STATUTORY INSTRUMENTS

# 1980 No. 1205

# WATER, ENGLAND AND WALES

## The Chester Water (Capital Powers) Order 1980

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| *Made* - - - - | *29th July* 1980 |
| *Coming into Operation* | *1st August* 1980 |

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 1980 and shall come into operation on 1st August 1980.

(2) The Chester Water Acts and Orders 1857 to 1975 and this order may be cited together as the Chester Water Acts and Orders 1857 to 1980.

Interpretation.

**2.** 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.

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 1975) are hereby incorporated with this order—

(a) 1945 c. 42.

(b) S.I. 1951/142, 1900, 1965/319.

(*a*) The Companies Clauses Consolidation Act 1845(**a**), 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(**b**):

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.

(2) 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 is hereby incorporated with this order.

(3) In the construction of the enactment 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, when added to any money raised by the issue of share capital before the commencement of this order or borrowed by the issue of loan capital before the commencement of this order and in either case outstanding at the date or respective dates on which the Company exercise the powers of this section, shall be sufficient to produce in the aggregate five million pounds.

Provided that the aggregate of any sums 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

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(**a**) 1845 c. 16. (**b**) 1863 c. 118.

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

(ii) with the consent of the Secretary of State an additional amount not exceeding five per cent of such first-mentioned amount;

(2)(*a*) The Company may raise sums by the creation and issue of share capital under subsection (1) of this section by the creation and issue of ordinary shares or preference shares or stock or wholly or partly by one or more of these modes respectively.

(*b*) For the purposes of this section the amount raised or to be raised by the issue of any share capital shall be taken to be the amount which has been or will be raised as the case may be after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof and the nominal amount of any ordinary or preference shares or stock which have been or shall hereafter be issued for a consideration other than cash shall be deemed to have been raised by the Company by the issue of such ordinary or preference shares or stock (as the case may be).

(3) For the purposes of this section the Company may, without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845, borrow money on mortgage of the undertaking.

(4) The Company shall not pay interest on any moneys borrowed or debenture stock issued under this section 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 said 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 (Investments) Act 1958(**a**)), or the bankers who placed the mortgage or placed or underwrote the issue of debenture stock; or

(*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.

(5) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the Chester Water Acts and Orders 1857 to 1975 shall cease to be exercisable.

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

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

(*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 deficiences arising during the last five years before the year in respect of which a dividend is being paid.

Temporary borrowing.

**6.** In addition to the powers conferred on the Company to borrow money on mortgage of the undertaking or to raise money by the creation and issue of debenture stock by this order, the Company may for the purposes of or in connection with the undertaking borrow by way of temporary loans or overdrafts from banks or otherwise any sums which they may temporarily require—

(*a*) for the purpose of defraying expenses pending the receipt of revenues receivable by them in respect of the year in which such expenses are incurred, and

(*b*) for the purpose of defraying, pending the issue of shares or stock which the Company are then empowered to issue or the borrowing of money on mortgage of the undertaking or by the creation and issue of debenture stock in pursuance in either of the last two cases of a statutory borrowing power then available to the Company, expenses intended to be defrayed by means of such issue or borrowing as the case may be:

Provided that the aggregate amount outstanding at any time of the moneys so borrowed for these purposes shall not exceed three hundred thousand pounds.

Application of enactments.

**7.** 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(**a**)

Section 59 (Receipt in case of persons not sui juris).

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(**a**) 1911 c. lxxvii.

The Chester Waterworks Act 1930(a)

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(b)

Section 8 (Priority of mortgages and debenture stock over other debts);

Section 9 (Existing mortgages to have priority).

**8.** The following enactment is hereby repealed— Repeals.

The Chester Water (Capital Powers) Order 1975(c)

Section 4 (Capital and borrowing powers).

**9.** 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. Costs of Order.

*P. J. Hosegood,*
An Under Secretary
Welsh Office.

Signed by authority of the
Secretary of State.
29th July 1980.

(a) 1930 c. lvii.
(b) S.I. 1953/966.
(c) S.I. 1975/1442.