convener) shall have a casting vote as well as a deliberative vote.

(4) The quorum of any such committee shall be fixed by the court and such committee may act notwithstanding any vacancy in their number if a quorum is present.

(5) For the purposes of this section “ delegate ” means remit to a committee with power to such committee to exercise on behalf of the court the jurisdiction and functions specified in the remit.

31. The Corporation shall provide such accommodation, with furniture, books and other things as are required for the transaction of the business of the court, and the salaries, fees and expenses of the officers of the court shall be paid out of the burgh fund. Expenditure of dean of guild court.

32. Nothing in this Order shall be in derogation of the rights, powers, privileges, functions and jurisdictions possessed by the court at common law or by usage as a dean of guild court of a royal burgh except so far as inconsistent with any provision of the Act of 1959. Saving for common law rights of dean of guild court.

C. Officers of dean of guild court

33.—(1) The Corporation shall appoint a clerk of the court.

Clerk of dean of guild court.

(2) Section 93 (other than subsection (3)) of the Act of 1947 (which relates to the appointment of depute or interim officers) shall apply to the office of clerk of the court as if the clerk of the court were included among the officers mentioned in subsection (1) thereof.

34.—(1) The Corporation may appoint legal assessors to advise the court on questions of law.

Legal assessors of dean of guild court.

(2) If any legal assessor is not available at any time the clerk of the court may appoint an interim legal assessor.

35. The Corporation may appoint such other officers of the court as they consider necessary for the efficient discharge of their functions, and every such officer shall hold office during the pleasure of the Corporation. Other officers of dean of guild court.

PART IV

BUILDINGS

A. Buildings on new streets

Prohibition of building to which access is obtained from new street until street defined, etc.

36.—(1) The dean of guild court shall not grant warrant for the construction of any building to which an access is obtained from a new street until—

(a) the Corporation have made an order authorising the construction of such street or, in the case of a street to be constructed by them, have resolved to construct such street; and

(b) the approved line, width and level of such street or such length thereof as shall be necessary for forming a proper access to such new building, has been defined by posts or in some other suitable manner.

(2) (a) Where any such new street or length thereof has been so defined a person shall not occupy, or permit to be occupied, any new building to which an access is obtained from such street or length thereof until—

(i) the carriageway and footway of such new street, or length thereof, has been completed (in accordance with the terms of the relative order in the case of a street authorised by a new street order), or, pending such completion, to such modified extent approved by the city engineer as sufficient for the purpose of access to such building; and

(ii) such new street, or length thereof, has been sewered.

(b) Where access to such new building is provided by means of a footpath in addition to the access from the street the provisions of sub-paragraph (i) of paragraph (a) of this subsection shall, with any necessary adaptations, apply with respect to the completion of such footpath as it applies with respect to the completion of the carriageway and footway of the new street.

(3) Any person acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and, in the case of a street authorised by a new street order, the Corporation may construct so much of the carriageway, footway, footpath and sewerage works as should have been constructed, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from the person in default.

(4) Nothing in this section shall apply in relation to any building required to be constructed for the housing of the apparatus of the electricity board or the gas board.

B. Public buildings

Public buildings. 37.—(1) The dean of guild court may on the application of the master of works cause any public building to be inspected and may, by notice under the hand of the master of works, require the owner of such building to execute such works to minimise the risk to the

public in the event of fire or other danger as the dean of guild court may think fit, and as shall be specified in such notice, and that within a reasonable period to be specified in such notice.

PART IV
—cont.

(2) (a) If any such owner fails to comply with any requirement of a notice under this section within the period prescribed therein the sheriff may, on the application of the master of works, interdict such owner from using such building or causing or permitting it to be used until such requirement has been complied with.

(b) Any application under this subsection shall proceed by way of initial writ under the Sheriff Courts Acts and shall proceed in all respects as if it were an action for interdict at common law.

(c) It shall be competent, in the proceedings on any such application, for the owner to raise the question of the reasonableness of any requirement of any such notice, and the sheriff may modify any such requirement.

(3) Nothing in this section shall authorise the dean of guild court to require the execution of any works in conflict with, deviation from, or excess of, the provisions of the building standards regulations.

(4) This section shall not apply in relation to premises in respect of which a licence under head A—Places of public entertainment—or a permit under head B—Public shows—of Part IX (General licensing provisions) of the Order of 1961, or a licence under the Cinematograph Acts 1909 and 1952, is for the time being in force.

C. Maintenance of buildings

38. The master of works may, by notice, require the owner of any building or other premises fronting or adjoining a street to execute such works including the provision of rhones, down pipes, channels or gutters (being works of replacement or maintenance) as may be specified in such notice as are necessary to prevent, so far as is reasonably practicable, water from such building or other premises falling upon the street or flowing on to, or over, the footway thereof, and that within a reasonable period to be stated in such notice.

Prevention of
water from
buildings and
other premises
flowing on to
footway.

39.—(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 pertaining to, a building has become insecure, worn out, damaged or is in need of repair the master of works may, by notice, require the owner of such building, within a reasonable period to be stated in such notice, to execute such works as may be necessary for securing, restoring or repairing such structure, fixture, wall or fence and as shall be specified in such notice.

Repair, etc., of
structure, etc.,
of buildings.

(2) This section shall not apply in relation to any advertisement to which regulations made under section 29 of the Town and Country Planning (Scotland) Act 1947, for the time being apply.

1947 c. 53.

PART IV
—cont.

As to
execution of
works required
under head C
of Part IV of
Order.

40.—(1) If any works required to be executed by any owner in pursuance of a notice under this head of this Part of this Order are not executed within the period stated therein, the master of works may serve notice upon such owner requiring him to show cause to the dean of guild court why such works should not be executed by the master of works, and if such owner fails to show cause as aforesaid such works may be executed by the master of works, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from such owner.

(2) Notwithstanding anything in this head of this Part of this Order the master of works may, in a case of emergency (of which he shall be the sole judge), execute without notice any such works on any building as he could have required by notice under the preceding section, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from the owner of such building.

As to notices
and allocation
of expense for
purposes of
head C of
Part IV of
Order in
relation to
tenements.

41.—(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 head of this Part of this Order be deemed to be the owner of such building and notices shall be given to the owner of every such part of such building accordingly.

(2) Every owner of every such part of such building shall be liable to the Corporation for any expense incurred by the master of works in executing any works in pursuance of this head of this Part of this Order in the proportion which the net annual value of the part of such building owned by him bears to the aggregate of the net annual value of the whole of such building at the date when the works were completed 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 to recover from the owner of any other part of such building the amount, or any part thereof, paid by, or recovered from, him.

(3) For the purposes of the preceding subsection the expression “net annual value”, in relation to any part of such building which is separately entered in the valuation roll, means the net annual value as shown in the valuation roll of such part of such building and, in relation to any part of such building which, along with other lands and heritages (not being part of such building), is entered as a unum quid in the valuation roll, means the proportion of the net annual value, as shown in the valuation roll, of the subjects so entered which is applicable to such part of such building according to an apportionment to be made by the city assessor.

Appeals against
notices, etc.,
under head C
of Part IV of
Order.

42. Any person aggrieved by—

- (a) any requirement of a notice under this head of this Part of this Order; or
- (b) any apportionment made under subsection (3) of the preceding section;

may appeal to the sheriff.

D. Special provisions with respect to tenements

PART IV

—cont.

43.—(1) The owner of premises in, or entering or having access from, any common stair or any basement used in common shall—

Repair, etc.,
of common
stairs, etc.

(a) in the case of a common stair having an open well-hole, provide and maintain handrails of sufficient height, or otherwise so constructed or guarded, as to prevent children climbing or sliding thereon;

(b) provide and maintain any necessary fencing on the windows in such common stair; and

(c) maintain the doors of such common stair, and the doors of all cellars opening into such common stair, or of any basements used in common.

(2) Any such owner failing to comply with any provision of the preceding subsection shall be guilty of an offence under this Order, and the Corporation may execute any works reasonably necessary to remedy the defect, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from such owner.

44. If any back green or open ground attached to any tenement containing eight or more separate dwellinghouses, or any court, passage or area used in common by the occupiers of such a tenement is not so formed, flagged, asphalted or paved, or is not provided with such works on, above, or below its surface as to allow of the satisfactory drainage of its surface or subsoil to a proper outfall, the city engineer may, by notice, require the owner of such tenement to execute all such works as may be necessary to remedy the defect and as shall be specified in such notice, and that within a reasonable period to be stated in such notice.

Back greens,
courts, etc.,
to be paved.

45.—(1) (a) The Corporation may, by notice, require the owner of any tenement to execute, within a reasonable period to be specified in such notice, such works as may be necessary, and as shall be specified in such notice, to protect all water supply pipes and cisterns within such tenement against accident or stoppage from frost.

Protection of
pipes from
frost.

(b) Any owner aggrieved by any requirement of a notice under this subsection may appeal to the sheriff.

(2) Section 41 (As to notices and allocation of expense for purposes of head C of Part IV of Order in relation to tenements) of this Order shall, with any necessary adaptations, apply with respect to works required by a notice under the preceding subsection.

46.—(1) The owner of any part of a tenement may, with the consent of the Corporation, but without the consent of the owner or occupier of any other part of the tenement, lay and maintain water pipes, soil pipes and waste pipes in, through or across any common stair or court and upon the outside walls of the tenement, and through any basement thereof, and any ground or area connected therewith.

Water pipes
and soil and
waste pipes
may be carried
through
different parts
of tenements.

(2) Where it is necessary, in order to provide for the effectual drainage of any part of a tenement, that any soil pipe or waste pipe shall be carried through or under any other part of the tenement the owner

PART IV
—cont.

of such part for which drainage is to be provided may, with the consent of the Corporation but without the consent of the owner or occupier of such other part of the tenement, lay and maintain such soil pipe or waste pipe through such other part of the tenement.

(3) Any owner exercising his rights under this section shall cause as little damage to property, and detriment and inconvenience to any person, as circumstances allow, and shall make good any damage done.

(4) Nothing in this section shall be in derogation of regulation 161 of the building standards regulations (which relates to the siting of soil pipes, etc., and the provision of ducts therefor).

E. Height of chimneys

New building
overreaching
adjoining
chimneys.

47.—(1) Where after the commencement of this Order:—

- (a) any person constructs a building (in this section referred to as the “taller building”) to a greater height than an adjoining building; and
- (b) any chimneys or flues of the adjoining building are in a party wall between the two buildings or in an external wall of the adjoining building;

the dean of guild court may, on the application of the master of works, make an order—

- (i) requiring that person, within such period as may be specified in the order, (not being less than two months), to increase the height of those chimneys or flues (if it is reasonably practicable so to do) so that the top thereof will be of the same height as the top of the chimneys of the taller building or, where there are no chimneys on the taller building, such height above the top of the taller building as may be prescribed in the order; and
- (ii) requiring the owner and occupier of the adjoining building to allow the first-mentioned person to enter on that building and execute such work as may be necessary to comply with such order.

(2) If within fourteen days from the date of an order made under the preceding subsection, the said owner or occupier serves on the first-mentioned person and on the master of works a notice that he elects to execute the work himself, the owner or occupier shall comply with the order instead of the first-mentioned person and recover from that person the expense reasonably incurred by him in so doing.

(3) Any person aggrieved by an order made under subsection (1) of this section may appeal to the sheriff, and section 16 of the Act of 1959 (which relates to appeals against decisions of buildings authorities) shall, with any necessary adaptations, apply with respect to any such appeal.

(4) If—

- (a) any person required to increase the height of any chimneys or flues in accordance with an order made under subsection (1) of this section fails to comply with such requirement (except in a case where the owner or occupier of an adjoining building

has refused to allow entry on that building or the execution of any such work as may be necessary to comply with such requirement or has served a notice as aforesaid); or

PART IV
—cont.

- (b) any person required to allow entry on his building in accordance with any such order fails to allow such entry or, having served a notice as aforesaid, fails to comply with such requirement;

he shall be guilty of an offence under this Order, and the master of works may execute such work as may be necessary to increase the height of any chimneys or flues in accordance with the requirement of such order, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from the person constructing the taller building.

F. Miscellaneous

48. Regulation 197 of the building standards regulations (which requires that every window above the ground storey of a house, not being a roof light, shall be so constructed as to enable the outside of the window to be cleaned safely from inside the house) shall in its application to the city, also extend and apply to the construction of the windows in buildings of any other classification: Construction of windows.

Provided that in special circumstances the dean of guild court may dispense with the requirements of the said regulation in the case of any such buildings.

PART V

STREETS

A. Vesting, etc., for purposes of Part V of Order

49. Subject to the provisions of this Part of this Order, all streets, carriageways or footways or parts thereof which were vested in the Corporation at the commencement of this Order shall continue to be vested in them for the purposes of this Part of this Order. Vesting of public streets.

50. Subject to the provisions of this Order all land acquired by the Corporation for the purpose of constructing, widening or improving public streets shall vest in them without the necessity of any disposition or other conveyance in their favour of the lands so acquired. Vesting of land acquired by Corporation for street purposes.

51.—(1) The Corporation shall maintain, and shall keep corrected up to date, the list prepared by them in pursuance of the repealed Acts of public streets and of any carriageways and footways or parts thereof for the maintenance of which they have undertaken responsibility. List of public streets.

(2) The omission of any street from the list of public streets shall not of itself infer that such street is not a public street.

(3) The list of public streets shall be kept in the office of the city engineer and may be inspected by any person free of charge at all reasonable hours.

PART V
—cont.Construction of
new streets by
Corporation.*B. Construction of new streets by Corporation*

52.—(1) The Corporation may construct a public street upon any lands vested in them, and as part of the construction of any public street they may—

- (a) construct a bridge or tunnel to carry such street; and
- (b) construct dual carriageways, cycle tracks and roundabouts.

(2) The construction of a tunnel under the powers of the preceding subsection shall be carried out only under a public street or in any lands vested in the Corporation.

(3) Nothing in subsection (1) of this section shall authorise the construction of a bridge over, or a tunnel under, any navigable waters, but the provisions of this subsection shall not affect the powers of the Corporation with respect to the maintenance, improvement or reconstruction of any existing bridge carrying a street over navigable waters.

Corporation
may enter into
agreements with
private
developers
relative to
construction of
new streets.

53. The Corporation may enter into and carry into effect agreements with any persons for the construction by the Corporation of public streets through the lands of such persons partly at the expense of such persons and partly at the expense of the Corporation.

*C. Naming of streets and numbering of premises in streets*Naming of
streets.

54.—(1) The Corporation shall determine the name by which every street shall be distinguished.

(2) (a) The Corporation may from time to time alter the name of any street.

(b) Notice of any alteration of the name of any street made by the Corporation under this subsection shall be given by them forthwith by advertisement.

(3) The Corporation shall cause the name of every street to be affixed, painted or marked on a conspicuous part of any premises, fence, lamp-post, pole, standard or other structure at or near each end or corner of, and entrance to, such street, and for the purposes of this subsection they may erect poles, standards or other structures in such street.

(4) Any person who puts up in any street any name different from the name affixed, painted or marked or caused to be affixed, painted or marked by the Corporation shall be guilty of an offence under this Order.

Numbering of
premises in
streets.

55.—(1) The Corporation may, by notice, require the owner of any premises in any street to affix or paint on such premises such distinguishing number in such position and style, and within such period, as may be prescribed in such notice.

(2) The Corporation may from time to time, by notice, require the owner of any such premises to alter such number or, when necessary, to renew it.

PART V
—cont.

(3) Any owner who affixes, paints or marks or suffers to be affixed painted or marked on any premises any number other than the number prescribed in a notice under this section shall be guilty of an offence under this Order.

56. The Corporation shall keep a register of all alterations made by them in the numbers of premises in streets, and such register shall be kept in the office of the city engineer and may be inspected by any person free of charge at all reasonable hours.

Register of alterations in numbers of premises in streets.

D. Maintenance and improvement of streets

General power of maintenance and improvement

57.—(1) The Corporation may from time to time execute such works on any public street as they may deem necessary or expedient for the purposes of maintaining, altering, widening, improving or renewing it, including—

Maintenance, improvement, etc., of public streets.

- (a) the construction of dual carriageways, the division of carriageways, the construction of roundabouts and the variation of the relative widths of carriageways and footways;
- (b) the construction of cycle tracks;
- (c) the construction and reconstruction of bridges carrying streets; and
- (d) the alteration of the levels of streets.

(2) The Corporation shall, subject to the provisions of this Order, pay compensation to the owners and occupiers of any lands or premises injuriously affected by any operations of the Corporation under paragraphs (c) and (d) of the preceding subsection.

Safety provisions

58.—(1) The Corporation may in any public street construct and maintain such raised paving, pillars, walls, rails or fences or apparatus or works, temporary or permanent, as they consider necessary for the protection of the public.

Guard rails, refuges, etc., in streets.

(2) The provisions contained in Part II of the Act of 1950 (which regulate the relations between an authority carrying out road alterations and undertakers whose apparatus is affected thereby) shall apply to works executed under the powers of the preceding subsection as if such works were mentioned in paragraph (a) of subsection (1) of section 21 of that Act.

59.—(1) The owner of every sunk area, or other land fronting or adjoining a street which is on a lower level than such street, shall provide and maintain fencing or railings of sufficient height and so situated and constructed as to obviate danger to persons using such street.

Fencing of sunk areas, etc., fronting or adjoining streets.

PART V
—cont.

(2) Any owner acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and the Corporation may provide such fencing or railings, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from such owner.

Fencing of
lands and
premises
fronting streets.

60.—(1) The Corporation may, by notice, require the owner of any land fronting any street, within a reasonable period to be stated in such notice, to erect, so far as not already done, a suitable fence or wall along such land so far as fronting such street, and to repair, alter or renew any fence or wall along such land so far as fronting such street.

1845 c. 33.

(2) This section shall not apply to any land requiring to be fenced in pursuance of the Railways Clauses Consolidation (Scotland) Act 1845, so long as used for railway purposes.

Pawl posts in
streets.

61.—(1) The Corporation may erect pawl posts in any street where they consider it necessary or expedient.

(2) The provisions contained in Part II of the Act of 1950 (which regulate the relations between an authority carrying out road alterations and undertakers whose apparatus is affected thereby) shall apply to works executed under the powers of the preceding subsection as if such works were mentioned in paragraph (a) of subsection (1) of section 21 of that Act.

Lopping of
overhanging
trees, hedges,
etc.

62.—(1) Where any tree, hedge or shrub overhangs any street so as to—

- (a) endanger or obstruct the passage of vehicles or pedestrians;
- (b) obstruct or interfere with the light from any public lamp; or
- (c) obstruct the view of drivers of vehicles;

the Corporation may, by notice, require the owner or occupier of the land on which such tree, hedge or shrub is growing, to lop or cut the same within fourteen days so as to prevent such obstruction, interference or danger.

(2) Any person aggrieved by any requirement of a notice under the preceding subsection may appeal to the sheriff.

Height of
fences and
hedges at
corners of
streets.

63.—(1) For the purpose of promoting public safety and of facilitating traffic by preventing or removing obstructions to view, the Corporation may, by notice to the owners of any lands situated at, or within fifty yards from, the corner of any street, prescribe the height of fences, boundary walls, hedges, trees and shrubs at, or within fifty yards from, such corner.

(2) (a) A person on whom a notice under the preceding subsection has been served shall not construct a fence or wall or permit a hedge, tree or shrub to grow to a greater height than that prescribed by the notice.

(b) Any person acting in contravention of this subsection shall be guilty of an offence under this Order, and the Corporation may enter upon the land and reduce the height of such fence, wall, hedge,

tree or shrub to the height prescribed by them, and the expense reasonably incurred by them in so doing shall be recoverable from the owner in default.

PART V
--cont

(3) (a) The Corporation may, by notice, require the owners of such lands to reduce the height of any fence, wall, hedge, tree or shrub which exceeds that prescribed by the notice to a height not exceeding that so prescribed.

(b) Where the height of any existing fence, wall, hedge, tree or shrub is reduced in accordance with the requirements of a notice under this subsection the Corporation shall, subject to the provisions of this Order, pay compensation to the owners and occupiers of any lands injuriously affected thereby.

(c) Compensation shall not be paid a second time in consequence of the growth of any hedge, tree or shrub above the height prescribed in such notice.

(4) Any person aggrieved by any requirement of any notice under this section may appeal to the sheriff.

(5) The owner of the land to which any notice under this section relates may, notwithstanding any agreement with the occupier, take such steps as are necessary for complying with the requirements of such notice.

64.—(1) The Corporation may, by notice, require the owner or occupier of any land fronting or adjoining any public street to execute, within such reasonable period as may be prescribed in such notice (not being less than twenty-eight days), such works as may be specified in such notice for the prevention of soil or refuse from that land falling, or being washed or carried, on to such street or into any sewer or gully therein in such quantities as to obstruct such street or choke such sewer or gully.

Prevention of soil, etc., being washed into streets.

(2) Any person aggrieved by any requirement of a notice under the preceding subsection may appeal to the sheriff.

Construction of footways of public streets

65.—(1) The Corporation may, by notice, require the owners of any lands fronting or adjoining, or having access to, any public street, to cause, within such reasonable period as may be prescribed in such notice, footways to be provided before their respective lands and to be paved with such material, in such manner and form, and of such breadth, as may be prescribed in such notice.

Construction of footways of public streets.

(2) (a) Where the lands of any owner front any street for a continuous length exceeding one hundred yards and such lands are unfeued or unbuilt on, or are not laid out or used as a garden or pleasure ground or pertinent of a house, the Corporation shall not be entitled to require such owner to construct such footway, but they may themselves cause such footway to be constructed in so far as they consider necessary and for that purpose they may enter upon such lands.

PART V
—cont.

(b) The Corporation may recover from such owner the expense reasonably incurred by them in the construction of such footway when the lands fronting such footway are—

- (i) feued or built upon; or
- (ii) laid out or used as a garden or pleasure ground or pertinent of a house.

(c) All expense incurred by the Corporation under this subsection, so far as recoverable from the owners, shall be recoverable in the manner in which expense incurred by the Corporation in connection with works on private streets is recoverable under this Order.

(3) Nothing in this section shall empower the Corporation to enter upon operational land of any statutory undertakers without the consent of the undertakers concerned.

Construction of footways in front of new buildings.

66. Any person who proposes to construct a building fronting a public street where there is no existing footway, or a footway of less width than seven feet six inches between the carriageway of such street and the lands upon which it is proposed that the building shall be constructed, shall make provision on such lands for a footway of such breadth, not exceeding seven feet six inches, as the Corporation may, by notice, require, and shall construct such footway with such material, in such manner and form, and within such reasonable period, as may be specified in such notice.

Footways constructed under sections 65 and 66 of Order to be public footways.

67. Footways constructed under either of the two preceding sections shall, on completion, vest in, and be maintained by, the Corporation for the purposes of this Part of this Order.

Grass margins, trees, shrubs, etc.

Grass margins, etc., in streets.

68.—(1) The Corporation may—

- (a) lay out and maintain grass or other margins in any part of any public street;
- (b) plant with trees or shrubs any part of any public street;
- (c) protect with suitable guards or fences any such grass or other margins, trees or shrubs;
- (d) from time to time add to the carriageway or footways of any such street any part or the whole of such margins; and
- (e) in the case of a private street permit the owners to do anything specified in this subsection on such conditions as the Corporation may consider necessary or appropriate.

(2) Nothing in this section shall empower the Corporation to prevent reasonable access to any land or premises fronting or adjoining such street from the carriageway or footways thereof.

(3) Any person who, without lawful authority or reasonable cause—

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—cont.

(a) rides or drives any horse or vehicle or drives any cattle on or across any grass or other margin; or

(b) leaves any vehicle on any grass or other margin;

shall be guilty of an offence under this Order.

(4) For the purposes of section 7 of the Telegraph Act 1878—

1878 c. 76.

(a) any work done in the exercise of the powers conferred by this section shall be deemed to be works done in the execution of an undertaking authorised by an Act of Parliament;

(b) the Corporation or any such owners carrying out the work shall be deemed to be the undertakers.

69. The Corporation may—

Pleasure grounds, etc., in streets.

(a) lay out and maintain enclosures or pleasure grounds in any public street and provide them with fences, gates and seats; and

(b) plant such enclosures or pleasure grounds with trees, shrubs, flowers or grass.

E. Prevention of danger or annoyance to users of streets, etc.

70.—(1) The Corporation may, by notice, require the owner of any railway, aqueduct or canal which is carried by means of a bridge over any street to provide, within a reasonable period to be prescribed in such notice, and thereafter to maintain, a screen under such bridge, or to adopt such other method of carrying off the rainwater, or any moisture flowing from or percolating through, such bridge as will prevent the same falling on persons passing along such street.

Carrying off rainwater, etc., from bridges.

(2) Any person aggrieved by any requirement of a notice under the preceding subsection may appeal to the sheriff.

71. Every person who occupies any portion of a street for the purpose of depositing building materials or otherwise in connection with operations for constructing, extending, demolishing, maintaining or altering any building without permission under section 8 of the Act of 1959, or otherwise than in accordance with such permission (including the conditions, if any, to which the permission is subject), or continues such occupation beyond the period permitted, shall be guilty of an offence under this Order.

Building materials, etc., not to be deposited on streets without authority.

72. The Corporation may remove and dispose of any building materials deposited on any street and left unenclosed, or allowed to remain longer than necessary, and the expense reasonably incurred by them in so doing shall be recoverable from the person in default.

Building materials left on streets may be removed by Corporation.

PART V
—cont.

Precautions to be taken by Corporation in executing works in streets.

73.—(1) Where the Corporation are executing works in any street they shall—

- (a) erect such barriers for preventing danger to traffic, and for regulating traffic, as may be necessary;
- (b) cause the works to be properly guarded and lighted from sunset to sunrise; and
- (c) where the nature of the work so requires, cause any building adjoining the street to be shored up or otherwise protected.

(2) Nothing in the preceding subsection shall be in derogation of section 8 of the Act of 1950 (which contains requirements as to safety, obstruction and other matters to be observed during and in connection with the execution of certain works in streets and in controlled land within the meaning of that Act).

F. Control of operations or erections on, over or under streets

Licences to construct bridges over, and tunnels or subways under, streets.

74.—(1) The Corporation may grant to the owner of any lands or premises fronting a street a licence to construct and use a way by means of a bridge over, or a tunnel or subway under, such street on such terms and conditions, and (as regards use) for such period as the Corporation think fit.

(2) A licence under this section shall not authorise any interference with—

- (a) the convenience of persons using the street; or
- (b) apparatus or works of any statutory undertakers without the consent of such undertakers.

(3) It shall be a condition of every licence under this section that the owner of the lands or premises in respect of which it is granted shall, at his own expense, remove such bridge, or fill up such tunnel or subway, as the case may be, or alter such bridge, tunnel or subway in such manner as the Corporation may require, if at any time they consider such removal, filling up or alteration necessary or desirable in connection with the execution of improvements to the street, and the decision of the Corporation that such removal, filling up or alteration is necessary or desirable in that connection shall be final.

(4) The Corporation may require an applicant for a licence under this section to pay a reasonable sum in respect of legal or other expenses in connection with the licence or the application therefor but no other payment shall be exigible by them in respect of the licence or the application therefor.

(5) The owner of the lands or premises in respect of which a licence has been granted under this section shall maintain the bridge, tunnel or subway to which such licence relates, and shall be liable in respect of any accident that may result from any default arising out of or in connection with such maintenance, and the Corporation shall not be under any liability in respect thereof.

(6) (a) Without prejudice to the code in Part II of the Act of 1950 (which regulates the relations between an authority carrying out road alterations and undertakers whose apparatus is affected thereby) any work authorised or required by a licence under this section to be done by the person to whom the licence is granted shall, for the purposes of section 7 of the Telegraph Act 1878, be deemed to be work proposed to be done in the execution of an undertaking authorised by an Act of Parliament, and the person carrying out the work shall be deemed to be the undertaker. 1878 c. 76.

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—cont.

(b) For the purposes of the placing or maintenance of overground telegraphic lines under the powers conferred by the Telegraph Acts, 1863 to 1962, a bridge constructed or used in accordance with a licence under this section shall be deemed to be part of the street which it crosses.

(7) Any person who—

- (a) constructs a bridge over, or a tunnel or subway under, a street without a licence under this section; or
- (b) constructs or uses a bridge, tunnel or subway otherwise than in accordance with the terms and conditions of the licence; or
- (c) fails to remove or alter a bridge or fill up a tunnel or subway when required to do so in accordance with any condition of the licence or within one month from the date of the expiration of the licence;

shall be guilty of an offence under this Order.

(8) The conditions of any licence under this section shall be binding upon the applicant and every successive owner of the lands or premises in respect of which the licence was granted.

(9) The Corporation may remove any bridge, or fill up any tunnel or subway, as the case may be, constructed without a licence under this section, and the expense reasonably incurred by them in so doing shall be recoverable from the person in default.

(10) This section shall not apply in relation to any bridge over a street, or tunnel or subway under a street, constructed under statutory powers.

75.—(1) (a) A person shall not, without the consent of the Corporation, make, fix or place—

- (i) any erection, encroachment, obstruction or projection in, on, or over any street, or beyond the building line of any street; or
- (ii) any overhead beam, rail, pipe, cable, wire or other similar apparatus over, along or across a street.

Encroachments
and projections
on or over
streets not to
be made without
consent of
Corporation.

(b) Any consent under this section may be for such period as the Corporation may prescribe.

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—cont.

(2) Any person acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and the Corporation may remove any thing made, fixed or placed in contravention of that subsection and the expense reasonably incurred in so doing shall be recoverable by them from the person in default.

1947 c. 53.

(3) Nothing in this section shall apply to an advertisement to which regulations made under section 29 of the Town and Country Planning (Scotland) Act 1947, for the time being apply.

Works on or
under streets
not to be
executed
without consent
of Corporation.

76.—(1) Subject to the provisions of this Order a person shall not, without the consent of the Corporation or without other lawful authority—

- (a) make any alteration of, or opening on, the carriageway or footways of any street;
- (b) construct any cellar, vault, arch, chamber or other similar work under any street;
- (c) lay any pipes under any street; or
- (d) construct in any street any pavement lights, pavement crossings, gratings, or coal or other chutes;

(all of which operations (and any similar operations executed before the commencement of this Order) are hereinafter in this head of this Part of this Order referred to as “works”).

(2) Any person who executes any works without the consent of the Corporation or without other lawful authority shall be guilty of an offence under this Order.

(3) The Corporation may demolish, fill up or remove any works executed in contravention of subsection (1) of this section and may restore the surface of any street affected thereby, and the expense reasonably incurred by them in so doing shall be recoverable from the person in default.

(4) Where consent is given by the Corporation under subsection (1) of this section to any works during pleasure or for a limited period, the person to whom such consent has been given shall, on such consent being withdrawn, or on the expiry of such period, as the case may be, demolish, fill up or remove the works in respect of which such consent has been given and restore the street, failing which the Corporation may do so, and the expense reasonably incurred by them in so doing shall be recoverable from such person.

(5) (a) The consent of the Corporation under subsection (1) of this section to any works may be granted by the issue of a permit signed by the city engineer.

(b) The Corporation shall charge a fee of 5s. for each application for a permit under this subsection.

(6) A consent of the Corporation under subsection (1) of this section shall not authorise any interference with apparatus or works of any statutory undertakers without the consent of such undertakers.

77. In any case where the consent of the Corporation is given under the preceding section to the construction of any pavement crossing, the Corporation may, in the case of any lands or premises which abut on more than one street, determine the street or streets on which such pavement crossing shall be constructed.

Conditions as to position of pavement crossings where lands abut on more than one street.

78.—(1) If the city engineer at any time certifies that any works are—

Powers, etc., with respect to making good defects in street works.

(a) in a state of disrepair; or

(b) insecure; or

(c) in a condition from which danger to the public may be apprehended;

the Corporation may, by notice, require the owner or occupier of the lands or premises in connection with which the works have been executed to carry out, within a reasonable period to be prescribed in such notice, such operations as may be necessary to make good such defect and as may be specified in such notice, and the city engineer may cause such works to be temporarily fenced, guarded or repaired at the expense of such owner or occupier.

(2) If such owner or occupier fails, within the period specified in a notice under the preceding subsection, to carry out the operations required by the notice the Corporation may—

(a) cause such operations to be carried out; or

(b) cause the works to be demolished, filled up or removed, and the street restored;

and in either case the expense reasonably incurred by them shall be recoverable from such owner or occupier.

79. Any person who permits any works, or any opening made in a street in connection therewith, to be in such a condition as to be dangerous to the public shall be guilty of an offence under this Order.

Penalty for permitting street works to be in dangerous condition.

80.—(1) Any person who, with the consent of the Corporation, or under any other lawful authority, breaks up or makes any alteration of, or opening on, the carriageway or footways of any street shall, when his operations are completed, give notice to the city engineer, and shall restore—

Restoration of streets where openings made.

(a) the portion of the carriageway or footways broken up, damaged or affected by his operations; and

(b) an additional space of not less than six inches in breadth around the same.

(2) The portion of the carriageway or footways so restored shall be maintained by such person for six months from the completion of such restoration.

(3) If such person fails to comply with the requirements of this section the Corporation may, after giving forty-eight hours' notice to

PART V
—cont.

such person, restore or repair such carriageway or footways, and the expense of such restoration or repair shall be recoverable by the Corporation from the person in default.

Saving for statutory undertakers in respect of head F of Part V of Order.

81.—(1) This head of this Part of this Order shall not apply in relation to any works to which the Act of 1950 applies, or to any works executed by any statutory undertakers under the powers of any other enactment.

(2) Works shall not be executed which are likely to affect or interfere with apparatus or works of any statutory undertakers without the consent of such undertakers.

G. Permanent stopping up of streets

Permanent stopping up of public streets.

82.—(1) The Corporation may make an order stopping up permanently any public street or any portion of a public street—

- (a) which has become unnecessary; or
- (b) which has become dangerous to the public; or
- (c) which the Corporation, for any other substantial reason, deem it expedient to stop up permanently.

(2) (a) Where the Corporation propose to make an order under this section they shall, before carrying the proposal into effect—

- (i) give notice of the proposal by advertisement in two successive weeks;
- (ii) cause a copy of such notice to be posted in some conspicuous place at each end of the public street to which the proposal relates; and
- (iii) not later than the second publication of the notice of the proposal to make the order, serve a copy of such notice, together with a copy of this section, on every owner, lessee and occupier (except tenants for three months or less) of lands and premises fronting, or entering from, the public street to which the proposal relates.

(b) Such notice shall state the general effect of the proposal (including the effect of subsections (6) to (8) of this section); that any person aggrieved by such proposal may lodge representations in writing with respect to the said proposal with the town clerk; and the period within which such representations must be lodged, not being earlier than fourteen days after the second advertisement.

(3) When the Corporation, after consideration of any such representations, have made an order under this section they shall give notice of the making of the order by advertisement and shall serve a copy of such notice on every owner, lessee and occupier (except tenants for three months or less) of lands and premises fronting, or entering from, the public street to which the order relates.

(4) Any informality, defect or error in any publication or notice under this section, or in connection with the service of any notice, shall not affect the validity of any order made by the Corporation under this section if such informality, defect or error was not a material one.

(5) Any person aggrieved by any such order may appeal to the sheriff within twenty-eight days after the publication of the making of such order.

(6) An order under this section shall become operative—

(a) where no appeal to the sheriff has been taken under the preceding subsection, on the expiry of twenty-eight days after the publication of the notice of the making of the order; or

(b) where an appeal to the sheriff has been taken under the preceding subsection, and the sheriff has confirmed the order, with or without modification, on the date of the interlocutor of the sheriff confirming the order, or, where an appeal has been taken against any such interlocutor of the sheriff and such appeal has been dismissed, on the date on which the interlocutor of the Court of Session dismissing such appeal becomes final.

(7) (a) The sheriff may, on the application of any owner of land fronting a public street (or portion thereof) in respect of which an order under this section has become operative, declare the solum of such public street (or portion thereof) to be vested in such owner, but only to the extent to which such solum was vested in such owner before the order became operative.

(b) An application under this subsection—

(i) shall not be considered unless it is made within three months from the service on the owner making the application of the notice required to be given to him in pursuance of subsection (3) of this section; and

(ii) shall 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.

(8) The solum of any public street (or portion thereof) in respect of which an order under this section has become operative, with the exception of any part thereof declared to be vested in any owner in pursuance of a declarator by the sheriff under the preceding subsection, shall vest in the Corporation.

(9) The solum of any public street (or portion thereof) stopped up permanently under this section shall be freed and discharged from the public use thereof.

(10) In any case in which any public street (or portion thereof) has been stopped up permanently under this section the Corporation may remove the paving material, and any street lighting equipment and other apparatus belonging to them.

PART V
—cont.

Saving for Postmaster General and electricity and gas boards in respect of head G of Part V of Order.

83.—(1) As soon as may be after the expiry of twenty-eight days after an order under the preceding section has become operative, the Corporation shall give notice thereof to the Postmaster General and to the electricity board and the gas board.

(2) (a) Where any public street, or portion of a public street has been stopped up in pursuance of an order under the preceding section, the following provisions of this subsection shall have effect in relation to so much of any telegraphic line belonging to or used by the Postmaster General as is in the land which by reason of the stopping up has ceased to be a public street (in those provisions referred to as “the affected line”), that is to say:—

- (i) the power of the Postmaster General to remove the affected line shall be exercisable notwithstanding the stopping up, so however that the said power shall not be exercisable as respects the whole or any part of the affected line after the expiration of three months from the giving of notice of the stopping up unless before the expiration of that period the Postmaster General has given notice to the Corporation of his intention to remove the affected line or that part thereof, as the case may be;
- (ii) the Postmaster General may, by notice to the Corporation, abandon the affected line or any part thereof, and shall be deemed, as respects the affected line or any part thereof, to have abandoned it at the expiration of the said period of three months unless before the expiration of that period he has removed it or given notice of his intention to remove it;
- (iii) the Postmaster General shall be entitled to recover from the Corporation the expense of providing in substitution for the affected line and any telegraphic line connected therewith which is rendered useless in consequence of the removal or abandonment of the affected line, a telegraphic line in such other place as he may reasonably require; and
- (iv) where under sub-paragraph (ii) of this paragraph the Postmaster General has abandoned the whole or any part of the affected line it shall vest in the Corporation and the Telegraph Acts 1863 to 1962 shall not apply in relation to it as respects anything done or omitted after the abandonment thereof.

(b) In relation to any portion of any public street stopped up in pursuance of an order under the preceding section in which the solum is vested in persons other than the Corporation, the preceding paragraph shall, as regards the portion of any public street so vested, have effect as if references to the Corporation were references to such persons.

(3) The electricity board and the gas board shall continue to have the same powers and rights in respect of their apparatus remaining in the land which by reason of the stopping up has ceased to be a public street as they would have had if it had remained a public street:

Provided that, if the Corporation, or the persons in whom the solum of such public street, or portion thereof, is vested, as the case may be, so require, the electricity board and the gas board, or either of them as the case may be, shall remove the apparatus, and the expense reasonably incurred by them in so doing shall be recoverable from the Corporation, or such persons as the case may be.

(4) (a) Nothing in the preceding subsection shall empower the Corporation or any person to require the gas board to remove any apparatus unless a reasonably adequate alternative line for such apparatus is available.

(b) Any dispute under the preceding paragraph as to whether a reasonably adequate alternative line for any apparatus of the gas board is available shall be settled by arbitration.

(c) The Corporation shall repay to the gas board the reasonable expenses incurred by the gas board of or in connection with the removal and relaying or replacing of any apparatus and the provision and laying or placing of any new apparatus in consequence of the provisions of this section and the reasonable cost of and incidental to—

- (i) the cutting off of any apparatus from any other apparatus; and
- (ii) any other work or thing rendered reasonably necessary in consequence of any such operations as are referred to in this subsection:

Provided that subsections (3), (4) and (5) of section 23 of the Act of 1950 (which imposes limitations on undertakers' rights to payments) shall so far as applicable extend and apply to any payment to be made by the Corporation under this subsection as if the works therein mentioned were undertakers' works within the meaning of subsection (2) of the said section 23 and as if in the said subsection (3) the words from "existing apparatus was" to "then" were omitted:

Provided further that where any existing apparatus is replaced in accordance with the provisions of this section the Corporation shall not be required to make any payment to the gas board for any such apparatus which may be replaced and which has been rendered derelict useless or unnecessary and such last-mentioned apparatus shall so soon as the new apparatus has been laid become the property of the Corporation.

H. Private streets

84.—(1) The Corporation shall have the charge, control and superintendence of all private streets.

Control and
maintenance of
private streets.

(2) All private streets shall be maintained to the satisfaction of the Corporation by the persons responsible for their maintenance.

PART V
—cont.

Power of majority of frontagers to require private streets to be taken over by Corporation.

85.—(1) If a private street, or the carriageway or footway of a private street, has been sewered, levelled, paved, and made good to the reasonable satisfaction of the Corporation—

- (a) a majority in number of the owners of lands fronting such private street; or
- (b) as many of such owners as own between them more than half the aggregate length of all the frontages on both sides of such private street;

may, by notice, require the Corporation to take over such private street, or the carriageway or footway thereof, as the case may be, which shall thereupon vest in, and be maintained by, the Corporation as a public street, or as a public carriageway or public footway, as the case may be.

(2) In determining what constitutes a majority in number of owners for the purposes of this section, joint owners shall be deemed to be one owner.

(3) This section shall not apply in relation to a part of a private street unless it is a part not less than one hundred yards in length which the owners of land having a frontage on that part of the private street elect to treat as constituting a private street for the purposes of this section.

Power of Corporation to require private streets to be completed.

86.—(1) If a private street, or the carriageway or footway of a private street, or any part thereof, has not been sewered, levelled, paved, and made good to the reasonable satisfaction of the Corporation, they may, by notice, require the owners of the lands fronting such private street, or part thereof, to execute, within such reasonable period as may be specified in such notice, such street works as may be necessary to have such private street or carriageway or footway, or part thereof, sewered, levelled, paved, and made good as aforesaid.

(2) A notice under the preceding subsection shall contain—

- (a) a specification of the street works required, with a statement that the relative plans and sections may be inspected at the office of the city engineer at all reasonable hours free of charge;
- (b) an estimate of the probable cost of the street works; and
- (c) a provisional apportionment apportioning the estimated cost among the owners of the lands liable therefor:

Provided that any sewers required to be provided in accordance with a notice under the preceding subsection shall be sewers for carrying off surface water only.

(3) The Corporation may include in street works required to be executed in accordance with a notice under subsection (1) of this section a variation of the relative widths of the carriageway and of the footway or footways of the private street, or part thereof, to which the notice relates:

Provided that no greater charge shall be imposed on any person by reason of any such variation than could have been imposed in respect of a carriageway or footway of the width prescribed by or under the provisions of the repealed Acts applicable to such street when it was constructed, and any sum in excess of that charge shall be borne by the Corporation.

(4) On the completion of the street works required to be executed in accordance with a notice under subsection (1) of this section the private street or the carriageway or footway, or part thereof, to which such notice relates, shall vest in, and be maintained by, the Corporation as a public street, or as a public carriageway or public footway, as the case may be.

(5) Any person aggrieved by any requirement of a notice under subsection (1) of this section may appeal to the sheriff.

87.—(1) Where in the opinion of the Corporation it is not expedient that the carriageway or footway of any private street, or of any part thereof, should be sewered, levelled, paved, or otherwise made good by the execution of permanent street works in pursuance of the preceding section they may, by notice, require the owners of the lands fronting such street, or part thereof, to execute, within such reasonable period as may be specified in such notice, such works specified in such notice as may be necessary to have the carriageway or footway of such street, or part thereof, put in order temporarily:

Powers of Corporation with respect to temporary works and minor repairs on private streets.

Provided that the Corporation may execute such minor works on, or temporary repairs of, any private street, or part thereof, as they consider necessary to obviate danger to traffic without charging the owners of the lands fronting such private street, or part thereof, with the expense, but the execution of such works or repairs shall not be deemed to imply that such street has been taken over by the Corporation as a public street.

(2) Any person aggrieved by any requirement of a notice under the preceding subsection may appeal to the sheriff.

88.—(1) Subject to the provisions of this head of this Part of this Order, all expense reasonably incurred by the Corporation for and in connection with, and incidental to, the execution by them of street works (whether temporary or permanent) on any private street shall, subject as hereinafter in this section provided, be apportioned by the Corporation on the owners of the lands fronting such private street in proportion to the extent of the frontage of the lands of each owner to such private street.

Expense of street works on private streets.

(2) In the case of any lands having two or more separate owners the sum so apportioned in respect of such lands shall be apportioned among such owners according to the net annual value of the several parts of such lands in separate ownership.

(3) In any case in which street works have been executed by the owners of the lands fronting a private street in accordance with the requirements of a notice under this head of this Part of this Order

PART V
—cont.

the two preceding subsections shall, unless otherwise agreed among such owners, apply and have effect, with any necessary adaptations, with respect to the apportionment of the expense of such street works among such owners.

(4) Where—

- (a) a private street serves as an access to lands adjoining, but not fronting, such street, or which front it only to a small extent; or
- (b) in any other circumstances the payment of the expense should, in the opinion of the Corporation, not be allocated in proportion to the frontage;

the Corporation shall fix and determine—

- (i) the lands (whether fronting such street or any part thereof or not) of which the owners shall be liable for such expense; and
- (ii) the proportion leviable from each owner which they consider equitable in the circumstances.

(5) Except where otherwise expressly provided in this head of this Part of this Order all expense incurred by the Corporation under such head shall, for a period of three years after the date of apportionment by the Corporation, be a burden on the lands in relation to which such expense was incurred, and, failing payment by the owner, the amount so apportioned, to the extent of any rent due or to become due, may be recovered from the occupier thereof, who shall be entitled to deduct such amount, with interest thereon at the rate of 5 per cent. per annum, from the rent from time to time becoming due to such owner.

(6) Any person aggrieved by any apportionment under this section may appeal to the sheriff.

(7) Nothing in this section shall entitle the Corporation to recover from the railways board or the waterways board any part of the expense incurred by the Corporation in connection with, or incidental to, street works on any private street on which land of the railways board or the waterways board, as the case may be, fronts unless and until—

- (a) permanent buildings have been constructed on at least one-fourth of the frontage of such land to such private street; or
- (b) such land has been enclosed (otherwise than temporarily) and laid out to at least the said extent.

I. Construction of new streets by private developers

Definition for
head I of Part V
of Order.

89. In this head of this Part of this Order—

“plans” includes plans, sections and specifications, and, in relation to any bridge, elevations and design calculations.

Authority to construct new streets

PART V
—cont.

90.—(1) A person shall not construct a street except in accordance with an order made by the Corporation under this head of this Part of this Order authorising the construction of such street.

New streets not to be constructed without authority of Corporation.

(2) For the purposes of this head of this Part of this Order a continuation of an existing street shall be deemed to be the construction of a street.

91.—(1) Every application for authority to construct a street shall be lodged with the town clerk and shall contain the particulars, and be accompanied by the plans, specified in Schedule 2 to this Order.

Procedure with respect to applications for authority to construct new streets.

(2) Notice of the lodging of every such application shall be served by the applicant upon the owners of all lands fronting the proposed street and also, if required by the Corporation, upon the owners of such adjoining lands as the Corporation may specify, and such notice shall state that any objections to the application must be lodged with the town clerk within fourteen days.

92.—(1) The Corporation may grant an application under the preceding section in whole or in part.

Disposal of applications for authority to construct new streets.

(2) If, in the opinion of the Corporation, any proposed street, or any part thereof, would—

(a) be unsatisfactory as regards—

- (i) the position, width, or gradient thereof; or
- (ii) the mode of construction thereof; or
- (iii) the materials proposed to be used; or
- (iv) the position of the kerb and centre lines and the proposed building line; or
- (v) any of the other details or particulars shown on the plans; or

(b) be contrary to the provisions of this head of this Part of this Order;

they shall either refuse to grant the application in respect of such proposed street, or they may make an order authorising the construction of such proposed street or part thereof subject to such alterations on the plans as they consider necessary or appropriate, and subject also to such other reasonable conditions as they consider necessary or appropriate with reference to any matters to which they are entitled to have regard under this head of this Part of this Order.

(3) (a) The Corporation shall not—

- (i) refuse to grant an application for authority to construct a street; or
- (ii) grant an application in part; or
- (iii) make an order subject to alterations;

without giving the applicant an opportunity of being heard in person or by a representative.

PART V
—cont.

(b) If objections to an application for authority to construct a street are lodged, the Corporation shall give the applicant and the objector an opportunity of being heard in person or by a representative.

(4) The Corporation, before disposing of any application for authority to construct a street, may require the applicant to submit a scheme of development of any land owned by him which may, in their opinion, be affected by the construction of the proposed street.

(5) Before making any order under this section authorising the construction of a street, the Corporation shall communicate the terms of the proposed order to the applicant, who, if dissatisfied therewith, may withdraw the application.

Conditions which may be included in new street orders.

93. The conditions subject to which the Corporation may make an order authorising the construction of a street may, without prejudice to the generality of the provisions of subsection (2) of the preceding section, include—

- (a) provision with reference to culs-de-sac;
- (b) a provision that the proposed street or any part thereof shall be constructed for use by pedestrians only;
- (c) the provision of suitable and convenient accesses to the proposed street by cross streets, continuation of streets, or otherwise;
- (d) the fixing of the line, level, position and direction of the proposed street and footways thereof so as to make provision for—
 - (i) convenient communication with other streets;
 - (ii) gradients suitable for traffic; and
 - (iii) the drainage (including the provision of separate sewers for the discharge of surface water in addition to sewers for the discharge of foul water) of the proposed street and of buildings fronting thereon or adjacent thereto, and of adjoining lands the drainage of which will be affected by the construction of the proposed street; and
- (e) provision for the corner of any proposed street at its junction with any other street being rounded off, or splayed, in such manner and to such extent as the Corporation may require.

Compensation where building line of new street set back more than 45 feet.

94. If any new street order contains a condition requiring that the building line of the street authorised by such order be set back to a greater distance than forty-five feet from the centre line of such street the owner of any lands injuriously affected by the building line being so set back shall, subject to the provisions of this Order, be entitled to compensation.

Construction of bridge to carry new street.

95.—(1) Where it is proposed to construct a bridge in connection with the construction of a street, plans of such bridge shall be lodged along with the application for authority to construct such street, and such bridge and the approaches thereto shall be deemed to form part of such street.

(2) The Corporation may, in any new street order, include such conditions as they consider necessary or appropriate in regard to the widths and gradients of the proposed bridge and the approaches thereto, and the design, materials, construction and stability of such bridge.

PART V
—cont.

(3) This section shall not apply in relation to any bridge authorised to be constructed under statutory powers.

96.—(1) Every person making application for a new street order shall cause any alterations required, or approved of, on the plans lodged with reference to such application to be clearly marked thereon so as to distinguish them from the original plans and, if so required by the Corporation, shall lodge amended plans.

Provisions with respect to plans, etc., relative to new streets orders.

(2) All plans lodged with reference to an application for a new street order, as approved by the Corporation, shall—

- (a) be signed by the town clerk as relative to such order; and
- (b) be kept in the office of the city engineer and may be inspected by any person free of charge at all reasonable hours.

97. A new street order shall cease to have effect (except as regards so much of the works authorised by such order as are then completed)—

Period of validity of new streets orders.

- (a) on the expiry of three years from the making of such order, or such longer period (not being more than five years from the making of such Order) as may be specified in such order; or
- (b) on the expiry of such additional period as the Corporation may subsequently allow, not exceeding three years from the date on which such order would otherwise have ceased to have effect.

98. A new street order shall be binding upon the applicant for such order and every successive owner of the land to which such order relates.

New streets orders to be binding on successive owners.

99.—(1) (a) Before any works in connection with the construction of a street are commenced, or any such works are suspended (otherwise than temporarily) after being commenced, or are resumed after being suspended for a period exceeding three months, notice stating the date of the intended commencement, suspension or resumption, as the case may be, shall be given to the city engineer.

Notice before commencement, suspension or resumption of works on new streets.

(b) Such notice shall be given not less than three days before such intended commencement, suspension or resumption, as the case may be.

(2) Any person who commences, suspends or resumes such works in contravention of the preceding subsection shall be guilty of an offence under this Order.

PART V
—cont.Minimum
width of new
streets.*Width of new streets*

100.—(1) Subject to the provisions of this head of this Part of this Order a new street shall be of a width of not less than sixty feet.

(2) If, in the opinion of the Corporation, a proposed street is not likely to be a main thoroughfare it may be of such less width than sixty feet as the Corporation may approve, subject to such conditions as they consider necessary or appropriate and in particular, but without prejudice to the said generality, conditions with respect to—

- (a) the length of such proposed street;
- (b) the minimum widths of the carriageway and footways or, in the case of a street to be constructed for use by pedestrians only, the minimum width of such street; and
- (c) the provision of passing and turning places.

Power of
Corporation to
require new
street to be
constructed of
a greater width
than 60 feet.

101.—(1) If, in the opinion of the Corporation, a proposed street is likely to be a main thoroughfare they may, if they consider it necessary or appropriate, require that it shall be of such greater width than sixty feet as they may determine.

(2) (a) The owner of the land on which such proposed street is to be constructed shall not be required to bear any expense in the execution of the necessary street works in excess of the amount he would have been required to bear if such proposed street had been constructed of a width of sixty feet.

(b) Any expense incurred in the execution of such additional street works shall be borne by the Corporation, and any dispute as to the amount of such expense shall be settled by arbitration.

(c) After such street has been constructed such owner shall, subject to the provisions of this Order, be entitled to compensation in respect of any loss or damage sustained by him by or in consequence of such street being constructed of a greater width than sixty feet.

*Powers of Corporation with respect to construction of streets
authorised by new streets orders*Construction by
Corporation of
streets
authorised by
new streets
orders.

102.—(1) If at any time the Corporation desire to construct any street, or part thereof, for the construction of which a new street order has been made, they may, after giving three months' notice of their intention to the owners of the lands over which such street, or part thereof, is intended to be constructed, and of any lands fronting thereon, enter upon the lands of such owners, or any of them, and construct such street, in whole or in part, in conformity with such order, and execute all other works incidental thereto or connected therewith.

(2) (a) The expense reasonably incurred in so doing shall be defrayed by the Corporation in the first instance, but, subject to the provisions

of this Order, shall be recoverable by them in the manner in which expense incurred by them in connection with works on private streets is recoverable under head H (Private streets) of this Part of this Order.

(b) The Corporation shall have all the powers of apportioning such expense among the owners of lands fronting any such street, or such part thereof, as are exercisable by them under head H (Private streets) of this Part of this Order in the case of works on private streets.

(3) (a) The Corporation may prescribe a period within which any sum apportioned on any person under this section shall be payable, and in prescribing such period, they shall take into consideration the time at which the construction of such street will be of benefit to any person on whom it is proposed to make any such apportionment:

Provided that the Corporation shall not be entitled to recover any sum apportioned upon any such owner until such lands are built on, or are laid out or used as garden or pleasure ground, or pertinent to a building, and they shall then and from time to time be entitled to recover only such part of the sum so apportioned as shall be properly attributable to the land so used.

(b) Interest upon such apportioned sum shall not be payable to the Corporation in respect of the period from the date of apportionment until such time as the Corporation shall have become entitled to recover such apportioned sum.

(4) Any street constructed by the Corporation under this section shall vest in, and be maintained by, them as a public street, but without prejudice to the right of the Corporation, under this section, to recover the expense incurred by them in connection with the construction of such street.

(5) Where any lands of the railways board or the waterways board wholly or partially front or adjoin any street or part thereof constructed by the Corporation under this section, and such lands are, at the time of the construction of such street, used by the railways board or the waterways board as the case may be solely as operational land, and have no direct communication with such street, the Corporation shall not be entitled to recover any part of the expense incurred in connection with the construction of such street effecting to such lands but they shall be entitled to recover the same from the railways board or the waterways board as the case may be if and when the railways board or the waterways board as the case may be make a communication with such street from such lands.

Enforcement of provisions of head I of Part V of Order

103. Any person who—

(a) constructs or commences to construct any street without having obtained a new street order authorising the construction of such street; or

(b) having obtained a new street order, deviates from the plans approved by the Corporation relative to such order, or contravenes any condition contained in such order;

shall be guilty of an offence under this Order.

Penalty for
constructing
new street
without
authority, etc

PART V
—cont.

Powers of Corporation where new street constructed without authority, etc.

104. In the case of a contravention of any provision of the preceding section the Corporation may—

- (a) by order, close such street temporarily, or stop it up permanently; or
- (b) execute such works as may be necessary to restore such street, or part thereof, to its previous condition, and recover the expense reasonably incurred by them in so doing from the person in default; or
- (c) by notice, require the person who constructed or commenced to construct such street to execute such works as may be specified in such notice, and within such period as may be specified in such notice, to bring such street into conformity with the plans approved by the Corporation.

J. *Lines of building frontage*

General building line.

105.—(1) Subject to the provisions of this head of this Part of this Order, it shall not be lawful, without the consent of the Corporation, to construct any building or bring forward any existing building—

- (a) within a distance of thirty feet from the centre line of any street; or
- (b) beyond the front main wall of the building on either side thereof where such main wall is more than thirty feet back from the centre line of the street:

Provided that where such front main wall is more than fifteen feet back from the side of the street it shall be lawful to construct or bring forward any building up to fifteen feet from the side of the street, subject to such building being in every case at least thirty feet back from the centre line of the street.

(2) Subsection (2) of section 212 (As to consents of Corporation and authorised officers under Order) of this Order shall not apply in relation to the withholding of a consent by the Corporation under the preceding subsection or as to the reasonableness of any terms and conditions subject to which any consent under the said subsection has been granted.

Building line on Joppa-Seafield promenade.

106. It shall not be lawful, without the consent of the Corporation, to construct any building or bring forward any existing building within a distance of twenty-five feet from the centre line of the Joppa-Seafield promenade.

Power of Corporation to prescribe building line where building to be rebuilt.

107.—(1) The Corporation may prescribe a building line in relation to the site of any building to which this section applies, and it shall not be lawful, without the consent of the Corporation, to conduct any operations for the reconstruction of such building, or to construct any new building on the site of such building, nearer to the centre line of the street than the building line so prescribed.

(2) The owner of any building affected by the prescribing of a building line under this section shall, subject to the provisions of this

Order, be entitled to compensation for any loss sustained by him in consequence of any refusal by the Corporation of a consent or of any conditions attached to a consent under the preceding subsection.

PART V
—cont.

(3) This section applies to the site of any building in respect of which application for—

(a) a warrant for demolition; or

(b) a warrant for conducting any operations involving the demolition of the existing structure to a material extent;

has been made to the dean of guild court.

108.—(1) Where in the opinion of the Corporation—

(a) a public street is narrow or inconvenient, or without any sufficiently regular boundary line; or

(b) it is expedient that a public street should be widened;

they may, notwithstanding anything in this head of this Part of this Order, prescribe a building line in relation to either one side or both sides of such public street.

Power of Corporation to prescribe building line where public street to be improved or widened.

(2) Where a building line prescribed under this section is in force in relation to any public street it shall not be lawful, without the consent of the Corporation, to construct or bring forward any building nearer to the centre line of such public street than such building line.

(3) The Corporation may revoke any building line prescribed by them under this section, or any part of such a line if, in their opinion, it is no longer necessary.

(4) The provisions of Schedule 3 to this Order shall have effect in relation to the prescribing of a building line under this section and to the revocation of such a line or any part thereof.

(5) The revocation by the Corporation of a building line prescribed by them under this section in relation to any public street may be conjoined with the prescribing by them of a new building line under this section in relation to such street:

Provided that the intention of the Corporation to revoke the existing building line shall be included in the notice required to be given in pursuance of paragraph 2 of Schedule 3 to this Order to owners, lessees and occupiers of land affected.

(6) Where a building line prescribed under this section in relation to any public street is at a greater distance than thirty feet from the centre line of such street any person whose property is injuriously affected by the prescribing of such building line shall, subject to the provisions of this Order, be entitled to compensation for such injurious affection.

(7) (a) The Corporation may, at any time after a building line has been prescribed under this section, on giving six months' notice to the owner, lessee and occupier of any building which, or any part of which, was beyond such building line at the date when it was prescribed, require such building to be demolished or set back or altered so that it shall not project beyond such building line.

PART V
--cont.

(b) The owner, lessee and occupier of any building to which this subsection applies shall, subject to the provisions of this Order, be entitled to compensation for any loss sustained by them in consequence of any requirement of the Corporation under this subsection:

Provided that—

(i) if, within twenty-eight days of the date of the service by the Corporation of a notice under this subsection any owner on whom the notice has been served gives notice to the Corporation that he objects to the requirement of the notice on the ground that such requirement cannot be complied with without material detriment to his interest in the building or the land on which it is situated or any adjoining land belonging to him and intimates that he is able and, in the circumstances of the case, willing to sell to the Corporation the building to which the notice relates, with or without any such adjoining land, on terms not less favourable to the Corporation than those on which they could have acquired the building compulsorily under this Order the matter shall, in default of agreement, be referred to and determined by the Lands Tribunal for Scotland;

1949 c. 42.

(ii) until sections 1 to 3 of the Lands Tribunal Act 1949 (which relate to the establishment of the Lands Tribunal for Scotland), come into force as respects Scotland the preceding proviso shall have effect as if for the reference therein to the said tribunal there were substituted a reference to an official arbiter appointed under the Land Compensation (Scotland) Act 1963, and sections 3 and 5 of the said Act of 1963 shall apply subject to any necessary modifications in relation to the determination of any question under the said proviso.

1963 c. 51.

(8) A person shall not be entitled to compensation on account of any building constructed, contract made, or other thing done, after the date on which a plan showing the building line was deposited in accordance with the provisions of paragraph 1 of Schedule 3 to this Order, not being work done for the purpose of finishing a building the reconstruction of which had begun before that date, or of carrying out a contract made before that date.

(9) (a) Nothing in this section shall apply in relation to any operational land of the railways board or the waterways board or the dock commission without the consent of the railways board the waterways board or the dock commission, as the case may be.

(b) A consent required under the preceding paragraph shall not be unreasonably withheld, and any consent granted may be granted subject to such reasonable conditions as may be prescribed by the statutory undertakers concerned.

(c) Any dispute as to—

(i) whether a consent required under paragraph (a) of this subsection has been unreasonably withheld; or

(ii) the reasonableness of any conditions subject to which a consent under the said paragraph has been granted; shall be settled by arbitration.

PART V
—cont.

109.—(1) Where in the opinion of the Corporation it is desirable to fix or set back the line of frontage at any corner of any street in order to facilitate traffic, they may, notwithstanding anything in this head of this Part of this Order, prescribe a building line in relation to such corner and within a distance not exceeding fifty yards from such corner.

Power of Corporation to prescribe building lines at corners of streets.

(2) The preceding section shall, with any necessary adaptations, apply in relation to the prescribing and enforcing of a building line under this section, and to compensation in respect thereof.

110.—(1) Any consent of the Corporation granted under this head of this Part of this Order may be restricted to such period as the Corporation may prescribe.

As to consents of Corporation and appeals under head J of Part V of Order.

(2) Any person aggrieved by—

(a) a decision of the Corporation prescribing a building line under—

(i) Section 107 (Power of Corporation to prescribe building line where building to be rebuilt); or

(ii) Section 108 (Power of Corporation to prescribe building line where public street to be improved or widened), or

(iii) Section 109 (Power of Corporation to prescribe building lines at corners of streets);

of this Order; or

(b) a refusal by the Corporation of a consent, or the period of a consent, or any conditions attached to a consent, under any of the following provisions of this Order:—

(i) Section 106 (Building line on Joppa-Seafield promenade); or

(ii) Section 107 (Power of Corporation to prescribe building line where building to be rebuilt); or

(iii) Section 108 (Power of Corporation to prescribe building line where public street to be improved or widened);

may appeal to the sheriff within one month from the date on which such decision, consent or refusal of consent was intimated to such person.

111.—(1) The dean of guild court shall not grant warrant for the construction of any building in so far as such building would project beyond any building line fixed by or prescribed under this head of this Part of this Order unless the consent of the Corporation to such projection has been obtained.

Dean of guild court to have regard to building lines.

PART V
—cont.

(2) The dean of guild court shall, on a motion to that effect by the Corporation, continue consideration of any application for consent for the construction of any building for such period as may be reasonably necessary to afford the Corporation an opportunity of prescribing a building line under this head of this Part of this Order.

(3) The provisions of this section shall, with any necessary adaptations, apply with respect to the master of works or to the clerk of the dean of guild court in dealing by virtue of a delegation made under section 7 of the Act of 1959, with applications for warrants for the construction of works of a minor character.

Acquisition of land between building lines and street.

112.—(1) The powers of the Corporation under section 208 (Acquisition of land for purposes of Order, etc.) of this Order to acquire land by agreement or compulsorily shall include power to acquire, by agreement or compulsorily, the whole or part of any land lying between the building line of any street and such street.

(2) In the case of compulsory acquisition of any land in pursuance of the preceding subsection in respect of which compensation has already been paid under subsection (6) of section 108 (Power of Corporation to prescribe building line where public street to be improved or widened) of this Order the arbiter shall take the amount of such payment into account.

Restrictions imposed by head J of Part V of Order not to apply to railings and fences.

113. Nothing in this head of this Part of this Order shall render unlawful the construction of a boundary wall, railing or fence not exceeding six feet in height.

K. Miscellaneous and general

Seats in streets.

114. The Corporation may provide and place, or authorise the placing of, seats in any street.

Storage bins in streets.

115. The Corporation may provide, in any street, bins or other receptacles of such dimensions and in such positions as they may determine, for the storage of sand, grit or other road materials.

Works under Part V of Order to be executed to satisfaction of city engineer.

116. Any works on, in or under any street authorised or required to be executed by any person under any provision of this Part of this Order shall be executed to the satisfaction of the city engineer.

Power of Corporation to contribute to expense of street works.

117. Notwithstanding anything in the following provisions of this Part of this Order:—

Section 65 (Construction of footways of public streets);

Section 66 (Construction of footways in front of new buildings);

or

Head H (Private streets);

the Corporation may at any time contribute the whole or any part of the expense incurred by, or recoverable from, any person in connection with the execution of any street works under any of the said

provisions or under the corresponding provisions of the repealed Acts if they are satisfied that, having regard to all the circumstances, including the financial circumstances of the person liable for such expense, it is inequitable that he should bear the whole of such expense.

PART V
—cont.

118.—(1) (a) The Corporation may, upon such terms and conditions as they think fit, convey any portion of any public street to the owner of any lands adjoining it for the purpose of obtaining a uniform building line or of improving such street.

Corporation may convey portions of public streets to adjoining owners.

(b) All public rights over any portion of any street so conveyed shall be extinguished.

(2) Notwithstanding any conveyance under this section the Postmaster General shall continue to have the same powers and rights in respect of any telegraphic line belonging to or used by him which remains in the portion of any such street so conveyed as if the same had continued to be part of the street, and if, by reason or in consequence of any such conveyance it becomes necessary to alter any such telegraphic line the enactments contained in section 7 of the Telegraph Act 1878, shall apply to any such alteration as though the Corporation or the owner of the adjoining land (as the case may be) were “undertakers” within the meaning of the said Act.

1878 c. 76.

(3) Notwithstanding any conveyance under this section the electricity board and the gas board shall continue to have the same powers and rights in respect of their apparatus remaining in the portion of any street so conveyed as they would have had if such portion had remained part of a public street.

PART VI

RIGHTS OF WAY AND PUBLIC WAYS

119. In this Part of this Order—

“public way” means any public way which was maintained by the former parish councils within the suburban areas annexed to the city by the Edinburgh Boundaries Extension and Tramways Act 1920.

Definition for Part VI of Order.

1920 c. lxxxvii.

120. The Corporation may acquire, by agreement, any right of way within, or partly within and partly outwith, the city, the acquisition of which would in their opinion be beneficial to the inhabitants of the city or any part thereof.

Acquisition of rights of way.

121. The Corporation may maintain—

- (a) any right of way acquired by them; and
- (b) any public way.

Maintenance of rights of way and public ways.

122. The powers conferred by this Part of this Order or the exercise thereof, shall not—

- (a) relieve any other person from any liability with respect to the maintenance of any right of way or public way; or

Powers of Part VI of Order not to relieve other persons of liability.

PART VI
—cont.

- (b) impose on the Corporation any liability in respect of injury to persons or damage to property resulting from the condition of any right of way or public way.

Closing rights
of way and
public ways.

123. The provisions of head G (Permanent stopping up of streets) of Part V (Streets) of this Order shall, with any necessary adaptations, apply with respect to rights of way and public ways as they apply with respect to streets.

PART VII

SEWERS AND DRAINS

A. *Definitions for Part VII of Order*

Definitions for
Part VII of
Order.

124. In this Part of this Order—

- “cesspool” includes a settlement tank or other tank for the reception and disposal of foul water from buildings;
- “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 sub-soil water drains;
- “petroleum”, “petroleum filling station” and “petroleum-spirit” have the meanings respectively assigned to them by the Petroleum (Consolidation) Act 1928;
- “sewage” means any substance which passes through a public sewer or the sewers referred to in section 158 (Definitions for Part VIII of Order) of this Order;
- “soil appliance” means a sanitary appliance for the collection and discharge of excreted matter;
- “street” includes any highway and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not;
- “surface water” means the run-off of rainwater from roofs and the ground surface, whether paved or unpaved; and
- “waste appliance” means a sanitary appliance for the collection and discharge of water used for ablutionary, culinary and other domestic purposes.

1928 c. 32.

B. *General functions of Corporation in relation to drainage*

General duty of
Corporation to
provide for
drainage of
city.

125.—(1) Subject to the provisions of this Part of this Order, the Corporation shall—

- (a) provide and maintain such sewers including sewers reserved for surface water (other than private sewers or drains for the drainage of the lands of any person) as may be necessary for effectually draining the city in a suitable manner;
- (b) provide and maintain all such works and apparatus as may be necessary for operating and scouring such sewers; and
- (c) make provision, by means of sewage disposal works or otherwise, for the treatment and disposal of sewage.

(2) Sewers provided by, or vested in, the Corporation under this Part of this Order shall be known, and are referred to in this Order, as "public sewers":

PART VII
—cont.

Provided that a sewer constructed by the Corporation for the purpose only of draining lands vested in them shall be deemed to be a private sewer for the purposes of this Order until it has been declared to be a public sewer.

(3) The functions of the Corporation under paragraph (c) of subsection (1) of this section shall include power to—

- (a) make or produce;
- (b) convert, utilise, treat, or otherwise make merchantable; and
- (c) sell or otherwise dispose of;

any product (including sludge gas and any residual product of sludge gas) arising directly or indirectly in or out of the process of the treatment or disposal of sewage or any residual thereof at any sewage disposal works of the Corporation.

126. The Corporation shall keep deposited at the office of the city engineer, for inspection by any person free of charge at all reasonable hours, a map showing, so far as reasonably practicable, the size, depth and position of the public sewers, and the city engineer shall from time to time make such corrections, alterations and additions to such map as may be necessary.

Map of public
sewers.

127.—(1) The Corporation may within the city (and also, subject to the provisions of the succeeding section, outwith the city for the purpose of outfall, or the treatment or disposal of sewage)—

Construction of
public sewers,
etc., by
Corporation.

(a) construct a public sewer—

- (i) in, under or over any street, or through or under any cellar or vault below any street; and
- (ii) in, on or over any land not forming part of a street, after giving reasonable notice to the owner and occupier of that land; and

(b) construct and maintain sewage disposal works on any land vested in them;

and may from time to time inspect, maintain, alter and renew, or may remove or abandon, any public sewer.

(2) Where the Corporation, in the exercise of their powers under this section, lay a public sewer in, on or over any land not forming part of a street, or inspect, maintain, alter or renew or remove a public sewer laid in, on or over any such land under the powers conferred by this section, they shall from time to time, subject to the provisions of this Order, pay compensation to every person interested in that land for any damage done to, or injurious affection of, that land by reason of the laying, inspection, maintenance, alteration, renewal or removal of such public sewer.

PART VII
—cont.

(3) (a) The Corporation shall be entitled to set off against the amount of any compensation payable by them to an owner of land in respect of damage done to, or injurious affection of, such land by reason of the exercise by the Corporation of their powers under this section the amount by which the value to the owner of any land vested in him has been enhanced by the construction of the public sewer.

(b) Any question arising under this section as to the right of the Corporation to make such a set off as aforesaid or as to the amount so to be set off shall, subject to the provisions of paragraph 4 of Schedule 6 to this Order, be referred to, and determined, in default of agreement, by the Lands Tribunal for Scotland and, if the claim by such owner for compensation in respect of damage to, or injurious affection of, such land has been referred to the said Lands Tribunal, the references on both questions shall be conjoined.

Conditions as
to constructing
public sewers
outwith city.

128.—(1) Where the Corporation, in the exercise of their powers under the preceding section, propose to construct a public sewer outwith the city, they shall—

(a) in the case of each local authority district in which they propose to construct a public sewer, publish by advertisement in a newspaper circulating in the district a notice describing the nature of their proposals, specifying the land directly affected thereby, and naming a place where a plan illustrative of their proposals may be inspected at all reasonable hours by any person free of charge; and

(b) serve not later than the date of the publication of the said advertisement, a copy of the notice on the local authority of the district and on the highway authority for any highway in which they propose to construct the public sewer.

(2) If, within forty days after the publication of the notice referred to in the foregoing subsection, notice of objection to their proposals is served on the Corporation either by any local authority or any highway authority referred to in paragraph (b) of the preceding subsection or by any owner or occupier of land directly affected by the proposals, they shall not proceed with their proposals without the consent of the Secretary of State.

(3) The preceding provisions of this section with respect to the publication and service of, and objections to, the notices therein referred to shall not apply where the work which the Corporation propose to carry out outwith the city consists only of constructing a public sewer in a highway and they have obtained the consent of the local authority of the district within which that highway is situated and also, where that other authority is not the highway authority for the highway in question, the consent of the highway authority.

(4) For the purposes of this section “district” “highway” and “highway authority” have the meanings respectively assigned to them by the Act of 1946.

129. Subject to the provisions of this Part of this Order the Corporation may carry any public sewer across, over or under the bed or channel of the river and over or under any mill lade connected with the river and, with the consent of the Secretary of State, across, over or under the bed or channel of the river Almond and over or under any mill lade connected with that river.

PART II
—cont.

Power to lay public sewers in bed of Water of Leith and river Almond, etc.

130. (1) The Corporation may construct any public sewer so as to discharge into any tidal waters.

Discharge of public sewers into tidal waters.

(2) Nothing in the preceding subsection shall authorise the Corporation, otherwise than by agreement with the dock commission, to construct any public sewer so as to discharge into the harbour and docks of Leith but the provisions of this subsection shall not affect the powers of the Corporation with respect to the maintenance, improvement or reconstruction of any public sewer discharging into the harbour and docks of Leith at the commencement of this Order.

(3) Nothing in this section shall be in derogation of the Rivers 1951 c. 66. (Prevention of Pollution) (Scotland) Act 1951.

131.—(1) The Corporation may discharge, or cause to be discharged, into any watercourse—

Discharge of public sewers into water-courses.

(a) the contents of any public sewer reserved for surface water; and

(b) the contents of any public sewer—

(i) during times of heavy rainfall; and

(ii) while the public sewers, or any of them, are being repaired, scoured, altered or renewed, or are stopped up or interfered with by accident or any other cause:

Provided that where the Corporation propose to discharge, or cause to be discharged, the contents of any public sewer into any watercourse while such public sewer is being repaired, scoured, altered or renewed, they shall (except in a case of emergency) give not less than seven days' notice of their intention to the Lothians River Purification Board and shall have due regard to any representations which may be made to them by the said Board as to the time, mode and rate of discharge with a view to avoiding or minimising injury or inconvenience from such discharge.

(2) (a) In the exercise of the powers conferred by the preceding subsection the Corporation shall do as little damage as may be and shall pay compensation to all persons for any damage sustained by them or liability to which they may become subject by reason of the exercise of those powers.

(b) Any dispute arising under this section as to the fact of damage or incurring of liability or as to the amount of the compensation shall be settled by arbitration.

PART VII
—cont.Use of Water
of Leith and
river Almond,
etc., for
scouring public
sewers

132.—(1) The Corporation may from time to time divert water from the river and from the river Almond, and from any mill lade connected with the river or with the river Almond, for the purpose of scouring any public sewer.

(2) Subsection (2) of the preceding section shall apply with respect to the exercise by the Corporation of their powers under the preceding subsection.

*C. Protection of public sewers*Buildings not
to be con-
structed, or
materials
deposited, over
public sewers.

133.—(1) A person shall not, without the consent of the Corporation, construct, or cause to be constructed, any building over any public sewer shown on the map referred to in section 126 (Map of public sewers) of this Order, or deposit any materials or things over any such public sewer of such a nature or in such quantity as to be likely to cause damage to such public sewer or obstruct access thereto.

(2) The Corporation may demolish any building constructed, or remove any materials or things deposited, in contravention of the preceding subsection, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from the person constructing such building or causing it to be constructed, or depositing such materials or things, or causing them to be deposited.

Ventilation of
public sewers,
etc.

134.—(1) The Corporation may, for the purpose of ventilating the public sewers and other works connected therewith—

- (a) provide all such ventilating shafts and pipes, fans and such other works as they consider necessary or appropriate; and
- (b) fix such ventilating shafts or pipes into, on or against any building, or on any land, after giving reasonable notice to the owner and occupier of such building or land;

and may from time to time inspect, maintain, alter and renew, or may remove, any such works.

(2) The Corporation shall from time to time, subject to the provisions of this Order, pay compensation to the owner and occupier of any such building or land for damage to, or injurious affection of, such building or land by reason of the exercise of their powers under paragraph (b) of the preceding subsection.

Injurious
matter not to
be permitted to
pass into
sewers or
drains.

135.—(1) A person shall not discharge, or cause or permit to flow or pass, into any public sewer, or into any sewer or drain communicating with a public sewer—

- (a) any waste or live steam, condensing water or other liquid of a temperature exceeding 110 degrees Fahrenheit;
- (b) any petroleum spirit, carbide of calcium, or explosive substance; or
- (c) any liquid or any solid matter of whatever description which, either by itself or by admixture with any other liquid or matter therein—

(i) would be likely to interfere with the free flow of the contents of such public sewer, or to affect prejudicially the treatment and disposal of its contents; or

(ii) would be injurious to the construction, maintenance, use or efficiency of such public sewer; or

(iii) would cause, or be likely to cause, silting up, encrustation, corrosion or decay in the materials of such public sewer or of any works connected therewith; or

(iv) would cause, or be likely to cause, a nuisance or involve danger to, or injury to the health of, persons engaged in the construction or maintenance of such public sewer or of any works connected therewith.

PART VII
—cont.

(2) (a) Any person proposing to make a new discharge of trade effluent into any public sewer, or into any sewer or drain communicating with a public sewer, may apply to the Corporation for a determination as to whether or not such discharge would be prohibited under paragraph (c) of the preceding subsection.

(b) An application under the preceding paragraph of this subsection shall be made in writing addressed to the city engineer.

(c) If the Corporation fail to give the applicant notice of their decision on any application made to them under paragraph (a) of this subsection within two months from the receipt of such application they shall be deemed to have determined that the discharge to which such application relates would be prohibited under paragraph (c) of the preceding subsection.

(d) If any person is aggrieved by a determination made or deemed to have been made under this subsection that a discharge would be prohibited under paragraph (c) of the preceding subsection the question of the reasonableness of such determination shall be settled by arbitration.

(e) In this subsection the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume and rate of discharge of the effluent, substantially a repetition or continuation of a previous discharge made within the preceding twelve months (whether from the same or a different outlet) so however that a discharge which is in other respects a repetition or continuation of a previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

(3) Any person acting in contravention of any provision of subsection (1) of this section shall be guilty of an offence under this Order.

136.—(1) Any person who wilfully does anything by reason of which the drainage of the city may be obstructed or damaged shall be guilty of an offence under this Order.

Penalty for obstructing or damaging drainage of city.

(2) The preceding subsection shall not apply to the exercise of the powers conferred on the dock commission by the Leith Harbour and Docks Order, 1962.

PART VII
—cont.

Ashes, etc., not to be permitted to enter soil appliances, etc.

137.—(1) A person shall not deposit in, or cause or permit to be deposited in or to enter, any soil appliance or waste appliance, any ashes or other matter by which such soil appliance or waste appliance may be obstructed.

(2) (a) Any person acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and the city engineer may execute any work necessary to remove such obstruction, and the expense reasonably incurred in so doing shall be recoverable by the Corporation 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.

138. The Corporation may from time to time by notice, require the owner of any building for which a trap or tank has been provided in pursuance of regulation 149 of the building standards regulations (which relates to the provision of traps or tanks for the interception and retention of oil, fat, greases, volatile substances or silt, etc.) to empty and clean out such trap or tank and dispose of the contents thereof in such manner as may be prescribed in the notice.

D. Communication of private sewers and drains, and sewers of other local authorities, with public sewers

Right of owners and occupiers within city to drain into public sewers.

139.—(1) Subject to the provisions of this Part of this Order—

- (a) an owner or occupier of any premises; and
- (b) the owner of any private sewer;

within the city shall be entitled to have his private sewer or drains made to communicate with a public sewer and thereby to discharge foul water and surface water from those premises or that private sewer into such public sewer:

Provided that nothing in this subsection shall entitle any person—

- (i) to discharge any foul water, directly or indirectly, into a public sewer reserved for surface water; or
- (ii) to discharge, directly or indirectly, into any public sewer any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment, including this Order; or
- (iii) to have his private sewer or drain made to communicate directly with a storm-water overflow sewer.

(2) Subject to the provisions of this Part of this Order with respect to breaking open streets, the owner or occupier of any lands or premises may break open any street for the purpose of enabling his private

sewer or drain to be made to communicate with a public sewer and for the purpose of examining, repairing and renewing any private sewer or drain draining his lands or premises into a public sewer.

PART VII
—cont.

140. The local authority of any area outwith the city may, with the consent of the Corporation, and subject to the making of such reasonable payment, or periodic payments, as the Corporation may prescribe, make any of their sewers to communicate with a public sewer, and the provisions of the preceding section shall, with any necessary adaptations, apply accordingly.

Use of public
sewers by other
local
authorities.

141. The owner or occupier of any premises, and the owner of any private sewer, outwith the city may, with the consent of the Corporation, and subject to the making of such reasonable payment, or periodic payments, as the Corporation may prescribe, have his private sewer or drains made to communicate with a public sewer as if his premises or private sewer, as the case may be, were within the city and the provisions of section 139 (Right of owners and occupiers within city to drain into public sewers) of this Order shall, with any necessary adaptations, apply accordingly.

Use of public
sewers by
owners or
occupiers
outwith city.

142.—(1) A communication with a public sewer shall be made only by the Corporation, and the point of communication and the manner of effecting such communication, shall be determined by the city engineer.

Making of
communications
with public
sewers.

(2) The Corporation may fix a scale of charges for making such communications, and such charges shall be recoverable by the Corporation from the person on whose behalf, or on whose application, such communication was made.

(3) Where a private sewer or drain, or a sewer of another local authority, has been made to communicate with a public sewer without the consent of the Corporation, the Corporation may—

- (a) stop up the communication between such sewer or drain and the public sewer; or
- (b) execute any work necessary for making such communication conform with their requirements;

and they may recover the expense reasonably incurred by them from the person or local authority by or on whose behalf such communication was made.

E. Construction of new sewers by private developers

143.—(1) A person shall not, without the consent of the Corporation, construct or cause to be constructed, a private sewer which is intended to communicate with a public sewer.

Construction of
new sewers by
private
developers.

(2) (a) The provisions with reference to applications for authority to construct new streets, and the disposal of such applications, contained in head I (Construction of new streets by private developers) of

PART VII
—cont.

Part V (Streets) of this Order shall, with any necessary adaptations and subject as hereinafter provided in this section, apply with reference to applications under this section.

(b) The plans to be lodged with reference to any such private sewer shall show—

- (i) the intended line, size, depth and inclination thereof;
- (ii) the proposed point of communication with the public sewer; and
- (iii) the details of the arrangements proposed for ventilation, and for access for the purpose of maintenance;

and there shall be lodged with such plans a specification of the materials proposed to be used in the construction of such private sewer.

(c) Section 103 (Penalty for constructing new street without authority, etc.) and section 104 (Powers of Corporation where new street constructed without authority, etc.) of this Order shall, with any necessary adaptations, apply in relation to any contravention of this section.

Corporation may require proposed private sewer to be so constructed as to drain additional lands and buildings.

144.—(1) Where the plans, sections and specifications submitted under the preceding section are such as would be approved by the Corporation as sufficient for the drainage of the lands or buildings of the person proposing to construct the private sewer but the Corporation are of opinion that it is desirable that the sewer should be so constructed as to be capable of draining additional lands and buildings, they may require such person to construct such sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall, or otherwise, from the manner in which he proposed to construct it, and such person shall comply with such requirements.

(2) Upon the completion of the construction of such private sewer it shall vest in, and be maintained by, the Corporation as a public sewer.

(3) The Corporation shall repay to such person the expense reasonably incurred by him in the construction of such sewer additional to the expense which he would have incurred in the construction of a sewer sufficient for the drainage of his lands or buildings, and any dispute as to the amount of such additional expense shall be settled by arbitration.

(4) The Corporation may, as a condition of allowing any person other than the owner of the land through which such sewer is constructed, or his feuars, to make use of such sewer, recover from such person such additional expense so far as relating to the lands or buildings of such person to be drained by such sewer.

F. Private sewers and drains, cesspools, etc.

Private sewers and drains to be maintained by owners.

145.—(1) All private sewers and drains shall be under the survey and control of the Corporation, and shall be maintained by the owners of the premises to which they are connected.

(2) (a) The city engineer may, by notice, require the owners of any premises to which any private sewer or drain is connected to repair or scour such private sewer or drain in the manner and within the period (not being less than seven days) prescribed in such notice.

(b) Where several premises in different ownership are connected to such private sewer or drain the expense of any such works executed by the city engineer shall be recoverable from each of such owners in the proportion which the net annual value of the premises of each of such owners bears to the aggregate of the net annual value of all the premises connected to such private sewer or drain.

(c) A notice under this subsection shall be deemed to be validly served if it is served on all the owners whose premises are known by the city engineer to be connected to such private sewer or drain.

(d) Where a notice under this subsection has been served on the owners of any premises to which any private sewer or drain is connected requiring them to repair or scour such private sewer or drain, and the works required by such notice are executed by such owners and it is ascertained while such works are being executed or after they have been completed, that such private sewer or drain is also connected to premises in the ownership of other persons (on whom notice was not served) such other persons shall be liable to contribute a proportion of the expense (calculated in accordance with paragraph (b) of this subsection) of such works notwithstanding that notice was not served upon them.

(e) Where the requirements of a notice under this subsection are not complied with, and it is subsequently ascertained while the works required by such notice are being executed by the city engineer or after they have been completed that such private sewer or drain is also connected to premises in the ownership of other persons (on whom notice was not served) such other persons shall be liable for a proportion of the expense (calculated in accordance with paragraph (b) of this subsection) of the works executed by the city engineer notwithstanding that notice was not served upon them.

(3) The city engineer, and any other authorised officer of the Corporation may, in a case of emergency (of which such officer shall be the sole judge) cause any private sewer or drain to be repaired and put in good order without notice having been given in accordance with paragraph (a) of the preceding subsection (but in any such case notice shall be given by the city engineer as soon as possible thereafter), and the expense of such works (calculated in accordance with paragraph (b) of the preceding subsection) shall be recoverable by the Corporation from the owner or owners of any premises to which such private sewer or drain is connected.

(4) Nothing in this section shall impose on the Corporation any liability in respect of injury to persons or damage to property resulting from the condition of any private sewer or drain.

(5) For the purposes of this section “ private sewer ” and “ drain ” shall be deemed to include any pipe for conveying soil water or waste water to a private sewer or drain, and any pipe provided for ventilating a private sewer or drain.

PART VII
—cont.Sewers, etc., in
private streets.

146. When the carriageway of a private street has been taken over by, and has vested in, the Corporation, any private sewers therein shall, unless otherwise agreed between the owners and the Corporation, vest in and be maintained by the Corporation as public sewers.

Corporation
may take
over private
sewers by
agreement.

147. The Corporation may, by agreement, take over any private sewer, and every private sewer so taken over shall vest in, and be maintained by, the Corporation as a public sewer.

Notice to be
given before
private sewers
or drains
covered up.

148.—(1) Any person who has opened up a private sewer or drain for any purpose shall give notice to the city engineer before proceeding to cover up such private sewer or drain, and the city engineer shall cause such private sewer or drain to be inspected and tested within twenty-four hours of receiving such notice.

(2) Any person who covers up such private sewer or drain without giving notice to the city engineer, or before the expiry of a period of twenty-four hours from the receipt of such notice (unless during such period such private sewer or drain has been inspected and tested by the city engineer) shall be guilty of an offence under this Order, and the city engineer may cause such private sewer or drain to be uncovered for the purpose of inspection and testing, and the expense thereby incurred shall be recoverable by the Corporation from such person.

Manholes
provided for
private sewers
and drains
not to be
obstructed.

149. Section 133 (Buildings not to be constructed, or materials deposited, over public sewers) of this Order shall, with any necessary adaptations, apply with respect to the manholes provided for private sewers and drains as it applies with respect to public sewers.

Cesspools.

150.—(1) Every cesspool shall be constructed, maintained and operated to the satisfaction of the city engineer.

(2) (a) A person shall not, without the consent of the Corporation, form or construct, or cause to be formed or constructed, a cesspool—

- (i) within one hundred feet of any dwellinghouse; or
- (ii) within two hundred feet of any well or spring.

(b) Any person acting in contravention of this subsection shall be guilty of an offence under this Order, and the city engineer may, by notice, require such person to execute, within a reasonable period to be stated in such notice, such work as may be necessary for filling up or removing such cesspool or otherwise rendering it innocuous.

(3) If at any time a public sewer is provided within one hundred yards of any building of which the drainage is discharged into a cesspool, the city engineer may, by notice, require the owner of such building to construct, within a reasonable period to be stated in such notice, a private sewer for the drainage of such building, and to cause such private sewer to communicate with such public sewer, and thereafter to disconnect and stop up the drain leading to such cesspool to the satisfaction of the city engineer:

Provided that the city engineer shall not be entitled to serve such notice unless—

PART VII
—cont.

- (a) the public sewer is at a level which makes it reasonably practicable to construct such private sewer so as to drain by gravitation into such public sewer; and
- (b) the land intervening between such building and the public sewer is land through which such owner is entitled to construct a private sewer.

G. Drainage of buildings

151. Notwithstanding anything in this Part of this Order the Corporation shall not—

Drainage of
cellars, etc.,
below street
level.

- (a) be required to provide for the drainage of cellars, vaults or chambers below street level unless such cellars, vaults or chambers can be drained by gravitation into a public sewer; or
- (b) be liable for any flooding of any floor, cellar or vault below street level in any building.

152.—(1) Where any building has been provided with separate drains for foul water and for surface water the owner of such building shall, unless the Corporation otherwise approve, maintain such separate drains, and shall not discharge surface water, or cause or permit surface water to be discharged, from such building into any public sewer other than a public sewer reserved for surface water.

Buildings with
separate drains
for foul water
and for surface
water.

(2) Any owner of any such building acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and the city engineer may execute any works necessary to prevent such discharge, and the expense reasonably incurred in so doing shall be recoverable by the Corporation from such owner.

153.—(1) Without prejudice to the provisions of section 155 (Power to enter, survey, etc. lands and premises for purposes of Part VII of Order) of this Order, the city engineer and any other authorised officer of the Corporation may, on producing (if required) his authorisation—

Inspection of
drainage of
buildings.

- (a) inspect, and apply such tests as he may consider necessary to, the drainage system of any building; and
- (b) for that purpose—
 - (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 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 Corporation

PART VII
—cont.

(3) If such drainage system is found to be in disrepair, the city engineer, or such other authorised officer, as the case may be, may, by notice, require the owner of such building, within a reasonable period to be stated in such notice, to repair such drainage system or any part thereof in such manner and to such extent as may be necessary for effectually draining the building, and subsection (2) of section 145 (Private sewers and drains to be maintained by owners) of this Order shall, with any necessary adaptations, apply with respect to any such requirement.

(4) If any land to which this section applies is operational land held by statutory undertakers and those undertakers object to the exercise of the powers of this 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.

Summary
power to
remedy
defective soil
and waste
appliances.

154. 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 city engineer that any soil appliance or waste appliance in or on any premises is stopped up, fractured or leaking, he may, by notice, require the owner of such premises to remedy the defect within twenty-four hours.

H. Entry to lands and premises for purposes of Part VII of Order

Power to enter,
survey, etc.,
lands and
premises for
purposes of
Part VII of
Order.

155.—(1) The power to enter premises conferred on authorised officers of the Corporation by section 241 (Power to enter premises) of the Order of 1961 shall include power to enter, examine and lay open any lands or premises within or outwith the city for the purpose of surveying, measuring, taking levels, examining works, ascertaining the course of public sewers and private sewers, and drains discharging into public or private sewers, and of maintaining, reconstructing or altering public sewers, or any other purpose ancillary to the powers conferred by this Part of this Order:

Provided that such power shall not be exercised with respect to any lands or premises unless notice of the intention to enter such lands or premises, and the nature of the operations proposed to be carried out, has been given to the occupier not less than seven days before the first entry (except in case of emergency, in which case notice shall be given as soon as possible) and in any case further notice shall not be required in respect of any subsequent entry on the lands or premises for the purpose of carrying out the operations specified in the notice.

(2) Authorised officers of the Corporation acting in the exercise of the powers conferred by this section shall cause as little detriment and inconvenience to any person as circumstances allow, and the Corporation shall, subject to the provisions of this Order, make compensation to the owners and occupiers of any lands or premises injuriously affected by the exercise of such powers.

(3) If any land to which this section applies is operational land held by statutory undertakers and those undertakers object to the exercise of the powers of this 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
—cont.

I. General

156.—(1) For the purposes of any provision of this Part of this Order which empowers the Corporation to construct, lay or maintain public sewers, the provisions of Part I of the Third Schedule to the Act of 1946 shall be incorporated with this Order, subject, however, to such adaptations as may be necessary to make those provisions applicable to the laying, constructing, inspecting, repairing, altering, renewing and removing of public sewers as well as to the laying, constructing, inspecting, repairing, altering, renewing and removing of water mains and pipes.

Breaking open streets for purposes of Part VII of Order.

(2) The provisions so incorporated, with any such adaptations, shall apply in relation to—

- (a) any person who is entitled or authorised to have any private sewer or drain made to communicate with a public sewer; and
- (b) the local authority of any area outwith the city authorised to have any sewer belonging to them made to communicate with a public sewer;

as if, so far as the powers of such person or local authority extend, he or they were the Corporation:

Provided that, in its application to a person entitled or authorised to have a private sewer or drain made to communicate with a public sewer, paragraph 1 of the said Part I of the Third Schedule to the Act of 1946 shall have effect as if the words “ and of any bridge carrying a street and any cellar or vault below any street, and any sewer, drain or tunnel in or under any such roadway or footpath ” were omitted therefrom.

157. The Corporation shall so discharge their functions under this Part of this Order as not to create a nuisance.

Corporation not to create nuisance under powers of Part VII of Order.

PART VIII

WATER OF LEITH

A. Definitions for Part VIII of Order

158. In this Part of this Order—

“ Act of 1951 ” means the Rivers (Prevention of Pollution) (Scotland) Act 1951;

“ day ”, in a context relating to a rate of discharge of water or trade effluent, means a period of twenty-four hours reckoned from midnight, and “ daily ” shall be construed accordingly;

“ mill lade pipe ” means the pipe laid by the Corporation under the powers conferred by the Edinburgh Improvement Act 1887, commencing at the weir across the river immediately upstream of Legget’s Skinnery and terminating 170 yards

Definitions for Part VIII of Order.
1951 c. 66.

1887 c. vi.

PART VIII
—cont.

or thereby north of Broughton Road by a connection with a public sewer, and includes the requisite service pipes in connection therewith;

“ river water ” means water abstracted by the Corporation from the river;

“ schedule 4 premises ” means the premises specified in Schedule 4 to this Order;

“ schedule 5 premises ” means the premises specified in Schedule 5 to this Order;

“ sewers ” means the sewers constructed by, or which were vested in, the Water of Leith Purification and Sewerage Commissioners under the Water of Leith Purification and Sewerage Acts 1889 to 1908, other than the branch of the sewer referred to in section 183 (Part of Water of Leith sewer to form part of sewerage undertaking of Midlothian county council) of this Order.

B. Maintenance of flow of Water of Leith, etc.

Improvement
of flow of
Water of
Leith.

159.—(1) The Corporation may, for the purpose of preserving, maintaining and improving the flow of the river, and for the purpose of preserving or improving amenity—

- (a) clean the bed or channel of the river and remove accumulations of silt, refuse or other obstructions;
- (b) continue to maintain, and may alter, improve and reconstruct all works executed by them in the bed and channel, and on the banks, of the river; and
- (c) alter the level, gradient, alignment and width of any part of the bed and channel of the river in such manner as they think fit.

(2) (a) The powers conferred by the preceding subsection shall (without prejudice to the generality of that subsection) include—

- (i) power to deposit on the banks of the river, and to carry away, any mud, gravel or other material removed from the river in the maintenance thereof;
- (ii) power to remove any dam, weir, sluice or other work situated in the bed or channel, or on the banks, of the river which is no longer required or which is in a state of disrepair, or has become ruinous or derelict; and
- (iii) power to remove any tree growing in the bed or channel, or on the banks, of the river.

(b) Any dispute arising under sub-paragraph (ii) of the preceding paragraph between the Corporation and the owner or occupier of any mill or other work on the river as to whether any dam, weir, sluice or other work is no longer required or is in a state of disrepair, or has become ruinous or derelict, shall be settled by arbitration.

(3) (a) In the exercise of the powers conferred by paragraph (c) of subsection (1) of this section the Corporation shall do as little

damage as may be and shall pay compensation to all persons for any loss or damage sustained by them by reason of the exercise of these powers.

PART VIII
—cont.

(b) Any dispute arising under the preceding paragraph as to the fact of loss or damage or as to the amount of compensation shall be settled by arbitration.

(4) The Corporation may contribute towards the expense incurred by any other person in the carrying out of operations which could have been carried out by them under this section.

(5) The powers conferred by this section, or the exercise thereof, shall not relieve any person from any liability attaching to such person in reference to the matters specified in this section.

(6) Nothing in this section shall authorise the carrying out by the Corporation of any operations in contravention of the Act of 1951 or of any byelaws made thereunder.

160.—(1) A person shall not, without the consent of the Corporation, construct any work of any kind in the bed or channel, or on the banks, of the river which would be likely to—

Restriction on works, etc., in Water of Leith.

- (i) interfere with, or obstruct the flow of, the river; or
- (ii) diminish the flow of the river, or abstract or divert water therefrom.

(2) Any person acting in contravention of the preceding subsection shall be guilty of an offence under this Order, and the Corporation may remove any work constructed in contravention of that subsection, and the expense reasonably incurred by them in so doing shall be recoverable from the person in default.

(3) Nothing in this section shall be in derogation of subsection (2) of section 21 of the Act of 1946 (which provides that the Secretary of State may, by order, provide for the compulsory acquisition by a local water authority of right to take water from a stream or other source of supply).

161. The Corporation may make byelaws—

- (a) for the protection and preservation of the fish; and
- (b) for the regulation of fishing;

in the river so far as within the city.

Byelaws as to fishing in Water of Leith.

C. Supply of river water to schedule 4 premises

162.—(1) Subject to the provisions of this head of this Part of this Order, the Corporation may continue to abstract water from the river by means of the mill lade pipe for the purpose of supplying river water to the schedule 4 premises and shall, if required by the occupier of any of the schedule 4 premises, supply to such premises a quantity of river water not exceeding the maximum quantity specified in column 4 of Schedule 4 to this Order opposite to such premises.

Corporation to continue to supply river water to schedule 4 premises.

PART VIII
—cont.

(2) The Corporation shall not be liable for any loss or damage arising from or in consequence of any interruption of the supply of river water provided by them to any of the schedule 4 premises due to any cause not within their control, but they shall, as soon as reasonably practicable, take steps to restore the supply of river water which may be interrupted from any such cause.

Maintenance of meters and recorders at schedule 4 premises.

163.—(1) Subject to the provisions of this head of this Part of this Order, the Corporation shall continue to maintain—

- (a) each of the existing meters at the premises numbered 1, 2, 4, 5 and 6 in Schedule 4 to this Order; and
- (b) the existing recorder at the premises numbered 7 in the said schedule;

and shall renew such meters and such recorders from time to time when necessary.

(2) The occupiers of the premises numbered 3 in Schedule 4 to this Order shall continue to maintain the meter provided by them at such premises.

Maintenance of mill lade pipe.

164. Subject to the provisions of this head of this Part of this Order, the Corporation shall continue to maintain the mill lade pipe for the purpose of supplying river water to the schedule 4 premises in accordance with, and to the extent required by, the provisions of this head of this Part of this Order.

Discontinuance of supply of river water to schedule 4 premises.

165.—(1) Notwithstanding anything in this head of this Part of this Order the Corporation may discontinue the supply of river water to any of the schedule 4 premises on giving not less than twelve months' notice to the owner and occupier of such premises.

(2) (a) The owner of any such premises shall be entitled to compensation in respect of the discontinuance of such supply.

(b) Such compensation shall be assessed by reference to the average amount of river water supplied to such premises by the Corporation during each of the three years preceding the date on which the Corporation give notice of such discontinuance, and in assessing such compensation regard shall be had to—

- (i) the amount of water rates and charges which may reasonably be expected to become payable in respect of an equivalent supply of water to such premises from the water undertaking of the Corporation; and
- (ii) any payments made to the Corporation in respect of the supply of river water to such premises which will cease to be payable on such discontinuance.

(c) The Corporation shall repay to the owner of any such premises any expenditure reasonably incurred by him in disconnecting the supply of river water to such premises and in having such premises connected with the water mains of the Corporation.

(d) Any dispute as to the amount of compensation or expenditure under this subsection shall be settled by arbitration.

PART VIII
—cont.

(3) On the discontinuance of the supply of river water by the Corporation to any of the schedule 4 premises all obligations of the Corporation, however constituted, to supply river water to such premises shall cease and determine.

166. On the discontinuance of the supply of river water by the Corporation to all the schedule 4 premises the Corporation may abandon the mill lade pipe. Abandonment of mill lade pipe.

167. The provisions of Part I of the Third Schedule to the Act of 1946 shall be incorporated with this Order subject to such adaptations as may be necessary to make these provisions applicable to the inspecting, repairing, altering, renewing and removing of the mill lade pipe as well as to the inspecting, repairing, altering, renewing and removing of water mains and pipes. Breaking open streets for purposes of head C of Part VIII of Order.

D. Discharges into Water of Leith sewers
Nature and quantities of discharges

168.—(1) Subject as hereinafter provided in this section, the Corporation shall continue to maintain the sewers and they may use them as public sewers. Use of Water of Leith sewers.

(2) The occupiers of the schedule 5 premises shall, subject to the provisions of this head of this Part of this Order, be entitled to discharge from such premises into the sewers—

(a) soil water and waste water; and

(b) trade effluent not exceeding the maximum daily quantity, or at a rate in excess of the maximum rate of discharge, prescribed by or in pursuance of this head of this Part of this Order.

169.—(1) The maximum quantities, and the maximum rates of discharge, respectively, of trade effluent which the occupiers of the schedule 5 premises shall, subject to the provisions of this head of this Part of this Order, be entitled to discharge into the sewers shall be those specified in column 4 of Schedule 5 to this Order opposite to each of such premises. Allocation of quantities, etc., of trade effluent to be discharged into Water of Leith sewers.

(2) The occupier of any premises who discharges trade effluent, or causes or permits trade effluent to be discharged from such premises into the sewers of a quantity, or at a rate, in excess of the maximum quantity, or maximum rate of discharge, as the case may be, specified in column 4 of Schedule 5 to this Order opposite to such premises, shall be guilty of an offence under this Order:

Provided that—

(a) in the case of the premises numbered 4 in Schedule 5 to this Order, the occupier thereof shall not be guilty of an offence

PART VIII
—cont.

under this subsection in respect of any discharge of trade effluent from such premises if, during the period of discharge, the combined quantity, or rate of discharge, as the case may be, of trade effluent from such premises and the premises numbered 3 in the said schedule did not exceed the combined quantity, or rate of discharge, as the case may be, for the time being applicable to both of such premises; and

- (b) in the case of either of the premises numbered 6 or 7 in Schedule 5 to this Order, the occupier thereof shall not be guilty of an offence under this subsection in respect of any discharge of trade effluent from such premises if, during the period of discharge, the combined quantity, or rate of discharge, as the case may be, of trade effluent from both of such premises did not exceed the combined quantity, or rate of discharge, as the case may be, for the time being applicable to both of such premises.

(3) It shall be a defence in any proceedings relating to an alleged contravention of the preceding subsection that the discharge of the trade effluent of a quantity in excess of the maximum quantity, or at a rate in excess of the maximum rate of discharge, as the case may be, was due to circumstances outwith the control of the occupier of the premises.

Variation of allocation of quantities, etc., of trade effluent to be discharged into Water of Leith sewers.

170.—(1) (a) On the application of the owners of any three of the schedule 5 premises or of any owner of any of the schedule 5 premises who is, or any owners of any such premises who are in the aggregate, entitled to discharge not less than 50,000 cubic feet of trade effluent per day into the sewers, the sheriff may at any time after the expiry of six months from the commencement of this Order in the first instance and thereafter, if satisfied that there has been a material change of circumstances, after the expiry of five years from the date of the determination of any application made under this subsection, vary the maximum quantities, or maximum rates of discharge, specified in column 4 of Schedule 5 to this Order.

(b) Any such application shall be by way of initial writ under the Sheriff Courts Acts and, subject as hereinafter provided in this section, shall be disposed of as a summary application as defined in the said Acts.

(2) An application under the preceding subsection shall not be considered unless, at least six months prior thereto, notice of the intention to make such application shall have been given by the applicants to the Corporation and to the owners of all the other schedule 5 premises, and the Corporation and all such owners shall be called as parties in any such application.

(3) On any application under this section the sheriff may, at any stage of the proceedings, and shall, whether before or after the conclusion of the proceedings, if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in connection with the application, and an appeal shall lie, with the leave of the Court of Session or of the House of Lords, from

any decision of the Court of Session under this section, which leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

171.—(1) The Corporation may from time to time prescribe conditions as to the nature or composition and temperature of the trade effluent which may be discharged into the sewers from any of the schedule 5 premises:

Restrictions on nature, etc., of trade effluent discharged into Water of Leith sewers.

Provided that in prescribing any conditions under this subsection the Corporation shall have regard to the circumstances in which the occupiers of such premises or their predecessors were entitled under the repealed Acts, to discharge trade effluent into the sewers.

(2) Any conditions prescribed by the Corporation under the preceding subsection may be general, or may relate only to particular premises.

(3) The Corporation shall give notice to the occupiers of all premises affected thereby of—

- (a) any conditions prescribed by them under this section;
- (b) the date on which such conditions shall come into operation:

Provided that for the period of five years from the commencement of this Order the Corporation shall not be entitled to prescribe any conditions which would affect prejudicially the discharge from any of the schedule 5 premises into the sewers of any trade effluent which was being discharged from any of said premises into the sewers on the 28th March, 1964, in accordance with the provisions of the repealed Acts or any determination made thereunder.

(4) Conditions prescribed under this section shall not be varied within five years from the date on which they came into operation.

(5) Any dispute between the occupier of any premises and the Corporation as to—

- (a) the reasonableness of any conditions prescribed under this section; or
- (b) the date on which any such conditions shall come into operation; or
- (c) any question arising under the proviso to subsection (3) of this section;

shall be settled by arbitration.

(6) (a) The occupier of any of the schedule 5 premises who discharges trade effluent, or causes or permits trade effluent to be discharged, into the sewers otherwise than in conformity with the conditions prescribed by the Corporation under this section, shall be guilty of an offence under this Order.

(b) It shall be a defence in any proceedings relating to an alleged contravention of this subsection that the discharge of the trade effluent otherwise than in conformity with the conditions prescribed by the Corporation was due to circumstances outwith the control of the occupier of the premises.

PART VIII
—cont.

Power of Corporation to require trade effluent to be diverted from Water of Leith sewers into public sewers.

172.—(1) Notwithstanding anything in this head of this Part of this Order, the Corporation may, by notice to the owner and occupier of any of the schedule 5 premises, direct that the whole or any part of the trade effluent from such premises shall on and after such date as may be specified in the notice, be discharged into such public sewer as they may direct instead of into the sewers.

(2) (a) Where the Corporation have made a direction in pursuance of the preceding subsection, the communication with the public sewer shall be made by, and at the expense of, the Corporation and there shall also be borne by the Corporation—

(i) the expense reasonably incurred by such owner or occupier in executing any necessary ancillary works, including the removal and re-erection of the existing recorder, or the provision of a new recorder; and

(ii) where the nature, composition or temperature of the trade effluent to be discharged into such public sewer is such that the discharge thereof into such public sewer would be prohibited under the provisions of Part VII (Sewers and drains) of this Order, an annual amount representing the difference between the cost of such treatment as may be necessary to permit such trade effluent to be discharged into the public sewer and the cost of any treatment which would have been required under this head of this Part of this Order if such trade effluent had continued to be discharged into the sewers.

(b) Any dispute arising under the preceding paragraph shall be settled by arbitration.

Recorders and settlement tanks, etc.

Provision of recorders and keeping of records of trade effluent discharged into Water of Leith sewers.

173.—(1) Subject as hereinafter provided in this Part of this Order, the Corporation shall—

(a) provide (so far as not already provided) and maintain such recorders as may be required to measure the volume and rate of discharge of the trade effluent being discharged from each of the schedule 5 premises into the sewers; and

(b) make regular readings of the recorders provided in accordance with the preceding paragraph and keep records of such readings.

(2) Records kept by the Corporation under the preceding subsection shall be retained by them for a period of five years and shall be kept in the office of the city engineer and may be inspected free of charge at all reasonable hours by or on behalf of the owners and occupiers of any of the schedule 5 premises.

(3) The Corporation shall, if required by the occupier of any of the schedule 5 premises and at his expense—

(a) remove any recorder to another site in such premises; and

(b) provide and maintain an additional recorder in such premises.

174.—(1) The occupier of each of the schedule 5 premises shall—

- (a) provide (so far as not already provided) and maintain in such premises such an inspection chamber as will enable a person readily to take at any time samples of what is passing into the sewers from such premises; and
- (b) from time to time clean the recorder chambers and inspection chambers at such premises; and
- (c) from time to time remove all solid matter deposited in any settlement tank at such premises:

PART VIII
—cont.
Provision and
cleaning, etc., of
inspection
chambers etc.

Provided that the recorder chamber at the premises numbered 12 in the said schedule shall continue to be cleaned by the Corporation.

(2) (a) (i) If the occupier of any of the schedule 5 premises fails to provide or maintain an inspection chamber in accordance with the requirements of paragraph (a) of the preceding subsection the Corporation may, by notice, require such occupier to provide such an inspection chamber, or to carry out such maintenance operations (as the case may be) as may be specified in such notice and within such period as may be specified therein.

(ii) Any dispute between the Corporation and an occupier of any of the schedule 5 premises with respect to any requirement of a notice under this paragraph shall be settled by arbitration.

(b) If the occupier of any of the schedule 5 premises fails to carry out any of the operations specified in paragraphs (b) or (c) of the preceding subsection to the satisfaction of the city engineer, the city engineer may carry out such operations and the expense reasonably incurred in so doing shall be recoverable by the Corporation from such occupier.

E. General

175. Any dispute between the occupier of any of the schedule 5 premises and the Corporation as to any requirement of any notice under this Part of this Order shall be settled by arbitration.

Settlement of
disputes as to
requirements of
notices under
Part VIII of
Order.

176. Notwithstanding the repeal of the repealed Acts, any determination of the Corporation under section 186 (Liquids &c. which may be put into sewers or otherwise dealt with) of the Edinburgh Corporation (Streets Buildings and Sewers) Order 1926 affecting the sewers, shall subject to the provisions of this Part of this Order continue to apply until conditions prescribed by the Corporation under subsection (1) of section 171 (Restrictions on nature, etc., of trade effluent discharged into Water of Leith sewers) of this Order come into operation.

As to existing
determinations
of Corporation
with respect to
nature, etc.,
of discharges
into
Water of Leith
sewers.

177. The power to enter premises conferred by section 241 (Power to enter premises) of the Order of 1961 shall extend and apply to entry for the purpose of reading and testing any meter or recorder provided under this Part of this Order in any of the schedule 4 premises or schedule 5 premises.

As to entry
to schedule 4
and 5 premises.

PART VIII
—cont.

Power of Corporation to take samples of trade effluent discharged into Water of Leith sewers.

178. For the purpose of their functions under this Part of this Order the Corporation shall have the like powers of obtaining and taking away samples of trade effluent discharged into the sewers from any of the schedule 5 premises as are possessed by a river purification authority under section 19 of the Act of 1951, with regard to samples of water from any stream, or of any effluent passing into any stream, within the area of the authority, and the provisions of the said section 19 shall, with any necessary adaptations, extend and apply to the Corporation accordingly.

Application to Part VIII of Order of certain provisions of Part VII of Order.

179.—(1) The provisions of Part VII (Sewers and drains) of this Order hereinafter specified shall, with any necessary adaptations, extend and apply in reference to the provisions of this Part of this Order as fully and effectually as if those provisions had been re-enacted in this Part of this Order, that is to say:—

- Section 126 (Map of public sewers);
- Section 131 (Discharge of public sewers into watercourses);
- Section 132 (Use of Water of Leith and river Almond, etc., for scouring public sewers);
- Section 133 (Buildings not to be constructed, or materials deposited, over public sewers);
- Section 134 (Ventilation of public sewers, etc.);
- Section 135 (Injurious matter not to be permitted to pass into sewers or drains);
- Subsections (1) and (3) of section 142 (Making of communications with public sewers);
- Section 155 (Power to enter, survey, etc., lands and premises for purposes of Part VII of Order);
- Section 156 (Breaking open streets for purposes of Part VII of Order); and
- Section 157 (Corporation not to create nuisance under powers of Part VII of Order):

Provided that section 135 (Injurious matter not to be permitted to pass into sewers or drains) of this Order, as so extended and applied, shall not extend and apply in relation to the discharge of trade effluent from any of the schedule 5 premises in accordance with the provisions of head D (Discharges into Water of Leith sewers) of this Part of this Order.

(2) Section 141 (Use of public sewers by owners or occupiers outwith city) of this Order shall, with any necessary adaptations, apply with respect to the sewers but only to the extent to which capacity is available in the sewers after allowing for the discharge of the quantities of trade effluent authorised from time to time to be discharged into the sewers from the schedule 5 premises.

Saving for common law rights of riparian owners in relation to Water of Leith.

180. Water abstracted from the river for the purposes of any of the schedule 5 premises and discharged into the sewers shall, for the purposes of any rule of law relating to the common law rights of riparian owners, be deemed to have been returned to the river.

PART VIII

—cont.

181. The regulations under section 33 (Compensation) of the Water of Leith Purification and Sewerage Act 1889, prescribing the quantity of foul water which may be discharged into the sewers, made by the Corporation on the 28th July, 1927, and amended by them on the 8th November, 1929, and approved and confirmed, as so amended, by the sheriff on the 9th July, 1930, are hereby annulled.

Existing regulations prescribing quantity of foul water to be discharged into Water of Leith sewers annulled.
1889 c. cvi.

182. Section 189 (Power to let, sell, etc. lands) of the Order of 1958 shall apply and have effect with respect to any land acquired by the Corporation or their predecessors for the purposes of the Water of Leith Purification and Sewerage Acts 1889 to 1908, notwithstanding the provisions of the Lands Clauses Consolidation (Scotland) Act 1845, with regard to the sale of superfluous lands.

As to disposal of superfluous land acquired under Water of Leith Purification and Sewerage Acts.
1845 c. 19.

183. The branch of the sewer constructed under the powers of the Water of Leith Purification and Sewerage Act 1889, commencing on the right bank of the Water of Leith at a point 150 yards or thereby west of Balerno Lodge and continuing along the right bank of the Water of Leith to a junction with the Sighthill-Balerno sewer of the county council of the county of Midlothian, shall cease to form part of the Water of Leith undertaking of the Corporation and shall be deemed to form part of the sewerage undertaking of the said county council.

Part of Water of Leith sewer to form part of sewerage undertaking of Midlothian county council.

184. Nothing in this Part of this Order shall affect prejudicially—

(a) the rights of Robert Legget & Sons under the agreement between the Corporation, the former Water of Leith Purification and Sewerage Commissioners and Robert Legget & Son, Skinners and Wool Merchants, dated 14th, 16th and 21st March, 1893, and recorded G.R.S. (Edinburgh) and in the Books of Council and Session on 20th April, 1893; or

For protection of Robert Legget & Sons and White Burns & Co. Ltd.

(b) the rights of White Burns and Company Limited under the agreement between Messrs. White Burns & Co., Skinners and Tanners and Wool Merchants, and the former Water of Leith Purification and Sewerage Commissioners dated 14th and 15th March, 1899.

PART IX

WATERCOURSES, ETC.

185. In this Part of this Order "culvert" includes a pipe or drain.

Definition for Part IX of Order.

186.—(1) (a) A person shall not, without the consent of the Corporation, cover over any watercourse or ditch, or substitute a culvert therefor.

Watercourses or ditches not to be covered over or culverted without consent of Corporation.

(b) Any person acting in contravention of this subsection shall be guilty of an offence under this Order.

(c) In the case of any contravention of this subsection, the Corporation may, by notice, require the person in default—

(i) to restore the watercourse or ditch to its previous condition; or

PART IX
—cont.

(ii) to execute such works as they may consider necessary to cover over the watercourse or ditch or to substitute therefor a culvert of such dimensions and capacity as may be specified in the notice.

(d) Any notice under the preceding paragraph may specify dates for the commencement and completion of the works required by the notice, and where such works are not commenced at, or completed by, the respective dates so specified, the Corporation may proceed to execute or complete (as the case may be) such works, and the expense reasonably incurred in so doing shall be recoverable by them from the person in default.

(2) (a) The conditions subject to which the Corporation may grant a consent under paragraph (a) of the preceding subsection may include a condition requiring an owner to make provision for the passage of a greater quantity of water than he is otherwise obliged to permit to pass, and in that event any additional expenditure reasonably incurred by him in complying with any such requirement shall be borne by the Corporation.

(b) The provisions of the preceding paragraph of this subsection shall, with any necessary adaptations, apply with respect to the requirements of a notice under sub-paragraph (ii) of paragraph (c) of the preceding subsection as they apply with respect to conditions of a consent under paragraph (a) of the said subsection.

(3) Nothing in this section shall apply in relation to any culvert constructed by the railways board or the waterways board under statutory powers.

Provision as to
culverting of
watercourses
or ditches.

187.—(1) If in any case a watercourse or ditch or any part thereof is or is likely to cause a nuisance the Corporation may serve on the owner of any land on which such watercourse or ditch is situated, or which such watercourse or ditch abuts, a notice requesting such owner to execute such works as may be necessary to obviate such nuisance by substituting for such watercourse or ditch, or such part of such watercourse or ditch as may be specified in the notice, a culvert of such dimensions and capacity as may be specified in the notice, with all necessary gullies and other means of conveying surface water into and through the same and that within such period as may be specified in the notice and offering to pay the reasonable cost of executing the works specified in the notice.

(2) Any person who objects to the execution of any works specified in a notice under the preceding subsection may appeal to the sheriff.

(3) If despite such offer as aforesaid the works specified in any notice under subsection (1) of this section are not executed by the owner on whom the notice was served within the time specified therein the Corporation may, after giving to such owner fourteen days' notice of their intention, enter upon the land of such owner and themselves execute the works specified in the notice:

Provided that in the exercise of the powers conferred on them by this subsection the Corporation shall do as little damage as may be and shall make good all damage done.

(4) On the completion of the construction of a culvert, with all necessary gullies and other means of conveying surface water into and through the same in accordance with the provisions of this section such culvert shall vest in the Corporation as a public sewer reserved for surface water.

PART IX
—cont.

(5) Nothing in this section shall apply in relation to any watercourse constructed by the railways board or the waterways board under statutory powers or situated upon lands vested in them and for the maintenance of which they are responsible under any enactment.

188.—(1) The owner of the land in which any culvert constructed for the passage of water is situated (other than a culvert to which the preceding section applies), shall maintain such culvert, and shall, when required by the Corporation, by notice, execute any works necessary for such purposes, and that within such period, all as may be specified in such notice.

Maintenance of
culverts.

(2) Nothing in the preceding subsection shall apply in relation to any culvert constructed by the railways board or the waterways board under statutory powers.

189. The Corporation may contribute the whole or part of the expense of the execution of works for any of the purposes mentioned in the preceding provisions of this Part of this Order, or may, by agreement with any owner, themselves execute any such works which he may be required, or is entitled, to execute.

Power of
Corporation to
contribute to
expense of, or
to execute,
works relating
to water-
courses or
ditches.

190.—(1) Any part of a watercourse or ditch which is so choked or silted up as to obstruct or impede the flow of water therein and thereby to cause, or to be likely to cause, an overflow of the water therein on to adjacent land or premises, or to hinder the effective drainage of water through the same, shall be deemed to be a nuisance within the meaning of the Public Health Acts, and the provisions of those Acts relating to nuisances shall apply to every such part of such watercourse notwithstanding that it may not be injurious to health.

Watercourses
or ditches
choked up to
be a nuisance
under Public
Health Acts.

(2) Nothing in this section shall be deemed to impose any liability on any person other than the person by whose act or default the nuisance arises or continues.

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

Appeals against
notices under
Part IX of
Order.

PART X

MISCELLANEOUS

192.—(1) This section applies to apparatus consisting of luminous tube signs designed to work at a voltage normally exceeding 650 volts or other equipment so designed and of the transformers required to raise the voltage so as to operate the signs or equipment not being apparatus which—

Firemen's
switches for
luminous tube
signs.

(a) is inside a building and is attended while in operation; or

PART X
—cont.

(b) is used for lighting only and is before the commencement of this Order fitted with a readily accessible switch on the low-voltage side of the transformer.

(2) As from the commencement of this Order, apparatus to which this section applies shall be provided with a cut-off switch on the low-voltage side of the transformer and the switch shall be so placed and coloured or otherwise marked as to satisfy such reasonable requirements as the Corporation may impose to ensure that it shall be readily accessible to and recognisable by firemen.

(3) Not less than ten days before work is begun to instal apparatus to which this section applies the consumer shall give notice to the Corporation showing where the cut-off switch is to be placed and how it is to be coloured or otherwise marked.

(4) Where apparatus to which this section applies has been installed before the commencement of this Order the consumer shall, not later than twenty-one days after the commencement of this Order, give notice to the Corporation—

(a) in the case of apparatus already provided with a cut-off switch on the low-voltage side of the transformer, showing where the switch is placed and how it is coloured or otherwise marked;

(b) in the case of apparatus not already provided with such a cut-off switch showing where the switch is to be placed and how it is to be coloured or otherwise marked.

(5) Where notice has been given to the Corporation as required by subsection (3) or subsection (4) of this section the proposed or (as the case may be) actual position, colouring or marking of the switch shall be deemed to satisfy the requirements of the Corporation unless within ten days from the date of service of the notice the Corporation have served on the consumer a counter-notice stating that their requirements are not satisfied.

(6) A cut-off switch which complies with the regulations of the Institution of Electrical Engineers shall for the purposes of this section be deemed to satisfy the requirements of the Corporation.

(7) A person aggrieved by a counter-notice served by the Corporation under subsection (5) of this section may appeal to the sheriff.

(8) The owner or the occupier of premises where apparatus is installed which does not comply with the requirements of subsection (2) of this section shall be guilty of an offence under this Order.

(9) A person who fails to give notice as required by subsection (3) or subsection (4) of this section shall be guilty of an offence under this Order.

(10) The provisions of this section shall not affect the requirements of the Electricity Supply Regulations, 1937, or any regulations that may be made under section 60 of the Electricity Act 1947.

(11) (a) This section shall not apply in relation to premises in respect of which a licence under the Cinematograph Acts 1909 and 1952, is for the time being in force:

(b) Where any luminous tube sign to which, but for the preceding paragraph, subsection (1) of this section would apply is proposed to be fitted on or in any such premises the owner or occupier thereof shall give notice to the Corporation before such apparatus is fitted informing them of the position in which it is proposed to place the cut-off switch.

PART X
—cont.

(12) Notice of the provisions of this section shall be given by the Corporation by advertisement not later than the 31st March, 1965, but evidence of compliance with the provisions of this subsection shall not be required in any proceedings.

193.—(1) Where, upon consideration of a report by the firemaster of the fire brigade acting within the city in pursuance of any arrangements made under the Fire Services Act 1947, the Corporation are of opinion that there is an undue risk of fire in any building to which this section applies or, in the event of fire, an undue risk of injury or danger to persons resorting thereto (having regard to the number of persons likely to resort to the building at any one time) the Corporation may, by notice—

Fire precautions
in certain
buildings used
as places of
assembly.
1947 c. 41.

(a) require the owner of such building—

(i) to provide satisfactory and sufficient means of ingress and egress and passages and gangways; and

(ii) to alter any installation, apparatus and fittings for the lighting and heating of the building, or to provide a new installation, apparatus or fittings for such purposes;

all as may be specified in such notice and within a reasonable period to be specified in such notice; and

(b) require the occupier of such building—

(i) to fix securely in a satisfactory position the chairs and seating accommodation;

(ii) to secure that open fires or stoves shall be suitably and adequately protected; and

(iii) to provide and maintain in the building adequate fire-fighting appliances;

all as may be specified in such notice and within a reasonable period to be specified in such notice.

(2) Any person aggrieved by any requirement of a notice under the preceding subsection may appeal to the sheriff.

(3) Nothing in this section shall authorise the Corporation to require the execution of any works in conflict with, deviation from, or excess of, the provisions of the building standards regulations.

(4) (a) If the owner or the occupier of any building on whom a notice under subsection (1) of this section has been served alleges that the occupier (in the case of a notice served on the owner) or the owner (in the case of a notice served on the occupier) of the building to which the notice relates should bear, or contribute to, the expense of complying with any requirement of any such notice the sheriff may, on the application of such owner or occupier as the case may be,

PART X
--cont.

and after giving such occupier, or owner, as the case may be, an opportunity of being heard, make such order as appears to him just and equitable in all the circumstances of the case.

(b) Any application under this subsection shall 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.

(5) (a) The person having the control of any building to which this section applies shall ensure—

(i) that the means of ingress and egress and the passages and gangways shall be left free and unobstructed; and

(ii) that the fire-fighting appliances are readily accessible for instant use;

at all times during which the persons referred to in subsection (7) of this section are assembled in the building:

Provided that sub-paragraph (i) of this paragraph shall not apply in relation to any building if the person having the control of that building has not control over the use of the part of the building used as a place of assembly by persons and for the purposes referred to in subsection (7) of this section.

(b) Any person acting in contravention of any provision of this subsection shall be guilty of an offence under this Order.

(6) (a) If the Corporation are of opinion that immediate action for the prevention or reduction of danger from fire should be taken in the case of any building to which this section applies the sheriff may, on the application of the Corporation, interdict the owner and occupier of such building from using such building or causing or permitting it to be used for the purposes mentioned in subsection (7) of this section until all necessary provision for the prevention or reduction of danger from fire has been made.

(b) Any application under this subsection shall proceed by way of initial writ under the Sheriff Courts Acts and shall proceed in all respects as if it were an action for interdict at common law.

(7) This section applies to any building used, whether occasionally or not, by the members of any club, organisation or other body which has been formed for the purposes of or the objects of which include the entertainment of or participation in dancing or the playing of games by the members thereof, but shall not apply in relation to premises in respect of which a licence under head A—Places of public entertainment—or a permit under head B—Public shows—of Part IX (General licensing provisions) of the Order of 1961, or a licence under the Cinematograph Acts 1909 and 1952, is for the time being in force provided that the conditions attached to any such licence or permit are complied with while the premises are being used for such purposes.

(8) Nothing in this section shall impose on the Corporation any liability in respect of injury to persons or damage to property resulting from the condition of any building to which this section applies.

194.—(1) Notwithstanding anything in Part X (Restaurants and Refreshment Stalls) of the Order of 1958 the Corporation may, in respect of any particular occasion, or during any specified period (not exceeding two months in any year) on the application of the owner or occupier of any premises, exempt such premises from the requirement of the said Part X as to registration as a special hours restaurant, either without conditions or subject to such conditions as they think fit.

PART X
—cont.

Temporary exemptions from requirement to register premises as special hours restaurants.

(2) The Corporation shall charge a fee of 10s. for each application for an exemption under the preceding subsection.

195.—(1) The Corporation may, by notice, require the owner of any mill lade or dam which they consider to be dangerous, to fence the same sufficiently, or to repair any existing fence enclosing any such mill lade or dam, and that within such period as may be specified in such notice.

Protection and acquisition, etc., of mill lades, etc.

(2) The Corporation may acquire by agreement—

(a) any such mill lade or dam; and

(b) any mill or any part of any mill to which any such mill lade is connected.

196. It is hereby declared that the lands upon which the sea walls and promenade at Joppa constructed by the Corporation under the powers conferred by the Edinburgh Corporation Act 1906, and the Edinburgh Corporation Order, 1916 (being works numbers 12 and 13 authorised by the said Act of 1906, and works numbers 7 and 8 authorised by the said Order of 1916) are situated shall, by virtue of this Order, vest in the Corporation.

As to sea walls and promenade at Joppa.
1906 c. clxiii.

197.—(1) A person shall not, without the consent of the Corporation, place, jack up or lay up any vessel upon any street or promenade, or any sea wall to which the public have access or which is required by law to be left free from obstructions.

Restrictions on placing vessels on streets, etc.

(2) Any person acting in contravention of the preceding subsection shall be guilty of an offence under this Order.

198. The Corporation may provide sheds, yards and other accommodation and facilities for the storage of vessels, and may let the same on such terms and conditions as they may think fit.

Facilities for storage of vessels.

199.—(1) The Corporation may provide and maintain, or contribute to the cost of provision and maintenance of, recreational, social and welfare facilities for their employees.

Recreational and other facilities for employees.

(2) For such purposes the Corporation may—

(a) acquire or appropriate land, and construct buildings thereon; and

(b) make such charges as they think fit for the use of any premises provided by them.

PART X
—cont.Byelaws as to
tents, vans, etc.
1897 c. 38.

200. In its application to the city section 73 of the Public Health (Scotland) Act 1897, shall be extended so as to authorise the Corporation to make byelaws with respect to—

- (a) the number of tents, vans, sheds or similar structures used or intended to be used for human habitation to be permitted on any land;
- (b) the area to be allotted to each such tent, van, shed or similar structure;
- (c) securing sanitary conditions in such tents, vans, sheds or similar structures and on any such land;
- (d) securing a sufficient supply of wholesome water to such tents, vans, sheds or similar structures;
- (e) securing the good and orderly conduct of persons frequenting any such land and of the occupiers of the tents, vans, sheds or similar structures situated thereon; and
- (f) the provision of adequate lighting of such land and precautions against fire:

Provided that—

- (i) nothing in this section shall apply to any caravan which is for the time being stationed on any caravan site in respect of which a site licence, or an exemption for the purposes of paragraphs 4, 5 or 6 of the First Schedule to the Caravan Sites and Control of Development Act 1960, from the requirement to hold a site licence, is for the time being in force (the terms “caravan”, “caravan site” and “site licence” having the same meaning as in the Caravan Sites and Control of Development Act 1960); and
- (ii) the byelaws made under paragraph (e) of this section shall not apply to any tents, vans, sheds or similar structures used or intended to be used for human habitation by a person whose regular employment or occupation is that of a circus proprietor, roundabout proprietor or travelling showman (not being a pedlar or hawker) provided that such tents, vans, sheds or similar structures are used only in connection with his employment or occupation and that any person occupying such tents, vans, sheds or similar structures is not guilty of any misconduct.

1960 c. 62.

Dust, ashes,
etc., not to be
thrown down
in common
stairs, etc.

201. Any person who throws down, drops or otherwise deposits any dust, ashes, filth, refuse or litter in any court or common stair, or in any lobby, water-closet or cellar used in common, or on the roof of any cellar, outhouse or other building shall be guilty of an offence under this Order.

Removal of
obnoxious
matter.

202.—(1) Where it appears to the sanitary inspector that any accumulation in any premises of obnoxious matter, whether manure, dung, soil, filth or other matter ought to be removed, and it is not the duty of the Corporation to remove it, he may, by notice require the

occupier of such premises or, if the premises are unoccupied, the owner of such premises, to remove such obnoxious matter within forty-eight hours.

PART X
—cont.

(2) Any person failing to comply with any requirement of a notice under the preceding subsection shall be guilty of an offence under this Order, and the sanitary inspector may remove such obnoxious matter and dispose of it, and the expense reasonably incurred in so doing shall be recoverable from such person.

203. The following agreements are hereby annulled:—

Certain
agreements
annulled.

(i) minute of agreement between the Most Noble James, Duke of Abercorn, K.G., and the Corporation, dated the 18th and 21st April, 1885, as set forth in Schedule A to the Edinburgh Extension and Sewerage Act 1885;

1885 c. clxxix.

(ii) minute of sale and agreement between His Grace William Henry Walter, Duke of Buccleuch and Queensberry, K.G. and the Edinburgh and Leith Corporations Gas Commissioners, dated the 5th and 9th February, 1898, as set forth in the Second Schedule to the Edinburgh and Leith Corporations Gas Act 1898;

1898 c. xv.

(iii) minute of agreement between the Governors of James Gillespie's Hospital and Free School and the Water of Leith Purification and Sewerage Commissioners, dated the 9th and 13th April, 1908, as set forth in the Second Schedule to the Water of Leith Purification and Sewerage Order, 1908;

(iv) minute of agreement between the Water of Leith Purification and Sewerage Commissioners and the Governors of George Heriot's Trust, dated the 20th and 21st July, 1908, as set forth in the Third Schedule to the Water of Leith Purification and Sewerage Order, 1908;

(v) agreement between the Corporation, the Caledonian Railway Company and the North British Railway Company, dated the 28th and 29th April and 9th May, 1913, as set forth in the Third Schedule to the Edinburgh Corporation Act 1913; and

1913 c. lxxiv.

(vi) minute of agreement between the dock commission and the Corporation, dated the 6th and 11th February, 1958, as set forth in the Eighth Schedule to the Order of 1958.

204. In the event of the Corporation demolishing the existing Lyceum Theatre belonging to them and erecting any building as a theatre in substitution therefor on the site of or in the vicinity of the site of the existing Lyceum Theatre such building, on being licensed as a theatre under the provisions of the city Acts, shall, for the purposes of Part IV of the Customs and Excise Act 1952, be deemed to be premises erected before the 1st January, 1904, and accordingly subsection (2) of section 150 of the said Act (which provides, inter alia, that a certificate for the sale of excisable liquor shall not be required in respect of any premises in Scotland duly licensed as a theatre if such premises were erected before the 1st January, 1904) shall apply to such building while so licensed in all respects as if the said building had been erected before the said date.

Application of
section 150 (2)
of Customs and
Excise Act
1952 to
theatre erected
in place of
existing
Lyceum
Theatre.
1952 c. 44.

PART XI

GENERAL

Expenditure for purposes of Order.

205. All expenditure incurred by or on behalf of the Corporation in the exercise of their functions under this Order and the byelaws made thereunder and not otherwise recovered as provided in this Order shall be defrayed out of the burgh fund.

Borrowing for purposes of Order.

206.—(1) The Corporation may from time to time borrow such money as may be necessary—

(a) for the purposes of this Order to which capital is properly applicable and for which borrowing powers are not otherwise available; and

(b) for paying the costs, charges and expenses of and incidental to the preparing for, obtaining and confirming this Order or otherwise in relation thereto;

in the same manner as if the said purposes were included among the purposes mentioned in subsection (1) of section 258 of the Act of 1947.

(2) Notwithstanding anything contained in section 262 of the Act of 1947 any money borrowed for the purposes specified in paragraph (a) of the preceding subsection shall be repaid within forty years from the date or dates of borrowing the same and any money borrowed for the purpose of paragraph (b) of the preceding subsection shall be repaid within five years from the 29th May, 1965.

Saving for control of borrowing.

207. Nothing in this Order shall authorise the exercise of any power of borrowing money or the making of any issue of capital otherwise than in compliance with the provisions of any order for the time being in force under section 1 of the Borrowing (Control and Guarantees) Act 1946, or of section 259 of the Act of 1947.

1946 c. 58.

Acquisition of land for purposes of Order, etc.

208.—(1) (a) The Corporation may acquire by agreement whether by way of purchase, feu, lease or excambion, any land within or outwith the city—

(i) for the purposes of any of their functions under this Order for the acquisition of which powers are not otherwise available, and

(ii) for the benefit, improvement or development of the city.

(b) The Corporation may, in the exercise of the powers conferred by this subsection, acquire by agreement any land notwithstanding that such land is not immediately required.

(2) (a) The Corporation may be authorised by the Secretary of State to purchase compulsorily any land which they may from time to time require for the purposes of any of their functions under Part V—Streets, Part VII—Sewers and drains, and Part VIII—Water of Leith, of this Order, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act.

1947 c. 42.

(b) Nothing in this subsection shall authorise the compulsory acquisition of operational land of any statutory undertakers.

PART XI
—cont.

209. For the purposes of any provision of this Order authorising the Corporation to execute any works or construct any buildings, any land in which they have obtained sufficient servitude or other rights shall be deemed to be land vested in them.

Lands in which Corporation have obtained servitudes, etc., deemed vested in Corporation for certain purposes.

210. Where any provision of this Order provides for the payment by the Corporation of compensation to the owners, lessees or occupiers of lands and premises for—

Claims for compensation under Order.

(a) damage to, or injurious affection of, such lands or premises;
or

(b) any loss sustained by them in relation to such lands or premises;

in consequence of the exercise by the Corporation of any of their powers under this Order, the provisions of Schedule 6 to this Order shall apply and have effect in relation to claims for such compensation.

211. As respects byelaws made under this Order the confirming authority for the purposes of section 301 of the Act of 1947 shall be the Secretary of State.

Confirming authority for byelaws.

212.—(1) Where any provision of this Order provides that any work shall not be executed, or any action taken without the consent of the Corporation, or of an authorised officer of the Corporation, such consent—

As to consents of Corporation and authorised officers under Order.

(a) shall not be unreasonably withheld; and

(b) may be granted subject to such reasonable terms and conditions as the Corporation or such authorised officer may think fit.

(2) Except where otherwise expressly provided in this Order, any dispute as to—

(a) whether any such consent has been unreasonably withheld; or

(b) the reasonableness of any terms or conditions subject to which any such consent has been granted;

shall be settled by arbitration.

213. Where under any provision of this Order any person is required to maintain any premises, works, apparatus or appliances such person shall maintain such premises, works or apparatus or appliances in good repair and, in the case of works, apparatus and appliances, in efficient working order.

Construction of references to obligation to maintain premises, works, etc.

PART XI
—cont.
Appeals to
sheriff.

214.—(1) Where any provision of the city Acts provides for an appeal to the sheriff against any order, requirement, refusal or other decision of the Corporation, or of any officer of the Corporation, such appeal shall 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 fourteen days from the date on which such order, requirement, refusal or other decision was intimated to such person.

(3) In any case where such an appeal lies the document intimating the decision of the Corporation, or of the officer of the Corporation, as the case may be, to the person concerned shall state the right of appeal and the period within which such appeal may be brought.

(4) (a) On an appeal under the city Acts, the sheriff may make such order confirming, varying or reversing the order, requirement, refusal or other decision of the Corporation, or of the officer of the Corporation, as the case may be, as he shall think fit, and subject as hereinafter provided in this section, it shall be the duty of the Corporation or such officer, as the case may be, to give effect to the decision of the sheriff, and in particular to grant or issue any consent, permit, licence or certificate of registration, and to make any necessary entry in any register.

(b) If, and in so far as, an appeal is based on the ground of some 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 a material one.

(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 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 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 order, requirement, refusal or other decision of the Corporation, or of any officer of the Corporation, against which a right of appeal is conferred by the city Acts—

(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 which he was lawfully carrying on up to the time of the order, requirement, refusal or 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—

PART XI
—cont.

- (i) no proceedings shall be taken in respect of any failure to execute the work or take the action, nor shall the Corporation themselves execute the work or take the action; and
- (ii) that person may carry on that business 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, and an appeal shall lie, with the leave of the Court of Session or of the House of Lords, from any decision of the Court of Session under this section, which leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

215. It shall not be competent for any person in any proceedings by the Corporation for the recovery of any expenses incurred by them under this Order to raise any question which might have been raised by such person on an appeal under any provision of this Order.

Questions on which appeal competent not to be raised in proceedings for recovery of expenses under Order.

216. The Corporation and any authorised officer of the Corporation may cancel any notice served by the Corporation or by such officer, as the case may be, on any person in pursuance of any provision of the city Acts and may serve a new notice on the same person or on any other person.

Power to cancel notices and to serve new notices.

217. A certificate of the date of completion of any works executed under this Order by or on behalf of the Corporation signed by an authorised officer of the Corporation shall be conclusive evidence of such date in the absence of evidence to the contrary.

Certificate by authorised officer of date of completion of works under Order to be conclusive.

218.—(1) Where under any provision of this Order the Corporation are required to give any notice by advertisement, such advertisement shall, unless otherwise expressly provided, be inserted in one or more newspapers circulating in the city.

Construction of references to notices by advertisement.

(2) Where any such provision requires notice to be given by advertisement in two successive weeks there shall be an interval of not less than six clear days between each publication.

219.—(1) Any person guilty of an offence under this Order shall be liable on summary conviction to a penalty not exceeding the penalty specified in Schedule 7 to this Order in relation to such offence.

Penalties for offences under Order.

(2) Where the contravention in respect of which any person is convicted of an offence under any provision of this Order is continued

PART XI
—cont.

after conviction the person convicted shall be guilty of a further offence of a like nature and shall be liable on summary conviction to a further fine not exceeding for each day or part of a day during which the contravention is shown to have been so continued one-half of the maximum fine appropriate to the original offence.

Certain provisions of Orders of 1932 and 1933 deemed to have ceased to have effect by virtue of orders under section 368 (1) (c) of Act of 1947.

220.—(1) The provisions of the Edinburgh Corporation Order, 1932, specified in Part I of Schedule 8 to this Order which ceased to have effect in accordance with the provisions of the Edinburgh Corporation Order, 1950, shall, for the purposes of subsection (6) of section 368 of the Act of 1947, be deemed to have ceased to have effect as if an order to that effect had been made by the Secretary of State under paragraph (c) of subsection (1) of that section.

(2) The preceding subsection shall extend and apply to—

- (a) the provisions of the Edinburgh Corporation Order, 1932, specified in Part II of Schedule 8 to this Order, which ceased to have effect in accordance with the provisions of the Order of 1958; and
- (b) the provisions of the Edinburgh Corporation Order, 1933, specified in Part III of the said schedule which ceased to have effect in accordance with the provisions of the Order of 1958.

Application of certain sections of Orders of 1958 and 1961.

221. The sections hereinafter specified of the Orders of 1958 and 1961, so far as not varied by, or inconsistent with, the provisions of this Order, shall, with any necessary adaptations, extend and apply in reference to the provisions of this Order as fully and effectively as if those sections had been re-enacted in this Order, that is to say:—

Order of 1958—

- Section 255 (Powers of Order to be cumulative);
- Section 256 (Interpretation of “provide”);
- Section 261 (Breach of conditions of consent);

Order of 1961—

- Section 207 (Penalty for aiding and abetting offences under Order and byelaws);
- Section 208 (Offences by bodies corporate);
- Section 252 (Mode of reference to arbitration).

Crown rights:

222. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown or shall subject to the provisions of this Order any lands, buildings or works vested in or occupied by the Crown or any department of Her Majesty's Government except to such extent as Her Majesty or such department may agree and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise the Corporation to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, heritages, subjects, or rights of whatsoever description

belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose.

PART XI
—cont.

223. Nothing in this Order shall authorise the execution of any works on, over or under tidal lands below high-water mark except in accordance with plans and sections approved by the Minister of Transport and subject to such conditions and restrictions as the said Minister may prescribe before such work is begun.

224.—(1) Where any work constructed by the Corporation under the authority of the city Acts wholly or partially on, in, under or over tidal waters or tidal lands below high-water mark is abandoned, or suffered to fall into decay, the Minister of Transport may, by notice, either require the Corporation at their own expense to repair and restore such part of such work as is situated below high-water mark or any portion thereof, or require them to abate or remove the same and restore the site thereof to its former condition to such an extent and within such limits as the said Minister may think proper.

Abatement
of work
abandoned or
decayed.

(2) Where any part of any such work which has been abandoned or suffered to fall into decay is situated above high-water mark and is in such condition as to interfere, or cause reasonable apprehension that the same may interfere, with the right of navigation or the exercise of other public rights over the foreshore, the Minister of Transport may include any such part of such work or any portion thereof in any notice under this section.

(3) If the Corporation fail to comply with any notice under this section within thirty days from the date when the notice is served upon them, the Minister of Transport may execute the works specified in the notice at the expense of the Corporation and the amount of such expense shall be a debt due from the Corporation to the Crown and shall be recoverable accordingly.

225. The provisions of the Town and Country Planning (Scotland) Acts, 1947 to 1959, and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

Saving for
town and
country
planning.

226.—(1) Nothing in this Order shall authorise the Corporation (except in case of emergency) to execute any works which they are authorised to execute under this Order in, under, over, across, along or upon any operational land of any statutory undertakers without the consent of the statutory undertakers concerned.

General saving
for statutory
undertakers in
relation to
execution of
works under
Order.

(2) (a) A consent required under the preceding subsection shall not be unreasonably withheld, and any consent granted may be granted subject to such reasonable conditions as may be prescribed by the statutory undertakers concerned.

PART XI
—cont.

(b) Any dispute as to—

- (i) whether a consent required under the preceding subsection has been unreasonably withheld; or
- (ii) the reasonableness of any condition subject to which a consent under the preceding subsection has been granted;

shall be settled by arbitration.

Saving for railways and waterways boards and public service vehicle operators in respect of certain works.

227. Nothing in the following sections of this Order:—

Section 58 (Guard rails, refuges, etc., in streets);

Section 61 (Pawl posts in streets); or

Section 115 (Storage bins in streets);

shall empower the Corporation to interfere with, or render less convenient the access to, or exit from, any station or depot of the railways board or of the waterways board or of any operators of public service vehicles without the consent of the railways board, the waterways board or such operators, as the case may be.

Amendments and repeals of local Acts, Orders and Scheme.

228.—(1) (a) Subject to the provisions of this Order, the provisions of the Acts and Orders, of which the numbers and marginal notes are set out in column 1 of Schedule 9 to this Order, shall have effect subject to the amendments specified in relation to those sections respectively in column 2 of the said schedule.

(b) Article 12 of the Edinburgh Corporation (Superannuation) Modification Scheme, 1939, shall have effect as if the words “Without prejudice to the provisions of Sub-Section (3) of Section 24 of the Order of 1937, but in corroboration thereof,” were omitted therefrom.

(2) Subject to the provisions of this Order the provisions of the Acts and Orders specified in Schedule 10 to this Order (so far as not already repealed) are hereby repealed to the extent indicated in column 3 of that schedule.

Saving from effect of repeal.

229.—(1) Subject to the provisions of this Order and notwithstanding the repeal of the repealed Acts—

(a) all existing agreements made by the Corporation or their predecessors under or confirmed by any of the repealed Acts shall, so far as subsisting and in force at the commencement of this Order, continue valid and available for all purposes and for and against all parties as if the Act confirming this Order had not been passed;

(b) all acts, works, matters and things done or commenced under the powers of the repealed Acts which were valid and available or in progress at the commencement of this Order and all existing notices, notices to treat, agreements, awards, contracts, titles, deeds, leases, servitudes, obligations and rights shall continue valid and available for all purposes and for and against all parties and may be continued, enforced and completed as if the Act confirming this Order had not been passed;

- (c) all existing annuities, bonds, mortgages or other securities made, granted, payable or created by the Corporation or their predecessors under any of the repealed Acts shall continue valid and available for all purposes as if the Act confirming this Order had not been passed;
- (d) all actions, arbitrations, submissions and proceedings by, with or against the Corporation or any officers of the Corporation by reason of any matters or things done before the commencement of this Order in execution of, or in relation to, any of the repealed Acts may be continued, commenced or prosecuted by, with or against the Corporation or such officer as if the Act confirming this Order had not been passed;
- (e) all prosecutions in respect of offences against any provision of the repealed Acts initiated before the repeal of such provision may be continued as if the Act confirming this Order had not been passed;
- (f) all existing byelaws, rules, regulations, orders, licences, registrations, consents, sanctions, permissions and approvals and things done in execution of, or in relation to, or granted in pursuance of, the repealed Acts shall continue in force until repealed, altered or revoked under the provisions of this Order or otherwise or until their expiration and may be enforced in like manner and with the same penalties as if made for the like purposes respectively under the provisions of this Order;
- (g) all sums due at the commencement of this Order to the Corporation under the repealed Acts may be collected and recovered by them as if the Act confirming this Order had not been passed;
- (h) all books, registers, deeds, plans, documents and writings which under the repealed Acts would have been receivable in evidence shall be admitted in evidence in all courts and proceedings as if the Act confirming this Order had not been passed; and
- (i) any agreement or document relating to any of the provisions of the repealed Acts which are re-enacted with or without modification in this Order shall, unless the contrary intention appears, be of full force and effect and shall be deemed to refer to the corresponding provisions enacted in this Order and any references in any such agreement or document to any such provisions of the repealed Acts shall be deemed to be a reference to such corresponding provisions.

(2) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 38 of the Interpretation Act 1889.

PART XI
—cont.

References to provisions of Order deemed to include references to corresponding provisions of repealed Acts.

230. In this Order the expression “under this Order”, and any other expression describing any matter or thing by reference to this Order, or to any provision of this Order, shall be construed as including a reference to the repealed Acts, or to the corresponding provisions of the repealed Acts, as the case may be, and any reference to byelaws made under any of the provisions of this Order shall be construed as including a reference to any byelaws made under the corresponding provisions of the repealed Acts and in force for the time being.

Costs of Order.

231. The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming this Order or otherwise in relation thereto shall be paid by the Corporation out of the burgh fund in such manner as the Corporation may determine.

SCHEDULES

SCHEDULE 1

Section 28.

RULES FOR REGULATING PROCEDURE IN DEAN OF GUILD COURT IN RESPECT OF ANY BUSINESS WHICH IS NOT CONJOINED WITH BUSINESS RELATING TO THE FUNCTIONS OF THE COURT UNDER THE ACT OF 1959

1. Every proceeding shall be instituted by an application or petition in writing, and the subsequent procedure shall be as ordered by the court.

2. Interlocutors pronounced at a sitting of the court shall be signed by the lord dean of guild, or the member acting as chairman at such sitting in the absence of the lord dean of guild, but deliverances appointing service or intimation of any petition, motion or other step of procedure or fixing a diet for hearing parties may be pronounced and signed by the clerk or by any member of the court without the necessity of a sitting.

3. The court may, and on the motion of any party to the proceeding shall, order a record of the process to be made up.

4. The court may from time to time prescribe rules with respect to induciae, citation, lodging of plans and other productions, custody of process, and any other matter relating to forms of procedure.

5. There shall be payable to the clerk of the court by the parties to the proceedings such fees as the court shall from time to time fix, according to a scale to be approved by the auditor of the Court of Session, and such fees shall be accounted for by the clerk of the court to the city chamberlain and paid into the burgh fund.

6.—(1) The court shall have the like power of awarding expenses as are exercisable by the sheriff in a civil process in the sheriff court, and such expenses shall, unless the court otherwise directs, be taxed in accordance with the scale of taxation applicable in the sheriff court in causes where the amount of principal concluded for exceeds £250.

(2) The clerk of the court shall act as auditor of the accounts of expenses except in proceedings in which expenses are found due to or by the Corporation, and in any such proceedings the court shall appoint an independent person to act as auditor.

7. A decree of the court for payment of expenses or any other sum shall decern and ordain instant execution by arrestment and also execution to pass thereon by poinding and sale after a charge of ten free days, and such decree may be enforced both within and beyond the city in the same manner, by the same officers, and to the same effect,

SCH. 1
—cont.

1838 c. 114.

as a decree of a sheriff court in a civil process, and where the debtor in any such decree is resident in the county of Midlothian beyond the city an extract of such decree shall, for the purposes of the Debtors (Scotland) Act 1838, be deemed to be an extract decree of a sheriff court other than the sheriff court of the Lothians and Peebles.

8. The provisions of this schedule shall, in the case of any committee of the court acting in virtue of a delegation under section 30 (Committees of dean of guild court) of this Order, have effect, with any necessary adaptations, as if such committee were the court.

Section 91.

SCHEDULE 2

PARTICULARS TO BE CONTAINED IN, AND PLANS TO BE LODGED WITH, APPLICATIONS FOR NEW STREETS ORDERS

1. The application shall contain a short description of the proposed street, or each of the proposed streets, to which the application relates, specifying the points of commencement and termination of the proposed street, or of each of such proposed streets, and the proposed lengths, widths and gradients thereof, and shall state the proposed name of each such street.

2. The application shall state the name and address of the owner of the land upon which each such proposed street is to be constructed.

3. There shall be lodged with the application plans of each of such proposed streets.

4. The plans and the horizontal lengths of sections shall be drawn to a scale of not less than 1 inch to every 41.66 feet, and the vertical height of sections shall be drawn to a scale of 1 inch to every 10 feet. The elevations of bridges shall be drawn to a scale of not less than $\frac{1}{2}$ inch to 1 foot.

5. The specifications relative to each of such proposed streets shall state the materials proposed to be used, the mode of construction and the means of drainage.

6. The plans shall have marked thereon the names and addresses of all the owners of all lands fronting each of such proposed streets.

7. The application shall contain a certificate by the applicant or his agent that notice of the application has been served upon all the owners referred to in the preceding paragraph.

8. For the purposes of this schedule the word "plans" (except where the context otherwise requires) has the meaning assigned to it by section 89 (Definition for head I of Part V of Order) of this Order.

SCHEDULE 3

Section 108.

PROCEDURE FOR FIXING AND REVOKING BUILDING LINES UNDER SECTION 108 (POWER OF CORPORATION TO PRESCRIBE BUILDING LINE WHERE PUBLIC STREET TO BE IMPROVED OR WIDENED) OR UNDER SECTION 109 (POWER OF CORPORATION TO PRESCRIBE BUILDING LINES AT CORNERS OF STREETS) OF ORDER

1. A plan showing the building line which the Corporation propose to prescribe shall be deposited at the office of the city engineer, and may be inspected by any person free of charge at all reasonable hours during a period of one month from the day on which it is so deposited.

2. As soon as such plan has been so deposited the Corporation shall give notice of the proposal to prescribe the building line and of the times and place at which such plan may be inspected, and of the effect of the following provisions of this Order:—

Section 108 (Power of Corporation to prescribe building line where public street to be improved or widened);

Section 109 (Power of Corporation to prescribe building lines at corners of streets);

Section 112 (Acquisition of land between building lines and street); and

Paragraph 3 of this schedule;

to every owner, lessee and occupier of land affected.

3. The Corporation shall consider any objection by any owner, lessee or occupier of land affected to the proposed building line made within six weeks from the date on which the notices aforesaid were given and may then prescribe the building line.

4. Not later than six weeks after the date on which the Corporation prescribe the building line they shall prepare a plan, duly authenticated, on which such building line shall be shown, and shall give notice of the prescribing of such building line and of the times and place at which the said plan may be inspected to every owner, lessee and occupier of land affected.

5. The Corporation shall—

(a) give notice of the revocation of a building line prescribed by them under section 108 (Power of Corporation to prescribe building line where public street to be improved or widened) of this Order to every owner, lessee or occupier of land affected; and

(b) indicate on the plan prepared in accordance with the preceding paragraph the extent to which the building line has been revoked.

6. Any informality or error in any notice under this schedule or any omission to give any notice as aforesaid shall not affect the validity of any decision of the Corporation prescribing or revoking a building line.

7. For the purposes of this schedule a tenant for three months or less shall not be deemed to be an occupier of land.

Section 162.

SCHEDULE 4

SUPPLY OF RIVER WATER FROM MILL LADE PIPE TO CERTAIN
PREMISES

1	2	3	4
No.	Premises	Owner	Maximum quantity per day (in cubic feet)
1	Marble Works—Canonmills	Stewart McGlashan & Son, Ltd.	200
2	Garage—No. 3 Warriston Road (formerly Stott's Laundry)	Morrison & Gibb, Ltd. ...	50
3	Lothian Chemical Works—Nos. 1a, 3, 5 & 7 Broughton Road (formerly Blandfield Chemical Works)	Lothian Chemical Co., Ltd.	5,000
4	Regent Confectionery Works—Beaverhall Road (formerly Lindsay's Cooperage)	W. & M. Duncan Ltd. ...	5
5	Works—No. 25 Beaverbank Place (formerly Boyce & Johnston's Foundry)	J. & R. Slack, Ltd. ...	30
6	Works—Beaverbank Place ...	Thos. G. Symington & Co. Ltd.	10,000
7	White's Skinnery—26 Beaverbank Place	Thomas G. White & Co....	5,000

SCHEDULE 5

Section 169.

ALLOCATION OF TRADE EFFLUENT TO BE DISCHARGED INTO
WATER OF LEITH SEWERS

1	2	3	4	
No.	Premises	Owner	Maximum quantity of discharge per day (cu. ft.)	Maximum rate of discharge per minute (cu. ft.)
(a) In the Parish of Currie and County of Midlothian				
1	Balerno Bank Mill ...	John Galloway & Co. Ltd.	90,000	85
2	Kinauld Tan Works	J. Hewit & Sons Ltd. ...	3,250	10
3	Kinleith Mill ...	Henry Bruce & Sons Ltd.	120,000	100
(b) In the City of Edinburgh				
4	Woodhall Mill ...	Woodhall Paper Co. Ltd.	25,000	15
5	Mossy Mill ...	Andrew Scott & Co. Ltd.	15,000	15
6	Slateford Dye Works and Inglis Green Laundry	A. & J. Macnab Ltd. ...	17,000	40
7	Slateford Mill ...	A. & J. Macnab Ltd. ...	5,000	10
8	Saughton Leather Works	Horn McCullagh & Co. Ltd.	7,000	22
9	Gorgie Glue Works	J. & G. Cox Ltd. ...	60,000	120
10	Legget's Skinnery ...	Robert Legget & Sons ...	125,000	160
11	White's Skinnery ...	Thomas G. White & Co.	5,000	30
12	Bonnington Skinnery	White Burns & Co. Ltd.	50,000	160

Section 210.

SCHEDULE 6

PROVISIONS WITH RESPECT TO CLAIMS FOR COMPENSATION BY OWNERS,
LESSEES AND OCCUPIERS OF LANDS AND PREMISES FOR—

- (A) DAMAGE TO, OR INJURIOUS AFFECTION OF, SUCH LANDS AND PREMISES;
AND
(B) LOSS SUSTAINED IN RELATION TO SUCH LANDS AND PREMISES

1. A claim for compensation shall be made by serving on the town clerk a notice stating the grounds of the claim and the amount claimed.

2. The Corporation shall not be required to entertain a claim for compensation unless—

(a) notice of the occurrence of the damage to, injurious affection of, or loss sustained in relation to, the lands or premises is given to the town clerk without unreasonable delay; and

(b) the claim is made—

(i) in the case of a claim under section 94 (Compensation where building line of new street set back more than 45 feet) of this Order, within six months from the date of the order;

(ii) in the case of a claim under section 101 (Power of Corporation to require new street to be constructed of a greater width than 60 feet) of this Order, within six months after the construction of such street;

(iii) in the case of a claim under subsection (6) of section 108 (Power of Corporation to prescribe building line where public street to be improved or widened) of this Order, within six months from the date when the building line was prescribed; and

(iv) in any other case, within six months from the discovery of the damage to, injurious affection of, or loss sustained in relation to, the lands or premises:

Provided that the Corporation shall not be required to entertain any such claim made after the expiry of three years from the occurrence of such damage, injurious affection or loss.

3. Subject to the terms of the succeeding paragraph, any question as to the right of a claimant to recover compensation under this Part of this Order, or as to the amount of the compensation recoverable, shall, in default of agreement, be referred to, and determined by, the Lands Tribunal for Scotland.

1949 c. 42.

4. Until sections 1 to 3 of the Lands Tribunal Act 1949 (which relate to the establishment of the Lands Tribunal for Scotland) come into force as respects Scotland the preceding paragraph shall have effect as if for the reference therein to the said Tribunal there were substituted a reference to an official arbiter appointed under the Land Compensation (Scotland) Act 1963, and sections 3 and 5 of the said Act of 1963 shall apply, subject to any necessary modifications, in relation to the determination of any question under the preceding paragraph, as modified by this paragraph.

1963 c. 51.

SCHEDULE 7

Section 219.

MAXIMUM PENALTIES FOR OFFENCES UNDER ORDER

Provision of Order contravened	Maximum fine
Section 36 (Prohibition of building to which access is obtained from new street until street defined, etc.)	£25
Section 43 (Repair, etc., of common stairs, etc.)	£25
Subsection (4) of section 47 (New building overreaching adjoining chimneys)	£25
Subsection (4) of section 54 (Naming of streets)	£10
Subsection (3) of section 55 (Numbering of premises in streets)	£10
Section 59 (Fencing of sunk areas, etc., fronting or adjoining streets)	£25
Subsection (2) of section 63 (Height of fences and hedges at corners of streets)	£25
Subsection (3) of section 68 (Grass margins, etc., in streets)	£10
Section 71 (Building materials, etc., not to be deposited on streets without authority)	£10
Subsection (7) of section 74 (Licences to construct bridges over, and tunnels or subways under, streets)	£25
Section 75 (Encroachments and projections on or over streets not to be made without consent of Corporation)	£25
Section 76 (Works on or under streets not to be executed without consent of Corporation)	£25
Section 79 (Penalty for permitting street works to be in dangerous condition)	£25
Section 99 (Notice before commencement, suspension or resumption of works on new streets)	£10
Section 103 (Penalty for constructing new street without authority, etc.)	£25
Section 135 (Injurious matter not to be permitted to pass into sewers or drains)	£25
Section 136 (Penalty for obstructing or damaging drainage of city)	£25
Section 137 (Ashes, etc., not to be permitted to enter soil appliances, etc.)	£10
Subsection (2) of section 148 (Notice to be given before private sewers or drains covered up)	£10

SCH. 7
—cont.

Provision of Order contravened	Maximum fine
Subsection (2) of section 150 (Cesspools)	£25
Section 152 (Buildings with separate drains for foul water and for surface water)	£25
Section 160 (Restriction on works, etc., in Water of Leith)	£50
Subsection (2) of section 169 (Allocation of quantities, etc., of trade effluent to be discharged into Water of Leith sewers)	£50
Section 171 (Restrictions on nature, etc., of trade effluent discharged into Water of Leith sewers)	£50
Subsection (1) of section 186 (Watercourses or ditches not to be covered over or culverted without consent of Corporation)	£25
Subsections (8) or (9) of section 192 (Firemen's switches for luminous tube signs)	£25
Subsection (5) of section 193 (Fire precautions in certain buildings used as places of assembly)	£50
Section 197 (Restrictions on placing vessels on streets, etc.)	£10
Section 201 (Dust, ashes, etc., not to be thrown down in common stairs, etc.)	£10
Section 202 (Removal of obnoxious matter)	£25

SCHEDULE 8

Section 220.

PROVISIONS OF ORDERS OF 1932 AND 1933 DEEMED TO HAVE CEASED TO
HAVE EFFECT BY VIRTUE OF ORDERS UNDER SECTION 368 (1) (c) OF ACT
OF 1947

PART I

EDINBURGH CORPORATION ORDER, 1932

- Section 100 (Establishment of burgh fund);
- Section 101 (Books of account);
- Section 102 (Yearly accounts to be made out);
- Section 103 (Accounts to exhibit complete state);
- Section 104 (Trust funds under management of Corporation);
- Section 106 (Accounts to be laid before Corporation);
- Section 107 (Annual estimates);
- Section 108 (Expenditure payable out of assessments);
- Subsections (1) and (3) of section 109 (Deficiency or surplus on public utility undertakings);
- Section 110 (Laying on of assessments);
- Section 111 (Exemptions or abatements from burgh assessments);
- Section 112 (Assessments not to be imposed on church halls etc.);
- Section 113 (Deduction for partial occupation etc.);
- Section 114 (Assessment of unlet or unoccupied property);
- Section 115 (Relief from assessments in case of poverty);
- Section 116 (Collection from occupier on default of owner);
- Section 118 (Assessment roll to be made up);
- Section 119 (Recovery of burgh assessments);
- Section 120 (Recovery of assessments etc. in cases of persons resident beyond the city);
- Section 121 (Misnomers not to affect proceedings for recovery of assessments); and
- Section 122 (Amendment of Water Order of 1924).

PART II

EDINBURGH CORPORATION ORDER, 1932

Heads C (Borrowing) D (Corporation stock) and E (Loans fund) of
Part IV (Finance and Assessments).

PART III

EDINBURGH CORPORATION ORDER, 1933

- Section 14 (Honorary treasurer);
- Section 27 (Meetings of Corporation);
- Section 28 (Appointment of members of Corporation &c. to offices);
- Section 33 (Town clerk);
- Section 34 (City chamberlain and city collector);
- Section 112 (Power to appoint judges in burgh court); and
- Section 114 (Officials of burgh court).

Section 228.

SCHEDULE 9

AMENDMENTS OF PROVISIONS OF CITY ACTS

1	2
Section	Amendments
	<i>An Act to enable the Lord Provost, Magistrates and Council of the City of Edinburgh to carry into effect certain Purposes in regard to the Erection of a Chapel at the West End of Prince's Street, and for effecting certain Improvements in the Neighbourhood thereof and in other Parts of the extended Royalty of the said City (56 Geo. III c. xli).</i>
XIII (Buildings may be erected on the Earthen Mound)	The words from and including "in such Manner and Form" to the end of the section shall be omitted.
166 (Water etc. pipes may be brought up to upper storeys)	<p style="text-align: center;"><i>Edinburgh Corporation (Streets Buildings and Sewers) Order, 1926</i></p> <p>For the section there shall be substituted the following section:—</p> <p>"Gas pipes may be brought up to upper storeys. 166. It shall be lawful for the owner of any part of a tenement to have gas pipes laid in the common passage and brought up the common staircase or along and upon the outside walls of the tenement or through any sunk storey thereof and any ground or area connected therewith:</p> <p>Provided that authority to lay and put up such pipes shall be first obtained from the Corporation and the work connected with the introduction of such pipes and with the maintenance and repair shall be so executed as to occasion the least possible inconvenience to any owner or occupier and that any injury done in the execution of these works shall be forthwith repaired."</p>
1 (Short and collective titles)	<p style="text-align: center;"><i>Edinburgh Corporation Order, 1932</i></p> <p>The words from and including "and the Edinburgh Municipal and Police Acts 1879 to 1930" to the end of the section shall be omitted.</p>
173 (Retiring allowances to servants)	The words "such", and "or other", and the words from and including "who are in any capacity" to the end of the section shall be omitted.
71 (Saving of provisions of Order of 1932)	<p style="text-align: center;"><i>Edinburgh Corporation Order, 1933</i></p> <p>In subsection (1) "(1)" shall be omitted, for the word "allowances" there shall be substituted the word "benefits", and the words "under this Part of this Order", "or other" and "to the respective officers or servants receiving such superannuation allowances" shall be omitted.</p>
361 (For protection of London Midland and Scottish Railway)	In paragraph (5) the words "(exclusive of his substitutes) on the application of either party" shall be omitted.

1	2
Section	Amendments
	<i>Edinburgh Corporation Order, 1958</i>
137 (Special provisions as to Waverley Market)	In subsection (1) the words " Without prejudice to the powers conferred on the Corporation by section 133 (Public halls) of this Order " shall be omitted.
190 (General improvements)	For the section there shall be substituted the following section:— " General improvements. 190.—(1) The Corporation may lay out, form and maintain such works of a permanent character or such general improvements as may be conducive to the amenity of the city or the promotion of the health, convenience and recreation of the inhabitants, with all proper and convenient accesses thereto. (2) The Corporation may maintain, or contribute towards the maintenance of, land or buildings provided by any person for any of such purposes."
199 (Reserve fund for British Empire Games)	In subsections (1) and (4) for the word " sixty-six " there shall be substituted the word " seventy ".
233 (Power to pay expenses of public ceremonies, etc.)	After " 233 " there shall be inserted " (1) ". For paragraph (b) there shall be substituted the following paragraph:— " (b) in connection with the reception and entertainment of:— (i) persons paying visits by way of official courtesy to the city (including the provision of suitable gifts on such occasions); and (ii) persons attending conferences in the city; " At the end there shall be added the following subsection:— " (2) This section shall be deemed to have come into operation on the 1st April, 1964."
168 (Jurisdiction of burgh court)	<i>Edinburgh Corporation Order, 1961</i> In subsection (3), for sub-paragraph (i) of paragraph (b) there shall be substituted the following sub-paragraph:— " (i) head C (Protection of public sewers) of Part VII (Sewers and drains), Part VIII (Water of Leith) and Part IX (Watercourses, etc.) of the Edinburgh Corporation Order 1964; "
178 (Disposal of stolen articles in possession of police)	For the section there shall be substituted the following section:— " Disposal of stolen articles in possession of police. 178.—(1) Where any article has— (a) been produced by virtue of the preceding section; or

SCH. 9
—cont.

1

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Section	Amendments
1872 c. 93.	<p>(b) come into the possession of the police in connection with any criminal proceedings, or proposed criminal proceedings, or by virtue of paragraph (e) of subsection (1) of section 148 (Miscellaneous provisions as to brokers) or section 150 (Duty to detain persons offering stolen property) of this Order, or section 34 of the Pawnbrokers Act 1872;</p> <p>the burgh court may, on the application either of the city prosecutor or of any person claiming the article—</p> <p>(i) make an order for the delivery of the article to the person appearing to the court to be the owner thereof either with or without payment; or</p> <p>(ii) if the owner cannot then be ascertained, or if the person appearing to the court to be the owner refuses or delays to take delivery of the article, make such order with respect to the article as the court may think proper.</p> <p>(2) An order under paragraph (i) of the preceding subsection shall not affect the right of any person to take, within a period of three months from the date of the order, civil proceedings for the recovery of the article to which the order relates against any person in possession thereof, but on the expiration of the said period any such right shall cease.</p> <p>(3) Notwithstanding anything in this section, the chief constable may at any time cause to be sold or, if it is unmarketable, otherwise disposed of, any article which is in the possession of the police as a result of any of the circumstances mentioned in paragraph (b) of subsection (1) of this section and which is of a perishable nature or of such a nature that its custody involves unreasonable expense or inconvenience and, in the event of a sale, the proceeds thereof shall be dealt with as if they were the original article.”</p>

*Edinburgh Corporation Order
Confirmation Act 1964*

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Section	Amendments
200 (Obstruction of traffic in streets)	In paragraph (b) of subsection (2) the words “ or (except with lawful authority) any building materials or any builder’s rubbish ” shall be omitted.
242 (In default of owner, etc., Corporation may execute works)	In subsection (1) the words “ or any notice given in pursuance of any provision of the city Acts ” shall be inserted between the words “ city Acts ” and “ any work ”.
243 (In default of owner, occupier may execute works)	In subsection (1) the words “ or any notice given in pursuance of any provision of the city Acts ” shall be inserted between the words “ city Acts ” and “ the occupier ”.
246 (Power to require occupier to permit works to be executed by owner)	In subsection (1) the words “ or any notice given in pursuance of any provision of the city Acts ” shall be inserted between the words “ city Acts ” and “ the sheriff ”.
253 (Application of certain sections of Order of 1958)	The words “ Section 260 (Appeals to sheriff) ” shall be omitted.
23 (Return of contributions without interest in certain cases)	<p style="text-align: center;"><i>Edinburgh Corporation Order, 1962</i></p> The words “ (other than in consequence of an offence of a fraudulent character or grave misconduct, being such an offence or such misconduct in connection with the performance of the duties of, or otherwise in relation to his employment) ” shall be inserted after the word “ Corporation ” where it first occurs in the said section.
80 (Application of certain sections of Orders of 1958 and 1961)	The words “ Section 260 (Appeals to sheriff) ” shall be omitted.

SCHEDULE 10

ACTS AND ORDERS REPEALED

Session and chapter or number of statutory instrument	Title of Act or Order	Extent of repeal
50 Vict. Sess. 2, c. vi	Edinburgh Improvement Act 1887	The whole Act.
52 & 53 Vict. c. cvi	Water of Leith Purification and Sewerage Act 1889	The whole Act.
61 Vict. c. xv	Edinburgh and Leith Corporations Gas Act 1898	The whole Act.
4 Edw. 7 c. clxxxviii	Edinburgh and District Water Order Confirmation Act 1904	The whole of the Act and the scheduled Order.
8 Edw. 7 c. clxiii	Water of Leith Purification and Sewerage Order Confirmation Act 1908	The whole of the Act and the scheduled Order.
4 & 5 Geo. 5 c. clxxxvii	Edinburgh and District Water Order Confirmation Act 1914	Section 40 of the scheduled Order.
16 & 17 Geo. 5 c. xxii	Edinburgh Corporation (General Powers) Order Confirmation Act 1926	The whole of the Act and the scheduled Order.
16 & 17 Geo. 5 c. lxxv	Edinburgh Corporation (Streets Buildings and Sewers) Order Confirmation Act 1926	In section 1 of the scheduled Order the words from and including "and the Edinburgh Municipal and Police Acts 1879 to 1924" to the end of the section, sections 3 and 5, Part II, paragraphs (a), (b) and (c) and sub-paragraph (i) of paragraph (d), of section 26, and the proviso to section 26, section 27, section 28 except so far as applicable to sub-paragraph (ii) of paragraph (d) of section 26, sections 29 and 33 inclusive, section 34 except so far as applicable to sub-paragraph (ii) of paragraph (d) of section 26, sections 35 to 71 inclusive, Parts IV, V (except section 166 as re-enacted

Session and chapter or number of statutory instrument	Title of Act or Order	Extent of repeal
		by this Order), VI, VII and IX and section 222 of, and the First Schedule to, the scheduled Order.
20 Geo. 5 c. xlvii	Edinburgh Corporation Order Confirmation Act 1930	The whole of the Act and the scheduled Order.
22 Geo. 5 c. vii	Edinburgh Corporation Order Confirmation Act 1932	Sections 2, 3, 4, 192, 193 and 194 of the scheduled Order.
22 Geo 5 c. viii	Edinburgh Corporation (Sheriff Court House &c.) Order Confirmation Act 1932	The whole of the Act and the scheduled Order.
24 Geo. 5 c. v	Edinburgh Corporation Order Confirmation Act 1933	Sections 2, 3, 4, 23, subsection (2) of section 71, sections 72, 234, 256, 319, 332, paragraph (2) of section 352, sections 353, 358, paragraphs (4) and (8) of section 360 and sections 362, 363, 364, paragraph (j) of subsection (1) of section 369 (so far as relating to the agreements Nos. 1 and 6 enumerated in the Fourteenth Schedule) of, and the Fourth Schedule to, the scheduled Order.
14 Geo. 6 c. xxvii	Edinburgh Corporation Order Confirmation Act 1950	The whole of the Act and the scheduled Order.
7 Eliz. 2 c. v	Edinburgh Corporation Order Confirmation Act 1958	Sections 245, 246, 248 and 260 of, and the Eighth Schedule to, the scheduled Order.
10 Eliz. 2 c. ii	Edinburgh Corporation Order Confirmation Act 1961	Sections 218 to 222 inclusive, 227, 228, subsection (4) of section 242, and section 244, of the scheduled Order.
1962 No. 1904 (S. 84)	Edinburgh Corporation Order 1950 Amendment Order 1962	The whole Order.

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—cont.

Session and chapter or number of statutory instrument	Title of Act or Order	Extent of repeal
11 Eliz. 2 c. ii	Edinburgh Corporation Order Confirmation Act 1962	Sections 71 and 72 of the scheduled Order.
1964 No. 860 (S. 56)	The Building (Scotland) Act, 1959 (Local Act Provisions) (Edinburgh) Order, 1964	So far as excepting from the operation of section 30 (1) of the Act of 1959 the provisions of the Edinburgh Corporation (Streets Buildings and Sewers) Order, 1926, being Nos. 4 to 11 (inclusive) of Schedule 1.

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