STATUTORY INSTRUMENTS

1973 No. 1048

WATER SUPPLY, ENGLAND AND WALES

The Staffordshire Potteries Water Board (Whitmore and Acton) Order 1973

Made - - - -	13*th June* 1973
Coming into Operation	19*th June* 1973

The Secretary of State for the Environment, in exercise of powers conferred by section 9(1) of the Water Act 1945(a) and now vested in him (b) and of all other powers enabling him in that behalf, hereby orders as follows:—

Citation and commencement.

1.—(1) This order may be cited as the Staffordshire Potteries Water Board (Whitmore and Acton) Order 1973 and shall come into operation on 19th June 1973.

(2) This order shall be included among the enactments which may be cited together as the Staffordshire Potteries Water Board Acts and Orders 1853 to 1973.

Interpretation.

2. In this order unless the context otherwise requires—

"the appropriate vendor" means—

(*a*) as regards the Whitmore Estate undertaking Rafe Gordon Dutton Cavenagh-Mainwaring; and

(*b*) as regards the Acton Estate undertaking Guy Cavenagh-Mainwaring.

"the Board" means the Staffordshire Potteries Water Board;

"the day of transfer" means 24th June 1973;

"the deposited plan" means the plan prepared in duplicate, signed by an Under Secretary in the Department of the Environment and marked "Plan referred to in the Staffordshire Potteries Water Board (Whitmore and Acton) Order 1973" one copy of which has been deposited and is available for inspection at the offices of the Board, and one at the offices of the Secretary of State for the Environment;

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

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

"the Whitmore Estate undertaking" and "the Acton Estate undertaking" mean the water undertaking of the Whitmore Estate and the water undertaking of the Acton Estate as respectively described in Parts I and II of Schedule 1 to this order.

(a) 1945 c. 42.

(b) S.I. 1951/142, 1900, 1970/1681 (1951 I, pp. 1348, 1347; 1970 III, p. 5551).

[DOE 11908]

Information to be supplied before transfer.

3.—(1) Before the day of transfer the appropriate vendor shall send to the clerk of the Board a statement giving particulars with respect to the matters specified in the definition of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, in section 2 of this order.

(2) Any question arising between the Board and the appropriate vendor as to the correctness of the said statement shall be determined by arbitration.

Transfer of Whitmore Estate undertaking and Acton Estate undertaking.

4.—(1) Subject to the provisions of this order, on the day of transfer the Whitmore Estate undertaking and the Acton Estate undertaking shall by virtue of this order be transferred to and vest in the Board and shall become part of the undertaking.

(2) On the day of transfer the appropriate vendor shall grant to the Board the rights specified in Part I of Schedule 2 to this order in relation to lands retained by the appropriate vendor.

(3) In consideration of such transfer to and vesting in the Board of the Whitmore Estate undertaking and the Acton Estate undertaking and of the appropriate vendor granting to the Board the said rights, the Board shall on the day of transfer pay to the appropriate vendor, in the case of the Whitmore Estate undertaking the sum of £25,250, and in the case of the Acton Estate undertaking the sum of £8,000; and shall enter into covenants with the appropriate vendor in the terms specified in Part II of Schedule 2 to this order.

Transfer of licences under Water Resources Act 1963.

5. Any licence held by the appropriate vendor immediately before the day of transfer under the Water Resources Act 1963(**a**), in so far as it is a licence to abstract water or to obstruct or impede the flow of an inland water by means of works transferred by this order, shall on the day of transfer be transferred to the Board by virtue of this order and the Board shall thereupon, by virtue of section 32(5) of the said Act of 1963, to that extent become the holder of such licence for the purposes of that Act.

Power to maintain, etc., works.

6.—(1) From and after the day of transfer the Board may continue and maintain the works transferred to them by virtue of this order for the purposes of the undertaking.

(2) Any mains, pipes or other works so transferred shall, for the purposes of section 19 of the Third Schedule as applied to the undertaking, be deemed to have been laid or constructed by the Board.

Outgoings and receipts in respect of Whitmore Estate undertaking and Acton Estate undertaking.

7.—(1) The appropriate vendor shall pay and discharge all debts liabilities and outgoings which shall have become payable by him before or accrued due from him up to the day of transfer in respect of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, and shall be entitled to all rates, rents, charges and other sums of money which shall have become payable to him before or accrued due to him up to the day of transfer in respect of the said undertakings.

(2) Subject to the provisions of this order, the Board shall pay and discharge all debts, liabilities and outgoings and shall be entitled to all rates, rents, charges and other sums of money which shall become payable

(**a**) 1963 c. 38.

or accrue due on and after the day of transfer in respect of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be.

(3) Except so far as may be otherwise agreed between the appropriate vendor and the Board but notwithstanding the foregoing provisions of this section, so much of any amount paid or recovered by the appropriate vendor pursuant to this section as is attributable to any period beginning on or after the day of transfer shall (as the case may require) be repaid to him by, or paid by him to, the Board; and so much of any amount so paid or recovered by the Board as is attributable to any period before the day of transfer shall (as the case may require) be repaid to them by, or paid by them to, the appropriate vendor.

(4) For the purpose of giving effect to the foregoing provisions of this section any such debts, liabilities, outgoings, rates, rents, charges and sums of money shall when necessary be apportioned between the appropriate vendor and the Board.

Carrying on of Whitmore Estate undertaking and Acton Estate undertaking.

8.—(1) The appropriate vendor in carrying on the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, between the date of coming into operation of this order and the day of transfer shall not, without the previous consent of the Board—

(*a*) enter into any contract or incur any liability otherwise than in the ordinary course of carrying on the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, extending beyond the day of transfer or make any unnecessary expenditure or any exceptional expenditure other than expenditure reasonably incurred in connection with the transfer of the said undertakings by this order, or

(*b*) vary any rates, rents or charges which are being demanded or taken by them at the date of coming into operation of this order.

(2) Nothing in this order shall impose any liability on the Board in respect of anything done in contravention of this section.

Collection of outstanding debts.

9. All rates, rents, charges and other sums of money which may accrue due or become payable to the appropriate vendor in connection with the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, after the day of transfer shall, notwithstanding anything in this order or the transfer to the Board of the said undertakings pursuant to this order, continue to accrue due or be payable and may be collected and recovered by the Board.

Pending actions not to abate.

10. Any action, arbitration or proceeding and any cause of action, arbitration or proceeding pending or existing on the day of transfer by or against or in favour of the appropriate vendor in relation to the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, shall not abate or be in any wise prejudicially affected by the transfer to the Board of the said undertakings or by anything in this order, but

(*a*) in the case of an action, arbitration or proceeding, or cause of action, arbitration or proceeding, relating to the quality of any water supplied by the appropriate vendor before the day of transfer, may be continued, prosecuted or enforced against the appropriate vendor as if this order had not been made; and

(*b*) in any other case may be continued, prosecuted or enforced by, against or in favour of the Board as and when it might have been continued, prosecuted and enforced by, against or in favour of the appropriate vendor if this order had not been made, but not further or otherwise:

Provided that any rent, rate, charge or other sum of money payable to the appropriate vendor before the day of transfer may be sued for and recovered by the appropriate vendor in the same manner in all respects as it might have been sued for and recovered if this order had not been made.

Books, etc. to remain evidence.

11.—(1) All books and other documents which, if this order had not been made, would have been evidence in respect of any matter for or against the appropriate vendor in relation to the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, shall on and after the day of transfer be admissible in evidence in respect of the same or the like matter for or against the Board.

(2) All officers of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, and other persons who at the day of transfer have in their possession or under their control any books or other documents relating exclusively to and forming part of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, shall be liable to account for and deliver them up to the Board, or to such person as the Board may appoint to receive them, and subject to the same consequences on refusal or neglect as if they had been appointed by and become possessed thereof for the Board.

(3) The appropriate vendor shall on and after the day of transfer be entitled to have access at all reasonable times and for all reasonable purposes to any books and documents delivered up to the Board under this section and the Board shall have a like right of access to any books and documents relating partly to the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, but retained by the appropriate vendor as not relating exclusively to and forming part of those undertakings respectively.

Saving of contracts.

12. Except as by this order otherwise provided all contracts, agreements, conveyances, deeds, leases, licences and other instruments affecting the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, and in force on the day of transfer shall as from that day be as binding on and of as full force and effect against or in favour of the Board and may be enforced against or in favour of the Board as fully and effectually as if instead of the appropriate vendor the Board had been a party thereto or bound thereby or entitled to the benefit thereof.

Power to borrow.

13.—(1) The Board shall have power, in addition and without prejudice to their powers of borrowing under any other enactment, from time to time to borrow, without the consent of any sanctioning authority, the sum requisite for the payment of consideration under section 4(3) of this order and for the payment of costs, charges and expenses under section 16 of this order.

(2) Provisions to the like effect as the provisions of Part IX of the Local Government Act 1933(a), so far as they are not inconsistent with

(a) 1933 c. 51.

this section, shall apply in relation to the borrowing of money under this section and the fixed period for the purposes of the said provisions shall, in the case of a payment under the said section 4(3), be fifteen years, and in the case of a payment under the said section 16, be five years.

(3) In respect of any money borrowed in pursuance of this section on or after 1st April 1974, this section shall have effect as if—

(*a*) for the words "any sanctioning authority" in sub-section (1) there were substituted the words "the Secretary of State"; and

(*b*) for the words "Part IX of the Local Government Act 1933" in subsection (2) there were substituted the words "Part I of Schedule 13 to the Local Government Act 1972(a).

Settlement of disputes.

14. Any dispute arising in connection with the provisions of this order between the Board and the appropriate vendor shall be referred to and determined by a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the appropriate professional institution.

Application of section 94 of Third Schedule.

15. For the purposes of this order, the provisions of section 94 (Copies of special Act to be kept by undertakers in their office, and deposited with certain officers) of the Third Schedule shall apply to the undertaking and are hereby incorporated with this order.

Costs of order.

16. All costs, charges and expenses of and incidental to the application for and the preparing and making of this order shall be paid by the Board and may in whole or in part be defrayed out of revenue.

SCHEDULE 1

PART I

Description of Whitmore Estate undertaking

1. All that property comprising the Whitmore Estate Water Undertaking, including the freehold sites of the Limpit Reservoir, Coney Greave Tank and the Moat Pumphouse, collecting chamber and reservoir (which sites are respectively numbered F258, F257 and F256 and shown coloured brown on the deposited plan) together with the mains, wells, reservoirs, pumphouses and other apparatus and equipment (but not including the Coney Greave Tank erected on the said land numbered F257) used for the purposes of the said Whitmore Estate Water Undertaking immediately before the day of transfer and also shown coloured brown on the deposited plan, but excluding that part of the said undertaking known as the Hall Supply within the area coloured pink and hatched purple on the deposited plan.

2. All mains and communication pipes within the meaning of section 1 of the Third Schedule used immediately before the day of transfer by the appropriate vendor in connection with the supply of water by him from the works referred to in paragraph 1 hereof, together with all consumers' meters (but excluding consumers' meters which are the property of the consumer) and chambers and surface boxes used in connection therewith, but not including any pipe which is a supply pipe within the meaning of the said section 1.

3. The benefit of, and liabilities under, all easements, quasi-easements, rights, covenants and conditions which immediately before the day of transfer were vested in or enjoyed by the appropriate vendor in connection with the lands, buildings, works, apparatus and equipment comprised within the Whitmore Estate Water Undertaking.

(a) 1972 c. 70.

4. Subject to the provisions of this order, the benefits of and all liabilities under any contracts entered into by the appropriate vendor and in force immediately before the day of transfer relating to the supply of water in connection with the Whitmore Estate Water Undertaking.

5. All deeds, agreements, registers, books, accounts, maps, plans, specifications, engineering reports, vouchers, letters, records of conveyances and proceedings relating solely and exclusively to the Whitmore Estate Water Undertaking or to the supply of water thereby which immediately before the day of transfer are in the possession of the appropriate vendor or his servants or agents.

6. All such other machinery, plant, spare parts, tools, apparatus, stock in trade, stores, furniture, chattels and effects of the appropriate vendor as immediately before the day of transfer belonged to the appropriate vendor and were normally and properly used wholly or mainly for the purpose of or in connection with the Whitmore Estate Water Undertaking, but not including any motor vehicle used partly for the purposes of that undertaking and partly for other purposes of the appropriate vendor.

PART II

Description of Acton Estate undertaking

1. All that property comprising the Acton Estate Water Undertaking, including the freehold sites of the Acton Reservoir and the Acton pumphouse and well (which sites are respectively numbered F255 and F254 and shown coloured green on the deposited plan) together with the mains, wells, reservoirs, pumphouses and other apparatus and equipment used for the purposes of the said Acton Estate Water Undertaking immediately before the day of transfer and also shown coloured green on the deposited plan.

2. All mains and communication pipes within the meaning of section 1 of the Third Schedule used immediately before the day of transfer by the appropriate vendor in connection with the supply of water by him from the works referred to in paragraph 1 hereof, together with all consumers' meters (but excluding consumers' meters which are the property of the consumer) and chambers and surface boxes used in connection therewith, but not including any pipe which is a supply pipe within the meaning of the said section 1.

3. The benefit of, and liabilities under, all easements, quasi-easements, rights, covenants and conditions which immediately before the day of transfer were vested in or enjoyed by the appropriate vendor in connection with the lands, buildings, works, apparatus and equipment comprised within the Acton Estate Water Undertaking.

4. Subject to the provisions of this order, the benefits of and all liabilities under any contracts entered into by the appropriate vendor and in force immediately before the day of transfer relating to the supply of water in connection with the Acton Estate Water Undertaking.

5. All deeds, agreements, registers, books, accounts, maps, plans, specifications, engineering reports, vouchers, letters, records of conveyances and proceedings relating solely and exclusively to the Acton Estate Water Undertaking or to the supply of water thereby, which immediately before the day of transfer are in the possession of the appropriate vendor or his servants or agents.

6. All such other machinery, plant, spare parts, tools, apparatus, stock in trade, stores, furniture, chattels and effects of the appropriate vendor as immediately before the day of transfer belonged to the appropriate vendor and were normally and properly used wholly or mainly for the purpose of or in connection with the Acton Estate Water Undertaking, but not including any motor vehicle used partly for the purposes of that undertaking and partly for other purposes of the appropriate vendor.

SCHEDULE 2

PART I

RIGHTS TO BE GRANTED TO THE BOARD BY THE APPROPRIATE VENDOR

1. Rights of easement in fee simple and without charge—

(*a*) in respect of all mains forming part of the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, laid in land to be retained by the appropriate vendor;

(*b*) for the purpose of enabling the Board to lay and maintain connecting mains from the Board's existing supply mains to link thereto the Whitmore Estate undertaking or the Acton Estate undertaking, as the case may be, in positions to be agreed between the Board and the appropriate vendor;

(*c*) to inspect, divert, replace, enlarge, maintain, repair and connect all such mains and pipes with all necessary and proper and convenient works incident thereto in, through, upon or under land of the appropriate vendor;

(*d*) to the flow and passage of water through all such apparatus;

(*e*) to free right of ingress, egress and regress to, upon or from the land of the appropriate vendor for the purpose of exercising the rights in this paragraph referred to and for all incidental purposes:

Provided that the Board in the exercise of the rights to be granted under this paragraph shall do or cause to be done as little damage as reasonably may be to the land of the appropriate vendor and shall from time to time on demand make full compensation to the owners and occupiers of such land for all damage or injury which may be done to the surface of the land or to crops growing thereon through or by reason or in consequence of the exercise of the said rights, and, when any land is opened or broken up in exercise of the said rights to restore the same as nearly as practicable to its original level and condition and complete with all convenient speed the work for which such land has been opened or broken up.

2. In relation to the Whitmore Estate undertaking, the benefit of the agreement dated 7th August 1914 made between Francis Dent and others of the first four parts, Ellen Jane Cavenagh-Mainwaring of the fifth part, C.M. Parker Jervis and William Edward Stamer of the sixth part and the London and North Western Railway Company of the seventh part, under which the British Railways Board, as successors to the said London and North Western Railway Company, provide a supply of water of up to 4,000 gallons per day to the Whitmore Estate.

3. In respect of private roads owned by the appropriate vendor, not being streets within the meaning of section 1 of the Third Schedule, the same rights of laying, maintaining, repairing, renewing and diverting the Board's mains and services as those conferred upon statutory water undertakers under Part V of the Third Schedule.

PART II

COVENANTS TO BE ENTERED INTO BY THE BOARD

That, unless the necessary storage and supply of water for the purposes of the undertaking cannot otherwise be reasonably provided for, the Board will not within as the case may be the boundaries of the Whitmore Estate or the Acton

Estate of the appropriate vendor, as such boundaries exist immediately before the day of transfer, erect any water tower or water towers; and if it should be found necessary to erect any such tower, the Board will consult with the appropriate vendor with a view to agreeing a suitable siting for and design of such tower.

Signed by authority of the Secretary of State

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

13th June 1973

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