STATUTORY INSTRUMENTS

1976 No. 241

WATER, ENGLAND AND WALES

The Mid-Sussex Water (Financial Provisions) Order 1976

Made - - - - 16*th February* 1976

Coming into Operation 23*rd February* 1976

The Secretary of State for the Environment, in exercise of powers conferred by section 23 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 Mid-Sussex Water (Financial Provisions) Order 1976, and shall come into operation on 23rd February 1976.

(2) The Mid-Sussex Water Acts and Orders 1881 to 1972 and this order may be cited together as the Mid-Sussex Water Acts and Orders 1881 to 1976.

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 Mid-Sussex Water Company;

"the Secretary of State" means the Secretary of State for the Environment;

"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 subsequent 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 Mid-Sussex Water Acts and Orders 1881 to 1972) are hereby incorporated with this order—

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

(*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*) the Companies Clauses Act 1863(b) except the provisions of section 13 thereof which limit the rate of dividend on preference capital:

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:

Provided also that nothing in this subsection shall affect the rights of holders of stock issued pursuant to the Newhaven and Seaford Water Order 1955(c).

(2) For the purposes of this order the provisions of 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, 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 nineteen million pounds:

(a) 1845 c. 16. (b) 1863 c. 118. (c) S.I. 1955/857.

Provided that the aggregate of any sums so borrowed shall not (when added to other sums so borrowed by the Company and still outstanding at the date or respective dates on which the Company exercise the powers of this section, and to any sums borrowed temporarily under section 6(*b*) of the Newhaven Seaford and Ouse Valley Water Order 1959(a)) exceed in the whole twice the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the issue of share capital.

(2) For the purposes of the proviso to subsection (1) of this section 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.

(3) The Company may raise share capital under this section by the creation and issue of ordinary or preference shares, or wholly or partly by one or more of those modes.

(4) For the purposes of this section the amount raised or to be raised by the issue of 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 reissue thereof.

(5) The power to borrow money under this section on mortgage of the undertaking may be exercised without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845.

(6) The unexercised powers of the Company for raising money by the creation and issue of share capital under the Mid-Sussex Water Acts and Orders 1881 to 1972 shall cease to be exercisable.

Maximum rates of dividend.

5.—(1) 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 capital subscribed before the commencement of this order, the rates which they were entitled to pay thereon immediately before that commencement;

(*b*) on capital subscribed during the initial period, ten per cent or such higher rate not exceeding twelve per cent as the Secretary of State may in respect of any subscription allow; and

(*c*) on capital subscribed after the expiration of the initial period, 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 subsection "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 the last foregoing subsection shall prevent the payment of a greater dividend on any capital referred to therein which is issued as ordinary capital in order to make up deficiencies in previous dividends thereon arising during the last five years before the year in respect of which a dividend is being paid.

(a) S.I. 1959/920

(3) The Mid-Sussex (Application of Third Schedule) Order 1972(a) is amended:—

(*a*) in Part I of Schedule 1, by adding the following provision—

"Section 74(1) and (2) (Maximum rates of dividend)";

(*b*) in Part I of Schedule 2, by deleting the provision relating to section 74 of the Third Schedule.

Maximum rates of interest.

6. The Company shall not pay interest on any moneys borrowed on mortgage 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 (Investments) Act 1958(b)), 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.

Priority of existing mortgages.

7. The principal moneys secured by mortgages granted, in pursuance of any enactment, by the Company before the commencement of this order and subsisting at that commencement shall, during the continuance of those mortgages, have priority over the principal moneys secured by any mortgages granted by virtue of this order.

Application of existing Act.

8. The undermentioned sections of the Newhaven and Seaford Water Act 1898(c) shall, subject to the provisions of this order, so far as applicable extend and apply to any shares, debenture stock or mortgages issued or granted under the powers of this order and to any moneys raised thereby as though those enactments, with any necessary modifications, were re-enacted in this order:—

Section 26 (Dividends on different classes of shares or stock to be paid proportionately);

Section 37 (Priority of mortgages and debenture stock over other debts);

Section 38 (Application of moneys).

Repeals.

9. The enactments specified in column (1) of the Schedule to this order are repealed to the extent shown in column (2) thereof.

Costs of order.

10. 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.

(a) S.I. 1972/791. (b) 1958 c. 45. (c) 1898 c. ccxviii.

SCHEDULE

ENACTMENTS REPEALED

Enactments (1)	Extent of repeal (2)
The Newhaven and Seaford Water Act 1898(a)	Section 21 (Capital) Section 22 (Company to call in and cancel existing share certificates and issue new certificates in lieu thereof) Section 23 (Power to Company to raise additional capital) Section 25 (Profits of Company limited)
The Newhaven and Seaford Water Act 1922(b)	Section 35 (Amendment of section 23 of Act of 1898) Section 37 (Power to borrow) Section 38 (Debenture stock) Section 39 (Borrowed money not to be converted into capital)
The Newhaven and Seaford Water Order 1927(c)	Article 11 (Additional capital) Article 12 (Limit of dividend on capital)
The Newhaven and Seaford Water Order 1939(d)	Section 10 (Additional capital) Section 11 (Limit of interest on borrowed money) In section 14 (Application of sections of existing Acts and Orders), the entries relating to articles 12 and 13 of the Order of 1927
The Newhaven and Seaford Water Order 1951(e)	Section 5 (Additional capital) Section 6 (Power to borrow)
The Newhaven and Seaford Water Order 1955(f)	Section 5 (Creation of capital)
The Newhaven Seaford and Ouse Valley Water Order 1955(g)	Section 5 (Additional capital) Section 6 (Power to borrow) In section 8 (Application of existing Acts and Orders), the entry relating to section 13 of the Order of 1927
The Newhaven Seaford and Ouse Valley Water Order 1959(h)	Section 4 (Additional capital) Section 5 (Power to borrow) In section 8 (Application of existing Acts and Orders), the entry relating to section 13 of the Order of 1927
The Newhaven Seaford and Ouse Valley Water (No. 2) Order 1959(i)	Section 5 (Creation of capital)

(a) 1898 c. ccxviii. (b) 1922 c. xix. (c) Confirmed by 1927 c. xxxv.
(d) Confirmed by 1939 c. xli. (e) S.I. 1951/209
(f) S.I. 1955/857. (g) S.I. 1955/929. (h) S.I. 1959/920.
(i) S.I. 1960/494.

Enactments (1)	Extent of repeal (2)
The Mid-Sussex Water Order 1960(a)	Section 5 (Additional capital) Section 6 (Power to borrow) In section 8 (Application of existing Acts and Orders), the entry relating to section 13 of the Order of 1927
The Mid-Sussex Water Order 1963(b)	Section 4 (Additional capital) Section 5 (Power to borrow) In section 7 (Application of existing Acts and Orders), the entry relating to section 13 of the Order of 1927
The Mid-Sussex Water (No. 2) Order 1969(c)	The whole order
The Mid-Sussex Water Order 1971(d)	Section 4 (Additional capital and maximum dividend rates) Section 5 (Power to borrow) In section 7 (Application of existing Acts and Orders), the entry relating to section 13 of the Order of 1927
The Mid-Sussex Water (No. 2) Order 1971(e)	The whole order

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

Signed by authority of the Secretary of State

16th February 1976.

(a) S.I. 1960/623. (b) S.I. 1963/1951. (c) S.I. 1969/1050.
(d) S.I. 1971/498. (e) S.I. 1971/928.

Printed in England by McCorquodale Printers Ltd., and published by Her Majesty's Stationery Office
150/P17074/0 C 46 K9 2/76
20p net
ISBN 0 11 060241 2