STATUTORY INSTRUMENTS

1976 No. 335

WATER, ENGLAND AND WALES

The Hartlepools Water (Financial Provisions) Order 1976

Made - - - - *2nd March* 1976

Coming into Operation *8th March* 1976

The Secretary of State for the Environment, in exercise of the powers conferred by sections 23 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 Hartlepools Water (Financial Provisions) Order 1976 and shall come into operation on 8th March 1976.

(2) The Hartlepools Water Acts and Orders 1867 to 1972 and this order may be cited together as the Hartlepools Water Acts and Orders 1867 to 1976.

Interpretation.

2.—(1) In this order unless the context otherwise requires—

"the Company" means the Hartlepools Water Company;

"the existing loan capital" means the debenture stocks issued under the authority of the Hartlepools Water Acts and Orders 1867 to 1972 before the commencement of this order;

"the existing share capital" means the ordinary capital and preference capital issued under the authority of the Hartlepools Water Acts and Orders 1867 to 1972 before the commencement of this order;

"share" means share in the share 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 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 subsequent enactment, including this order.

Incorporation of enactments.

3.—(1) The Companies Clauses Consolidation Act 1845(c), except sections 56 to 60 (which relate to the conversion of borrowed money into capital), section 145 (which relates to the publication of penalties), and

(a) 1945 c. 42.
(b) S.I. 1951/142, 1900, 1970/1681 (1951 I, pp. 1348, 1347; 1970 III, p. 5551).
(c) 1845 c. 16.

[DOE 22509]

sections 161 and 162 (which provide for affording access to the special Act), and the Companies Clauses Act 1863(a), except Part IV (which relates to change of name), as amended by subsequent Acts, are, so far as applicable for the purposes and subject to the provisions of this order, hereby incorporated with this order:

Provided that the said Act of 1863 as so incorporated shall have effect as if—

(*a*) section 14 (which relates to dividends on preference capital) were incorporated subject to the modifications prescribed by section 6 (Modification of section 14 of the Companies Clauses Act 1863) of the Hartlepools Water Order 1970(b); and

(*b*) the words "and to the same amount as" were omitted from section 22 (which contains regulations as to the creation and issue of debenture stock).

(2) 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.

(3) For the purposes of this order section 94 of the Third Schedule to the Water Act 1945 (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.

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 the existing share capital or borrowed by the issue of the existing loan capital 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 five hundred thousand pounds.

(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 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.

(3)(*a*) 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:

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

(a) 1863 c. 118. (b) S.I. 1970/1356.

(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 for the Environment an additional amount not exceeding ten per cent. of such first-mentioned amount;

(*b*) For the purposes of this subsection the nominal amount of any ordinary or preference shares 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 (as the case may be).

(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 for the Environment 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 Hartlepools Water Acts and Orders 1867 to 1972 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 capital at rates greater than the following rates—

(*a*) on capital created or subscribed before the date of coming into operation of this order, the rates which the Company were entitled to pay thereon immediately before the said date;

(*b*) on capital subscribed on or after the coming into operation of this order, as follows—

(i) in the case of ordinary capital ten per cent. during the initial period and thereafter seven per cent. or such higher rate, not exceeding ten per cent., as the Secretary of State for the Environment may in respect of any subscription allow, or

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

(a) 1958 c. 45.

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

(2) Nothing in the foregoing subsection shall prevent the payment of a greater dividend on so much of the paid-up share capital as is issued as ordinary capital in order to make up deficiences in previous dividends:

Provided that as respects ordinary capital created or subscribed after the coming into operation of the Hartlepools Water (Financial Provisions) Order 1972(a) and that referred to in sub-paragraph (*b*)(i) of subsection (1) of this section this subsection shall apply only in respect of deficiences arising during the last five years before the year in respect of which a dividend is being paid.

Application of provisions of Hartlepools Gas and Water Act 1930.

6. The undermentioned sections of the Hartlepools Gas and Water Act 1930(b) shall, subject to the provisions of this order, so far as applicable extend and apply in relation to any share capital, debenture stock or mortgage created and issued or granted under the provisions of this order or to any moneys raised thereby as if those sections with any necessary modifications were re-enacted in this order—

Section 59 (Power to offer additional capital by subscription);
Section 61 (Application of authorised capital);
Section 63 (Debenture stock);
Section 64 (Priority of money raised on mortgage or debenture stock);
Section 65 (Existing mortgages to have priority).

Repeals.

7. Section 9 (Power to Company to borrow) of the Hartlepools Water Order 1959(c) and section 6 (Maximum rates of dividend) of the Hartlepools Water (Financial Provisions) Order 1972 are hereby repealed.

Amendment of section 4 of the Hartlepool Gas and Water Act 1900.

8. Section 4 (Consolidation and conversion of Company's existing share capital into 5 per cent. maximum ordinary stock) of the Hartlepool Gas and Water Act 1900(d) shall have effect as if—

(*a*) in subsection (1) the words "to be called "Hartlepool Gas and Water Company's Five per centum Maximum Ordinary Stock" " were omitted;

(*b*) in subsection (2) for the words "Hartlepool Gas and Water Company's Five per centum Maximum Ordinary Stock" there were substituted the words "stock referred to in subsection (1) of this section".

Costs of order.

9. All costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and making of this order shall be paid by the Company and may be paid by them in whole or in part out of revenue.

Signed by authority of the Secretary of State 2nd March 1976.

A. G. Semple,
An Under Secretary in the Department of the Environment.

(a) S.I. 1972/681.
(b) 1930 c. cxci.
(c) S.I. 1959/2115.
(d) 1900 c. xciv.

Printed in England by McCorquodale Printers Ltd., and published by Her Majesty's Stationery Office
150/P17139/8 D 29 K9 3/76
12p net
ISBN 0 11 060335 4