STATUTORY INSTRUMENTS

1973 No. 348

WATER SUPPLY, ENGLAND AND WALES

The Kingston upon Hull Water Order 1973

Made - - - *27th February* 1973

Coming into Operation *20th March* 1973

The Secretary of State for the Environment in exercise of powers conferred by section 23 of the Water Act 1945(a) as extended by section 3 of the Water Act 1948(b) and section 33(2) of the Compulsory Purchase Act 1965(c) and now vested in him(d), and of all other powers enabling him in that behalf, hereby orders as follows:—

Citation.

1. This order may be cited as the Kingston upon Hull Water Order 1973.

Interpretation.

2.—(1) In this order unless the subject or context otherwise requires expressions to which meanings are assigned by the Third Schedule have the same respective meanings and—

"the Corporation" means the lord mayor, aldermen and citizens of the city and county of Kingston upon Hull;

"the deposited plans" means the plans prepared in duplicate signed by an Under Secretary in the Department of the Environment and marked "Plans referred to in the Kingston upon Hull Water Order 1973" one duplicate of which has been deposited and is available for inspection at the offices of the town clerk of the city and county of Kingston upon Hull and the other at the offices of the Secretary of State for the Environment;

"enactment" includes any Act, whether public general or local, and any order or scheme made thereunder, or any provision in any Act or any such order or scheme;

"the Third Schedule" means the Third Schedule to the Water Act 1945;

"tidal work" means so much of any work authorised by this order as is on, under or over tidal waters or tidal lands below the level of mean high water springs;

"the undertaking" means the water undertaking of the Corporation as for the time being authorised by any enactment;

"the works" means the works authorised by section 7 (Power to construct works) of this order and all works in connection therewith or subsidiary thereto.

(a) 1945 c. 42.
(b) 1948 c. 22.
(c) 1965 c. 56.
(d) S.I. 1950/142, 1900, 1970/1681 (1950 I, pp. 1348, 1347; 1970 III, p. 5551).

(2) Unless the context otherwise requires, references in this order to any enactment shall be construed as references to that enactment as extended or amended by any subsequent enactment including this order.

(3) Unless the context otherwise requires any reference in this order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this order.

Application of provisions of the Third Schedule.

3. For the purposes of this order the provisions of the Third Schedule which are set out in column (1) of the Schedule to this order shall, subject to the modifications set out in column (2) thereof, apply to the undertaking and are hereby incorporated with this order.

Application of enactments.

4.—(1) In its application in relation to this order, Part I of the Compulsory Purchase Act 1965 shall have effect subject to the following exceptions and modifications:—

(*a*) section 27 (Acquiring authority to make good deficiencies in rates) shall be omitted; and

(*b*) subsection (2) of section 11 (Powers of entry) shall have effect as if at the end of the first paragraph thereof there were inserted the words "(other than paragraph 3(3) thereof)".

(2) The provisions of the Railways Clauses Consolidation Act 1845(**a**) with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this order and, as so incorporated, shall have effect as if—

(*a*) for the words "the period by the special Act limited for the completion of the railway" there were substituted the words "the period of five years from the commencement of the special Act";

(*b*) the expression "the company" meant the Corporation; and

(*c*) the expression "the railway" meant the works and "the centre of the railway" meant the centre of any such works respectively; and

(*d*) the expression "the special Act" meant this order.

Power to acquire land.

5.—(1) The Corporation may purchase compulsorily for the purpose of the works all or any of the lands within the limits of land to be acquired delineated on the deposited plans.

(2) Notwithstanding the provisions of subsection (1) of this section, the Corporation shall not purchase compulsorily any land which is required by the Corporation solely for the construction of the aqueduct (Work No. 7 or Work No. 9) if the owner of such land is able and willing to grant or sell to the Corporation (at a price to be agreed or, failing agreement, to be determined in accordance with the provisions of the Land Compensation Act 1961(**b**)) such easements and rights over and in that land as the Corporation may in the circumstances require for the purpose of constructing and maintaining the said works.

Power to reinstate occupiers of property.

6. The Corporation may enter into, and carry into effect, an agreement or arrangement with the occupier of any land acquired under this order with respect to his reinstatement.

(**a**) 1845 c. 20. (**b**) 1961 c. 33.

Power to construct works.

7. Subject to the provisions of this order the Corporation may when they have acquired the necessary lands or sufficient interest therein construct, maintain, renew and alter in the lines and situations shown upon the deposited plans the following works in the East Riding of the county of York:—

In the parish of Barmby-on-the-Marsh in the rural district of Howden—

Work No. 1. An intake and pumping station on the south-east bank of the river Derwent.

Work No. 2 A raw water reservoir.

Work No. 3. A treatment works and pumping station adjacent to Works Nos. 1 and 2.

Work No. 4. A treated water reservoir adjacent to Works Nos. 1 and 2.

Work No. 5. A drain commencing at Work No. 2 and terminating in the river Derwent.

In the parishes of Barmby-on-the-Marsh and Wressle in the rural district of Howden—

Work No. 6. An access road commencing by a junction with the Howden to Selby road (classified A63) and terminating at Work No. 3.

In the parishes of Barmby-on-the-Marsh, Wressle, Howden, Kilpin, Eastrington, Gilberdyke, Blacktoft, Broomfleet, South Cave, Ellerker, Brantingham, Elloughton, Welton, North Ferriby and Swanland in the rural districts of Howden and Beverley—

Work No. 7. An aqueduct or line or lines of pipes commencing at Work No. 3 and terminating in Work No. 8.

In the parish of Swanland in the rural district of Beverley—

Work No. 8. A service reservoir.

In the parishes of Swanland and Skidby in the rural district of Beverley and the urban district of Haltemprice—

Work No. 9. An aqueduct or line or lines of pipes commencing at the reservoir (Work No. 8) and terminating at the Keldgate Reservoir of the Corporation.

Works to form part of undertaking.

8. The works and all land required for the purposes thereof shall for all purposes form part of and be comprised in the undertaking.

Temporary stoppage of drains, highways, etc

9.—(1) The Corporation during and for the purposes of the execution of any of the works or obtaining materials for the construction thereof may temporarily stop up, alter, divert, or otherwise interfere with any drain or highway or any private right of way, and, in the case of any highway or right of way, may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the highway or right of way from passing along and using the same.

(2) The Corporation shall provide reasonable access for foot passengers with or without animals bona fide going to or from any such land, house or building.

(3) (*a*) The powers of subsection (1) of this section shall not be exercised in relation to a highway without the consent of the highway authority, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment) as the highway authority may require, and any question whether such consent is unreasonably withheld, or any conditions so imposed are unreasonable, shall be determined by the Secretary of State for the Environment.

(*b*) The powers of subsection (1) of this section shall not be exercised in relation to any drain without providing a proper substitute before interrupting the passage of water in or through such drain, and the Corporation shall make compensation for any damage caused to any person by the exercise of such powers in relation to any drain, the amount of such compensation being, in case of dispute, determined by the Lands Tribunal.

(4) The exercise of the powers conferred by this section in relation to a highway shall not affect the powers of the Post Office under the Telegraph Acts as defined in section 21 of the Post Office Act 1969(**a**) to maintain, inspect, repair, renew or remove telegraphic lines or to open or break up that highway for any of those purposes.

For protection of Yorkshire River Authority.

10. For the protection of the Yorkshire River Authority (hereafter in this section referred to as "the River Authority") the following provisions shall unless otherwise agreed in writing between the Corporation and the River Authority apply and have effect:—

(1) In this section—

"authorised work" means so much of the works (whether temporary or permanent) as may adjoin or be constructed on, over or under or in any other way affect a watercourse including the banks and bed thereof;

"banks" and "watercourses" have the meanings assigned to them by the Land Drainage Act 1930(**b**);

"construction" includes execution and placing and "construct" and "constructed" have corresponding meanings;

"Engineer" means the Chief Engineer to the River Authority;

"plans" in relation to permanent works includes sections and particulars and in relation to temporary works includes sections.

(2) (*a*) Before commencing the construction of an authorised work the Corporation shall submit plans of such work to the River Authority for their reasonable approval and shall not commence the authorised work until such plans have been approved by the River Authority or in the case of difference until they shall have been settled by arbitration:

(**a**) 1969 c. 48. (**b**) 1930 c. 44.

Provided that unless the River Authority within 28 days after the receipt of any such plans signify to the Corporation their disapproval thereof and the grounds of their disapproval they shall be deemed to have approved thereof.

(*b*) Not less than 28 days before commencing any work of maintenance, repair or renewal of an authorised work the Corporation shall except in the case of emergency submit to the River Authority for their information a notice of intention to commence the work and a description of the work.

(3) (*a*) An authorised work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved by the River Authority as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the Engineer who shall be given reasonable notice of the date and time on and at which the authorised work is to be commenced.

(*b*) The Corporation shall at all reasonable times afford to the Engineer and his duly authorised representatives access to the authorised work for the purpose of inspection.

(4) If by reason of the construction, maintenance or repair of any authorised work or of the failure thereof or of the failure to maintain or repair the same injury or damage is caused in a watercourse or the banks thereof or to any property of the River Authority such injury or damage shall be forthwith made good by the Corporation to the reasonable satisfaction of the Engineer and if the Corporation fail so to do, the River Authority may make good the same and recover from the Corporation the costs and expenses reasonably incurred by them in so doing.

(5) Any difference between the Corporation and the River Authority under this section shall be referred to a single arbitrator to be appointed by an agreement between the parties, or, in default of agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party after giving notice in writing to the other party.

(6) If there shall be any inconsistency between any plans approved or deemed to be approved by the River Authority or settled by arbitration under the provisions of this section and the plans approved by the Secretary of State for Trade and Industry under section 12 of this order, the authorised works shall be constructed in accordance with the plans approved by the Secretary of State.

For protection of electricity undertakers

11. 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 unless the subject or context otherwise requires—

"adequate alternative apparatus" means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

"apparatus" means any electric lines and works (as respec-

tively defined in the Electric Lighting Act 1882(a) belonging to the undertakers or for the maintenance of which they are responsible (not being apparatus in respect of which the relations between the Corporation and the undertakers are regulated by the provisions of section 26 of the Public Utilities Street Works Act 1950(b), and includes any structure for the lodging therein of apparatus;

"in" in a context referring to apparatus or facilities and rights therefor includes under, over, across or upon;

"the undertakers" means the Central Electricity Generating Board and the Yorkshire Electricity Board or either of them, as the case may be.

(2) Notwithstanding anything in this order or shown on the deposited plans the Corporation shall not, under the powers of this order, acquire any apparatus otherwise than by agreement.

(3) If the Corporation in the exercise of the powers of this order acquire any interest in any land in which any apparatus is placed, they shall not remove that apparatus, or extinguish any right of the undertakers to use, maintain, repair, renew or inspect that apparatus until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

(4) If the Corporation, for the purpose of exercising the powers of this order, require the removal of any apparatus and give to the undertakers notice of their requirement, or if in consequence of the exercise of the powers of this order the undertakers shall require to remove any apparatus, the Corporation shall afford to the undertakers the necessary facilities and rights for the construction of adequate alternative apparatus in other land of the Corporation and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the Corporation are unable to afford facilities and rights as aforesaid the undertakers shall, on receipt of a notice to that effect from the Corporation forthwith use their best endeavours to obtain the necessary facilities and rights in other land.

(5) The Corporation shall, except in a case of emergency, give to the undertakers not less than fourteen days' notice in writing before commencing any works to which section 18 of the Schedule to the Electric Lighting (Clauses) Act 1899(c), applies.

(6) The Corporation shall pay to the undertakers the amount by which the costs, charges and expenses reasonably incurred by the undertakers in connection with any removal or alteration of any apparatus, or the construction of any new apparatus which may be required in consequence of the exercise of the powers of this order, shall exceed the value (such value being calculated after removal) of any apparatus removed in consequence of alternative apparatus being provided, and shall also make compensation to the undertakers for any damage caused to any apparatus in consequence of the exercise of the said powers.

(a) 1882 c. 56.
(b) 1950 c. 39.
(c) 1899 c. 19.

(7) The temporary stopping up, alteration, diversion of, or other interference with, any highway or private right of way under section 9 (Temporary stoppage of drains, highways, etc.) of this order shall not unreasonably prevent the undertakers from obtaining access to any apparatus nor prejudice or affect any right of the undertakers to maintain, inspect, repair, renew or remove any apparatus in that highway or right of way or to open or break up that highway or right of way for any of those purposes.

(8) Any difference which may arise between the Corporation and the undertakers under this section shall be referred to arbitration.

Tidal works not to be executed without approval of Secretary of State for Trade and Industry

12.—(1) A tidal work shall not be constructed, renewed or altered except in accordance with plans and sections approved by the Secretary of State for Trade and Industry and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, renewed or altered in contravention of this section or of any condition or restriction imposed under this section—

(*a*) the said Secretary of State may by notice in writing require the Corporation at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of thirty days from the date when the notice is served upon the Corporation they have failed to comply with the requirements of the notice, the said Secretary of State may execute the works specified in the notice; or

(*b*) if it appears to the said Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the said Secretary of State in so doing shall be recoverable from the Corporation as a simple contract debt.

Power to borrow.

13.—(1) The Corporation may borrow without the consent of any sanctioning authority, for any of the purposes specified in column (1) of the following table, the sum specified in relation thereto in column (2) of that table:—

Purpose for which money may be borrowed (1)	Amount (2)	Maximum period for repayment of loan (3)
(*a*) The purchase of land and easements for the Works	The sum required	Sixty years
(*b*) The construction of the Works except machinery and plant forming part of Works Nos. 1 to 5 and 8	£6,724,000	Forty years
(*c*) The provision of machinery and plant forming part of Works Nos. 1 to 5 and 8	£851,000	Twenty years
(*d*) The payment out of capital of interest on moneys borrowed for purposes (*a*) to (*c*) above	The sum required	The period specified in Section 8(4) of the Local Government (Financial Provisions) Act 1963(a)
(*e*) The payment of the costs, charges and expenses of this order	The sum required	Ten years

(a) 1963 c. 46.

(2) Every sum borrowed under subsection (1) of this section shall be repaid within such period from the date of borrowing as the Corporation, without the consent of any sanctioning authority, may determine, not exceeding the period specified in relation thereto in column (3) of the said table.

(3) Subject to the provisions of this section Part IX of the Local Government Act 1933(**a**) shall have effect as if money borrowed under this section were borrowed under that Part.

Modification of section 17 of the Kingston upon Hull Corporation Act 1911 for purposes of order.

14. For the purposes of this order section 17 of the Kingston upon Hull Corporation Act 1911(**b**) (which provides that the Corporation shall not construct any works for taking water from any lands acquired by them unless the works are authorised by and the lands specified in an Act of Parliament) shall have effect as if after the words "Act of Parliament" there were added the words "or an order under the Water Act 1945".

SCHEDULE

PROVISIONS OF THE THIRD SCHEDULE APPLIED

Provisions applied (1)	Modifications (2)
Part II Works and Lands	In section 2 for the words "the plans submitted to the Minister" there shall be substituted the words "the deposited plans". In section 4 the words from the beginning of the section to the words "abstract water" shall be omitted; for the words "in connection with their water undertaking" there shall be substituted the words "for the purposes of the special Act" after the word "buildings" there shall be inserted the words "roads, means of access, means of electrical communication, embankments, fences, piers, bridges"; after the words "supply of water" there shall be inserted the words "(including works for the disposal of sludge resulting from the operation of the authorised works)", after the words "Provided that" there shall be inserted "(*a*)" and after the words "any such line" there shall be inserted the following words— "or with any electric line belonging to any electricity undertakers; (*b*) nothing in this section shall authorise the doing of any thing constituting an infringement of the exclusive privilege with respect to telecommunication conferred on the Post Office by section 24(1) of the Post Office Act 1969."
Part IV (Minerals Underlying Waterworks)	In section 12 for the words "after this section is incorporated with their enactments" there shall be substituted the words "under the special Act"; for the words "all existing pipes or other conduits for the collection, passage or distribution of water and underground works belonging to them" there shall be substituted the words "all such pipes or other conduits or underground works"; and the words "for the time being belonging to them" shall be omitted.

(**a**) 1933 c. 51.

(**b**) 1911 c. lxxxvi.

Provisions applied (1)	Modifications (2)
Section 19 (Power to lay mains)	—
Section 20 (Conditions as to laying mains outside the limits of supply)	—
Part VI (Breaking Open Streets &c)	—
Section 82 (Power to enter premises)	—
Section 83 (Penalty for obstructing execution of special Act)	—
Section 85 (Summary proceedings for offences)	—
Section 86 (Continuing offences and penalties)	—
Section 87 (Restriction on right to prosecute)	—
Section 91 (Mode of reference to arbitration)	—
Section 92 (Liability of undertakers to pay compensation)	—
Section 93 (Protection for works of navigation authority and for catchment boards and railways)	In subsection (1) after the words "under any enactment" there shall be inserted the words "(other than their new functions under the Water Resources Act 1963(a))".
Section 94 (Copies of special Act to be kept by undertakers in their office and deposited with certain officers)	—

J. E. Beddoe,
An Under Secretary
in the Department
of the Environment

Signed by authority of
the Secretary of State
27th February 1973

(a) 1963 c. 38.

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