STATUTORY INSTRUMENT

1985 No. 1677

WATER, ENGLAND AND WALES

The Folkestone Water Order 1985

Made - - - - -	*25th October* 1985
Coming into Operation	*26th October* 1985

The Secretary of State for the Environment, in exercise of powers conferred by sections 23, 32, 33 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 Folkestone Water Order 1985 and shall come into operation on 26th October 1985.

(2) The Folkestone Water Acts and Orders 1848 to 1981 and this order may be cited together as the Folkestone Water Acts and Orders 1848 to 1985.

Interpretation

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

"the Company" means the Folkestone and District Water Company;

"the Order of 1973" means the Folkestone Water Order 1973(c);

"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.

Modification of enactments

3. As from the commencement of this order—

(*a*) paragraph (i) of the proviso to subsection (1) of section 4 (Capital and borrowing powers) of the Order of 1973 shall have effect as if for the words "twice the amount" there were substituted the words "three times the amount";

(*b*) subsection (7) of the said section 4 shall have effect as if for the reference to the coming into operation of the Order of 1973 there were substituted a reference to the coming into operation of this order;

(a) 1945 c.42.
(b) S.I. 1951/142, 1900, 1970/1681.
(c) S.I. 1973/623.

(*c*) section 6 (Maximum rates of dividend) of the Order of 1973 shall have effect as if for the references to the Order of 1973 and to the coming into operation of that order there were substituted references to this order and to the coming into operation of this order;

(*d*) paragraph (*f*) of subsection (3) of section 3 (Application of Third Schedule to undertaking) of the Folkestone Water Order 1958(**a**) shall have effect as if for sub-paragraphs (iii) and (iv) there were substituted the following sub-paragraphs:—

"(iii) in subsection (4) after the words "contingency fund" there shall be inserted the words "and depreciation" and for the words "twelve and a half" there shall be substituted the word "forty";

(iv) in subsection (5) after the words "contingency fund" there shall be inserted the words "and annual provision for depreciation" and for the words "one and a quarter" there shall be substituted the word "four";";

(*e*) Subsection (3) of the said section 3 shall have effect as if after paragraph (*f*) thereof there were inserted the following paragraph:—

"(*g*) in section 77 (which places a limitation on the balance carried forward at the end of a year):—

(i) in paragraph (*a*) of subsection (1) after the word "dividend" there shall be inserted the words "together with the advance corporation tax associated therewith";

(ii) in paragraph (*c*) of subsection (1) after the word "dividends" there shall be inserted the words "together with the advance corporation tax associated therewith;";

(*f*) section 11 (Temporary borrowing) of the Folkestone Water Order 1961(**b**) shall have effect as if in the proviso for the words "five hundred thousand pounds" there were substituted the words "seven hundred and fifty thousand pounds".

Collection of charges for water supply

4. Subsection (3) of section 3 (Application of Third Schedule to undertaking) of the Folkestone Water Order 1958 shall be varied by the insertion after paragraph (*b*) of the following paragraph:—

"(*bb*) in section 55 (which relates to the making and dates for payment of water rates)—

(i) in subsection (1), for the words from "by equal quarterly instalments" to the end of the subsection there shall be substituted the words—

"in respect of any premises—

(*a*) by equal half-yearly instalments on that one of those dates which is the first day of the rate period and on the first day of the seventh month comprised in that period; or

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(**a**) S.I. 1958/1632. (**b**) S.I. 1961/1631.

(*b*) if the directors of the undertakers so resolve and the person who is liable to pay the water rate payable in respect of the premises so elects by making payment, by a single payment on or before such date within the rate period as is resolved by the directors and specified in a statement sent by the undertakers to that person,

(subject in the case of paragraph (*a*) or (*b*) above to such discount as may be allowed by the undertakers under section 54(2) or section 57 of this Schedule); or

(*c*) if the directors of the undertakers so resolve and on or before such date or dates within the rate period as the directors then determine and as is specified in a statement sent by the undertakers to the person who is liable to pay the water rate payable in respect of the premises, that person gives notice in writing to the undertakers of his election to pay the rate by amounts as provided in this paragraph, then by such amounts (not less than two or more than ten) and on such dates (at intervals of not less than one month) as shall be determined and so specified by the undertakers.";

(ii) after subsection (2) there shall be inserted the following subsection—

"(2A) If the person who is, or who, but for the provisions of section 54 above, would be liable to pay the water rate payable in respect of any premises is in occupation of those premises during a portion only of the rate period, he or, as the case may be, the owner of the premises, shall be liable to pay so much only of the rate as bears to the whole rate the same proportion as the number of days within the rate period during which the first-mentioned person is in occupation bears to the number of days in the rate period, and, if any greater proportion of the rate has been paid, the person by whom it was paid shall be entitled to recover the excess from the undertakers, except in so far as he has previously recovered it from an incoming occupier:

Provided that nothing in this paragraph shall exempt the owner of any premises from liability in respect of any subsequent portion of the rate period during which the premises may again become occupied.";

(iii) for subsection (3) there shall be substituted the following subsection—

"(3) If, and so long as, the water rates are payable in respect of any premises in advance by half-yearly instalments, no proceedings shall be commenced for the recovery of any such instalment until the expiration of two months from the first day of the half-year in respect of which it has been demanded.";

(iv) in subsection (4), for the words "foregoing subsection" there shall be substituted the words "two foregoing subsections"; in paragraph (*a*) thereof, after the word "instalment" there shall be inserted the words "or amount due in respect"; and in paragraph (*b*) thereof, after the words "an instalment" there shall be inserted the words "or any sum in respect", and after the words "the instalment" there shall be inserted the words "or, as the case may be, the sum"; and

(v) after subsection (4) there shall be inserted the following subsection—

"(4A) Where a person gives notice under paragraph (*c*) of subsection (1) of this section of his election to pay the water rate payable in respect of any premises by amounts as provided in that paragraph—

(*a*) the notice shall, subject as provided in the next following paragraph, remain in force in respect of each successive rate period, and the undertakers shall send to that person in respect of each successive rate period such a statement of the amounts and dates for payment within that rate period as is referred to in the said paragraph (*c*), but, where the directors of the undertakers determine to vary the number of amounts payable in respect of a rate period, notice of that variation must be sent to that person not less than three months before the first day of that rate period, stating such varied number of amounts as provided in the said paragraph (*c*) and the dates for payment;

(*b*) the notice of election shall cease to have effect—

(i) if the person by whom it was given withdraws it by further notice in writing to the undertakers; or

(ii) if any payment is not made on or before the date in any rate period when it is due in accordance with the statement sent by the undertakers in respect of that rate period and the undertakers give notice to the person by whom the notice of election has been given that, by reason of the default, the notice is, or is to be, treated as cancelled;

and, upon the notice of election ceasing to have effect in accordance with this paragraph, any sum due by way of water rate in respect of the premises shall be recoverable as if no such notice of election had been given;

(*c*) the amounts specified in any statement sent by the undertakers to the person by whom notice of election has been given shall be equal, except that the undertakers may round off any such amount (other than the first or the last) to the nearest five pence and adjust the first or, as the case may be, last amount accordingly.".".

Section 55 of the Third Schedule as modified

5. Section 55 of the Third Schedule as it has effect by virtue of section 4 above is set out in the Schedule to this order.

Revocation

6. The Folkestone Water (Capital Powers) Order 1981 **(a)** is hereby revoked.

Application of section 94 of the Third Schedule

7. For the purposes of this order, section 94 of the Third Schedule (which requires undertakers to keep a copy of the special Act at their principal office and to deposit copies with certain officers) shall apply to the undertaking and is hereby incorporated with this order.

Costs of order

8. The costs, charges and expenses of and incidental to the application for and the preparation and making of this order shall be paid by the Company and may in whole or in part be defrayed out of revenue.

SCHEDULE

SECTION 55 OF THE THIRD SCHEDULE TO THE WATER ACT 1945 AS IT HAS EFFECT BY VIRTUE OF SECTION 4 OF THIS ORDER

Making and dates for payment of water rates

55.—(1) Undertakers who charge water rates under the special Act shall make such a rate by fixing, in respect of a period of twelve months commencing on either the first day of January, the first day of April, the first day of July or the first day of October, the rate-poundage or, as the case may be, the scale of rate-poundages, by reference to which amounts due under the rate are to be calculated and, subject to the provisions of this section, any such rate shall be payable in advance in respect of any premises—

(*a*) by equal half-yearly instalments on that one of those dates which is the first day of the rate period and on the first day of the seventh month comprised in that period; or

(*b*) if the directors of the undertakers so resolve and the person who is liable to pay the water rate payable in respect of the premises so elects by making payment, by a single payment on or before such date within the rate period as is resolved by the directors and specified in a statement sent by the undertakers to that person,

(subject in the case of paragraph (*a*) or (*b*) above to such discount as may be allowed by the undertakers under section 54(2) or section 57 of this Schedule); or

(*c*) if the directors of the undertakers so resolve and on or before such date or dates within the rate period as the directors then determine and as is specified in a statement sent by the undertakers to the person who is liable to pay the water rate payable in respect of the premises, that person gives notice in writing to the undertakers of his election to pay the rate by amounts as provided in this paragraph, then by such amounts (not less than two or more than ten) and on such dates (at intervals of not less than one month) as shall be determined and so specified by the undertakers.

(a) S.I. 1981/1658.

(2) A water rate under this section, or in force under any enactments relating to the undertakers immediately before the coming into operation of this section, shall unless and until a new rate is made, continue to operate in respect of each successive period of twelve months.

(2A) If the person who is, or who, but for the provisions of section 54 above, would be liable to pay the water rate payable in respect of any premises is in occupation of those premises during a portion only of the rate period, he or, as the case may be, the owner of the premises, shall be liable to pay so much only of the rate as bears to the whole rate the same proportion as the number of days within the rate period during which the first-mentioned person is in occupation bears to the number of days in the rate period, and, if any greater proportion of the rate has been paid, the person by whom it was paid shall be entitled to recover the excess from the undertakers, except in so far as he has previously recovered it from an incoming occupier:

Provided that nothing in this paragraph shall exempt the owner of any premises from liability in respect of any subsequent portion of the rate period during which the premises may again become occupied.

(3) If, and so long as, the water rates are payable in respect of any premises in advance by half-yearly instalments, no proceedings shall be commenced for the recovery of any such instalment until the expiration of two months from the first day of the half-year in respect of which it has been demanded.

(4) Subject to the provisions of the last two foregoing subsections—

(*a*) where the undertakers commence to give a supply of water to any premises, either for the first time or after a discontinuance of supply, the then current instalment or amount due in respect of the water rate shall become payable on the day on which notice requiring the supply is given to the undertakers or, if no such notice is given, on the day when they commence to give the supply; and

(*b*) the liability of a person to pay an instalment or any sum in respect of a water rate shall not be affected by the fact that, before the end of the period in respect of which the instalment or, as the case may be, the sum became payable by him, he or his tenant, as the case may be, removes from the premises in question, or causes the supply of water thereto to be discontinued.

(4A) Where a person gives notice under paragraph (*c*) of subsection (1) of this section of his election to pay the water rate payable in respect of any premises by amounts as provided in that paragraph—

(*a*) the notice shall, subject as provided in the next following paragraph, remain in force in respect of each successive rate period, and the undertakers shall send to that person in respect of each successive rate period such a statement of the amounts and dates for payment within that rate period as is referred to in the said paragraph (*c*), but, where the directors of the undertakers determine to vary the number of amounts payable in respect of a rate period, notice of that variation must be sent to that person not less than three months before the first day of that rate period, stating such varied number of amounts as provided in the said paragraph (*c*) and the dates for payment;

(*b*) the notice of election shall cease to have effect—

(i) if the person by whom it was given withdraws it by further notice in writing to the undertakers; or

(ii) if any payment is not made on or before the date in any rate period when it is due in accordance with the statement sent by the undertakers in respect of that rate period and the undertakers give notice to the person by whom the notice of election has been given that, by reason of the default, the notice is, or is to be, treated as cancelled;

and, upon the notice of election ceasing to have effect in accordance with this paragraph, any sum due by way of water rate in respect of the premises shall be recoverable as if no such notice of election had been given;

(*c*) the amounts specified in any statement sent by the undertakers to the person by whom notice of election has been given shall be equal, except that the undertakers may round off any such amount (other than the first or the last) to the nearest five pence and adjust the first or, as the case may be, last amount accordingly.

(5) Nothing in this section affects any right of the undertakers to make a minimum charge in respect of water rates.

J. A. L. Gunn,
An Under Secretary in the
Department of the Environment.

Signed by authority of
the Secretary of State
25th October 1985.