STATUTORY INSTRUMENTS

1975 No. 1442

WATER, ENGLAND AND WALES

The Chester Water (Capital Powers) Order 1975

Made - - - - *29th August* 1975

Coming into Operation *8th September* 1975

The Secretary of State for Wales, in exercise of powers conferred by sections 23, 32 and 50 of the Water Act 1945(a) and now vested in him(b), and of all other powers enabling him in that behalf, hereby orders as follows:—

Citation and commencement.

1.—(1) This order may be cited as the Chester Water (Capital Powers) Order 1975 and shall come into operation on 8th September 1975.

(2) The Chester Water Acts and Orders 1857 to 1972 and this order may be cited together as the Chester Water Acts and Orders 1857 to 1975.

Interpretation.

2.—(1) In this order, unless the context otherwise requires, the several words and expressions to which meanings are assigned by the enactments incorporated with this order shall have the same respective meanings; and—

"the Company" means the Chester Waterworks Company;

"share" means share in the capital of the Company and includes stock except when a distinction between stock and shares is expressed or implied and "share capital" shall be construed accordingly;

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

"the undertaking" means the undertaking of the Company as for the time being authorised by any enactment.

(2) Unless the context otherwise requires, any reference in this order to any enactment shall be construed as a reference to that enactment as extended or amended by any other enactment, including this order.

Incorporation of enactments.

3.—(1) The following enactments (so far as they are applicable to the purposes of this order and are not inconsistent with the provisions of the Chester Water Acts and Orders 1857 to 1972) are hereby incorporated with this order—

(*a*) the Companies Clauses Consolidation Act 1845(c), except sections 56 to 60 (which relate to the conversion of borrowed money into capital) and sections 161 and 162 (which provide for affording access to the special Act);

(*b*) Part I (relating to cancellation and surrender of shares), Part II (relating to additional capital), except the provisions thereof which limit the rate of dividend on preference capital, and Part III (relating to debenture stock) of the Companies Clauses Act 1863(d):

(a) 1945 c. 42.
(b) S.I. 1951/142, 1900, 1965/319 (1951 I, pp. 1348, 1347; 1965 I, p. 785).
(c) 1845 c. 16.
(d) 1863 c. 118.

Provided that—

(i) section 98 of the said Act of 1845 (which requires proceedings to be entered in books), as so incorporated, shall have effect as if after the words "shall be signed by the chairman of such meeting" there were inserted the words "or of the next succeeding meeting";

(ii) section 14 of the said Act of 1863 (which relates to dividends on preference capital), as so incorporated, shall have effect as if—

(A) after the words "each year" there were inserted the words "or out of the unappropriated profits from previous years or partly out of the one and partly out of the other", and

(B) before the words "profits available" there were inserted the word "such";

(iii) section 22 of the said Act of 1863 (which contains regulations as to the creation and issue of debenture stock), as so incorporated, shall have effect as if the words "and to the same amount as" were omitted.

(3) For the purposes of this order section 94 of the Third Schedule (which provides for copies of the special Act to be kept by undertakers in their office and to be deposited with certain officers) shall apply to the undertaking and are hereby incorporated with this order.

(3) In the construction of the enactments so incorporated with this order the expression "the special Act" shall mean this order and the expression "the company" shall mean the Company.

Capital and borrowing powers.

4.—(1) Subject to and in accordance with the provisions of this order, the Company may from time to time raise by the creation and issue of share capital or by borrowing on mortgage of the undertaking or by the creation and issue of debenture stock, or wholly or partly by any one or more of those modes respectively such sums as shall not exceed in the aggregate one million pounds in addition to the amount which has been raised by the Company by the creation and issue of share capital and by borrowing under the Chester Water Acts and Orders 1857 to 1972:

Provided that the aggregate of any sums so borrowed shall not (when added to any money borrowed on mortgage or raised by the creation and issue of debenture stock by the Company and still outstanding at the date or respective dates on which the Company exercise the powers of this section) exceed in the whole—

(*a*) the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the creation and issue of share capital; and

(*b*) with the consent of the Secretary of State an additional amount not exceeding ten per cent of such first mentioned amount.

(2) For the purposes of this section the Company may raise additional share capital by the creation and issue of further amounts of ordinary stock or preference stock or by the creation and issue of new ordinary shares or stock or new preference shares or stock or wholly or partly by one or more of those modes respectively.

(3) For the purposes of this section the amount raised by the issue of any share capital shall be taken to be the amount raised after taking into

account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(4) The Company may exercise their powers of borrowing money under this section without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845.

(5) For the purposes of this section the nominal amount of any share capital which has been or shall hereafter be issued for a consideration other than cash shall be deemed to have been raised by the issue of such share capital.

Maximum rates of dividend.

5.—(1) Subject to the provisions of this section, the Company shall not in respect of any year pay dividends on their paid-up share capital at rates greater than the following rates, that is to say—

(*a*) on share capital subscribed before the date on which this order comes into operation, the rates which they were entitled to pay thereon immediately before that date; and

(*b*) on capital subscribed during the initial period—

(i) in the case of ordinary capital, ten per cent;

(ii) in the case of preference capital, twelve per cent; and

(*c*) on capital subscribed after the expiration of the initial period—

(i) in the case of ordinary capital, seven per cent or such higher rate not exceeding ten per cent as the Secretary of State may in respect of any subscription allow; or

(ii) in the case of preference capital, seven per cent or such higher rate not exceeding twelve per cent as the Secretary of State may in respect of any subscription allow.

In this section "the initial period" means the period of five years beginning with the coming into operation of this order.

(2) Nothing in paragraphs (*b*) or (*c*) of subsection (1) of this section shall prevent the payment of a greater dividend on ordinary shares or stock in order to make up deficiencies in previous dividends except that in the case of any further issues of ordinary capital such payments shall be limited to deficiencies arising during the last five years before the year in respect of which a dividend is being paid.

Interest on borrowed money.

6. The Company shall not pay interest on any moneys borrowed or debenture stock issued under section 4 (Capital and borrowing powers) of this order at a higher rate than seven per cent per annum or such higher rate as the Secretary of State may from time to time allow:

Provided that the consent of the Secretary of State shall not be required to the payment of interest on moneys borrowed by the Company on mortgage of the undertaking or by the issue of debenture stock at a rate higher than seven per cent per annum if the rate is a fixed rate and is certified to the Company as being appropriate in the circumstances of the case by—

(*a*) the firm of stockbrokers, being members of a recognised stock exchange (as defined in the Prevention of Fraud (Inbestments) Act 1958(**a**)), or the bankers who placed the mortgage or placed or underwrote the issue of debenture stock; or

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(**a**) 1958 c. 45.

(*b*) in the case of the raising of money on mortgage an accountant or firm of accountants being either the duly appointed auditor or auditors of the Company or a person qualified to be so appointed.

Increased limits on reserve and contingency funds.

7. The provisions of section 76 of the Third Schedule (which provides for the establishment of reserve and contingency funds) as applied to the undertaking by the Chester Water Order 1962(**a**) shall have effect subject to the following further modifications:—

(i) in subsection (4) for the words "twelve and a half" there shall be substituted the word "twenty";

(ii) in subsection (5) for the words "one and a quarter" there shall be substituted the word "two".

Application of enactments.

8. Subject to the provisions of this order the undermentioned enactments shall, so far as applicable, extend and apply to any stocks created and issued under the powers of this order and to any moneys raised thereby as if those enactments with any necessary modifications were re-enacted in this order:—

The Chester Waterworks Act 1911(**b**)
Section 59 (Receipt in case of persons not sui juris).

The Chester Waterworks Act 1930(**c**)
Section 35 (Application of premiums);
Section 38 (Debenture stock);
Section 41 (Appointment of receiver);
Section 45 (Application of funds);
Section 52 (Joint holders).

The Chester Water Order 1953(**d**)
Section 8 (Priority of mortgages and debenture stock over other debts);
Section 9 (Existing mortgages to have priority).

Repeals.

9. The following enactment is hereby repealed—

The Chester Water (Borrowing Powers) Order 1972(**e**)—
Subsection (1) of section 5 (Power to borrow).

Costs of Order.

10. All costs, charges and expenses of or incidental to the application for this order and the preparation and making thereof may be paid by the Company in whole or in part out of revenue.

R. A. Lloyd Jones,

An Under Secretary
Welsh Office

Signed by authority of
the Secretary of State.
29th August 1975.

(**a**) S.I. 1962/655.
(**b**) 1911 c. lxxvii.
(**c**) 1930 c. lvii.
(**d**) S.I. 1953/966.
(**e**) S.I. 1972/1743.

Printed in England by Harrison & Sons (Hayes) Ltd., and published by Her Majesty's Stationery Office
51/15949 R80 K9 9/75
11p net
ISBN 0 11 051442 4