



CHAPTER lxx.

An Act to confirm a Provisional Order of the Minister of Health relating to the East Surrey Water Company. A.D. 1935.
[2nd August 1935.]

WHEREAS under the provisions of the Gas and Water Works Facilities Act 1870 and the Gas and Water Works Facilities Act 1870 Amendment Act 1873 the Minister of Health has made a provisional order which needs confirmation by Parliament : 33 & 34 Vict. c. 70. 36 & 37 Vict. c. 89.

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 order of the Minister of Health which is set out in the schedule to this Act is hereby confirmed and shall have full validity and force. Order in schedule confirmed.

2. This Act may be cited as the Ministry of Health Provisional Order Confirmation (East Surrey Water) Act 1935. Short title.

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SCHEDULE.

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EAST SURREY WATER.

Provisional order under the Gas and Water Works Facilities Act 1870 and the Gas and Water Works Facilities Act 1870 Amendment Act 1873 empowering the East Surrey Water Company to raise additional capital and to acquire further lands and for other purposes.

The Minister of Health in pursuance of the powers given to him by the Gas and Water Works Facilities Act 1870 the Gas and Water Works Facilities Act 1870 Amendment Act 1873 and of all other powers enabling him in that behalf hereby orders as follows :—

PART I.

PRELIMINARY.

Short and
collective
titles.

1.—(1) This order may be cited as the East Surrey Water Order 1935.

(2) The East Surrey Water Acts and Orders 1862 to 1930 and this order may be cited together as the East Surrey Water Acts and Orders 1862 to 1935.

Commence-
ment of
order.

2. This order shall come into operation on the date of the Act of Parliament confirming it.

Incor-
poration
of Acts.

3.—(1) 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 :—

(a) The Companies Clauses Consolidation Act 1845 (except the provisions thereof with respect to the conversion of the borrowed money into capital) as amended by the Companies Clauses Consolidation Act 1888;

(b) Part I (relating to cancellation and surrender of shares) Part II (relating to additional capital) and Part III (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts;

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- (c) The Lands Clauses Acts (except the provisions with respect to the purchase and taking of lands otherwise than by agreement and with respect to the entry upon lands by the promoters of the undertaking);
- (d) The Waterworks Clauses Acts 1847 and 1863 (except the words in section 44 of the Waterworks Clauses Act 1847 "with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner").

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(2) For the purpose of such incorporation the expression "special Act" where used in the said Acts shall be construed to mean this order and the term "Company" shall mean the Undertakers.

4.—(1) In this order unless the context otherwise requires the several words terms and expressions to which by any Act wholly or partly incorporated with this order and by the Gas and Water Works Facilities Act 1870 meanings are assigned have the same respective meanings.

Interpre-
tation.

(2) In this order unless the context otherwise requires—

"the order of 1912" means the East Surrey Water Order 1912 as confirmed by the Water Orders Confirmation Act 1912;

"the Act of 1921" means the East Surrey Water Act 1921;

"the Act of 1927" means the East Surrey Water Act 1927;

"the Act of 1930" means the East Surrey Water Act 1930;

"the Minister" means the Minister of Health;

"the directors" means the directors of the Undertakers;

"the Undertakers" means the East Surrey Water Company;

"the undertaking" means the undertaking of the Undertakers from time to time authorised.

PART II.

ADDITIONAL CAPITAL.

5. In addition to the capital already authorised to be raised by the Undertakers they may from time to time raise capital to such an amount as shall be sufficient to produce after taking into account premiums or discounts (if any) which may be obtained or allowed respectively on the issue thereof the sum of three hundred thousand pounds by the creation and issue of ordinary and preference shares and stock or wholly or partially by one or more of those modes Provided that the Undertakers shall not under the powers of this section issue any share of less nominal value than of one pound.

Additional
capital.

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Limit of
dividend.

6. For the purposes of section 75 of the Waterworks Clauses Act 1847 and of section 13 of the Companies Clauses Act 1863 the prescribed rate of dividend on any preference or ordinary shares or stock to be issued under the powers of this order shall be—

- (a) In the case of preference shares or stock the rate of six per centum per annum on the nominal value of the shares or stock; and
- (b) In the case of ordinary shares or stock the rate of seven per centum per annum on the nominal value of the shares or stock.

Borrowing
powers.

7. In addition to any other sums which they are authorised by the East Surrey Water Acts and Orders 1862 to 1930 to borrow the Undertakers may borrow on mortgage of the undertaking in respect of the additional capital by this order authorised to be raised any sum or sums not exceeding in the whole one-half of the amount actually received by the Undertakers (including premiums) on any shares or stock forming part of such additional capital which at the time of borrowing have been issued under the powers of this order but no sum shall be borrowed in respect of any such shares or stock until the Undertakers have proved to a justice of the peace before he gives his certificate under section 40 of the Companies Clauses Consolidation Act 1845 that the whole amount payable on the issue of the shares or stock with respect to which the borrowing powers are exercised and of the premium (if any) realised on the sale thereof has been paid.

Limit of
interest
on money
borrowed.

8. The Undertakers shall not without the consent of the Minister pay interest at a higher rate than four and a half per centum per annum in respect of any moneys borrowed on mortgage or any debenture stock issued under the authority of this order.

Provisions
as to pay-
ment of
commission
on sale of
shares or
stock.

9. The Undertakers when ordinary or preference shares or stock are to be offered for sale may with the approval of the Minister and subject to such conditions as the Minister may think fit to impose pay a commission not exceeding one and a half per centum to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any such shares or stock or procuring or agreeing to procure subscriptions whether absolute or conditional therefor:

Provided that—

- (a) the payment of the commission and the amount or rate per centum of the commission paid or agreed to be paid shall be disclosed in every prospectus advertisement or other document of the Undertakers relating to the offer for sale of the shares or stock; and
- (b) nothing in this section contained shall affect any power of the Undertakers to pay brokerage.

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10. The principal moneys secured by all mortgages subsisting at the commencement of this order which may have been granted by the Undertakers under the existing Acts and orders shall during the continuance of those mortgages have priority over the principal moneys secured by any mortgages granted by the Undertakers after the commencement of this order.

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 Priority of principal moneys secured by existing mortgages.

11.—(1) In this section unless the context otherwise requires—

Redeemable preference shares or stock and debenture stock.

“stock” means and includes preference shares or stock and debenture stock;

“issue” includes re-issue;

“redeemable stock” means any stock issued under the powers of this section so as to be redeemable;

“redeemed stock” means any redeemable stock which has been redeemed and is available for issue under the provisions of this section.

(2) Subject to the provisions of this section the directors may from time to time by virtue of this order and without further or other sanction issue so as to be redeemable any stock created by the Undertakers after the commencement of this order and any redeemed stock :

Provided that no redeemed stock shall be issued except for the purpose of effecting the redemption of redeemable stock under the provisions of this section unless the issue is authorised by a resolution of the Undertakers passed at an extraordinary meeting convened for the purpose.

(3) Redeemable stock may be redeemed either by paying off the stock or by issuing to the holder of the stock (subject to his consent) other stock in substitution therefor and for the purpose of raising money to pay off or of providing stock in substitution for any redeemable stock the Undertakers may create new stock or the directors may issue any redeemed stock so as to be redeemable or irredeemable as they may think fit :

Provided that—

(a) no new stock shall be created nor shall any redeemed stock be issued so as to make the total amount of any particular class of stock exceed the amount of stock of that class which the Undertakers are for the time being authorised to create except during any necessary interval between the creation or (in the case of redeemed stock) the issue of the stock and completion of the redemption of the redeemable stock for the

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purpose of redeeming which the stock of such particular class is proposed to be so created or issued; and

(b) during such interval as aforesaid the amount raised by means of any preference shares or stock so created or issued shall not be deemed to be paid-up share capital for the purposes of any enactment regulating the borrowing powers of the Undertakers.

(4) The redemption of any preference stock issued so as to be redeemable shall not affect the validity of any mortgage or debenture stock of which the grant or issue by the Undertakers was lawful in the circumstances existing at the date of such grant or issue.

(5) Redeemable stock shall bear such rate of dividend or interest (not exceeding any maximum rate prescribed in respect of the particular class of stock) and shall be redeemable at such time and in such manner and subject otherwise to such terms and conditions as the directors may before the issue thereof determine :

Provided that the terms and conditions of redemption upon which any redeemable stock is issued shall be stated in any offer by the Undertakers of such stock for sale and in the certificate of such stock and no term or condition of redemption which is not so stated shall be binding upon the holder of the stock.

(6) The Undertakers shall not redeem out of revenue any redeemable stock but any discount allowed on the issue or any premium payable on the redemption thereof may be written off out of revenue.

(7) The Undertakers may write off out of revenue any discount allowed on the issue or any premium payable on the redemption of any redeemable stock issued under the Act of 1921.

(8) Any preference shares or stock issued solely in substitution for redeemable stock shall not be subject to the provisions of section 24 (New shares or stock to be sold by auction or tender) of the Act of 1921 as amended by the Act of 1930 and incorporated in this order.

(9) Section 29 of the Act of 1921 is hereby repealed.

Application
of sections
of order of
1912 and
Acts of
1921 and
1927.

12. The following sections of the order of 1912 the Act of 1921 and the Act of 1927 shall (subject to the provisions of this order) extend and apply to any shares stock debenture stock or mortgages created issued or granted under the powers of this order and to any moneys raised thereby as though the said sections

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with any necessary modifications were re-enacted in this order (that is to say) :— A.D. 1935.

Order of 1912—

- Section 17 (Incidents of new capital);
- Section 19 (Application of money);
- Section 22 (Restrictions as to votes in respect of preferential capital);
- Section 25 (Priority of mortgages over other debts);
- Section 27 (Receipt in case of persons not sui juris).

Act of 1921—

- Section 24 (New shares or stock to be sold by auction or tender) as amended by the Act of 1930;
- Section 27 (Appointment of receiver).

Act of 1927—

- Section 32 (Debenture stock);
- Section 34 (Application of funds);
- Section 35 (As to holdings of debenture stock).

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PART III.

LANDS.

13.—(1) In addition to any lands which the Undertakers are by the East Surrey Water Acts and Orders 1862 to 1930 authorised to acquire or hold the Undertakers may by agreement purchase or take on lease or otherwise acquire and hold further lands for the purposes of the undertaking or any easement right or privilege (not being an easement right or privilege of water in which persons other than the parties to the easement have an interest) in over or under any lands or otherwise but the quantity of lands held by the Undertakers in pursuance of this section shall not at any time exceed one hundred acres : Acquisition of lands by agreement.

Provided that the Undertakers shall not create or permit a nuisance on any such land nor erect nor authorise the erection of any buildings thereon except offices and buildings for persons in their employ and such buildings and works as are required for or are connected with or incident to the purposes of the undertaking :

Provided also that the Undertakers shall not construct any works for taking or intercepting water from any lands acquired by them under the powers of this section unless the works are authorised by and the lands on which the works are to be constructed are specified in some future Act of Parliament or order having the force of an Act.

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(2) (a) Nothing in this section shall authorise the Undertakers to erect place or bring forward any building or erection in contravention of any byelaw or of any scheme made under the Town Planning Act 1925 or the Town and Country Planning Act 1932 and applicable to such building or erection or of the enactments hereinafter mentioned except with the consent of the appropriate county council urban local highway or other authority (as the case may be) but such consent shall not be unreasonably withheld and any question whether such consent is unreasonably withheld shall be determined by the Minister. If the Minister determines that such consent is unreasonably withheld then such consent shall be deemed to have been given.

(b) The enactments hereinbefore in this subsection referred to are—

section 3 (Buildings not to be brought forward) of the Public Health (Buildings in Streets) Act 1888;

section 27 (As to temporary buildings) of the Public Health Acts (Amendment) Act 1907;

section 33 (Power to prescribe improvement line for widening streets) of the Public Health Act 1925;

section 5 (Prescription of building lines) of the Roads Improvement Act 1925;

Any provision of any local Act or order enabling a county council urban local highway or other authority to prescribe a building or frontage line to be observed in any street or road or prohibiting or controlling the construction of any means of access to or the erection of buildings within a specified distance of any part of any street or road.

PART IV.

MISCELLANEOUS.

Amendment
of section
47 of Act
of 1930.

14. Section 47 of the Act of 1930 shall have effect and shall be deemed always to have had effect as though the words "Order of 1912" appeared therein in lieu of the words "Order of 1917."

For protec-
tion of
Kent county
council.

15. Unless and except so far as may be from time to time otherwise agreed in writing between the county council of the administrative county of Kent (in this section referred to as "the county council") and the Undertakers the following provisions shall have effect and apply to the exercise of the powers of the Undertakers so far as any of such powers affect any street (as defined by the Waterworks Clauses Act 1847) for the time

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being vested in the county council or bridge (which expression shall in this section include any bridge culvert or other similar structure the approaches thereto and the road over such structure and approaches) for the time being maintained by or at the expense of the county council :—

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- (1) All mains pipes and works of the Undertakers to be laid in under along or across the soil or pavement of any street or bridge shall be laid in such position and at such depth as the county council in writing under the hand of their surveyor (in this section referred to as "the county surveyor") may reasonably direct :
- (2) In the application of the provisions of the Waterworks Clauses Act 1847 with respect to the breaking up of streets for the purpose of laying pipes the notice required by section 30 of that Act shall (except for laying connecting or repairing communication pipes as to which three clear days' notice shall be given and in cases of leakage bursting or other emergency) in the case of a bridge be fourteen clear days instead of three days and in all other cases seven clear days instead of three days :
- (3) Except in cases of laying down connecting or repairing consumers' service pipes and except in cases of leakage bursting or other emergency the plan required by section 31 of the Waterworks Clauses Act 1847 shall be accompanied by a section and description of the proposed works and shall (except as aforesaid) be delivered to the county surveyor by the Undertakers not less than in the case of any bridge fourteen clear days and in all other cases seven clear days before the Undertakers commence to interfere with any bridge or street for the purpose of executing the works and any difference as to any such plan section or description or as to the temporary or other works referred to in the said section 31 shall be determined by arbitration under this section instead of in the manner prescribed by the said section 31 If the county surveyor shall not within fourteen clear days in the case of any bridge and seven clear days in any other case after the plan section and description shall have been delivered to him express his approval or disapproval thereof or signify his requirements in relation thereto he shall be deemed to have approved thereof :
- (4) The surplus paving metalling or materials removed during the laying renewal or repair of the mains pipes and works of the Undertakers shall not (so far as may be reasonably practicable) be placed on the metalled portion of any street or in or upon any bridge without

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the written consent of the county surveyor and subject to such conditions (other than a payment of money) and directions as he may reasonably require or give :

- (5) Subject to the rights of all parties claiming to be entitled thereto all surplus paving metalling or materials removed during the laying of the mains pipes or works in under along or across the soil or pavement of any street or bridge and not required by the Undertakers for the purpose of reinstating and making good the street or bridge may (if the county surveyor prior to the completion by the Undertakers of such laying notifies the Undertakers in writing of his desire so to use the same) be used by the county council for the maintenance and repair of any street or bridge and may be removed by the county council for that purpose Provided that nothing in this paragraph shall relieve or be deemed to relieve the Undertakers from any obligation imposed on them by section 32 of the Waterworks Clauses Act 1847 or otherwise :
- (6) If the Undertakers in the execution of any works in or affecting any street or bridge shall cause any damage injury or disturbance thereto and shall neglect or refuse to make good all such damage injury or disturbance to the reasonable satisfaction of the county council then it shall be lawful for the county council after reasonable notice to the Undertakers of the alleged neglect or refusal and of the works the county council propose to execute to do all works necessary for making good all such damage injury or disturbance and the Undertakers shall repay to the county council all costs charges and expenses which the county council shall reasonably and properly incur in carrying out such works including all reasonable expense of superintendence :
- (7) Nothing in this order or any former Act or order relating to the undertaking shall authorise the Undertakers to interfere with the structural part of any bridge without the consent in writing of the county surveyor which may be given upon such conditions as the county council or the county surveyor may reasonably determine :
- (8) Nothing in this order or any former Act or order relating to the undertaking shall limit prejudice or affect the right of the county council at any time to divert widen alter the levels of or otherwise alter and improve any street and to remove alter rebuild widen or repair any bridge in under along over across or attached to which any mains pipes or works of the Undertakers are carried

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in the same manner as the county council might have diverted improved removed altered rebuilt widened or repaired any such street or bridge if this order or any former Act or order had not been made or passed and such mains pipes and works had not been constructed or laid in under along over across or attached to such street or bridge respectively and subject to the provisions of this subsection the county council shall not make any compensation to the Undertakers for any expense or loss to which the Undertakers may be put by reason or in consequence of any such diversion improvement removal alteration rebuilding widening or reparation And in the event of any street or bridge in under along over across or attached to which any such mains pipes or other works are laid being diverted improved removed altered rebuilt widened or repaired as aforesaid in such manner as to require the removal or alteration of any such mains pipes or works the Undertakers shall as and when requested by the county surveyor by not less than fourteen days' notice in writing remove or alter the position of the said mains pipes and works and the works by which the same are carried in under along over across or attached to any such street or bridge as aforesaid and replace the same to the reasonable satisfaction of the county surveyor :

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Provided that—

(a) the cost of carrying out any works necessary for the purpose of complying with any requirement of the county surveyor pursuant to the provisions of this subsection—

(i) In the case of the diversion widening alteration of the levels of or other alteration or improvement of any street shall be repaid to the Undertakers by the county council;

(ii) in the case of the removal alteration rebuilding widening or reparation of any bridge shall be borne and paid by the Undertakers; and

(b) during any such diversion improvement removal alteration rebuilding widening or reparation of such street or bridge as aforesaid the county council shall allow the Undertakers all reasonable facilities for temporarily carrying such mains pipes and works along the street or across any stream or river so as not to interrupt the continuous supply of water or to diminish the pressure of such supply through such mains or pipes and the Undertakers may carry such mains and pipes accordingly; and

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(c) when any such diversion improvement removal alteration rebuilding widening or reparation has been completed the Undertakers shall have the same rights and powers with respect to such street or bridge as they had before such diversion improvement removal alteration rebuilding widening or reparation was carried out :

- (9) All works shall be so executed by the Undertakers as not to stop the traffic and so far as reasonably practicable as not in any way to impede or interfere with the traffic on any street or bridge and the Undertakers shall not open or break up at any one time a greater continuous length than one hundred yards of any street and shall leave an interval of at least one hundred yards between any two places at which they may open or break up such street at the same time :
- (10) The county council shall not be liable for or in respect of any damage or injury done to any mains pipes or other works of the Undertakers laid or executed in or along any street or in the soil or pavement of any bridge by reason of such mains pipes or other works being laid or executed at a depth below the surface of any road or the roadway over any bridge insufficient for their protection from injury arising from the reasonable use by the county council of any steam or other roller not exceeding fifteen tons in weight for the repair of such road or of any traction engine not exceeding the weight aforesaid :
- (11) All costs charges amounts and expenses payable by the Undertakers to the county council or by the county council to the Undertakers under the provisions of this section shall be recoverable as a debt due from the Undertakers to the county council or from the county council to the Undertakers as the case may require :
- (12) If any difference at any time arises between the county council or the county surveyor and the Undertakers touching this section or anything to be done or not to be done thereunder such difference shall be referred to and determined by an arbitrator to be agreed upon between them or failing such agreement to be appointed on the application of either party after notice in writing to the other of them by the President of the Institution of Civil Engineers and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to any such reference to arbitration as aforesaid.

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16. The Minister may direct any inquiries to be held by his inspectors which he may deem necessary for the purposes of his powers under this order and section 290 of the Local Government Act 1933 shall apply as if the Undertakers were a local authority and as if this order were an enactment relating to the functions of a local authority.

17. All costs charges and expenses of and incidental to the application for this order and the preparation making and confirmation of this order shall be paid by the Undertakers and may in whole or in part be defrayed out of revenue.

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Inquiries
and
expenses.

Costs of
order.

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