



CHAPTER xlv.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1899 relating to Dumfries and Maxwelltown Waterworks. A.D. 1922.
[20th July 1922.]

WHEREAS His Majesty's Secretary for Scotland has made the Provisional Order set forth in the schedule hereunto annexed under the provisions of the Private Legislation Procedure (Scotland) Act 1899 and it is requisite that the said Order should be confirmed by Parliament: 62 & 63 Vict. c. 47.

Be it therefore enacted by the King'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 shall be and the same is hereby confirmed. Confirmation of Order in schedule.

2. This Act may be cited as the Dumfries and Maxwelltown Waterworks Order Confirmation Act 1922. Short title.

A.D. 1922.

S C H E D U L E.

DUMFRIES AND MAXWELLTOWN
WATERWORKS.

Provisional Order to confer further powers on the Dumfries and Maxwelltown Waterworks Commissioners with regard to their water undertaking to authorise them to borrow further moneys and for other purposes.

WHEREAS by the Dumfries and Maxwelltown Waterworks Act 1850 the Dumfries and Maxwelltown Waterworks Commissioners (hereinafter called "the Commissioners") were authorised to supply with water the royal burgh of Dumfries the adjacent burgh or Barony of Maxwelltown and the suburbs of those burghs within the limits of the said Act and the said limits were extended by the Dumfries and Maxwelltown Waterworks (Additional Powers) Act 1897 and by that Act the Commissioners were incorporated and further powers were conferred upon them :

And whereas certain rating provisions were contained in the said Act of 1850 and were explained and amended by the Dumfries and Maxwelltown Waterworks Amendment Act 1852 which was subsequently repealed by the said Act of 1897 and by the last-mentioned Act the Commissioners were authorised to assess and levy within the limits of compulsory supply defined in that Act certain rates called respectively "the domestic water rate" and "the public water rate" :

And whereas it is expedient to authorise the Commissioners to increase the domestic water rate and the public water rate which they are authorised to levy as aforesaid to such amounts as are by this Order authorised :

And whereas it is expedient to authorise the Commissioners to borrow further moneys for the purchase of lands and for the general purposes of their undertaking :

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

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And whereas estimates have been prepared by the Commissioners for the purposes hereinafter mentioned and such estimates are as follows :—

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	£
For and in connection with the purchase of lands and servitudes and the construction of works for preventing the pollution of water - - - -	20,000
For the general purposes of the undertaking to which capital is properly applicable - - - -	20,000

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

And whereas the purposes aforesaid cannot be effected without an Order of the Secretary for Scotland confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1899 :

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary for Scotland orders as follows :—

1.—(1) This Order may be cited as the Dumfries and Maxwelltown Waterworks Order 1922.

Short and collective titles.

(2) This Order and the Dumfries and Maxwelltown Waterworks Acts 1850 and 1897 may be cited together as the Dumfries and Maxwelltown Waterworks Acts 1850 to 1922.

2. This Order shall commence and have effect on and from the date of the passing of the Act confirming the same which date is hereinafter referred to as “ the commencement of this Order.”

Commencement of Order.

3. The following Acts and parts of Acts (so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Order) are hereby incorporated with this Order (namely) :—

Incorporation of Acts.

(1) The Lands Clauses Acts except section 120 of the Lands Clauses Consolidation (Scotland) Act 1845 (relating to the sale of superfluous lands) and except the provisions with respect to the taking of lands otherwise than by agreement :

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(2) The Waterworks Clauses Act 1847 except—

(a) the words “with the consent in writing
“of the owner or reputed owner of any such
“house or of the agent of such owner” in
section 44;

(b) sections 75 to 82 (with respect to the
amount of profit to be received by the under-
takers when the waterworks are carried on
for their benefit); and

(c) section 83 (with respect to the yearly
receipt and expenditure of the undertakers):

(3) The Waterworks Clauses Act 1863.

Interpreta-
tion.

4.—(1) In this Order the several words and expres-
sions to which meanings are assigned by the Acts wholly
or partly incorporated herewith have the same respective
meanings unless there be something in the subject or
context repugnant to such construction.

(2) In this Order unless the subject or context
otherwise requires—

“The Commissioners” means the Dumfries and
Maxwelltown Waterworks Commissioners;

“The Act of 1850” means the Dumfries and
Maxwelltown Waterworks Act 1850;

“The Act of 1897” means the Dumfries and
Maxwelltown Waterworks (Additional Powers)
Act 1897.

Power to
hold lands
needful to
prevent
fouling and
to protect
water.

5.—(1) The Commissioners may by agreement pur-
chase or acquire and hold or may take on lease any
lands rights or servitudes or restrictions over any lands
which they may deem necessary for the purpose of
preventing the fouling of the water of any stream flowing
into any of their waterworks or of obviating danger of
contamination of the water in the gathering grounds of
any reservoir belonging to them or for the protection
of their waterworks against nuisance contamination
encroachment or injury and so long as such necessity
shall continue such lands shall not be deemed to be
superfluous lands within the meaning of the Lands
Clauses Acts but the Commissioners shall not create or
permit a nuisance and shall not erect any buildings on
such lands while so held except offices and buildings for

persons in their employ and such buildings as may be incident to or connected with the water supply of the area within which the Commissioners may supply water. A.D. 1922.
—

(2) The Commissioners may let for such period as they think fit or sell or feu any land acquired under this section on such terms conditions and restrictions as regards its use as to the Commissioners may seem fit and to secure that such land shall not be manured or broken up for tillage and that no buildings which may prejudicially affect the water supply or the purity of the water shall be erected thereon.

6. Persons empowered by the Lands Clauses Acts to sell and convey or discharge lands may if they think fit subject to the provisions of those Acts and of this Order grant to the Commissioners any servitude right or privilege (not being a servitude right or privilege of water in which persons other than the grantors 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 feu duties and ground annuals 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. Persons under disability may grant servitudes &c.

7. The Commissioners on selling any lands held by them for the purposes of their water undertaking and not required for those purposes may reserve to themselves all or any part of the water rights or other servitudes belonging thereto and may make the sale subject to such reservations accordingly and may also make any such sale subject to such other reservations special conditions restrictions and provisions with respect to the use of water exercise of noxious trades or discharge or deposit of manure sewage or other impure matter and otherwise as they may think fit. Reservation of water rights &c.

8. The Commissioners shall not construct any works for taking or intercepting water from any lands acquired by them unless the works are authorised by and the lands upon which the same are to be constructed are specified in this Order or in some other Order confirmed by Parliament or in some Act of Parliament. Limiting powers of Commissioners to abstract water.

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Power to
agree as to
drainage of
lands &c.

9. The Commissioners may make and carry into effect agreements with the owners lessees or occupiers of any lands within the drainage area of the waterworks of the Commissioners with reference to the execution by the Commissioners or such owners lessees or occupiers of such works as may be necessary for the purpose of draining such lands or any of them or for more effectually collecting conveying and preserving the purity of the waters which may be diverted collected and appropriated by the Commissioners flowing to upon or from such lands directly or derivatively into such waterworks.

Byelaws
for pro-
tection of
water.

10.—(1) The Commissioners may make byelaws for the protection of Lochrutton Loch whence the water supply of the Commissioners is taken for the prevention of pollution of the water draining thereinto or collected or impounded therein and for the prevention of any act or thing tending to the pollution of the water.

(2) The byelaws made under this section shall be in force within the areas from or through which the said waters flow or within so much of those areas as may be defined in the byelaws.

(3) The provisions with respect to byelaws to be made by a local authority contained in sections 183 to 187 (inclusive) of the Public Health (Scotland) Act 1897 shall apply to byelaws made by the Commissioners under this section.

(4) A copy of the proposed byelaws shall be sent to the clerks of the county councils of the county of Dumfries and of the stewartry of Kirkcudbright and the town clerks of the burghs of Dumfries and Maxwelltown one month at least before application is made for their confirmation and if either of the said county councils or the town council of either of the said burghs shall within the said month apply to the Scottish Board of Health for a local inquiry it shall not be lawful for the Board to confirm the proposed byelaws until after the holding of such inquiry.

(5) The Commissioners shall pay compensation to any owner or other person injuriously affected by any byelaws made under the provisions of this section and such compensation failing agreement shall be settled by an arbiter to be appointed by the sheriff on the application of either of the parties.

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11. The Commissioners without giving the notice required by section 16 (Commissioners may repair apparatus on failure of the owner or occupier) of the Act of 1897 may re-washer any cold water taps supplied from the main including ball taps in storage and water-closet cisterns belonging to any person supplied by them with water and that on payment by such person of the reasonable charges of the Commissioners in providing the necessary material and workmanship.

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Power to
Commis-
sioners to
re-washer
water
fittings.

12. The Commissioners shall not be bound to supply more than one house erected after the passing of this Order by means of the same communication pipe and they may if they think fit require that a separate pipe be laid from the main pipe into each house supplied by them with water.

Commis-
sioners not
bound to
supply
several
houses by
one pipe.

13. The water to be supplied by the Commissioners need not be constantly laid on under pressure during the execution of necessary repairs renewals or alterations.

Suspension
of constant
pressure
during
repairs &c.

14. The Commissioners shall not be bound to supply with water otherwise than by measure any building used by an occupier as a dwelling-house whereof any part is used by the same occupier for any trade or manufacturing purpose for which water is required.

Supply to
houses
partly used
for trade
&c.

15. A notice to the Commissioners from a consumer for the discontinuance of a supply of water shall not be of any effect unless it be in writing signed by or on behalf of the consumer and be left at or sent by post to the office of the Commissioners or be given by the consumer personally at the office of the Commissioners.

Notice of
discon-
tinuance.

16. Before any person connects or disconnects any meter by means of which any of the water of the Commissioners is intended to be or has been registered he shall give not less than twenty-four hours' notice in writing to the Commissioners of his intention to do so and all alterations or repairs and the connecting and disconnecting of meters shall be done at his cost and under the due superintendence of any officer of or person authorised by the Commissioners and any person offending against this enactment shall for every such offence be liable to a penalty not exceeding forty shillings.

Notice to
Commis-
sioners of
connecting
or dis-
connecting
meters.

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Injuring
meters &c.

17.—(1) Every person who wilfully fraudulently or by culpable negligence injures or suffers to be injured any pipe meter or other instrument for measuring water or any fittings belonging to the Commissioners or who fraudulently alters the index to any meter or other instrument for measuring water or prevents any meter or other instrument for measuring water from duly registering the quantity of water supplied or fraudulently abstracts consumes or uses water of the Commissioners shall (without prejudice to any other right or remedy for the protection of the Commissioners) be liable to a fine not exceeding five pounds and the Commissioners may in addition thereto recover the amount of any damage by them sustained.

(2) In any case in which any person has wilfully fraudulently or by culpable negligence injured or suffered to be injured any pipe meter instrument or fittings belonging to the Commissioners or has fraudulently altered the index to any meter or other instrument for measuring water or prevented the same from duly registering the quantity of water supplied or has fraudulently abstracted consumed or used water of the Commissioners the Commissioners may also enter upon the premises occupied by the offender and repair such injury and do all such works matters and things as may be necessary for insuring the proper registering by such meter of the quantity of water supplied by means thereof and the expense of such repair and of all such works matters and things shall be repaid to the Commissioners by the person so offending and may be recovered by them as water rates are recoverable The existence of artificial means for causing such injury alteration or prevention or for abstracting consuming or using water of the Commissioners when such pipe meter instrument or fittings is or are under the custody or control of the consumer shall be *prima facie* evidence that such injury alteration prevention abstraction consumption or use as the case may be has been fraudulently knowingly and wilfully caused by the consumer using such pipe meter instrument or fittings.

Applica-
tion of
section 34
of Act of
1897.

18. In section 34 (Prosecution of offences) of the Act of 1897 the expression "the Acts" occurring therein shall include this Order.

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19.—(1) Section 25 (Domestic water rate to be levied) of the Act of 1897 shall be read and have effect as if the words “one shilling and sixpence” had been inserted therein in lieu of the word “sixpence” as the maximum of the domestic water rate by that section authorised to be levied.

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—
Increase of domestic water rate and public water rate.

(2) Section 27 (Public water rate to be levied) of the said Act shall be read and have effect as if the words “two pence or such higher rate not exceeding four pence as the Scottish Board of Health may from time to time approve” had been inserted therein in lieu of the words “two pence” as the maximum of the public water rate by that section authorised to be levied.

20.—(1) The Commissioners may from time to time borrow at interest upon mortgage of the revenue of the water undertaking including the domestic rate and the public water rate for the purposes mentioned in the first column of the following table the respective sums mentioned in the second column thereof and they shall pay off all moneys so borrowed within the respective periods (in this Order referred to as “the prescribed period”) mentioned in the third column thereof namely :—

Power to borrow.

1. Purpose.	2. Amount.	3. Period.
	£	
(a) For and in connection with the purchase of lands and servitudes.	15,000	Sixty years from the date or dates of borrowing.
(b) For and in connection with the construction of works for preventing the pollution of water.	5,000	Forty-five years from the date or dates of borrowing.
(c) For the general purposes of the undertaking to which capital is properly applicable.	20,000	Thirty years from the date or dates of borrowing.
(d) For paying the costs charges and expenses of this Order.	The sum requisite.	Five years from the commencement of this Order.

(2) The Commissioners may also with the consent of the Secretary for Scotland borrow upon the security named in subsection (1) of this section such further

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A.D. 1922. money as may be necessary for any of the purposes of this Order or of the water undertaking of the Commissioners.

Any money borrowed under this subsection shall be repaid within such period (in this Order referred to as "the prescribed period") and by such method as may be prescribed by the Secretary for Scotland.

The Secretary for Scotland shall have and may exercise in regard to such consent all the powers of section 93 of the Local Government (Scotland) Act 1889.

Mode of
repayment
of borrowed
moneys.

21.—(1) The Commissioners shall pay off all moneys borrowed by them under this Order either by means of a sinking fund formed under the provisions of this Order or by equal yearly or half-yearly instalments of principal or of principal and interest combined or partly by one of those methods and partly by another or others of them.

(2) The Commissioners shall also pay off the moneys borrowed by them under the Act of 1850 and outstanding at the commencement of this Order either by means of a sinking fund formed under the provisions of this Order or by equal yearly or half-yearly instalments of principal or of principal and interest combined or partly by one of those methods and partly by another or others of them. Provided that the Commissioners shall pay off in every year not less than five hundred pounds of the principal moneys so outstanding and the period within which the first instalment of five hundred pounds of such principal money shall be paid off or the first payment into the sinking fund shall be made shall be one year from the commencement of this Order.

Sinking
fund.

22.—(1) If the Commissioners determine to repay by means of a sinking fund any moneys borrowed by virtue of this Order such sinking fund shall be formed and maintained either :—

(a) By payment to the fund throughout the prescribed period of such equal annual sums as will together amount to the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called a non-accumulating sinking fund; or

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(b) By payment to the fund throughout the pre- A.D. 1922.
scribed period of such equal annual sums as
with accumulations at a rate not exceeding
three and a half per centum per annum or such
other rate as the Secretary for Scotland may
sanction will be sufficient to pay off within the
prescribed period the moneys for the repayment
of which such sinking fund is formed. A sinking
fund so formed is hereinafter called an accumu-
lating sinking fund.

(2) Every sum paid to a sinking fund and in the
case of an accumulating sinking fund the interest on the
investments of the sinking fund shall unless applied in
repayment of the loan in respect of which the sinking
fund is formed be immediately invested in securities in
which trustees are by law for the time being authorised
to invest or in mortgages bonds debentures debenture
stock stock or other securities (not being annuity certi-
ficates or securities payable to bearer) duly issued by
any local authority other than the Commissioners or be
deposited in bank the Commissioners being at liberty
from time to time to vary and transpose such invest-
ments.

(3) In the case of a non-accumulating sinking fund
the interest on the investments of the fund may be
applied by the Commissioners towards the equal annual
payments to the fund.

(4) The Commissioners may at any time apply the
whole or any part of any sinking fund in or towards the
discharge of the money for the repayment of which the
fund is formed. Provided that in the case of an accumu-
lating sinking fund the Commissioners shall pay into the
fund each year and accumulate during the residue of the
prescribed period a sum equal to the interest which
would have been produced by such sinking fund so
applied if invested at the rate per centum per annum on
which the annual payments to the sinking fund are
based.

(5)—(a) If and so often as the income of an accumu-
lating sinking fund is not equal to the income which
would be derived from the amount invested if the same
were invested at the rate per centum per annum on which
the annual payments to the fund are based any deficiency
shall be made good by the Commissioners.

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(b) If and so often as the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the annual payments to the fund are based any such excess may be applied towards such annual payments.

(6) Any expenses connected with the formation maintenance investment application management or otherwise of any sinking fund under this Order shall be paid by the Commissioners in addition to the payments provided for by this Order.

(7) If it appears to the Secretary for Scotland or to the Commissioners at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will probably not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the Commissioners to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose.

(8) If the Commissioners desire to accelerate the repayment of any loan they may increase the amounts payable to any sinking fund.

(9) If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Order together with the accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Commissioners be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Commissioners may with the consent of the Secretary for Scotland reduce the payments to be made to the sinking fund either temporarily or permanently to such amounts as will be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed.

(10) If the amount in any sinking fund at any time together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Commissioners be sufficient to repay the loan in respect of which it is formed within the prescribed period

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the Commissioners may with the consent of the Secretary for Scotland discontinue the annual payments to such sinking fund. A.D. 1922.

(11) Any surplus of any sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such purpose as the Commissioners may determine.

(12) The period at which the payments into the sinking fund shall commence shall be within one year from the date of borrowing.

23. If after having borrowed the sums of money by this Order authorised or any part thereof the Commissioners shall pay off the same or any part thereof otherwise than by means of annuities or instalments or of the sinking fund provided by this Order or out of moneys derived from the sale of lands it shall be lawful for the Commissioners again to borrow the amount so paid off upon the same securities as those upon which the moneys so paid off were secured and so from time to time. Power to re-borrow.

24. Sections 94 95 and 96 of the Town Councils (Scotland) Act 1900 shall with the necessary modifications apply to the accounts of the Commissioners as if the Commissioners were a town council within the meaning of that Act and the provisions of section 33 of the Act of 1897 so far as these relate to the audit of the accounts are hereby repealed Provided that the said section 96 shall be read and have effect as if the month of July were referred to therein instead of the month of September. Accounts and audit.

25. The treasurer of the Commissioners shall within four months after the expiration of each year during which any sum is required to be paid as an instalment or to be set apart for a sinking fund under this Order transmit to the Secretary for Scotland a return in such form as may be prescribed by the Secretary for Scotland and verified by statutory declaration if so required by him showing the amount which has been so paid or set apart in respect of that year and the description of the securities upon which the same has been invested and also showing the purposes to which any portion of such sinking fund and the interest or income thereof have been applied during the same period and the total amount Annual return to Secretary for Scotland with respect to sinking fund.

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A.D. 1922. remaining invested at the end of the year and in the event of any default in making such return such treasurer so making default shall be liable to a penalty not exceeding twenty pounds which shall be recoverable by the Secretary for Scotland as a debt to the Crown is recoverable. If it appear to the Secretary for Scotland by any such return or otherwise that the Commissioners have failed to pay any instalment or to set apart the sum required by this Order to be set apart for the sinking fund or to make any increased payment thereto by this Order required or have applied any portion of the moneys set apart for that fund or any interest or income thereof to any purposes other than those authorised by this Order the Secretary for Scotland may by order direct that a sum not exceeding double the amount in respect of which such default shall have been made shall be set apart and invested as part of the sinking fund and such order shall be enforceable by decree of either division of the Inner House of the Court of Session in Scotland pronounced in a summary application presented for that purpose.

Application
of moneys
borrowed.

26. All sums borrowed by the Commissioners under this Order on mortgage or cash account or otherwise shall be applied only to purposes to which capital is properly applicable.

Reservation
of prior
mortgages.

27. Nothing in this Order shall prejudice or affect the priority or other rights or remedies under any mortgages or securities or obligations granted by the Commissioners before the commencement of this Order and then subsisting.

Protection
of lender
from
inquiry.

28. No person lending money to the Commissioners shall be bound to inquire as to the observance by the Commissioners of any provision of this Order or be bound to see to the application or be answerable for any loss misapplication or non-application of such money or any part thereof.

Commis-
sioners not
to regard
trusts.

29. The Commissioners shall not be bound to see to the execution of any trust whether express implied or constructive to which any mortgage or other security to be granted by the Commissioners or the money principal or interest thereby secured may be subject and the receipt of the person in whose name any such mortgage or other security stands in the books of the Commissioners shall be a sufficient discharge to the Commissioners for any

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money payable in respect of such mortgage or other security notwithstanding any trust to which the same or the money thereby secured may then be subject and the Commissioners shall not be bound to see to the application of the money paid on such receipt. A.D. 1922.

30. The mortgagees of the Commissioners under this Order may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a judicial factor. In order to authorise the appointment of a judicial factor in respect of arrears of principal the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than three thousand pounds. For appointment of judicial factor.

31. All costs charges and expenses of and incident to the preparing for obtaining and confirming this Order or otherwise in relation thereto shall be paid by the Commissioners out of any moneys in their hands or out of any moneys borrowed by them under this Order for that purpose. Costs of Order.

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