

ELIZABETH II



1970 CHAPTER ix

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
Edinburgh Corporation. [17th December 1970]

WHEREAS the Provisional Order set forth in the schedule
hereunto annexed has been made by the Secretary of
State under the provisions of the Private Legislation
Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52.
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 hereto
annexed is hereby confirmed. Confirmation
of Order in
schedule.
2. This Act may be cited as the Edinburgh Corporation Order
Confirmation Act 1970. Short title.

SCHEDULE

EDINBURGH CORPORATION

Provisional Order to authorise the Corporation of the city of Edinburgh to acquire lands; to construct a new sewer within the city; to abstract water from the Water of Leith in connection with refuse disposal within the city; to borrow money for the purposes of the Order; 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 by the Edinburgh Corporation Order 1967 (hereinafter referred to as "the Order of 1967") the Corporation have a general duty to provide for the drainage of the city:

1968 c. 47. And whereas in view of the terms of the Sewerage (Scotland) Act 1968 the existing powers of the Corporation to provide sewers may be superseded, it is expedient that the Corporation should be empowered to construct the sewer authorised by this Order and to discharge the contents thereof into the Water of Leith:

And whereas it is expedient that the Corporation should be authorised to abstract water from the Water of Leith in connection with the operation of a refuse disposal plant at Powderhall Edinburgh:

And whereas estimates have been prepared by the Corporation in respect of the following purposes and such estimates are as follows:—

For the purchase of lands and servitudes	£10,000
For the construction of Works Nos. 1 and 2	£490,000

And whereas the works included in such estimates are permanent works of the Corporation and it is expedient that the cost thereof should be spread over a term of years:

And whereas it is expedient that the Corporation should be authorised to borrow money for the purposes of this Order:

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

And whereas plans and sections showing the lines and levels of the works authorised by this Order with a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands and other property required or which may be taken for the purposes or under the powers of this Order have been deposited with the sheriff-clerk of Midlothian and

with the town clerk of the city and such plans, sections and book of reference are in this Order respectively referred to as the deposited plans, sections and book of reference:

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 last-mentioned Act the Secretary of State orders as follows:—

PART I

PRELIMINARY

1.—(1) This Order may be cited as the Edinburgh Corporation Order 1970. Short and collective titles.

(2) This Order and the Edinburgh Corporation Orders 1967 and 1969 may be cited together as the Edinburgh Corporation Orders 1967 to 1970.

(3) This Order shall be construed as one with the Edinburgh Corporation Orders 1967 and 1969.

2.—(1) In this Order, unless there is something in the subject or context repugnant to such construction, words and expressions to which meanings are assigned by the Edinburgh Corporation Orders 1967 and 1969 shall have the same respective meanings; and Interpretation.

“ Act of 1845 ” means the Lands Clauses Consolidation (Scotland) Act 1845; 1845 c. 19.

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

“ Corporation ” means the Corporation of the city;

“ day ” in a context referring to a rate of flow or abstraction of water means a period of twenty-four hours reckoned from midnight;

“ lands ” includes houses and buildings;

“ Lands Clauses Acts ” means the Lands Clauses Acts as amended by the Land Compensation (Scotland) Act 1963; 1963 c. 51.

“ Order of 1967 ” means the Edinburgh Corporation Order 1967;

“ sewer ” means the Work No. 1 authorised by this Order;

“ sheriff ” means the sheriff of the Lothians and Peebles and includes his substitutes;

“ works ” means the works authorised by this Order.

(2) 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.

(3) Until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland, in this Order “ the tribunal ” shall be construed as meaning an official arbiter appointed under the Land Compensation (Scotland) Act 1963. 1949 c. 42.

PART I
—cont.

Incorporation
of Acts.

1845 c. 33.

3. The following Acts, so far as they are applicable to the purposes of and are not inconsistent with this Order, are hereby (except where expressly varied by this Order) incorporated with this Order:—

The Lands Clauses Acts (except section 120 of the Act of 1845);

The Railways Clauses Consolidation (Scotland) Act 1845 with respect to the temporary occupation of land near the railway during the construction thereof and in that Act where applied to this Order the expressions “the promoters of the undertaking” and “the company” mean the Corporation, and the expressions “the railway” and “the undertaking” mean the sewer;

and this Order shall be deemed to be a special Act within the meaning of those Acts.

PART II

LANDS

Power to
acquire lands.

4. Subject to the provisions of this Order the Corporation may enter upon, take and use all or any of the lands within the limits of deviation delineated on the deposited plans and described in the deposited book of reference which they may require for the purposes of the sewer.

Period for
compulsory
purchase.

5. The powers of the Corporation for the compulsory purchase of lands under this Order shall cease on the 31st December, 1974.

Correction of
errors in
deposited plans
and book of
reference.

6.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Corporation, after giving ten days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the said sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and he shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, with the sheriff-clerk of Midlothian and with the town clerk of the city, and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Corporation to take the land and execute the works in accordance with the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

Servitudes,
etc., by
agreement.

7. Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit subject to the provisions of those Acts and of this Order grant to the Corporation any servitude,

right or privilege (not being a servitude, right or privilege of water in which persons other than the granters have an interest) required for the purposes of this Order in, over or affecting any such lands and the provisions of the said Acts with respect to lands and rentcharges or feu duties so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

PART II
—cont.

8. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

Set-off of betterment against compensation.

(a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and

(b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money:

Provided that any such enhancement in value of an interest in land shall be estimated on the assumption that planning permission in respect of that land would be granted under the Town and Country Planning (Scotland) Act 1947 for the operations or uses specified in the Third Schedule to that Act but not for any other development. 1947 c. 53.

9. All private rights of way over any lands which under the powers of this Order are acquired compulsorily shall as from the date of such acquisition be extinguished:

As to private rights of way over lands taken compulsorily.

Provided that the Corporation shall make compensation to all parties interested in respect of any such rights and such compensation shall be settled, failing agreement, in the manner provided by the Land Compensation (Scotland) Act 1963 for settling disputed compensation for lands authorised to be acquired compulsorily. 1963 c. 51

10.—(1) The power to enter premises conferred on authorised officers by section 629 (Power to enter premises) of the Order of 1967 shall include power to enter, examine and lay open the lands authorised by this Order to be taken and used or any of them for the purpose of surveying, measuring, taking levels, examining works and valuing the said lands or any other purpose ancillary to the powers conferred by this Order:

Power to enter, survey, etc., lands.

Provided that such power shall not be exercised with respect to any lands unless notice of the intention to enter such lands and the nature of the operations 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 for the purpose of carrying out the operations specified in the notice.

(2) An authorised officer acting in the exercise of the powers conferred by the preceding subsection shall cause as little detriment or inconvenience to any person as circumstances allow, and the

PART II
—cont.

Corporation shall, subject to the provisions of this Order, make compensation to the owners and occupiers of any lands injuriously affected by the exercise of these powers.

Further powers
of entry.

11. At any time after notice to treat has been served for any land which the Corporation are authorised by this Order to purchase compulsorily the Corporation may, after giving to the owner and occupier of the land not less than twenty-eight days' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Act of 1845 but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

Power to
acquire
servitudes
only.

12.—(1) In lieu of acquiring any land that may be acquired under this Order the Corporation may, for the purpose of constructing, using and maintaining so much of the sewer as will be laid underground and doing anything necessary in connection therewith, acquire such servitudes and rights in that land as they may require for that purpose.

(2) Accordingly the Corporation may give notice to treat in respect of any such servitude or right describing the nature thereof and the provisions of the Lands Clauses Acts shall apply in relation to the acquisition of such servitudes and rights as if they were lands within the meaning of those Acts.

(3) Where the Corporation have acquired a servitude or right only in any land under this section—

- (a) they shall not be required or (except by agreement) entitled to fence off or sever that land from the adjoining land; and
- (b) the owner or occupier of the land for the time being shall, subject to the servitude or right, have the same right to use and cultivate the land as if the Act confirming this Order had not been passed.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for a servitude or right is given under this section requires the Corporation to acquire the land, the Corporation shall not be entitled to acquire the servitude or right unless the tribunal determines that the servitude or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house:

Provided that nothing in this subsection shall apply to land forming part of a street.

(5) A notice to treat given under this section shall be endorsed with notice of the effect of subsection (4) of this section.

Power to
enter on lands
for construction
of sewer.

13.—(1) Where any lands which the Corporation are by this Order authorised to enter upon, take and use for the purposes of the sewer are situated in or under the carriageway, pavement or footpath of any

street shown on the deposited plans and described in the deposited book of reference the Corporation shall not, for the purpose of constructing and maintaining the said sewer, notwithstanding anything in this Order, be obliged to take such lands or any part thereof but may without notice enter upon such lands and construct and maintain the sewer in, through or under the said lands subject only to the provisions of section 15 (Claims for compensation) of this Order:

Provided that the Corporation shall not, except for the purpose of manholes or other openings, permanently take or use the surface of any such street.

(2) With respect to any lands (other than the lands referred to in subsection (1) of this section) shown on the deposited plans and described in the deposited book of reference which the Corporation are authorised by this Order to enter upon, take and use for the purposes of the sewer the Corporation shall not for the purpose of constructing and maintaining the sewer, notwithstanding anything in this Order, be obliged to take the said lands or any part thereof but may after giving not less than fourteen days' notice to the owners, lessees and occupiers thereof enter upon such lands and construct and maintain the sewer in, through or under the said lands, subject only to the provisions of section 15 (Claims for compensation) of this Order.

14. Notwithstanding anything in this Order the owners of and other persons interested in any cellar, vault or other construction in or under any lands which the Corporation are authorised by this Order to enter upon, take and use for the purposes of this Order shall, if need be, sell the same for the purposes of this Order, the Corporation paying such sum for such cellar, vault or other construction including compensation for any damage sustained by such owners or persons by severance or otherwise as, failing agreement, shall be settled by the tribunal and such cellar, vault or other construction to be taken and used as aforesaid shall not be deemed part of a house or other building or manufactory within the meaning of section 90 of the Act of 1845.

Power to
purchase
cellars, etc.

15. The Corporation shall make reasonable compensation to the owners, lessees and occupiers of any lands for—

Claims for
compensation.

- (a) damage to, or injurious affection of, such lands; or
- (b) any loss sustained by them in relation to such lands;

in consequence of the exercise by the Corporation of any of their powers under this Order and the provisions of Schedule 10 to the Order of 1967 shall apply in relation to claims for such compensation.

16. Whereas in order to avoid, in the execution and maintenance of any works authorised by this Order, injury to the houses and buildings within 100 feet (30.48 metres) of such works, it may be necessary to underpin or otherwise strengthen the same: Therefore the Corporation at their own expense may, and if required by the owners or lessees of any such house or building shall, subject as hereinafter provided in

Underpinning
or otherwise
strengthening
houses.

PART II
—cont.

this section, underpin or otherwise strengthen the same and the following provisions shall, unless otherwise agreed, have effect and be binding on the Corporation (that is to say):—

- (1) At least twenty days' notice shall, unless in case of emergency, be given to the owners, lessees and occupiers or by the owners or lessees of the house or building so intended or so required to be underpinned or otherwise strengthened;
- (2) Each such notice if given by the Corporation shall be served in manner prescribed by section 18 of the Act of 1845 and if given by the owners or lessees of any such house or building to be underpinned or strengthened shall be sent to the principal office of the Corporation;
- (3) If any owner, lessee or occupier of any such house or building or the Corporation, as the case may require, within fourteen days after the giving of such notice give a counter-notice in writing that he or they, as the case may be, dispute the necessity of such underpinning or strengthening, the question of the necessity shall (failing agreement) be determined by an engineer to be agreed upon or, in case of difference, appointed as arbiter at the instance of either party by the President of the Institution of Civil Engineers;
- (4) The arbiter appointed shall forthwith upon the application of either party proceed to inspect such house or building and determine the matter referred to him and, in the event of his deciding that such underpinning or strengthening is necessary, he may, and if so required by such owner, lessee or occupier shall, prescribe the mode in which the same shall be executed and the Corporation may and shall proceed forthwith so to underpin or strengthen the said house or building;
- (5) If in any case in which any house or building has been underpinned or strengthened such underpinning or strengthening proves inadequate for the support or protection of the house or building against further injury arising from the execution or use of the works of the Corporation then, and in every such case, the Corporation shall make compensation to the owners, lessees and occupiers of such house or building for such injury;
- (6) Nothing in this section nor any dealing with any property in pursuance of this section shall relieve the Corporation from the liability to compensate under the Act of 1845 or under any other Act; and
- (7) Every case of compensation to be ascertained under this section shall be ascertained according to the provisions of the Lands Clauses Acts.

Compensation
in case of
recently
altered
buildings.

17. In settling any question of disputed purchase money or compensation payable under this Order by the Corporation, the tribunal shall not award any sum of money for or in respect of any improvement, alteration or building made for or in respect of any interest in the lands created after the 20th March, 1970, if in the opinion of such tribunal the improvement, alteration or building or the creation of the

interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing purchase money or compensation under this Order.

PART II
—cont.

PART III

CONSTRUCTION OF WORKS

18. Subject to the provisions of this Order, the Corporation may construct and maintain in the lines and according to the levels shown on the deposited plans and sections the works hereinafter in this section described, together with all necessary and proper appliances, works and conveniences incidental or subsidiary thereto, that is to say:—

Power to
construct
works.

Work No. 1. A surface water sewer of maximum internal diameter 6 feet 6 inches (1,981 millimetres) and 1 mile 439 yards (2.010 kilometres) or thereabouts in length wholly in the city and parish of Edinburgh commencing at a point 26 feet (7.92 metres) or thereabouts north eastwards of the north eastern boundary of enclosure No. 8144 on the 1/2500 Ordnance Survey Plan 36/2575 (revised edition 1944) and 50 feet (15.24 metres) or thereabouts north westwards from the centre line of Broughton Road by a junction with a sewer constructed by the Corporation for the purpose of discharging the contents of the proposed sewer into the Water of Leith and terminating at a point 100 feet (30.48 metres) south eastwards from the centre line of Holyrood Road and 46 feet (14.02 metres) eastwards from the centre line of Dumbiedykes Road;

Work No. 2. An intake wholly in the city and parish of Edinburgh on the south side of the Water of Leith at a point 44 feet (13.41 metres) or thereabouts east of the footbridge which carries over the Water of Leith a footpath which commences at the north western side of Broughton Road at its junction with McDonald Road together with a pipeline wholly in the city and parish of Edinburgh commencing at the said intake and terminating at the site of the refuse disposal plant constructed or to be constructed by the Corporation at Powderhall Edinburgh.

19. In the construction of the works the Corporation may deviate laterally to any extent not exceeding the limits of lateral deviation shown on the deposited plans and vertically from the levels shown on the deposited sections to any extent not exceeding 3 feet (.91 metres) upwards and to any extent downwards.

Power to
deviate.

20.—(1) For the purposes and during the construction of the works and in maintaining, renewing, altering and repairing the same and subject to the provisions of this Order the Corporation may use, break up or cross over or under, alter or stop up temporarily any streets, quays, bridges, railways, canals, passages, sewers, drains, watercourses, mill lades or mill dams, sluices, gas pipes and water pipes and electric or telephonic apparatus in any of the lands shown on the deposited plans and specified in the deposited book of reference which they may

Power to
stop up, alter,
etc., streets, etc.,
temporarily.

PART III
—cont.

from time to time find it expedient for any of those purposes so to interfere with providing, when possible, a proper temporary substitute before interrupting the traffic on any such street, quay, bridge, railway, canal or passage or the flow of water, gas, sewage or electricity or telephonic communication in any such sewer, drain, watercourse, mill lade, mill dam, sluice, canal, pipe or apparatus, as the case may be, and making compensation to all persons injuriously affected by the exercise of the powers granted to the Corporation under this Order.

(2) Nothing in this Order contained shall extend to authorise any interference with—

(a) any telegraphic line or other property of the Post Office; or

(b) any works of any undertakers within the meaning of the Electricity (Supply) Acts 1882 to 1935 to which the provisions of section 15 of the Electric Lighting Act 1882 apply except in accordance with and subject to the provisions of that section.

1882 c. 56.

(3) The exercise of the powers conferred by this section in relation to a street shall not affect the powers of the Post Office under the Telegraph Acts 1863 to 1916 to maintain, inspect, repair, renew or remove telegraphic lines or to open or break up that street for any of those purposes.

(4) In this Order the expression “telegraphic line” has the same meaning as in the Telegraph Act 1878.

1878 c. 76.

Sewers and drains to be connected with works.

21. Subject to the provisions of this Order the Corporation may in, under or across any streets or roads or upon lands belonging to them or over which they shall possess a servitude in that behalf or which they are by this Order authorised to enter upon, take and use for the purposes of this Order whether within or beyond the city from time to time make and maintain all such sewers, drains, pipes and appurtenances as may be necessary for connecting any sewers or drains with the sewer or with the existing sewers or for discharging or conducting the contents of such sewers and drains into the sewer or into the existing sewers, and may make and maintain all necessary sluices, valves, manholes, ventilators, cleansing shafts, bridges, approaches, pipes, overflows or appurtenances required for carrying out the purposes of this Order and may from time to time, for the purposes before mentioned, vary, extend, diminish, enlarge or remove any such sewers or drains.

Sewer to be a public sewer.

22. The sewer shall be a public sewer reserved for surface water to which the provisions of the Order of 1967 relating to public sewers shall apply.

For protection of statutory undertakers.

23. For the protection of the undertakers the following provisions shall unless otherwise agreed in writing between the Corporation and the undertakers apply and have effect:—

(1) In this section—

“apparatus” means—

(a) in relation to the South of Scotland Electricity Board, electric lines and works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the said board; and

(b) in relation to the Scottish Gas Board, any mains, pipes or other apparatus belonging to the said board; and includes any building, structure or works constructed for the lodging therein of apparatus;

“ in ” in a context relating to apparatus includes under, over, across, along or upon;

“ plans ” means plans, sections, elevations, working drawings and specifications;

“ position ” includes depth;

“ specified work ” means such part of any of the works authorised by this Order as in its execution and maintenance will or may interfere with or affect the support of any apparatus;

“ the undertakers ” means the South of Scotland Electricity Board and the Scottish Gas Board or either of them, as the case may be.

References to the acts or defaults of the Corporation include the acts or defaults of their workmen or servants or of their contractors or agents or the workmen or servants of such contractors or agents:

- (2) Notwithstanding anything in this Order or shown on the deposited plans the Corporation shall not acquire otherwise than by agreement any apparatus or land belonging to the undertakers:
- (3) At least twenty-eight days before commencing the execution of any specified work the Corporation shall give the undertakers notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and also showing the means to be employed by the Corporation not only for protecting the apparatus during the execution of such specified work and for securing a continuous supply of electricity or gas but also for making good any damage to or interference with the apparatus resulting from the execution of such specified work and if it should appear to the undertakers that such specified work will interfere with, damage or endanger their apparatus or materially impede the supply of electricity or gas the undertakers may within twenty-one days of the receipt of such notice require the Corporation to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be required by the undertakers in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

Provided that if the undertakers do not requisition the Corporation as aforesaid the Corporation may proceed with the execution of such specified work in accordance with the notice given by them and the accompanying plans:

- (4) Where a requisition has been given by the undertakers under the last foregoing subsection the protective works agreed

PART III
—cont.

upon or determined as aforesaid shall be executed by and at the expense of the Corporation but to the satisfaction of and under the superintendence of the undertakers (if after notice given to them by the Corporation of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the undertakers by or through such superintendence shall be paid by the Corporation:

Provided that the undertakers may intimate by notice in writing to the Corporation within fourteen days after the receipt by the undertakers of notice of the intended commencement of the specified work their intention themselves to do and execute such protective works and the Corporation shall on the completion thereof pay to the undertakers the reasonable expenses incurred by them in the execution of such protective works as may be agreed on or determined as aforesaid:

- (5) If the position of any of the apparatus is altered by the Corporation or the undertakers or if other apparatus is substituted therefor as provided for in subsections (3) and (4) of this section the undertakers may within twenty-one days of the receipt by them of the notice referred to in subsection (3) of this section require the Corporation to or may within the said period notify the Corporation of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so altered or removed and in that event the undertakers shall pay to the Corporation or shall themselves bear the additional cost attributable to the substitution of such larger apparatus:
- (6) The Corporation shall indemnify the undertakers against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the undertakers by reason or in consequence of any damage done by the Corporation to any apparatus or of any interruption in the supply by the undertakers of electricity or gas which may without the written authority of the undertakers be in any way occasioned either by reason of the execution by the Corporation of the works authorised by this Order or by the acts or defaults (in or in connection with such execution) of the Corporation:
- (7) Notwithstanding the temporary stopping up of any street under the powers of this Order the undertakers may exercise the same rights of access as they now enjoy to any apparatus:

Provided that in exercising the said rights of access the undertakers shall not interrupt the execution, maintenance or use of any works of the Corporation authorised by this or any other order and the undertakers shall compensate the Corporation for any damage to such works occasioned by the exercise of the said rights:

- (8) The undertakers shall if so requested by the Corporation furnish to the Corporation all available information relative

to the position and nature of any apparatus which in the opinion of the chief engineer of the undertakers might be affected by any of the works authorised by this Order:

PART III
—cont.

- (9) Any difference between the Corporation and the undertakers in connection with any of the provisions of this section or with anything contained in this Order shall failing agreement be determined by an arbiter to be mutually agreed upon between them or failing agreement to be appointed by the sheriff on the application of either party; if in determining any such dispute or difference any question of law arises the said arbiter shall at the request of either party state a case for the opinion and judgment of the Court of Session.

24. Any electrical works or equipment constructed, erected, laid down, maintained, worked or used pursuant to the powers conferred by this Order shall be so constructed, erected or laid down and so maintained, worked and used as to prevent interference with any telegraphic line belonging to or used by the Post Office or with telecommunication by means of any such line. For protection of the Post Office.

25. The following provisions for the protection of the British Railways Board (hereinafter in this section called "the board") shall unless otherwise agreed in writing between the Corporation and the board apply and have effect (that is to say):— For protection of British Railways Board.

- (1) In this section the expression "the railway and works" means any railway of the board and all sidings, stations, depots, roads, bridges, bridge approaches, tunnels and other works and conveniences connected therewith or any property or buildings of the board:
- (2) The sewer where the same is intended to be constructed under or across or near to or which may in any way affect the railway and works shall be constructed of such design, strength and durability as shall be sufficient for the effectual and safe support of the railway and works and shall be constructed and completed and thereafter altered, repaired, renewed and maintained under the superintendence of the board at the expense in all things of the Corporation and in accordance only with plans and specifications to be submitted to the board at least three weeks before the commencement of the construction of the sewer or of any alterations, repairs or renewals thereof or if the board shall object to the sewer or to any such alterations, repairs or renewals as shown on any plans and specifications so submitted to them then failing agreement as to any modification thereof in accordance only with plans and specifications to be settled by the arbiter to be appointed as hereinafter in this section provided of which last-mentioned plans and specifications a copy shall be delivered to the board at least three weeks before the commencement of the construction of the sewer or of any such alterations, repairs or renewals:

Provided that if the board shall not express their approval or disapproval of any plans and specifications within twenty-one days after the same shall have been submitted to them as

*Edinburgh Corporation Order
Confirmation Act 1970*

PART III
—cont.

aforesaid the Corporation shall be entitled to proceed with the construction of the sewer and with the said alterations, repairs or renewals in accordance with such plans and specifications but the board shall not be held to have approved or acquiesced in such plans and specifications:

- (3) The fact that the sewer or any such alterations, repairs or renewals have been constructed or carried out in accordance with any plans and specifications approved or not objected to by the board or with any requirement of the board or under the superintendence of the engineer of the board shall not excuse the Corporation from any liability for damage caused to the railway and works or affect any claim by the board for injury caused to the railway and works:
- (4) The Corporation shall not either temporarily or permanently enter upon or interfere with the railway and works further or otherwise than may be necessary for constructing, maintaining or effecting repairs to the sewer which may be constructed under or across or near to the railway and works in accordance with any such plans and specifications as aforesaid and they shall not alter or interfere with the lines or levels of the railway and works and they shall not unless with the consent of the board acquire any land or property of the board but only such a servitude through or in any land or property of the board as may be necessary for the sewer:
- (5) The Corporation shall pay to the board all reasonable expenses which the board may incur in connection with or in consequence of the construction, alteration, renewal, repair or maintenance of the sewer including (without prejudice to the said generality) any reasonable expense incurred by the board in connection with the employment of inspectors, signalmen, watchmen and others and for superintendence of such works and all extra precautions for the safety and working of the board's railway traffic or protection of their railway and works or the protection of the servants of the Corporation engaged within the property of the board on account of the construction, alteration, renewal, repair or maintenance of the sewer:
- (6) The sewer shall be constructed, altered, renewed, repaired and maintained by the Corporation so as not to alter or interfere with (except so far as may be necessary for carrying out the works) or injure or endanger the structure or stability of the railway and works and the Corporation shall at their own expense execute all underpinning or other works which may be necessary to secure the support or safety of the railway and works or any part thereof and should any damage or injury to or interference with the traffic on the railway and works be caused by or be due to the construction, alteration, renewal, repair or maintenance by the Corporation of or the failure of or defect of the sewer the Corporation shall free of all expense to the board execute all such works as may be necessary for repairing and making good the damage or preventing such interference as the case may be or the board in their option

may on giving the Corporation as long previous notice in writing as possible in the circumstances enter upon the works or property of the Corporation and execute all such works as may be necessary for repairing and making good such damage or preventing such interference and the Corporation shall repay to the board all reasonable expenses so incurred by them in connection therewith:

- (7) The Corporation shall make full compensation to the board for all loss or damage which the board may incur caused by the construction, alteration, renewal, repair or maintenance of (or failure to maintain) the sewer or by any interruption, impediment or interference to or with the railway and works consequent on the construction, alteration, renewal, repair or maintenance of (or failure to maintain) the sewer and the Corporation shall also free and relieve the board of and from all claims, damages or compensation which may be made against or recovered from the board arising out of or in consequence of the construction of the sewer or the alteration, renewal, repair or maintenance thereof, or failure to maintain the same, so far as such may have been occasioned by the act or default of the Corporation or those for whom they are responsible:
- (8) Should it be necessary in constructing, altering, renewing, repairing or maintaining the sewer to alter or remove any telegraph or telephone posts, wires or other telegraphic, telephonic or signalling apparatus belonging to or maintained by the board any works reasonably necessary for such alteration or removal may be executed by the board and the Corporation shall pay to the board all reasonable expenses incurred in connection therewith:
- (9) Nothing in this Order contained or which may be done in pursuance thereof shall prevent the board from maintaining and repairing and whenever in their discretion thought necessary reconstructing, altering, renewing, strengthening, widening, deviating or enlarging the railway and works under statutory powers existing at the date of the passing of the Act confirming this Order:

Provided that such operations shall not injuriously affect the sewer or interrupt the flow of surface water therein otherwise than may be reasonably necessary for carrying out such operations and if any injury or interruption shall arise to the sewer the board shall forthwith make good or remove the injury or interruption so far as such injury or interruption may have been occasioned by the act or default of the board or of those for whom they are responsible:

Before commencing any operations under the provisions of this subsection the board shall give twenty-eight days' previous notice in writing to the Corporation and any such operations shall so far as they may interfere with the sewer be carried

PART III
—cont.

out to the reasonable satisfaction of the city engineer. Any extra expense which the board may incur in carrying out such operations by reason of the existence of the sewer shall be paid by the Corporation as such extra expense may in the event of any difference of opinion be determined by an arbiter to be appointed as hereinafter in this section provided:

- (10) Nothing in this section contained shall prejudice or affect the rights, powers and immunities reserved to and conferred on the Corporation and the board by any Acts public or private or any agreements with or relating to the board conferring rights, powers and immunities and imposing liabilities, duties and obligations upon the Corporation and the board with reference to any sewers, property and works of the Corporation and to the railway and works:
- (11) If any difference shall at any time arise between the Corporation and the board or their engineers with respect to any of the matters referred to in this section such difference shall be referred to and determined by an arbiter to be agreed on or failing agreement to be appointed by the President of the Institution of Civil Engineers on the application of either the Corporation or the board; provided always that the award or decision of such arbiter shall not relieve the Corporation of their liability to make compensation to the board for loss or damage and to relieve them from claims as provided in subsection (7) hereof. If any question of law shall arise in the course of such arbitration the arbiter shall have power at the request of either party to state a case for the opinion of the Court of Session and the court shall determine such question.

PART IV

ABSTRACTION AND DISCHARGE OF WATER

Abstraction of water from Water of Leith.

26.—(1) The Corporation may, subject to the provisions of this Order, abstract and take for the purposes of their refuse disposal plant at Powderhall, Edinburgh and by means of Work No. 2 authorised by this Order the waters of the Water of Leith not exceeding 250,000 gallons per day.

(2) The Corporation shall construct and thereafter maintain a suitable meter for the purpose of measuring the quantity of water abstracted from the said Water of Leith which meter shall be open to the inspection of all interested persons at all reasonable times.

For protection of White Burns & Company Limited.

27. Nothing in this Part of this Order shall affect prejudicially the rights of White Burns & Company Limited under the agreement between White Burns & Company, Skinners and Tanners and Wool Merchants, and the former Water of Leith Purification and Sewerage Commissioners, dated 14th and 15th March, 1899.

Discharge into Water of Leith.

28. Notwithstanding anything in any enactment, the Corporation shall have power to discharge the contents of the sewer into the Water of Leith.

PART V

AMENDMENTS AND REPEALS

29.—(1) For section 574 (Crambe Reid bequests) of the Order of 1967 there shall be substituted the following section:—

Amendments
and repeals.

“Crambe
Reid
bequests.

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

(2) Section 662 (Saving for existing members of committees, etc.) of the Order of 1967 is hereby repealed.

(3) Article 3 of the Edinburgh Corporation Superannuation Modification Scheme, 1955 (which relates to the meaning of average remuneration) shall have effect and shall be deemed to have had effect from 10th May, 1967, as if proviso (b) were omitted.

PART VI

FINANCIAL

30.—(1) The Corporation may from time to time borrow any money necessary—

Borrowing by
Corporation
for purposes
of Order.

(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 section 258 (1) of the Local Government (Scotland) Act 1947, and Part XII of the said Act of 1947 shall extend and apply with respect to the borrowing of money under this section.

1947 c. 43.

(2) Notwithstanding anything in section 262 of the said Act of 1947 (which relates to the period of repayment of sums borrowed by a local authority) 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 purposes of paragraph (b) of the said subsection shall be repaid within five years from 29th May, 1971, or from the date of borrowing, whichever be the later.

31. Nothing in this Order shall authorise the exercise of any power of borrowing money or the making of any issue of capital otherwise

Saving for
control on
borrowing.

*Edinburgh Corporation Order
Confirmation Act 1970*

PART VI
—*cont.*

1946 c. 58.
1947 c. 43.

Costs of
Order.

than in compliance with the provisions of any order in force under section 1 of the Borrowing (Control and Guarantees) Act 1946, or of section 259 of the Local Government (Scotland) Act 1947.

32. The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming of 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.

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Edinburgh Corporation Order Confirmation Act 1970

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Section

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