STATUTORY INSTRUMENTS

1981 No. 171 (S.23)

WATER SUPPLY, SCOTLAND

The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981

Made - - - -	30*th January* 1981
Coming into Operation	30*th January* 1981

The Secretary of State in exercise of the powers conferred on him by sections 17(2) and 29(1) of the Water (Scotland) Act 1980(a) and of all other powers enabling him in that behalf, on the application of the Orkney Islands Council, hereby makes the following order:—

PART I

Citation and commencement

1. This order may be cited as the Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 and shall come into operation on 30th January 1981.

Interpretation

2. In this order, unless the context otherwise requires:—

"the Act" means the Water (Scotland) Act 1980;

"approved" means approved by the Secretary of State;

"Council" means the Orkney Islands Council as water authority;

"day" means a period of 24 hours reckoned from midnight;

"deposited plans" means the three plans each prepared in duplicate, sealed with the seal of the Secretary of State for Scotland and marked respectively "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Plan of Catchment Areas", "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Plan of Works" and "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Sections of Works", one copy of each of which is deposited in the office of the Scottish Development Department, New St Andrew's House, Edinburgh, and the other in the office of the Chief Executive to the Council at Kirkwall;

"gauge" includes a gauge weir or other apparatus for measuring the flow of water;

"intake" includes any work by which water is taken by the Council for the purposes of the undertaking;

"undertaking" means the water undertaking for the time being of the Council;

(a) 1980 c. 45.

"works" means the existing and proposed works described in Schedule 1 to this order and shown on the deposited plans marked "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Plan of Works" and "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Sections of Works" which the Council, in exercise of the powers conferred on them by section 21 of the Act, and in the lines and situations and according to the levels shown on the said deposited plans, propose to construct and maintain or in the case of those existing works propose to maintain for the purpose of providing a supply of water within their limits of supply when they have acquired the necessary lands or sufficient rights therein.

Incorporation and application of provisions of the Fourth Schedule of the Act

3. The provisions of section 10(3), (4) and (5) of Part III (supplementary provisions relating to compensation water) and section 44 of Part IX (liability of the Council to pay compensation) of the Fourth Schedule to the Act, modified and adapted in terms of section 17(3)(*b*) and section 29(1) of the Act and set out in Schedule 2 to this order apply to the undertaking in so far as affected by the provisions of this order.

Revocation of Orders of 1961 and 1974

4. The Orkney County Council (Hoglinns Water) Water Order 1961(**a**), the North of Scotland Water Board (Hoglinns Water) (Amendment) Water Order 1974(**b**) and the North of Scotland Water Board (Heldale Water) Water Order 1974(**c**) shall cease to have effect on the date on which the Council have completed the works and commence taking water by means thereof in terms of Article 5.

PART II

Water rights

5. Subject to the provisions of this order, the Council may, for the purposes of the undertaking, by means of the works:—

(1) impound and take water from Hoglinns Water Reservoir (Work No. 9) by means of Works Nos. 1, 2, 4 and parts of Works Nos. 3 and 5 for discharge to Heldale Water Reservoir (Work No. 8);

(2) impound and take water from Heldale Water Reservoir (Work No. 8) by means of Works Nos. 6 and 7.

6.—(1) During the construction of the works the Council may take from the said reservoirs such water as they may require for such construction.

(2) Commencing on the date of issue of the preliminary certificates given by the Engineer acting in terms of the Reservoirs (Safety Provisions) Act 1930(**d**) in relation to Hoglinns Water Reservoir (Work No. 9) and Heldale Water Reservoir (Work No. 8) the Council shall discharge, in uniform and continuous flow, from the said Hoglinns Water Reservoir into the Burn of Hoglinns a quantity of water not less than 180 cubic metres during every day measured through or over approved gauges (Work No. 2 and part of Work No. 3) and the Council shall discharge, in uniform and continuous flow, from Work No. 5 or from the said Heldale Water Reservoir into the Burn of Greenheads a quantity of water not less than 410 cubic metres during every day measured through or over an approved gauge (part of Work No. 6).

(**a**) S.I. 1961/1847. (**b**) S.I. 1974/2155. (**c**) S.I. 1974/2156.
(**d**) 1930 c. 51.

7. After the completion of the works the Council shall not:—

(*a*) take from the said Heldale Water Reservoir a quantity of water greater than 2,000,000 cubic metres in any period of 12 consecutive months measured through or over an approved gauge (part of Work No. 7);

(*b*) take from the said Heldale Water Reservoir a quantity of water greater than 8,180 cubic metres in any one day measured through or over an approved gauge (part of Work No. 7).

8. If the power to take water conferred by this order has not been exercised within ten years from the date on which this order comes into operation the said power shall cease.

PART III

Miscellaneous

9. The Council shall at all times after the expiration of six months from the date on which this order comes into operation keep at the office of the Chief Executive to the Council a copy thereof and one copy of each of the deposited plans.

Given under the seal of the Secretary of State for Scotland.

(L.S.)

Eric H. Nicoll,
Deputy Chief Engineer.

Scottish Development Department,
New St. Andrew's House,
Edinburgh.
30th January 1981.

SCHEDULE 1 Article 2

The works referred to in this order and shown on the deposited plans marked "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Plan of Works" and "The Orkney Islands Council (Heldale Water Reservoir and Hoglinns Water Reservoir) Water Order 1981 Sections of Works" are:—

Work No. 1

The existing dam at Hoglinns Water Reservoir (Work No. 9) to be raised and the overflow spillway of the said raised dam to be at a level of 100.17 metres above Ordnance Datum or thereby.

Work No. 2

An intake, discharge pipe and a gauging chamber incorporating an approved gauge for measuring the quantity of water discharged by the Council into the said Burn of Hoglinns, adjacent to or incorporated in Work No. 1.

Work No. 3

An intake on the said Burn of Hoglinns, a discharge pipe to Work No. 4 and a gauging chamber incorporating an approved gauge for measuring the quantity of water discharged by the Council into the watercourse of the said Burn of Hoglinns situated 1,020 metres or thereby to the north-west of Work No. 1.

Work No. 4

An aqueduct leading 960 metres or thereby in an easterly direction linking Work No. 3 and Work No. 5.

Work No. 5

A chamber, situated at the end of Work No. 4 at National Grid Reference ND 246918 or thereby, a pipe, extending 70 metres or thereby in a northerly direction, to carry discharged water from the said chamber to the gauge incorporated in Work No. 6, and an aqueduct, extending 36 metres or thereby in an easterly direction, to carry water from the said chamber to Heldale Water Reservoir (Work No. 8).

Work No. 6

A dam at Heldale Water Reservoir (Work No. 8) with the overflow spillway of the said dam at the level of 56.96 metres above Ordnance Datum or thereby, incorporating an approved gauge for measuring the quantity of water discharged by the Council into the said Burn of Greenheads from Work No. 5 and the said Heldale Water Reservoir, situated at National Grid Reference ND 246919 or thereby.

Work No. 7

An intake and pumping station incorporating an approved gauge for measuring the quantity of water taken from the said Heldale Water Reservoir by the Council, situated at National Grid Reference ND 265923 or thereby.

Work No. 8

A reservoir (Heldale Water Reservoir) commencing at the dam (Work No. 6) and extending over the said Heldale Water Reservoir.

Work No. 9

A reservoir (Hoglinns Water Reservoir) commencing at the dam (Work No. 1) and extending over the said Hoglinns Water Reservoir.

SCHEDULE 2 Article 3

The provisions of the Fourth Schedule to the Act referred to in this order are:—

Section 10(3)

If the Council—

(*a*) fail to install or maintain in good order any such gauge as is mentioned in this order, or refuse to allow any person interested to inspect and examine any such gauge or any records made thereby or kept by them in connection therewith or to take copies of any such records; or

(*b*) take any water contrary to the provisions of this order,

they shall, without prejudice to their civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (*a*) of this sub-section, on summary conviction to a fine not exceeding £50 in respect of each day on which the offence has been committed or has continued, and in the case of an offence under paragraph (*b*) of this subsection—

(i) on summary conviction, to a fine not exceeding £50 in respect of each such day; and

(ii) on conviction on indictment, to a fine not exceeding £500 in respect of each such day.

Section 10(4)

For the purposes of this order a fishery district board shall be deemed to be interested in the flow of water in any stream within their fishery district or any stream feeding such a stream and shall be deemed to be aggrieved by the commission of an offence under this order in relation to any such stream.

Section 10(5)

The provisions of this order shall be deemed to have been accepted by all persons interested as providing full compensation for all water impounded and taken by the works.

Section 44

The Council shall pay to the owners and occupiers of, and all other persons interested in, any lands or streams taken or used for the purposes of this order, or injuriously affected by the construction or maintenance of any works referred to in this order or otherwise by the execution of the powers thereby conferred, compensation for the value of the lands or streams so taken or used and for all damage sustained by those owners, occupiers and other persons by reason of the exercise as to those lands and streams of the powers conferred on the Council by this order or any Act incorporated therewith. The amount of such compensation shall, in the case of dispute, be settled in the manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.