

5 & 6 GEO. 6. *Land Drainage (Surrey County Council (Hogsmill River Improvement)) Provisional Order Confirmation Act, 1942.* Ch. iii.



CHAPTER iii.

An Act to confirm a Provisional Order made by the Minister of Agriculture and Fisheries under the Surrey County Council Act 1936 for the execution of works for the improvement of the river, Hogsmill and other rivers brooks and streams in the county of Surrey and for other purposes. [11th June, 1942.]

WHEREAS under the provisions of the Surrey County Council Act 1936 the Minister of Agriculture and Fisheries has made an Order which needs confirmation by Parliament: 26 Geo. 5.
& 1 Edw. 8.
c. cxxx.

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 Agriculture and Fisheries which as amended is set out in the schedule hereto shall be and the same is hereby confirmed and all the provisions thereof shall have full validity and force. Order in
schedule
confirmed.

2. This Act may be cited as the Land Drainage (Surrey County Council (Hogsmill River Improvement)) Provisional Order Confirmation Act 1942. Short title.

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SCHEDULE.

SURREY COUNTY COUNCIL (HOGSMILL RIVER IMPROVEMENT).

Provisional Order under the Surrey County Council Act 1936 empowering the Surrey County Council to execute works for the improvement of the river Hogsmill and other rivers brooks and streams in the county of Surrey and for other purposes.

THE MINISTER OF AGRICULTURE AND FISHERIES in pursuance of the powers given to him by section 27 of the Surrey County Council Act 1936 and of all other powers enabling him in that behalf hereby makes the following Order:—

PART I.

PRELIMINARY.

Short and collective titles.

1.—(1) This Order may be cited as the Surrey County Council (Hogsmill River Improvement) Order 1942.

(2) The Surrey County Council Acts 1925 to 1938 and this Order may be cited together as the Surrey County Council Acts and Order 1925 to 1942.

Commencement of Order.

2. This Order shall come into operation upon the date of the passing of the Act of Parliament confirming it.

Incorporation of Acts.

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

(1) The Lands Clauses Acts with the following exceptions and modification:—

8 & 9 Vict.
c. 18.

(a) Sections 127 to 132 of the Lands Clauses Consolidation Act 1845 are not incorporated with this Order;

(b) The bond required by section 85 of the Lands Clauses Consolidation Act 1845 shall be under the common seal of the Council and shall be sufficient without the addition of the sureties mentioned in that section;

8 & 9 Vict.
c. 20.

(2) The provisions of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of lands near the railway during the construction thereof and with respect to works for the accommodation of lands adjoining the railway:

Provided that for the purposes of this Order in the said incorporated provisions of the Railways Clauses Consolidation

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Act 1845 the expression "the company" means the Council and the expressions "the railway" and "the centre of the railway" mean respectively the several works authorised by section 5 (Power to Council to execute works) of this Order and the centre line of those works.

PART I.
—cont.

4. In this Order unless the context otherwise requires and except as otherwise expressly provided— Definitions.

Words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings ;

"The county" means the administrative county of Surrey ;

"The Council" means the county council of the county ;

"The commencement of this Order" means the date upon which this Order comes into operation ;

"The deposited plans" "the deposited sections" and "the deposited book of reference" mean respectively the plans sections and book of reference deposited in connection with this Order in pursuance of subparagraph (i) of paragraph (a) of subsection (2) of section 27 of the Act of 1936 ;

"The Act of 1919" means the Acquisition of Land (Assessment of Compensation) Act 1919 ; 9 & 10 Geo. 5.
c. 59.

"The Act of 1933" means the Local Government Act 1933 ; 23 & 24 Geo. 5.
c. 51.

"The Act of 1925" means the Surrey County Council Act 1925 ; 15 & 16 Geo. 5.
c. cxv.

"The Act of 1931" means the Surrey County Council Act 1931 ; 21 & 22 Geo. 5.
c. ci.

"The Act of 1936" means the Surrey County Council Act 1936 ; 26 Geo. 5. &
1 Edw. 8.

"County district" means a borough an urban district or a rural district in the county ; c. cxxx.

"The clerk" means the clerk of the Council ;

"Street" includes any highway and any lane footway bridge square court alley or passage whether a thoroughfare or not ;

"The Lands Clauses Acts" means the Lands Clauses Acts as modified by the Act of 1919 ;

"The Minister" means the Minister of Agriculture and Fisheries ;

"The tribunal" means the arbitrator or other authority to whom any question of disputed purchase money or compensation under this Order is referred in pursuance of the Act of 1919.

PART II.

RIVERS AND STREAMS.

5. The Council may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections make and maintain the works in the county hereinafter described together with all necessary works and conveniences connected therewith :— Power to
Council to
execute works.

Work No. 1 The widening regrading deepening and partial diversion in the royal borough of Kingston-upon-Thames and

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- the borough of Malden and Coombe of the river Hogsmill commencing at the junction of the river Hogsmill with the river Thames and terminating at the northern side of the Southern Railway embankment near Berrylands station ;
- Work No. 2 The widening regrading deepening and partial diversion in the borough of Malden and Coombe the borough of Surbiton and the borough of Epsom and Ewell of the river Hogsmill commencing at the termination of Work No. 1 hereinbefore described and terminating at the north side of Tolworth Court Bridge ;
- Work No. 3 The widening regrading deepening and partial diversion in the borough of Surbiton and the borough of Epsom and Ewell of the river Hogsmill (including the construction of a flood relief channel) commencing at the termination of Work No. 2 hereinbefore described and terminating at a point two hundred yards or thereabouts south-east of Lower Mill Ewell ;
- Work No. 4 The widening regrading deepening and partial diversion in the borough of Surbiton and the urban district of Esher of the unnamed tributary of the river Hogsmill which joins that river in the borough of Surbiton at a point 497 yards or thereabouts south of the commencement of Work No. 2 hereinbefore described commencing at the junction of that tributary with the river Hogsmill as widened under the powers of this Order and terminating at the south-eastern corner of the parcel numbered 202 on the 1/2500 Ordnance map (edition of 1932) Surrey sheet XII.12 ;
- Work No. 5 The widening regrading deepening and partial diversion in the borough of Surbiton and the borough of Epsom and Ewell of the unnamed tributary of the river Hogsmill which joins that river on the boundary between the said boroughs at a point 290 yards or thereabouts south-west of the commencement of Work No. 3 hereinbefore described commencing at the junction of that tributary with the river Hogsmill as widened under the powers of this Order and terminating at the northern side of Rushet Lane Chessington ;
- Work No. 6 The widening regrading deepening and partial diversion in the borough of Epsom and Ewell of the unnamed tributary of the river Hogsmill which joins that river in that borough at a point 43 yards or thereabouts south-east of the point at which that river passes under Ruxley Lane commencing at the junction of that tributary with the river Hogsmill as widened under the powers of this Order and terminating at the northern side of Long Grove Road Epsom ;
- Work No. 6A The widening regrading deepening and partial diversion in the borough of Epsom and Ewell of the unnamed stream which joins the last-mentioned tributary in that borough at a point 277 yards or thereabouts measured along the course of that tributary south of the southerly side of

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Chessington Road commencing at the junction of the stream with that tributary as widened under the powers of this Order and terminating at a point 360 yards or thereabouts in a south-westerly direction measured along the course of that stream from the point of commencement ;

Work No. 7 The widening regrading deepening and partial diversion in the borough of Epsom and Ewell of the unnamed tributary of the river Hogsmill which joins that river in that borough near the southernmost corner of the parcel numbered 137 on the 1/2500 Ordnance map (edition of 1933) Surrey sheet XIII.13 commencing at the junction of that tributary with the river Hogsmill as widened under the powers of this Order and terminating at the west side of Clandon Close Stoneleigh ;

Work No. 8 The widening regrading deepening and partial diversion in the borough of Epsom and Ewell of the unnamed tributary of the river Hogsmill which joins that river in that borough at the easternmost corner of the parcel numbered 164 on the 1/2500 Ordnance map (edition of 1933) Surrey sheet XIII.13 commencing at the junction of that tributary with the river Hogsmill as widened under the powers of this Order and terminating at the southern side of Christ Church Road Stamford Green.

6. The Council in executing the works authorised by this Part of this Order may deviate laterally from the lines or situations of those works as shown on the deposited plans to any extent not exceeding the limits of deviation shown on those plans and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding six feet either upwards or downwards.

Power to deviate in construction of works.

7.—(1) Within the limits of deviation shown on the deposited plans the Council in connection with the works authorised by this Part of this Order and for the purposes thereof may—

Subsidiary powers.

(a) Make provide and maintain all necessary and convenient walls embankments piling fences culverts drains weirs sluices and footpaths and all such machinery works and appliances as may be required and deposit materials excavated or dredged in the making and maintenance of the works authorised by this Part of this Order ;

(b) Raise widen lengthen alter and reconstruct the bridges over any river brook or stream widened or altered under the powers of this Part of this Order and the approaches to such bridges and strengthen underpin and deepen the piers arches and other supports and the foundations thereof ;

(c) Raise lower widen deepen enlarge lengthen alter and reconstruct the culverts through which any river brook or stream widened or altered under the powers of this Order flows ;

(d) Stop up and discontinue such portions of the said rivers brooks or streams as will be rendered unnecessary by reason of the diversion thereof under the powers of this Part of this Order

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and fill in the channels of the said portions of rivers brooks or streams ;

- (e) Execute any works for the protection of any adjoining lands or buildings ;
- (f) Remove alter divert or stop up any drain sewer channel or watercourse the Council providing a proper substitute before interrupting the flow of sewage in any drain or sewer or water in any channel or watercourse ; and
- (g) Alter mains pipes wires and other works and apparatus for conveying or transmitting water gas or electricity.

(2) (a) In the exercise of the powers conferred by this section the Council shall cause as little damage and inconvenience to any person as circumstances admit and shall make reasonable compensation for any damage caused to any person by the exercise of such powers.

(b) Any question as to the amount of any such compensation shall in default of agreement be determined by an official arbitrator under the Act of 1919.

(3) Within the limits of deviation shown on the deposited plans the Council may raise sink or otherwise alter the position of any of the steps areas cellars windows pipes or spouts belonging to any house or building and may remove all other obstructions so that the same be done with as little delay or inconvenience as the circumstances of the case will admit.

(4) The Council shall not raise sink or otherwise alter the position of any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General except under and subject to the provisions of the said Act.

41 & 42 Vict.
c. 76.

Power to divert
footpaths.

8. The Council may divert the public footpaths in the county referred to in the next following table in the manner shown upon the deposited plans and may stop up and cause to be discontinued as a footpath so much of each such footpath as will be rendered unnecessary by the new portion of footpath shown on those plans :—

Work No.	Local area.	Number of footpath on plan of work mentioned in column 1.
1	Royal borough of Kingston-upon-Thames.	69
5	Borough of Surbiton ...	23A

Power to vary
width of
widenings.

9. Notwithstanding anything contained in this Part of this Order or shown upon the deposited plans or sections the Council may within the limits of deviation shown on the deposited plans make the widenings of rivers brooks or streams authorised by this Part of this Order of such greater or less width than those shown on the deposited plans or sections with reference to those widenings as they may think fit.

Power to stop
up and fill in
parts of river.

10. The Council may stop up and discontinue (in addition to the portions of rivers brooks and streams rendered unnecessary by reason of the diversion thereof under the powers of this Part of this Order and

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without prejudice to any other powers conferred on the Council by this Order) the portion of the river Hogsmill in the borough of Epsom and Ewell and the borough of Surbiton situate between Worcester Park Road and Old Malden Lane on the one hand, and the intended diversion of that portion of the said river comprised in Work No. 2 authorised by this Part of this Order and shown on the deposited plans on the other hand:

PART II.
—cont.

II. If in order to avoid in the execution and maintenance of the works authorised by this Part of this Order injury to the houses and buildings within one hundred feet of those works it shall be necessary to underpin or otherwise strengthen the same the Council at their own costs and charges may and if required by the owners or lessees of any such house or building shall subject as hereinafter provided underpin or otherwise strengthen the same and the following provisions shall have effect:—

Underpinning
of houses
near works.

- (1) At least ten days' notice shall unless in case of emergency be given to the owners lessees and occupiers or by the owners or lessees of the house or building so intended or so required to be underpinned or otherwise strengthened:
- (2) Each such notice if given by the Council shall be served in manner prescribed by this Order and if given by the owners or lessees of the premises to be underpinned or strengthened shall be sent to the Council:
- (3) If any owner lessee or occupier of any such house or building or the Council (as the case may require) shall within seven days after the giving of such notice give a counter notice in writing that he or they as the case may be disputes or dispute the necessity of such underpinning or strengthening the question of the necessity shall be referred to the arbitration of an engineer (in this section referred to as "the referee") to be agreed upon or in the case of difference appointed at the instance of either party by the Minister and the Arbitration Acts 1889 to 1934 shall apply to the reference:
- (4) The referee shall forthwith upon the application of either party proceed to inspect such house or building and determine the matter referred to him and in the event of his deciding that such underpinning or strengthening is necessary he may and if so required by the Council or such owner lessee or occupier shall prescribe the mode in which the same shall be executed and the Council may and shall proceed forthwith so to underpin or strengthen the said house or building:
- (5) The Council shall be liable to compensate the owners lessees and occupiers of every such house or building for any inconvenience loss or damage which may result to them by reason of the exercise of the powers granted by this section:
- (6) If in any case in which any house or building shall have been underpinned or strengthened on the requisition of the Council such underpinning or strengthening shall prove inadequate for

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the support or protection of the house or building against further injury arising from the execution or use of the works of the Council then and in every such case unless such underpinning or strengthening shall have been done in pursuance of and in the mode prescribed by the referee the Council shall make compensation to the owners lessees and occupiers of such house or building for such injury provided the claim for compensation in respect thereof be made by such owners within twelve months and by such lessees or occupiers within six months from the discovery thereof :

(7) Nothing in this section contained nor any dealing with any property in pursuance of this section shall relieve the Council from the liability to compensate under section 68 of the Lands Clauses Consolidation Act 1845 or under any other Act :

(8) Nothing in this section shall repeal or affect the application of section 92 of the Lands Clauses Consolidation Act 1845.

Power to stop
up streets
temporarily.

12.—(1) The Council may for the purposes of and during the execution of the works authorised by this Part of this Order stop up interfere with alter or divert temporarily all or any part of the carriageway or footway of any street or part of a street within the limits of deviation shown on the deposited plans.

(2) The Council shall provide reasonable access for all persons bona fide going to or returning from any premises in any street of which the carriageway or footway is stopped up or interfered with altered or diverted under the powers of this section and for foot passengers and vehicular traffic bona fide going to or from any railway station or depot of any railway company.

(3) Where the Council under the powers of this section stop up temporarily any street or part of a street in which any apparatus of any persons authorised by any Act or Order having the force of an Act to supply gas water or electricity or any public sewer (as defined by the Public Health Act 1936) is situate they shall provide reasonable access for the officers and servants of such persons and of the local authority in whom the sewer is vested for the purpose of enabling them to inspect repair and renew any of such apparatus or any such sewer.

Maintenance
of works by
Council.

13. The works authorised by this Part of this Order shall be maintained by and (subject to the provisions of section 29 (Contributions by certain authorities) of this Order) at the expense of the Council.

Agreements
with owners of
land and others
for execution
of works.

14. The Council may enter into and carry into effect agreements or arrangements with the owners of or other persons interested in any land in or through which any of the works authorised by this Part of this Order are to be constructed or abutting on such works or the site thereof for or with respect to the execution of works by such owners or persons and the payment of the cost of so doing.

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15. If the works authorised by this Part of this Order are not completed on or before the date of expiry of five years from the expiry of the Emergency Powers (Defence) Act 1939 then as from that date the powers of the Council under this Part of this Order for the execution of such works shall cease except so far as the same are respectively then completed.

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Period for completion of works.
2 & 3 Geo. 6.
c. 62.

16.—(1) The Council may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as may be required for the purposes of the works authorised by this Part of this Order or for providing space for the erection of houses and buildings adjoining or near to such works or for the purposes of recoupment reinstatement or exchange or for other purposes of this Part of this Order.

Power to take lands for works &c.

(2) The powers of the Council for the purchase of lands by agreement shall be deemed to extend to and to authorise the purchase by the Council by agreement of any other lands which they may think it desirable to purchase in order to provide substituted sites or facilities for any persons whose lands may be required for the purposes of or in connection with the works authorised by this Part of this Order.

17. Notwithstanding anything contained in this Order or shown on the deposited plans the quantities of the several public open spaces specified in the second column of the following table which may be taken or used by the Council under the powers of this Order shall not exceed the quantities specified in the fifth column of the said table:—

As to open spaces &c.

Work No.	Name of public open space.	Numbers on plan of work mentioned in Col. 1.	Borough in which public open space is situate.	Area to be taken or used.		
				A.	R.	P.
2	Hogsmill Valley Open Space.	1	Borough of Surbiton	2	2	27
		14	Borough of Malden and Coombe.	0	2	35
2	Hogsmill River Open Space.	15 17 19 23 26 2A	Borough of Malden and Coombe.	3	0	33
4	Raeburn Avenue Open Space.	1 20 26	Borough of Surbiton	0	0	9
			Borough of Surbiton	2	0	4
4	Alexandra Recreation Ground.	62	Borough of Surbiton	0	1	33
4	King Edward VII Recreation Ground.	327	Borough of Surbiton	0	0	2
5	Bonesgate Open Space	6 10	Borough of Surbiton	0	3	0
7	Ewell Court Recreation Ground.	1	Borough of Epsom and Ewell.	0	0	37
8	Fitznell Estate Open Space.	1 3	Borough of Epsom and Ewell.	1	1	27

18. The Council may for the purposes of the works authorised by this Part of this Order enter upon and use so much of the beds and banks of the rivers brooks and streams referred to in section 5 (Power to Council to execute works) of this Order as is within the limits of

Power to use bed and banks of rivers brooks and streams.

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deviation of any of the said works shown on the deposited plans and as may be required for those purposes and they may also for the purposes of executing and placing temporary works and conveniences in connection with such works occupy and use temporarily so much of such beds and banks within the said limits as may be required for those purposes or any of them.

Power to
acquire ease-
ments only.

19.—(1) The Council in lieu of acquiring any lands for the purposes of so much of the works authorised by this Part of this Order as will be constructed underground may acquire such easements and rights in such lands as they may require for the purpose of constructing inspecting maintaining cleaning repairing renewing or enlarging those works and may give notice to treat in respect of such easements and rights and may in such notice describe the nature thereof and the provisions of the Lands Clauses Acts shall apply to such easements and rights as fully as if they were lands within the meaning of such Acts.

(2) As regards any lands used by the Council for the purposes of those works where any part of those works is constructed underground the Council shall not (unless they give notice to treat for those lands and not merely for easements therein) be required or entitled to fence off or sever those lands from the adjoining lands but the owners or occupiers for the time being shall at all times after the completion of the works have the same rights of passing over those lands for all purposes of or connected with the use or enjoyment of the adjoining lands as if those lands had not been used by the Council.

(3) Except as to land forming part of a street nothing in this section shall authorise the Council to acquire by compulsion any easement in any case in which the owner in his particulars of claim shall require the Council to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only and (except as aforesaid) every notice to treat for the acquisition of an easement shall be endorsed with notice of this subsection.

Power to
acquire lands
by agreement.

20. The powers of the Council under section 157 of the Act of 1933 shall extend to the purposes of this Order.

Correction
of errors
in deposited
plans and book
of reference.

21. If there is any omission misstatement or wrong description of any lands or of the owners lessees or occupiers of any lands shown on the deposited plans or specified in the deposited book of reference the Council after giving ten days' notice to the owners lessees and occupiers of the land in question may apply to two justices having jurisdiction in the place in which the lands are situate for the correction thereof and if it appears to the justices that the omission or misstatement or wrong description arose from mistake they shall certify the same accordingly and they shall in their certificate state the particulars of the omission and in what respect any such matter is misstated or wrongly described and such certificate or a copy thereof shall be deposited with the clerk and a duplicate thereof shall also be deposited with the clerk of the council for the county district in which the lands are situate and such certificate or copy and duplicate respectively shall be kept by such clerks respectively with the other documents to which the same

relate and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to such certificate and it shall be lawful for the Council to take the lands and execute the works in accordance with such certificate.

PART II.
—cont.

22. In determining the amount of compensation or purchase money to be paid by the Council in respect of the acquisition under this Part of this Order of any part of the lands of any person the enhancement in value of the adjoining lands of such person not so acquired or of any other lands of such person which are contiguous with such adjoining lands arising out of the execution of the works authorised by this Part of this Order or any of them or arising through such adjoining lands becoming lands fronting on any such works shall be fairly estimated and shall be set off against the said compensation or purchase money.

Benefits to be set off against compensation.

23. The Council may enter into and carry into effect agreements with any person being the owner of or interested in any lands houses or property abutting on any portion of the works authorised by this Part of this Order or of or in any lands which the Council may acquire under the powers of this Part of this Order with respect to the sale by the Council to such person of any lands or property for such consideration as may be agreed upon between the Council and such person and the Council may accept as satisfaction of the whole or any part of such consideration the grant by such person of any lands or property required by the Council for the purposes of this Part of this Order.

Power to Council to make agreements with owners of property &c.

24. For the purpose of determining any question of disputed compensation payable in respect of lands taken under the powers of this Part of this Order the following provisions shall apply and have effect :—

Compensation in case of recently created interest.

(1) The tribunal shall not take into account any building erected or any improvement or alteration made or any interest in land created after the first day of December nineteen hundred and thirty-seven and before the commencement of this Order if in the opinion of the tribunal the erection of the building or the making of the improvement or alteration or the creation of the interest in respect of which the claim is made was not reasonably necessary and was carried out with a view to obtaining or increasing compensation under this Order :

(2) Subject as is hereinafter in this section provided the tribunal shall not take into account—

(a) any building erected after the commencement of this Order or any improvement or alteration of any premises (other than any improvement or alteration reasonably necessary for properly maintaining such premises) made after that date which in the opinion of the tribunal materially enhances the value of such premises ; or

(b) any interest in land greater than that of a quarterly tenant created after the commencement of this Order :

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(3) If at any time after the commencement of this Order and before the expiration of the period limited by this Part of this Order for the compulsory purchase of lands any person, being the owner of or having any estate or interest in any premises which are liable to be acquired compulsorily under the powers of this Part of this Order gives notice in writing to the Council of his intention to erect any building upon or to make any improvement or alteration of or to create any such new interest as aforesaid in those premises (such intended building improvement alteration or new interest being specifically described in the notice) and the Council do not within one month after receiving any such notice serve upon such person notice to sell and convey or release his estate or interest in the said premises but serve such notice at any time after the expiration of the said period of one month—

(a) paragraph (2) of this section shall not apply with respect to the building improvement alteration or new interest described as aforesaid ; and

(b) paragraph (1) of this section shall apply with respect to the said building improvement alteration or new interest as if the same had been erected made or created after the said first day of December nineteen hundred and thirty-seven and before the commencement of this Order :

(4) The Council shall forthwith after the commencement of this Order send by post or deliver a copy of this section to all persons named in the deposited book of reference having an interest greater than that of a yearly tenant in any lands which are liable to be acquired compulsorily under the powers of this Part of this Order.

Limit of time
for compulsory
purchase of
lands.

25. The powers of the Council for the compulsory purchase of lands under the powers of this Part of this Order shall cease on the date of the expiry of five years from the expiry of the Emergency Powers (Defence) Act 1939.

Further powers
of entry.

26. At any time after notice to treat has been served for any lands which the Council are by this Order authorised to purchase compulsorily the Council may after giving to the owner and occupier of the lands not less than fourteen days' notice enter on and take possession of the lands or such part thereof as is specified in the notice without previous consent or compliance with sections 84 to 90 of the Lands Clauses Consolidation Act 1845 but subject to the payment of the like compensation for the lands of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

Incorporation
of provisions
of Act of 1931
relating to
lands.

27. The sections hereinafter mentioned of the Act of 1931 shall (subject to the provisions of any scheme for the time being in force under section 133 (Consolidated loans fund) of that Act or section 116 (Amendment and revocation of schemes under section 133 of Act of 1931) of the Act of 1936) so far as applicable extend and apply with

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reference to the Council to and with respect to any lands authorised to be acquired under this Part of this Order as if they were re-enacted in this Part of this Order with the substitution of references to the Council for references to the undertakers and with any other necessary modification :—

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- Section 8 (Persons under disability may grant easements &c.) ;
- Section 9 (Retention and disposal of lands) ;
- Section 10 (Proceeds of sale of surplus lands) ;
- Section 116 (Undertakers may enter upon property for survey and valuation) ;
- Section 117 (Owners may be required to sell parts only of certain premises) ;
- Section 119 (Extinction of private rights of way) ;
- Section 122 (Power to develop lands &c.) :

Provided that in the application of the said section 117 references to the properties described in the schedule to this Order shall be substituted for references to the properties described in the Second Schedule to the Act of 1931.

28. As from the date on which the intended diversion referred to in section 10 (Power to stop up and fill in parts of river) of this Order is completed all water rights (if any) which exist immediately before that date in connection with the mill in the borough of Epsom and Ewell known as Wilks Mill shall be extinguished.

Extinguishment
of water rights.

29.—(1) The mayor aldermen and burgesses of each of the boroughs of Epsom and Ewell Kingston-upon-Thames Malden and Coombe and Surbiton and the urban district councils of Esher and Leatherhead (in this section collectively referred to as "the local authorities") may and shall contribute an annual sum towards the expenses incurred by the Council in the execution of the works authorised by this Part of this Order and in the purchase of lands therefor (in this section referred to as "the said expenses").

Contributions
by certain
authorities.

(2) For the purposes of subsections (3) (4) (5) and (6) of this section the appropriate proportion to be contributed by each of the local authorities shall be ascertained by dividing the amount in respect of which such proportion falls to be ascertained in the ratio which the total of the rateable values of hereditaments situate both within the area of that local authority and within the drainage area of the rivers brooks and streams referred to in section 5 (Power to Council to execute works) of this Order bore on the first day of April next before the commencement by the Council of the works authorised by this Part of this Order to the total of the rateable values of all hereditaments within the said drainage area :

Provided that—

- (a) If any hereditament is situate partly within and partly without the said drainage area the part of the hereditament which is situate therein shall not be deemed to be a hereditament unless it is the subject of a separate assessment in the valuation list for the time being in force ; and

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(b) The part of the borough of Epsom and Ewell coloured pink on the map signed in quadruplicate by Dudley Auckland on behalf of the Council and by Philip Edward Whiteoak-Cooper on behalf of the mayor aldermen and burgesses of the said borough and deposited as to one copy in the Parliament Office of the House of Lords as to another copy in the Committee and Private Bill Office of the House of Commons as to another copy at the Ministry of Agriculture and Fisheries and as to another copy at the County Hall Kingston-upon-Thames shall be deemed not to be within the said drainage area ; and

(c) If by reason of paragraph (b) of subsection (5) of this section any of the local authorities is freed and discharged from any obligation to contribute under subsection (1) of this section the hereditaments situate within the area of that local authority shall in ascertaining the appropriate proportion for the purposes of subsections (3) and (4) of this section in their application to any other of the local authorities be deemed not to be within the said drainage area.

(3) In respect of each year up to the end of the year in which the works authorised by this Part of this Order are completed the sum to be contributed by each of the local authorities under subsection (1) of this section shall be the appropriate proportion of an amount equal to the total of—

(i) any sums paid in the year of account by the Council by way of interest on ; and

(ii) any sums set aside in the year of account by the Council towards the repayment of ;

so much of any moneys borrowed by the Council for the purpose of defraying the said expenses as is equivalent to the difference between one-half of the portion of the said expenses up to the end of the year of account and any sums already paid by the local authorities or any of them pursuant to subsection (5) of this section and shall be payable on demand.

(4) In respect of each year after the year in which the works authorised by this Part of this Order are completed the sum to be contributed by each of the local authorities under subsection (1) of this section shall be calculated in manner following :—

(a) There shall be deducted from the said expenses any contributions (not being contributions or payments under this section) received by the Council towards those expenses ;

(b) There shall be added to the sum ascertained in accordance with paragraph (a) of this subsection—

(i) the sum of one thousand pounds being the cost of certain works of improvement of the river Hogsmill carried out prior to the commencement of this Order by the mayor aldermen and burgesses of the royal borough of Kingston-upon-Thames ;

(ii) the sum of four hundred pounds being the cost of certain works of improvement of a tributary of the river

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Hogsmill carried out prior to the commencement of this Order by the mayor aldermen and burgesses of the borough of Surbiton or their predecessors the Surbiton urban district council ;

(iii) the sum of three hundred pounds being the cost of certain works of improvement of a tributary of the river Hogsmill carried out prior to the commencement of this Order by the mayor aldermen and burgesses of the borough of Malden and Coombe or their predecessors the Maldens and Coombe urban district council ;

(c) The sum to be contributed by each of the local authorities shall be the appropriate proportion of an amount equal to the total of—

(i) any sums paid in the year of account by the Council by way of interest on ; and

(ii) any sums set aside in the year of account by the Council towards the repayment of ;

so much of any moneys borrowed by the Council for the purpose of defraying the said expenses as is equivalent to the difference between one-half of the sum ascertained in accordance with paragraph (b) of this subsection and the total of any sums paid or payable by the local authorities or any of them pursuant to subsection (5) of this section and shall be payable on demand :

Provided that the sums to be contributed by the mayor aldermen and burgesses of the royal borough of Kingston-upon-Thames the borough of Surbiton and the borough of Malden and Coombe as so ascertained shall be reduced by amounts equal to the total of the sums so paid and set aside by the Council in respect of one thousand pounds four hundred pounds and three hundred pounds respectively.

(5) (a) The local authorities or any of them may if they think fit elect to pay to the Council the appropriate proportion of one-half of the sum ascertained in accordance with paragraph (b) of subsection (4) of this section and any local authority so electing shall on demand—

(i) make to the Council interim payments on account in proportion to the ratio of the portion of the said expenses incurred by the Council at the date of demand to the estimated total of the said expenses ; and

(ii) make to the Council such final payment as may be necessary after taking into account any sums previously paid under the last preceding subparagraph to discharge their liabilities under this subsection :

Provided that if the mayor aldermen and burgesses of the royal borough of Kingston-upon-Thames the borough of Surbiton or the borough of Malden and Coombe so elect as aforesaid the total sums which if it were not for this proviso would be payable by them under this subsection shall be reduced by one thousand pounds four hundred pounds and three hundred pounds respectively.

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(b) Any of the local authorities exercising the powers conferred by this subsection shall be freed and discharged from any obligation to contribute under subsection (1) of this section.

(6) (a) The local authorities may and shall contribute towards the expenses incurred by the Council in any year in maintaining the works authorised by this Part of this Order.

(b) The sum to be contributed by each of the local authorities under this subsection shall be the appropriate proportion of an amount equal to one-half of those expenses and shall be payable on demand.

(7) In this section the expression "year" means a period of twelve months ending on the thirty-first day of March.

Clattern Bridge.

30. If the Council under the powers of this Order desire to alter or interfere in any manner with the ancient part of the bridge over the Hogsmill River in the royal borough of Kingston-upon-Thames and known as Clattern Bridge the Council shall take down that part of that bridge and re-erect it to the approval of the Minister of Works and Buildings and on a site to be approved by that Minister.

Notice of works to Commissioner of Police.

31. Before breaking up or otherwise interfering in connection with the execution of any works under the powers of this Part of this Order with any street situate in the Metropolitan Police Area the Council shall (except in case of emergency) give seven days' notice in writing to the Commissioner of Police of the Metropolis and make such arrangements with the said Commissioner as may be reasonably necessary so as to cause as little interference as may be reasonably practicable with the traffic in the street during the execution of such works.

For protection of certain owners.

32.—(1) In this section the expression "the signed drawings" means the drawings of the portions of the works authorised by section 5 (Power to Council to execute works) of this Order which are referred to in subsections (3) and (4) of this section as shown on three sheets signed in quadruplicate by Colonel the Right Honourable Douglas Clifton Brown the Chairman of the Committee of the House of Commons to whom the Bill confirming this Order was referred and marked for purposes of identification as drawings Nos. 307/A, 316/A and 383 and deposited as follows:—

- One copy in the Parliament Office of the House of Lords;
- Another copy in the Committee and Private Bill Office of the House of Commons;
- Another copy at the Ministry of Agriculture and Fisheries; and
- Another copy at the County Hall Kingston-upon-Thames.

(2) Notwithstanding anything in this Order or shown on the deposited plans the several portions of the works authorised by the said section 5 of this Order which are defined in subsection (3) of this section shall not (except with the consent of the Minister) be constructed otherwise than in the respective lines or situations coloured green on the signed drawings and according to the respective notes stated on the signed drawings.

(3) The portions of the works authorised by section 5 of this Order to which subsection (2) of this section applies are the portions of the works mentioned in column 1 of the following table which will be situate in the areas mentioned in column 2 of that table and in the

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properties in those areas which have on the signed drawings the respective numbers mentioned in the third column of that table :—

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1.	2.	3.
Work No.	Area.	Numbers of properties affected by alterations.
1	Royal borough of Kingston-upon-Thames.	74 75 76 77 78 80 81 82 83 84 85 86 87 88 91 93.
2	Borough of Malden and Coombe.	14 20 21 22.
2	Borough of Surbiton ...	1.
2	Borough of Epsom and Ewell	7 8.
2	Borough of Surbiton ...	10.
4	Borough of Surbiton ...	23 25 to 54 (both inclusive) 60 61.
4	Borough of Surbiton ...	323 to 328 (both inclusive).
6	Urban district of Esher ...	2.
6	Borough of Epsom and Ewell	3 6 8 9 10.
4	Borough of Surbiton ...	77 128 129 132 138 to 146 (both inclusive) 214 to 221 (both inclusive) 221A 222 to 236 (both inclusive) 239 246 to 276 (both inclusive) 278 279 282 to 287 (both inclusive) 293 294 296 297 301 302.
8	Borough of Epsom and Ewell	82 to 115 (both inclusive) 117 to 178 (both inclusive) 180 to 199 (both inclusive).

(4) Notwithstanding anything in this Order or shown on the deposited sections the portion of Work No. 3 authorised by section 5 of this Order which will be situate in the property numbered on drawing No. 305/A (included in the signed drawing No. 383) 23 in the borough of Epsom and Ewell shall not (except with the consent of the Minister) be constructed otherwise than at the levels shown by the section forming part of drawing No. 305/A and according to the notes stated on that section.

33. The following provisions shall unless otherwise agreed have effect for the protection of the London County Council (hereinafter in this section called "the London Council") :—

For protection
of London
County Council.

(1) In and for the purposes of this section—

"lands of the London Council" means any lands railway building or other property of the London Council ;

"the said works" means any works by this Order authorised which will or may pass under through or within two hundred yards of any lands of the London Council :

(2) The Council shall not make such part of the said works as consists of the widening regrading or deepening of any river or stream of any greater width and depth than shall be reasonably approved by the London Council :

(3) The Council shall not without the consent of the London Council purchase or take any lands of the London Council under the provisions of this Order but the Council may acquire and the London Council shall if so required by the

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Council grant to them such easements and rights in over or affecting the lands of the London Council as the Council may require for the purposes of the said works and the provisions of section 19 (Power to acquire easements only) of this Order shall apply to the acquisition of such easements or rights :

- (4) Except for enabling access to be obtained along a route or routes to be reasonably approved by the London Council in order to construct renew repair or maintain the works by this Order authorised the provisions of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of lands as incorporated with this Order shall not apply to any lands of the London Council :
- (5) Not less than twenty-eight days before commencing to construct the said works the Council shall deliver to the London Council plans sections and specifications of the said works and shall not commence the same until such plans sections and specifications have been approved by the London Council or in case of any difference arising between the Council and the London Council until the difference shall have been settled by arbitration :

Provided that such approval shall not be unreasonably withheld and provided also that if within twenty-eight days from such delivery the London Council do not signify their approval or disapproval of such plans sections and specifications they shall be deemed to have approved the same.

The said works shall be executed in accordance with the plans sections and specifications approved or deemed to have been approved by the London Council or settled by arbitration and (subject thereto) to the reasonable satisfaction of the London Council and at the costs charges and expenses of the Council :

- (6) The Council shall at all times maintain the said works in sufficient repair and good order and condition to the reasonable satisfaction of the London Council and if and whenever the Council fail so to do the London Council may (after giving not less than seven days' notice except in cases of emergency when they shall give the longest practicable notice) make and do in and upon as well the works and lands of the Council as the lands of the London Council all such works and things as the London Council may think requisite and the reasonable expenses of the London Council in that behalf shall be repaid to the London Council by the Council :
- (7) The London Council shall at all reasonable times during the construction renewal or repair of the said works have free access thereto and every reasonable facility shall be afforded them for the inspection thereof and every reasonable notice which the London Council may at any time give touching any defect or want of repair shall as soon as possible be complied with by the Council :

- (8) If by or in consequence of the execution of the said works any lands of the London Council are injured or damaged such injury or damage shall be forthwith made good by the Council or in the event of their failing so to do the London Council may (after giving not less than seven days' notice except in cases of emergency when they shall give the longest practicable notice) make good the same and recover the reasonable cost thereof from the Council :
- (9) During the construction renewal or repair of the said works the Council shall to the reasonable satisfaction of the London Council provide and maintain means of access for persons vehicles and cattle to or from any portions of the lands of the London Council which by reason of such construction renewal or repair may be temporarily severed from other portions of the lands of the London Council :
- (10) During the construction renewal or repair of the said works the Council shall (subject to the preceding paragraph of this section) to the reasonable satisfaction of the London Council temporarily fence off the said works and take such other steps as the London Council may reasonably require for the purpose of preventing any accident and obviating any danger to cattle or to persons employed residing or accommodated at or resorting to the Horton Mental Hospital or the Long Grove Mental Hospital of the London Council and the Council shall immediately after the completion of such construction renewal or repair as the case may be remove any fencing provided in accordance with the provisions of this paragraph and make good the ground to the reasonable satisfaction of the London Council :
- (11) The Council shall at their own expense and to the satisfaction of the London Council—
- (i) fill in and turf over so much of any river or stream whether within or without the limits of deviation situate in any lands of the London Council as may be rendered unnecessary by reason of the diversion thereof under the powers of this Order : and
- (ii) carry out all necessary ditching piping and fencing erect gates and bridges provide watering places for cattle and do any other works which will be rendered necessary by or in consequence of the construction of the said works for the proper protection or management of the lands of the London Council :
- (12) All reasonable fees costs charges and expenses payable or incurred by the London Council in respect of any of the matters in the foregoing provisions of this section shall be borne and on demand paid by the Council and during the construction renewal or repair of the said works the Council shall bear and on demand pay to the London Council the expense of the employment by them of a sufficient number of inspectors or watchmen to be appointed by them for watching the lands of the London Council and for preventing as far as may be all

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interference therewith obstruction thereof and danger and accident thereto arising from any of the operations of the Council or from acts or defaults of the contractors of the Council or of any person in their employ or otherwise :

- (13) The Council shall be responsible for and make good to the London Council all costs losses damages and expenses which may be occasioned to the London Council or to the land of the London Council by reason of the construction of the said works or of any act or omission in relation thereto of the Council or of any person in their employ or of their contractors or others and the Council shall effectually indemnify and hold harmless the London Council from all claims and demands upon or against them by reason of such construction and of any such act or omission :
- (14) The approval by the London Council of any plans or the superintendence by the London Council of any work or the giving by the London Council of any consent under the provisions of this section shall not exonerate the Council from any liability or affect any claim for damages under this section or otherwise :
- (15) Any difference which may arise between the London Council and the Council under this section (other than a difference as to the construction of this section) shall be referred to or determined by arbitration by a civil engineer to be appointed as arbitrator (failing agreement between the parties) by the President of the Institution of Civil Engineers and the provisions of the Arbitration Acts 1889 to 1934 shall apply to any such reference.

For protection
of Metropolitan
Water Board.

34. The following provisions for the protection of the Metropolitan Water Board (hereinafter referred to as "the board") shall unless otherwise agreed in writing between the Council and the board apply and have effect :—

(1) In this section—

the expression "apparatus" includes mains pipes valves syphons hydrants and other works and apparatus :

the expression "the tributaries" means the unnamed tributaries of the river Hogsmill respectively referred to in the descriptions of Works Nos. 4 and 5 by this Part of this Order authorised ;

the expression "the engineer" means the chief engineer of the board or any person duly authorised to discharge temporarily the duties of the said chief engineer :

(2) Where in connection with the execution of Works Nos. 1 2 4 and 5 by this Part of this Order authorised or any of those works the Council—

(a) reconstruct any existing bridge over the river Hogsmill or over either of the tributaries in or upon which any main of the board is situate or raise the level of widen or otherwise alter any such bridge ; or

(b) lengthen any such bridge without any such reconstruction or alteration as aforesaid ; or

(c) raise lower widen deepen enlarge lengthen alter or reconstruct any existing culvert through which the river Hogsmill or either of the tributaries flows under any road in or under which any main of the board is situate ; or

(d) construct any new culvert for carrying the river Hogsmill or either of the tributaries under any road in or under which any main of the board is situate ;

and any such operation will render reasonably necessary the movement of or interference with any mains of the board the Council shall at their own expense and to the reasonable satisfaction of the board provide in the footway or footways of the reconstructed or altered bridge or of the added portion of the lengthened bridge or of the road over the existing or new culvert (as the case may be) and (in the case of any such bridge) in the footway or footways of such parts of the approaches thereto as are interfered with or broken up in connection with the reconstruction alteration or lengthening of the bridge accommodation and support of such a nature and in such position as the engineer may reasonably require for mains of the board having respectively carrying capacities equal to the carrying capacity of the several existing mains and for the following additional mains :—

(i) in the case of Tolworth Court bridge in the boroughs of Epsom and Surbiton a main having an internal diameter of eight inches ; and

(ii) in the case of the bridge in the borough of Surbiton and the urban district of Esher carrying the Kingston bye-pass road over the unnamed tributary referred to in the description of the said Work No. 4 a main having an internal diameter of twelve inches :

- (3) The Council shall repay to the board the cost reasonably incurred by the board in providing and laying in the accommodation to be provided by the Council pursuant to subsection (2) of this section and in those parts in or under which any main of the board is situate of any road of which the subsoil is disturbed in connection with the alteration reconstruction or lengthening of any such bridge or the construction raising lowering widening deepening enlarging lengthening alteration or reconstruction of any such culvert as aforesaid and for such distance (not exceeding ten feet) as shall be reasonably necessary in each particular case at each end of the said parts steel pipes externally protected in a suitable manner as shown on plans to be reasonably approved by the Council having the respective carrying capacities of the several existing mains :
- (4) (a) The board shall be at liberty to make all such alterations to any existing apparatus of the board provided for discharging water into the river Hogsmill or either of the

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tributaries from any other apparatus of the board as may be reasonably necessary by reason of the exercise by the Council of any of the powers of this Part of this Order or to lay down new or substituted apparatus for the purpose of discharging such water into the river Hogsmill or either of the tributaries as respectively widened or altered under the said powers and the expense reasonably incurred by the board in so doing shall be repaid to them by the Council ;

(b) Before commencing to make any such alterations or to lay down any such new or substituted apparatus as are referred to in paragraph (a) of this subsection the board shall give notice of their proposal to the Council accompanied by a plan section and particulars of the works proposed describing the intended manner of executing the same and showing the whole of the works proposed to be executed in connection therewith and by an estimate of the cost of the proposed works and the board shall not commence the works until such plan section particulars and estimate shall have been approved by the Council or until any matter in difference shall have been determined by arbitration as hereinafter provided ;

(5) In addition to any plan section and particulars which may be delivered by the Council to the board pursuant to section 38 (For protection of statutory undertakers) of this Order the Council not less than twenty-eight days before commencing any work under the powers of this Part of this Order over or under or within a distance of thirty feet measured horizontally from any apparatus of the board situate elsewhere than in or under any street or road shall deliver to the board a plan section and particulars of such work describing the proposed manner of executing the same and showing the whole of the works proposed to be executed in connection therewith :

(6) (a) At any time within twenty-eight days from the date of the receipt of any such plan section and particulars as are referred to in subsection (5) of this section or in section 38 (For protection of statutory undertakers) of this Order the board may by notice in writing to the Council intimate their disapproval of the proposed manner of executing the work to which the plan section and particulars relate (hereinafter referred to as a "specified work") so far as it will or may involve interference with or endanger any apparatus of the board or make any reasonable requirement with respect to such plan section and particulars and in particular they may require that the Council shall—

(i) provide and lay over or under the bed of the river Hogsmill in such position and at such depth as the board may reasonably require steel pipes externally protected in a suitable manner of the same respective internal diameters as and in substitution for any existing mains of the board situate over or under any part of that river

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affected by the exercise of the powers of this Order and make proper connections between such steel pipes and the said existing mains ; and

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(ii) lay down such works and apparatus as may be reasonably specified by the board and remove divert raise sink or otherwise alter the position of and support any such apparatus of the board and substitute temporarily or otherwise other apparatus (including where it may be reasonably necessary so to do steel pipes externally protected in a suitable manner) in such manner as may be reasonably specified by the board and lay or place under any such apparatus of the board cement concrete or other like substance ;

(all of which works and operations are in this section referred to as " protective works ") ;

(b) If the board shall not within the said period of twenty-eight days give any such notice in writing to the Council as aforesaid they shall be deemed to have approved the plan section and particulars as submitted to them and if within that period they give such notice the matters in difference shall unless previously settled by agreement between the Council and the board be determined by arbitration as hereinafter provided :

- (7) The Council shall not execute any specified work or any protective works except in strict accordance with the said plan section and particulars as approved or deemed to have been approved by the board or settled by arbitration :
- (8) The Council shall not in the exercise of any of the powers of this Part of this Order remove alter divert or stop up or interfere with any apparatus of the board or do anything which may impede the passage of water into or through such apparatus or interfere with the access thereto—
- (a) without the consent in writing of the board which shall not be unreasonably withheld ; nor
- (b) in any manner other than such as shall be reasonably approved by the board ; nor
- (c) until such good and sufficient apparatus as the board may reasonably consider necessary for continuing the supply of water shall have been provided and laid down and made ready for use by the board :
- (9) Any specified work and all protective works and all works to be executed or provided by the Council under this section or any other provision of this Order in connection with any apparatus of the board shall except as hereinafter provided be so executed or provided by the Council to the reasonable satisfaction and under the superintendence (if after reasonable notice in writing from the Council such superintendence be given) of the engineer and the reasonable costs charges and expenses of such superintendence shall on demand be paid by the Council to the board :

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- (10) Not less than twenty-two days before commencing the execution of any specified work in connection with which it shall have been agreed between the Council and the board or settled by arbitration that any protective works shall be made executed or done the Council shall give to the board notice in writing of their intention to commence such execution and shall state in such notice the place and time at which they propose so to commence and if within fourteen days after the receipt of such notice the board give notice in writing to the Council of their intention so to do they may themselves make execute or do any such protective works as aforesaid and in any such case the board shall commence such protective works as soon as reasonably practicable after being requested so to do by the Council and shall execute and complete the same with all reasonable dispatch. The Council shall repay to the board the expense reasonably incurred by the board in making executing or doing any protective works under the provision of this subsection:
- (11) If in the exercise by the Council of any of the powers of this Part of this Order before the completion of the works authorised by this Part of this Order any damage to any apparatus or property of the board or any interruption in the supply of water by the board shall be caused the Council shall bear and pay to the board the cost reasonably incurred by the board in making good such damage and shall make full compensation to the board for any loss sustained by them by reason of such damage or interruption of supply and shall indemnify the board against all claims demands proceedings costs damages and expenses which may be made or taken against the board or recovered from or incurred by the board by reason or in consequence of any such damage or interruption:
- (12) The Council shall not execute or do any work which may involve any interference with the continuous supply or transmission of water by the board from or by means of any main or pipe (other than a service main or pipe) during the months of May June July August and September in any year:
- (13) If any loss of water shall be sustained by the board by reason of any act or omission of the Council or of any of their contractors agents workmen or servants or any person in the employ of them or any of them in the exercise by the Council of any of the powers of this Part of this Order the Council shall pay to the board the value of any water so lost as aforesaid:
- (14) The reasonable expenses of all repairs or renewals of any apparatus of the board which may at any time after the completion of the works authorised by this Part of this Order be rendered necessary by reason of—
- (a) any act omission or default in connection with such works of the Council or their contractors or agents or the

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workmen or servants or any person in the employ of them or any of them ; or

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(b) any failure of the works of the Council ; or

(c) any subsidence resulting from such works within a period of twelve months after the completion thereof ;

shall be borne by the Council and be paid by them on demand to the board :

- (15) Whenever by reason of the exercise by the Council of any of the powers of this Order any apparatus of the board (other than apparatus for which new apparatus has been substituted by or at the expense of the Council) shall be rendered derelict useless or unnecessary the Council shall forthwith pay to the board such a sum as may be agreed between the Council and the board or as failing agreement shall be determined by arbitration under this section to be the value of such apparatus and in addition to such payment the Council shall pay to the board the reasonable cost of any works or things rendered necessary by reason of any such apparatus being rendered derelict useless or unnecessary by the exercise by the Council of the powers of this Order :
- (16) Any existing apparatus of the board which is replaced by other apparatus or for the value of which a sum is paid by the Council to the board under the provisions of this section shall so soon as such other apparatus has been provided and laid down and made ready for use by the board or the sum representing the value of the existing apparatus has been paid by the Council to the board as the case may be become the property of the Council who shall be at liberty subject to the provisions of this section to remove and to use or dispose of the same :
- (17) Except as herein otherwise expressly provided the Council shall bear and pay to the board the amount of any expenses reasonably incurred by the board in—
- (a) the diversion relaying alteration or removal of apparatus or the provision and laying of substituted apparatus under or in accordance with the provisions of this section ; or
- (b) the cutting off of any apparatus of the board from any other apparatus and the connecting of any new or substituted apparatus with any existing apparatus of the board rendered necessary by reason of the exercise of the powers of this Part of this Order ; or
- (c) the removal or any alteration of any communication or supply pipes rendered necessary by reason of the exercise of such powers ;

and shall indemnify the board against all claims and demands by the owner of any such supply pipe or by the owners or occupiers of premises supplied by means thereof :

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- (18) The board may where reasonably necessary employ watchmen and inspectors to watch and inspect the execution of any works under the powers of this Part of this Order so far as such works will or may interfere with or affect any apparatus of the board and the reasonable cost of the employment of such watchmen and inspectors shall be borne by the Council and be paid by them upon demand to the board :
- (19) If any difference shall arise between the Council and the board under this section (other than a difference as to the meaning or construction of this section which does not arise in the course of the arbitration) 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 and determination :
- (20) The provisions of this section shall be in addition to and not in substitution for or derogation of any other provisions of this Order or any enactment incorporated therewith which may enure for the benefit or protection of the board Provided that if there is any inconsistency between the provisions of this section and any such other provisions the first mentioned provisions shall prevail.

For protection
of London
Passenger
Transport
Board.

35. Section 47 (For protection of transport board) of the Act of 1936 shall extend and apply to and for the purposes of this Part of this Order as if it were re-enacted in this Part of this Order :

Provided that in the application of the said section—

- (a) the expression " this Act " shall mean this Order ;
- (b) the expression " any work " shall be deemed to include any works executed under the powers of section 7 (Subsidiary powers) of this Order.

For protection
of certain
electricity
undertakers.

36. Nothing in this Part of this Order shall extend to or authorise any interference with any works of the London and Home Counties Joint Electricity Authority or the mayor aldermen and burgesses of the royal borough of Kingston-upon-Thames or the mayor aldermen and burgesses of the borough of Wimbledon to which the provisions of section 15 of the Electric Lighting Act 1882 apply except in accordance with and subject to the provisions of that section and of section 17 of the schedule to the Electric Lighting (Clauses) Act 1899.

For protection
of Wandsworth
and District
Gas Company.

37. For the protection of the Wandsworth and District Gas Company (in this section referred to as " the company ") the following provisions shall unless otherwise agreed in writing between the company and the Council apply and have effect :—

- (1) Not less than twenty-eight days before commencing any of the works by this Order authorised in or affecting any street or

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road in or under which any mains pipes valves or other works or apparatus (all of which are in this section referred to as "apparatus") of the company are situate the Council shall deliver to the company a plan section and particulars of such works describing the proposed manner of executing the same and showing the whole of the works proposed to be executed in connection therewith :

(2) (a) At any time within twenty-eight days from the receipt of such plan section and particulars the company may by notice in writing to the Council intimate their disapproval of the proposed manner of executing such works so far as they will or may involve interference with or endanger the apparatus of the company or make any reasonable requirements with respect to such plan section and particulars ;

(b) The company may if it is reasonably necessary so to do for the protection of the apparatus of the company and if required by the Council shall with all reasonable dispatch—

(i) provide and lay down such works and apparatus as may be reasonably necessary for that purpose ; or

(ii) raise sink or otherwise alter the position of any apparatus of the company and support the same and substitute temporarily or otherwise other apparatus in such manner as may be reasonably necessary and lay or place under any apparatus cement concrete or other protective substance ;

(c) If the company shall not within the said period of twenty-eight days give any such notice in writing to the Council as aforesaid they shall be deemed to have approved the plan section and particulars as submitted and if within that period they give such notice the matters in difference shall (if not agreed between the company and the Council) be settled by arbitration as hereinafter provided :

(3) The Council shall not construct such works as aforesaid except in strict accordance with the said plan section and particulars as so approved or deemed to have been approved by the company or settled by arbitration :

(4) If in the exercise of any of the powers of this Order the Council lower or raise the level of any street or road so as to leave over any apparatus of the company a covering of less than two feet where the existing covering is not less than two feet or less than the existing covering where the same is less than two feet or more than five feet where the existing covering is not more than five feet or more than the existing covering where the same is more than five feet the company may—

(a) relay such apparatus at such depth that the covering over such apparatus will be not less than such minimum covering or more than such maximum covering ; or

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- (b) where the apparatus is situate in the carriageway of such street or road divert the same under the footway of such street or road and lay the same at such depth as to provide the said minimum covering or such less covering as they may think fit :
- (5) The Council shall not in the exercise of any of the powers of this Order remove raise sink or otherwise alter the position of or interfere with any apparatus of the company or do anything which may impede the passage of gas into or through such apparatus or interfere with the access thereto—
- (a) without the consent in writing of the company which shall not be unreasonably withheld ; nor
- (b) in any manner other than shall be reasonably approved by the company ; nor
- (c) until the company shall have provided and laid down and made ready for use (which if done shall be done with all reasonable dispatch) such good and sufficient apparatus (hereinafter referred to as "substituted apparatus") as they may reasonably consider necessary for continuing the supply of gas :
- (6) All works to be executed or provided under this section or under any other provision of this Order in connection with any apparatus of the company shall be so executed or provided to the reasonable satisfaction and at the expense of the Council :
- (7) If in the exercise by the Council of any of the powers of this Order any damage to any apparatus or property of the company or any interruption in the supply of gas by the company shall be caused the Council shall bear and pay to the company the cost reasonably incurred by the company in making good such damage and shall make full compensation to the company for any loss sustained by them by reason of such interruption of supply and shall indemnify the company against all claims demands proceedings costs damages and expenses which may be made or taken against or recovered from or incurred by the company by reason or in consequence of any such damage or interruption :
- (8) If any loss of gas shall be sustained by the company by reason of any act or omission of the Council or of any of their contractors agents workmen or servants or any person in the employ of them or any of them in the exercise by the Council of any of the powers of this Order the Council shall pay to the company the value of any gas so lost as aforesaid :
- (9) The expense of all repairs or renewals of any apparatus of the company which may at any time be rendered necessary by reason or in consequence of any act omission or default of the Council or their contractors or agents or the workmen

or servants or any person in the employ of them or any of them or by or in consequence of any failure of the works of the Council or any subsidence resulting from such works whether during the construction of such works or within the period of twelve months after the completion thereof shall be borne by the Council and paid by them on demand to the company :

(10) The Council shall bear and pay to the company the amount of any expenses reasonably incurred by the company in or in connection with—

(a) the diversion relaying alteration or removal of apparatus or the provision and laying of substituted apparatus under or in accordance with the provisions of this section ; or

(b) the removal or any alteration of any communication pipes rendered necessary by reason or in consequence of the exercise of the powers of this Order ;

and shall indemnify the company against all claims and demands by the owner of any such communication pipe or by the owners or occupiers of premises supplied by means thereof :

(11) The Council shall bear and pay the cost reasonably incurred by the company in the employment of watchmen and inspectors with reference to and during the execution by the Council under this Order of any works affecting or likely to affect any apparatus of the company :

(12) If any difference shall arise between the Council and the company under this section (other than a difference as to the construction or meaning of this section) 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.

38.—(1) For the protection of statutory undertakers the following provisions shall unless otherwise agreed in writing between the Council and the undertakers concerned apply and have effect :—

For protection
of statutory
undertakers.

Not less than twenty-eight days before commencing any of the works authorised by this Part of this Order in or affecting any street or road in or under which any apparatus of the undertakers is situate the Council shall deliver to the undertakers a plan section and particulars of such works describing the proposed manner of executing the same and showing the whole of the works proposed to be executed in connection therewith.

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(2) In this section—

“statutory undertakers” means any persons authorised by any public general or local Act or Order having the force of an Act to carry on any gas electricity or water undertaking;

“apparatus” means and includes electric lines street boxes lamp-posts mains pipes valves or other works or apparatus.

For protection
of Southern
Railway
Company.

39. Section 45 (For protection of Southern Railway Company) of the Act of 1936 shall extend and apply to and for the purposes of this Part of this Order as if it were re-enacted in this Part of this Order:

Provided that in the application of the said section—

(a) the expression “the authorised works” shall mean—

(i) Works 1 2 3 and 7 authorised by this Part of this Order and any works and conveniences connected therewith;

(ii) Any works executed under the powers of section 7 (Subsidiary powers) of this Order;

in so far as any such works may be executed in across or under or will or may in any way affect the railways works and property of the company;

(b) the expression “this Act” shall mean this Order;

(c) the expression “the passing of this Act” shall mean the commencement of this Order.

For protection
of Limpus and
Son Limited.

40. For the protection of the owner (as hereinafter defined) the following provisions shall unless otherwise agreed between the Council and the owner have effect:—

(1) In this section—

“the owner” means Limpus and Son Limited and includes their successors and assigns;

“the specified work” means the portion of Work No. 1 authorised by this Part of this Order which will be situate between the mains of the Metropolitan Water Board numbered on the deposited plans 75 in the royal borough of Kingston-upon-Thames and Villiers Road in that borough;

“the agreed plan” means the plan signed in duplicate by William Percival Robinson on behalf of the Council and by Herbert Stanley Limpus on behalf of the owner of which plan one copy has been deposited at the County Hall Kingston-upon-Thames and the other copy has been retained by the owner:

(2) Notwithstanding anything in this Order or shown on the deposited plans the specified work shall be constructed in the situation shown on the agreed plan and of a width throughout of thirty-seven feet between the walls thereof:

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- (3) The Council shall to the reasonable satisfaction of the owner construct in connection with the specified work—

(a) concrete walls (i) on the north side of the specified work along the whole length thereof and (ii) on the south side of the specified work along the lengths thereof marked with red lines on the agreed plan ;

(b) fences upon and along such lengths of the concrete walls to be constructed under the preceding paragraph (a) as adjoin the lands of the owner which fences shall be composed of iron posts and chain link fencing of not less than three feet and six inches in height ;

(c) a footbridge over the specified work to give access between the lands of the owner on either side of the portion of the specified work which will be constructed through the property numbered on the deposited plans 76 in the royal borough of Kingston-upon-Thames and in a situation to be reasonably approved by the owner which footbridge shall be constructed of reinforced concrete and of a width of six feet and with rails on each side of not less than three feet and six inches in height ; and

(d) two flights of steps in the concrete wall on the north side of the specified work in situations to be reasonably approved by the owner to give access from the properties numbered on the deposited plans 76 and 93 in the said royal borough to the channel of the specified work :

- (4) After the completion of the works mentioned in the preceding paragraph the concrete walls shall be maintained by the Council to the reasonable satisfaction of the owner and the fences footbridge and flights of steps shall be maintained by the owner to the reasonable approval of the Council :

- (5) The owner shall when so required by the Council convey to the Council without payment except of costs all his estate and interest in any land required for the portion of the specified work which will be constructed through the said properties numbered 76 and 93 and shall not make any claim for compensation for such land or any interest therein or for any damage that may be sustained by him by reason of the execution of the specified work and the works to be constructed by the Council pursuant to paragraph (3) and (7) of this section or in respect of any land injuriously affected by the execution of any such works :

- (6) The Council shall not under the powers of this Order acquire any land of the owner other than the land mentioned in the last preceding paragraph :

- (7) As soon as practicable after the completion of the specified work the Council shall—

(a) fill in that portion of the present channel of the Hogsmill River which is coloured green on the agreed plan

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so that the surface thereof will be reasonably level and also be level with the top of the banks thereof as existing at the commencement of this Order after making reasonable allowance for probable settlement; and

(b) construct along the southerly boundary of that part of the said portion of the present channel so coloured green which belongs to the owner a fence of the same height and composition as the height and composition of the fence which exists at the commencement of this Order near the southerly side of the said portion of the present channel and is shown by a black line on the signed plan.

The said fence so to be constructed by the Council shall after its completion be maintained by the owner to the reasonable satisfaction of the Council:

- (8) The owner shall permit the Council at all reasonable times to enter free of charge upon the lands of the owner adjoining the site of the specified work (including the portion of the bed and banks of the Hogsmill River belonging to the owner) for the purpose of constructing the specified work and the works which the Council are required by paragraphs (3) and (7) of this section to construct and also after the construction of the specified work for the purpose of inspecting repairing and maintaining the walls banks and bed of the specified work and of dredging cleansing and keeping free from obstruction the channel of the specified work:
- (9) If by or in consequence of the construction of the specified work or of the works which the Council are required by paragraph (3) of this section to construct any damage or loss be caused to or sustained by the tenant of the said property numbered 93 the Council shall make compensation to the tenant for such damage or loss:
- (10) Any dispute which shall arise between the company and the Council under this section shall be referred to a single arbitrator to be agreed between the parties or failing agreement to be appointed on the application of either party (after notice in writing to the other of them) by the President of the Surveyors' Institute and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to the reference.

PART III.

FINANCE AND MISCELLANEOUS.

Power to borrow.

41.—(1) The Council shall have power in addition and without prejudice to their powers of borrowing under the Act of 1933 from time to time to borrow without the consent of any sanctioning authority for and in connection with the purposes mentioned in the first column of the following table the respective sums mentioned in the second column thereof and they shall pay off all moneys so borrowed within

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such periods as they may determine not exceeding those respectively mentioned in the third column of the said table:—

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—cont.

1.	2.	3.
Purpose.	Amount.	Period for repayment.
(a) The execution of the works authorised by Part II (Rivers and streams) of this Order.	£ 164,780	Thirty years from the date or dates of borrowing.
(b) The purchase of lands under the powers of this Order.	25,000	Thirty years from the date or dates of borrowing.
(c) The payment of the costs charges and expenses referred to in section 49 (Costs of Order) of this Order.	The sum requisite.	Five years from the commencement of this Order.

(2) The provisions of Part IX of the Act of 1933 so far as they are not inconsistent with this Part of this Order or the Act of 1931 or any scheme made under section 133 (Consolidated loans fund) of the Act of 1931 or section 116 (Amendment and revocation of schemes under section 133 of Act of 1931) of the Act of 1936 and for the time being in force shall extend and apply to money borrowed under this section as if it were borrowed under Part IX of the Act of 1933 and the period fixed for the repayment of any money borrowed under this section shall as respects that money be the fixed period for the purpose of the said Part IX.

(3) The powers of the Council of borrowing for the purposes mentioned in the table contained in subsection (1) of this section shall be reduced if and to the extent that any local authority exercise the powers conferred by paragraph (a) of subsection (5) of section 29 (Contributions by certain authorities) of this Order.

42.—(1) The local authorities mentioned in the first column of the following table shall have power in addition and without prejudice to their powers of borrowing under the Act of 1933 from time to time to borrow without the consent of any sanctioning authority for the purpose of making any payment under subsection (5) of section 29 (Contributions by certain authorities) of this Order the respective sums mentioned in the second column of that table and they shall pay off all moneys so borrowed within such periods as they may determine not exceeding thirty years from the date or dates of borrowing:—

Power to local authorities to borrow.

1.	2.
Local authority.	Amount.
The mayor aldermen and burgesses of the borough of Epsom and Ewell.	£ 40,489
The mayor aldermen and burgesses of the royal borough of Kingston-upon-Thames.	5,264
The mayor aldermen and burgesses of the borough of Malden and Coombe.	13,583
The mayor aldermen and burgesses of the borough of Surbiton	35,436

(2) The provisions of Part IX of the Act of 1933 so far as they are not inconsistent with this Part of this Order shall extend and apply

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—*cont.*

to money borrowed under this section as if it were borrowed under Part IX of that Act and the period fixed for the repayment of any money borrowed under this section shall as respects that money be the fixed period for the purpose of the said Part IX.

Borrowing of further money.

43. In the application of sections 195 and 198 of the Act of 1933 to the borrowing for the purposes of this Order by the Council or any of the local authorities mentioned in the last preceding section of this Order of any further money the Minister shall be the sanctioning authority.

Saving for emergency restrictions on borrowing.
3 & 4 Geo. 6.
c. 20.

44. So long as the making of an issue of capital in the United Kingdom without the consent of the Treasury is prohibited by regulations made under the Emergency Powers (Defence) Acts 1939 and 1940 it shall not be lawful without such consent—

- (1) for the Council to exercise the powers of borrowing conferred by this Order except for the purpose mentioned in paragraph (c) of subsection (1) of section 41 (Power to borrow) of this Order; or
- (2) for any of the local authorities mentioned in section 42 (Power to local authorities to borrow) of this Order to exercise the powers of borrowing conferred on such local authority by this Order.

Application of general provisions of Acts of 1925 and 1931.

45.—(1) The following sections of the Act of 1925 and of the Act of 1931 shall extend and apply to and for the purposes of this Order as if they were re-enacted in this Order with any necessary modifications:—

The Act of 1925—

Section 97 (Power to enter into agreements);

Section 101 (Authentication and service of notices &c.);

The Act of 1931—

Section 168 (Powers of Act cumulative).

(2) The said section 101 of the Act of 1925 shall for the purposes of such extension and application as aforesaid have effect as if the word “lessee” were inserted after the word “owner” wherever the last-mentioned word occurs.

Restriction on making works during war.

46. Notwithstanding anything in this Order the Council shall not before the expiry of the Emergency Powers (Defence) Act 1939 commence the execution of any work under the powers of the Order unless they have obtained the consent of the Minister to its execution.

Inquiries by Minister.

47. The Minister may hold such inquiries as he may consider necessary in regard to the exercise of any powers conferred upon him or the giving of consents under this Order and section 290 of the Act of 1933 shall apply accordingly.

Costs of Order.

48. All costs charges and expenses of and incidental to the preparing applying for obtaining and confirming of this Order or otherwise incurred in relation thereto as taxed by the taxing officer of one of the Houses of Parliament shall be paid by the Council out of the county fund or out of moneys to be borrowed under this Order and shall for the purposes of section 29 (Contributions by certain authorities) of this Order be deemed to form part of the expenses incurred by the Council in the execution of the works authorised by Part II (Rivers and streams) of this Order.

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The SCHEDULE referred to in the foregoing Order.

PROPERTIES OF WHICH PARTS ONLY MAY BE ACQUIRED.

Work No.	Area.	Numbers on plan of work mentioned in column I.
1	Royal borough of Kingston-upon-Thames.	2 3 4 5 6 7 8 9 11 12 13 14 15 16 17 20 21 22 25 26 27 28 29 30 31 32 33 34 35 36 39 43 44 45 47 48 49 50 51 52 53 54 55 56 57 59 60 61 62 63 64 65 66 67 68 71 72 73 74 77 78 80 81 83 84 85 86 87 88 89 90 91 92 93 95 96 97.
1	Borough of Malden and Coombe.	2 4 8 9 10 11.
2	do. do.	15 18 20 21 22 28.
2	Borough of Surbiton... ..	7 8 9 10 12 13 13a 14 15 16.
3	do. do.	18.
2	Borough of Epsom and Ewell	1 2 3 4 5 6 7 8 9 10 12 13 13a 14 15 16
3	do. do.	18 20 21 23 24.
4	Borough of Surbiton... ..	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 22 23 24 25 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135a 137a 137b 137c 137d 137e 137f 137g 137h 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 205a 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 238a 239 240 240a 241 241a 242 242a 243 243a 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 281 282 283 284 285 286 287 288 289 290 292 293 294 295 296 298 299 300 301 302 303 303a 304a 304b 304c 305 306 307 309 310 311 312 313 314 315 316 317 319 320 323 324 325 326 327 329 330 331 333 334 335 336 337 338 339 340 341 342.
4	Urban district of Esher ...	1.
5	Borough of Surbiton... ..	3 4 7 9 12 13 14 15 16 17 18 19 20 21 22 23 24.
5	Borough of Epsom and Ewell	1 2 3a 4 5 6 8.
6	do. do.	1 2 3 6 6a 7 7a 8 8a 9 10 11 12 13 14 16 Pt. 17.
6A	do. do.	Pt. 17.

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Work No.	Area.	Numbers on plan of work mentioned in column 1.
7	Borough of Epsom and Ewell	1 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 49 50 51 52 53 54 55 56 57 58 60 60a 60b 61 62 63 64 65 66 67 68 69 70 73 74 76 77 78 79.
8	do. do.	5 9 12 13 14 15 16 17 19 20 21 22 23 24 25 26 27 28 29 30 31 32 34 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 78 79 80 81 82 83 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 109 110 111 113 114 115 117 118 119 120 121 122 123 124 125 126 127 128 129 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 175 176 177 178 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199.

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