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STATUTORY INSTRUMENTS

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1974 No. 644

**WATER SUPPLY, ENGLAND AND WALES**

**The Sheffield Water (Wentworth Estate) Order 1974**

*Made* - - - - - *27th March 1974*

*Coming into Operation*            *31st March 1974*

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[DOE 15987]

The Secretary of State for the Environment, in exercise of powers conferred by section 9 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 Sheffield Water (Wentworth Estate) Order 1974 and shall come into operation on 31st March 1974.

(2) The Sheffield Water Acts and Orders 1896 to 1973 and this order may be cited together as the Sheffield Water Acts and Orders 1896 to 1974.

Interpretation.

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

“the Act of 1945” means the Water Act 1945;

“the city” means the city of Sheffield;

“the Corporation” means the lord mayor, aldermen and citizens of the city acting by the council of the city;

“the day of transfer” means the 31st March 1974;

“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 Sheffield Water (Wentworth Estate) Order 1974” one duplicate of which is deposited and available for inspection at the office of the town clerk and the other at the office of the Secretary of State for the Environment;

“the Estates” means the Right Honourable William Thomas George Earl Fitzwilliam whose business is conducted under the title Fitzwilliam (Wentworth) Estates;

“the limits of supply” means the limits within which the Corporation are from time to time authorised to supply water;

“the town clerk” means the town clerk of the city and includes any person duly appointed by the Corporation to discharge temporarily the duty of that officer;

“the Wentworth undertaking” means the water undertaking of the Estates as described in Schedule 1 to this order;

“the undertaking” means the undertaking of the Corporation as from time to time authorised by any enactment;

and any expression to which a meaning is assigned by the Third Schedule to the Act of 1945 shall have the meaning so assigned.

(2) Except where the context otherwise requires, references in this order to any enactment shall be construed as references to that enactment as amended by, or having effect by virtue of, any subsequent enactment, including this order.

Transfer of Wentworth undertaking.

3.—(1) Subject to the provisions of this order on the day of transfer the Wentworth undertaking shall by virtue of this order and without payment or other consideration be transferred to and vest in the Corporation and shall for all purposes become part of the undertaking.

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(a) 1945 c. 42.

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

(2) On the day of transfer the Estates shall—

- (a) grant to the Corporation the rights specified in and subject to the conditions set out in Part 1 of Schedule 2 to this order; and
- (b) enter into a restrictive covenant with the Corporation in the terms specified in Part 2 of Schedule 2 to this order.

(3) On the day of transfer the Corporation shall enter into covenants with the Estates and his successors in title in the terms specified in Part 3 of Schedule 2 to this order.

4.—(1) As from the day of transfer the Corporation may for the purposes of the undertaking continue and maintain the reservoirs, pumping stations, mains, pipes and other works and apparatus transferred to them by this order. Power to continue and maintain transferred works.

(2) Any mains, pipes or other works transferred to the Corporation by this order shall for all purposes be deemed to have been laid or constructed by the Corporation.

5.—(1) The Estates shall pay and discharge all debts, liabilities and outgoings which shall have become payable by them before or accrued due from them up to the day of transfer in respect of the Wentworth undertaking, and shall be entitled to all rates, rents, charges and other sums of money which shall have become payable to them before or accrued due to them up to the day of transfer in respect of the Wentworth undertaking. Outgoings and receipts in respect of Wentworth undertaking.

(2) Subject to the provisions of this order, the Corporation 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 or accrue due on and after the day of transfer in respect of the Wentworth undertaking.

(3) Except so far as may be otherwise agreed between the Estates and the Corporation, but notwithstanding the foregoing provisions of this section, so much of any amount paid or recovered by the Estates 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 them by, or paid by them to, the Corporation; and so much of any amount so paid or recovered by the Corporation 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 Estates.

(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 Estates and the Corporation.

6. On and after the day of transfer the Corporation shall not be required to give free supplies of water from the pipes of the Wentworth undertaking. Free supplies.

7. All rates, rents, charges and other sums of money which may accrue due or become payable to the Estates in connection with the Wentworth undertaking after the day of transfer shall, notwithstanding anything in Collection of outstanding debts.

this order or the transfer to the Corporation of the Wentworth undertaking pursuant to this order, continue to accrue due or be payable and may be collected and recovered by the Corporation.

Carrying on  
of the Went-  
worth  
undertaking.

**8.—(1)** The Estates in carrying on the Wentworth undertaking between the date of commencement of this order and the day of transfer shall not, without the previous consent of the Corporation—

(a) enter into any contract or, subject to the provisions of this section, incur any liability, otherwise than in the ordinary course of carrying on that undertaking, extending beyond the day of transfer or make any unnecessary expenditure except that which is reasonably incurred in respect of accountancy, engineering or legal costs in connection with the transfer of that undertaking by this order; or

(b) vary any rates, rents or charges which were being demanded or taken by them in connection with that undertaking on the date of commencement of this order.

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

Continuance  
of actions.

**9.** Any action, arbitration or other proceedings or any cause of action, arbitration or other proceeding, pending or existing on the day of transfer by, or against, or in favour of, the Estates in respect of the Wentworth undertaking shall not be prejudicially affected by reason of this order and may be continued, prosecuted and enforced by, or against, or in favour of, the Corporation.

Saving of  
agreements,  
etc.

**10.** Subject to the provisions of this order, all sales, conveyances, grants, assurances, deeds, contracts (other than contracts the benefits of, and the liabilities under, which are not transferred by this order), bonds, agreements, notices and demands affecting the Wentworth undertaking and in force immediately before the day of transfer shall, on and from that day, be as binding and of as full force and effect in every respect and may be enforced as fully and effectually against, or in favour of, the Corporation as if, instead of the Estates, the Corporation had been a party thereto or bound thereby or entitled to the benefits thereof.

Books to  
remain  
evidence.

**11.** All books and documents which, if this order had not been made, would have been evidence in respect of any matter for or against the Estates shall, in so far as they relate to the Wentworth undertaking be admissible in evidence on and after the day of transfer in respect of the same matter for or against the Corporation.

Inspection  
of books,  
etc.

**12.** The Corporation may at all reasonable times inspect, and shall at their expense be entitled to copies of, all registers, books of account, maps, plans, specifications, engineering reports and other documents which relate to the Wentworth undertaking and are in the possession or under the control of the Estates.

Information  
to be  
supplied  
before  
transfer.

**13.—(1)** As soon as may be after the commencement of this order the agent of the Estates shall send to the town clerk a statement giving particulars with respect to the matters specified in the description of the transferred undertaking in Schedule 1 to this order.

(2) Any question arising between the Estates and the Corporation as to the correctness of the said statement shall be determined by an arbitrator to be appointed either by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

14. As from the day of transfer any agreement which may on that day be in force for, or with respect to, the supply of water in bulk by the Corporation to the Estates shall cease to have effect but without prejudice to the right of the Corporation to recover any sums payable in respect of water supplied before that day.

Determination of agreements with respect to bulk supplies.

15. For the purposes of this order, the provisions of section 91 (which provides for mode of reference to arbitration) and of section 94 (which requires copies of the special Act to be kept by undertakers in their office, and deposited with certain officers) of the Third Schedule to the Act of 1945 shall apply to the undertaking and are hereby incorporated with this order.

Application of certain provisions of Third Schedule to the Act of 1945.

## SCHEDULE 1

### DESCRIPTION OF THE WENTWORTH UNDERTAKING

The water undertaking of the Estates as existing immediately before the day of transfer, including—

- (a) the lands coloured red on the deposited plan together with all buildings and works erected thereon, and all equipment and apparatus housed or installed thereon for the purposes of water supply;
- (b) all mains and communication pipes within the meaning of section 1 of the Third Schedule of the Act of 1945 used immediately before the day of transfer by the Estates in connection with the distribution of water received by them from the Corporation's meters at Wentworth Tank Warren Lane, the War Memorial Hague Lane, Chapelfield Lane Thorpe Hesley and Reform Row Elsecar together with all fittings and consumers' meters but not including any pipe which is a supply pipe within the meaning of the said section 1 or any fitting or meter on such supply pipe;
- (c) 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 Estates in connection with the lands, buildings, works, apparatus and equipment comprised within the said undertaking;
- (d) subject to the provisions of this order, the benefits of and all liabilities under any contracts entered into by the Estates and in force immediately before the day of transfer relating to the supply of water in connection with the said undertaking;
- (e) all deeds, agreements, registers, books, accounts, maps, plans, specifications, engineering reports, vouchers, letters, records of conveyances and proceedings relating solely and exclusively to the said undertaking or to the supply of water thereby which immediately before the day of transfer are in the possession of the Estates or their servants or agents.

## SCHEDULE 2

### PART 1

#### RIGHTS TO BE GRANTED TO THE CORPORATION

1. The right from time to time to operate, inspect, reconstruct, replace, relay, cleanse, drain, renew, duplicate, enlarge and keep in good repair all mains, communication pipes valves meters and other apparatus whatsoever transferred to the Corporation by this order and hereinafter referred to as "the works".

2. The right for the purpose of exercising any right in this part of this Schedule contained and for all incidental purposes thereto from time to time to enter and be upon that part of the land belonging to the Estates (hereinafter called "the described land") and situated within eight feet of any of the works with or without vehicles horses, carts, machinery plant articles and implements, provided that (except in emergency) the exercise of this right by the Corporation shall be subject to 7 days notice to the Estates in writing.

3. The right to construct and erect from time to time a temporary fence or temporary fences of a type and of materials to be decided upon by the Corporation on the boundaries of the described land which temporary fence or temporary fences shall be removed on the completion of the exercise of any right under paragraph 1 and the subsequent restoration of the described land.

4. The right from time to time to fix or erect and thereafter maintain posts identification marks stiles or gates on the described land provided that on all stiles or gates so erected a notice shall be placed by and at the expense of the Corporation bearing the word "Private" and that so far as it is practicable to do so such posts and identification marks shall be placed fixed or erected in or near hedges fences or dykes.

5. The right so far only as the Estates has power to grant it but not further or otherwise (but not the exclusive right) of way at all times on foot or with vehicles plant machinery and implements over such occupation roads and tracks the use of which passes by custom or otherwise with the ownership or occupation of the land appurtenant thereto leading from a road or highway to or towards the described land or to any land belonging to or occupied by the Corporation the Corporation making good any damage caused by them to such occupation road or track in the exercise of this right.

6. The right of way at all times on foot or with vehicles plant and machinery over so much of the Estates land as it is necessary and reasonable to cross to gain access to the described lands from a public highway or occupation road the Corporation making good all damage caused by them to such access lands or failing this making full compensation to the Estates being in actual possession or to the tenants or occupiers of the access lands respectively as the case may be for all damage done or occasioned to the surface of the access lands or to the crops or herbage growing thereon:

Provided that (except in emergency) the exercise of this right by the Corporation shall be subject to seven days' notice to the Estates in writing.

### PART 2

#### COVENANT TO BE ENTERED INTO BY THE ESTATES

A covenant, framed so as to bind the land retained by the Estates into whose-soever hands the same may come and to benefit the water undertaking of the

Corporation but not so as to render the Estates liable for any breach of covenant committed after the Estates shall have parted with all interest in the land in respect of which such breach shall occur, that

- (a) the described land shall not be used for any purposes which would in any way injure or endanger the works or the water flowing therein or impede or interfere with the exercise of any rights referred to in Part 1 hereof;
- (b) that no building, erection or structure whatsoever shall be placed on the described land nor any tree planted thereon or therein;
- (c) that no streets, roads, fences, walls, drains, hedges, ditches, pipes, poles, wires or cables shall cross the described land in such a way that the longitudinal centre of the same shall be parallel to the longitudinal centre line of the water pipes in the described land or shall make with the last mentioned centre line an angle of 45° or less;
- (d) that the level of the surface of the described land shall not be altered more than 6 inches downwards or 2 feet upwards nor shall any such alteration be made which would in any way damage or impede the effective use of any of the works:

Provided that the above-mentioned covenant shall not be applied as relating to anything belonging to the Estates and now existing in under or over the described land.

### PART 3

#### COVENANTS TO BE ENTERED INTO BY THE CORPORATION

1. That in the exercise of any right referred to in Part 1 hereof the Corporation shall do or cause to be done as little damage as reasonably may be to the lands of the Estates over which any such right is exercised, such lands being hereinafter referred to as "the said lands".

2. That the Corporation will from time to time on demand make full compensation to the Estates being in actual possession or to the tenants or occupiers of the said lands respectively as the case may be for all damage or injury which shall be done or occasioned to the surface of the said lands or to the crops or herbage growing thereon respectively through or by reason or in consequence of the exercise by the Corporation their servants workmen contractors or agents of any right referred to in Part 1 hereof.

3. That when any part of the described lands shall from time to time be opened or broken up by the Corporation in the exercise of any of the rights referred to in Part 1 hereof the Corporation will lay aside all top soil to a maximum depth of 12 inches and afterwards replace the same uppermost on the land from whence such soil shall have been taken and restore the surface as nearly as practicable to its original level and condition and unless otherwise agreed upon will remove the surplus subsoil (if any) from the described lands and with all convenient speed complete the work for which such land shall have been so opened or broken up.

4. That the Corporation will make good as far as practicable all walls fences buildings roads ways and drainage interfered with in the laying and construction of the works or in the exercise of any right referred to in Part 1 hereof and that if such making good is not in the opinion of the Corporation practicable they will make compensation for any damage sustained by the Estates in consequence thereof.

5. That the Corporation will not in the exercise of any right referred to in paragraph 1 of Part 1 hereof cut down or otherwise interfere with any trees or timber except so far as may reasonably be necessary for the effective exercise of such right.

6. That where in the exercise of any right referred to in paragraph 1 of Part 1 hereof any existing hedges are severed or interfered with the Corporation will (subject to any right to erect gates or stiles as aforesaid) repair renew or replant such hedges so as to make them cattleproof but such covenant shall not thereafter render the Corporation liable for the maintenance of such hedges.

Signed by authority of the Secretary of State.

*J. E. Beddoe.*

An Under Secretary in the  
Department of the Environment.

27th March 1974.