STATUTORY INSTRUMENTS

1980 No. 1106

WATER, ENGLAND AND WALES

Newcastle and Gateshead Water (Capital Powers, etc.) Order 1980

Made - - - - 28*th July* 1980

Coming into Operation 31*st July* 1980

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 Newcastle and Gateshead Water (Capital Powers, etc.) Order 1980 and shall come into operation on 31st July 1980.

(2) The Newcastle and Gateshead Water Acts and Orders 1863 to 1977 and this order may be cited together as the Newcastle and Gateshead Water Acts and Orders 1863 to 1980.

Interpretation.

2. In this order unless the context otherwise requires—

"the Company" means the Newcastle and Gateshead Water Company;

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

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

"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 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 sections 161 and 162 (which provide for affording access to the special Act), and the Companies Clauses Act 1863(d), except Part IV (which relates to change of name) are, so far as they are applicable for the purpose of, and subject to the provisions of this order, hereby incorporated with this order:

Provided that—

(*a*) section 98 of the said Act of 1845 (which relates to the entry of

(a) 1945 c. 42. (b) S.I. 1951/142, 1900, 1970/1681.
(c) 1845 c. 16. (d) 1863 c. 118.

proceedings 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";

(*b*) section 14 of the said Act of 1863 (which relates to dividends on preference shares) as so incorporated shall have effect as if—

(i) 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

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

(*c*) 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) 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 the provisions of section 94 of the Third Schedule shall apply to the undertaking.

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

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 thirty-five million 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 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—

(i) 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; and

(ii) with the consent of the Secretary of State 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 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(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 duly appointed auditor or auditors of the Company or a person qualified to be so appointed.

(5) Notwithstanding anything contained in Part III of the Companies Clauses Act 1863 or in any Act or order previous to this order, the interest of all debenture stock and of all mortgages at any time created and issued or granted by the Company under any previous Act or order or this order or any subsequent Act or order shall (subject to the provisions of any subsequent Act or order) rank pari passu without respect to the dates of the securities or of the Acts of Parliament, orders or resolutions by which the stock and mortgages were authorised and shall have priority over all principal moneys secured by such mortgages. Notice of the effect of this enactment shall be endorsed on all such mortgages and certificates of debenture stock issued after the commencement of this order whether under the existing Acts and orders or this order.

(6) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the Newcastle and Gateshead Water Acts and Orders 1863 to 1975 shall cease to be exercisable.

(7) Any share capital which the directors of the Company were before the coming into operation of this order authorised by a resolution of the Company to create and issue and which was not so created and issued before the coming into operation of this order may be created and issued by the directors of the Company under subsection (1) of this section and without any further requisite.

(a) 1958 c. 45.

(8) Notwithstanding anything in any enactment for the time being relating to the Company, the directors of the Company may by virtue of this section and without further or other sanction or authority exercise any powers for the time being vested in the Company of borrowing and reborrowing on mortgage and of creating and issuing mortgages or debenture stock and of raising money by the issue of notes or bonds.

Application of certain provisions of Newcastle and Gateshead Waterworks Act 1938.

5. The following provisions of the Newcastle and Gateshead Waterworks Act 1938(a) shall extend and apply, with any necessary modifications, to the exercise of the powers of this order as if re-enacted therein:—

Section 44 (Additional capital to form part of general capital);

Section 47 (Debenture stock);

Section 48 (Priority of mortgages and debenture stock over other debts);

Section 49 (Priority of principal moneys secured by existing mortgages);

Section 50 (Appointment of receiver);

Section 51 (Application of money).

Maximum rates of dividend.

6.—(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 on or after the coming into operation of this order, as follows—

(i) in the case of ordinary capital subscribed during the initial period, ten per cent. and, in the case of ordinary capital subscribed thereafter 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 subscribed during the initial period twelve per cent. and, in the case of preference capital subscribed thereafter 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 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:

Provided that as respects ordinary share capital subscribed after the 1st October 1958 this subsection shall apply only to deficiencies arising during the last five years before the year in respect of which the dividend is being paid.

Temporary borrowing.

7. In addition to the powers to borrow money on mortgage of the undertaking or to raise money by the creation and issue of debenture stock, which are for the time being exercisable by the Company, the Company may for the purposes of or in connection with the undertaking

(a) 1938 c. lxxxii.

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 period of account in which those expenses are chargeable; and

(*b*) for the purpose of defraying, pending the issue of shares of any description or the borrowing of money in pursuance in either case of an authorisation in that behalf, expenses intended to be defrayed by means of such issue or borrowing, as the case may be:

Provided that the amount outstanding at any time of the moneys borrowed for the purpose mentioned in paragraph (*a*) of this section shall not exceed one million pounds.

Variations of sections 54 and 76 of Third Schedule.

8.—(1) For paragraph (*d*) of section 5(3) of the Newcastle and Gateshead Water Order 1958(a), as amended by section 2 of the Newcastle and Gateshead Water Order 1977(b), there shall be substituted the following paragraph—

"(*d*) in subsection (1) of section 54 (which provides that water rates on certain houses may be demanded from the owners) for the words "has a net annual value not exceeding thirteen pounds" there shall be substituted the words "is let to quarterly tenants or tenants holding for any period of three months or less or has a net annual value not exceeding the limit of value for the time being fixed for the purposes of the proviso to section 55(1) of the General Rate Act 1967" and the proviso shall be omitted;".

(2) For paragraph (*h*)(iii) of the said section 5(3) (modifying section 76 respecting the establishment of reserve and contingency funds), there shall be substituted the following sub-paragraphs—

"(iii) in subsection (4) for the words "twelve and a half" the word "forty";

(iv) in subsection (5) for the words "one and a quarter" the word "four"."

Repeals.

9. The provisions of the Newcastle and Gateshead Water Acts and Orders 1863 to 1977 specified in the Schedule to this order shall be repealed on the coming into force of this order.

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.

SCHEDULE

The Newcastle and Gateshead Waterworks Act 1863(c)—
Section 19 (Capital of the Company);
Section 20 (Distribution of existing capital);
Section 21 (Power to raise additional capital);
Section 22 (Mode of creating such capital);
Section 23 (New shares to be considered same as original shares);
Section 24 (Limiting amount of calls);
Section 25 (Privileges may be attached to new shares);
Section 27 (Terms and conditions to which preference shares liable to be stated in certificates);
Section 28 (Dividends on new shares);

(a) S.I. 1958/724. (b) S.I. 1977/1608. (c) 1863 c. xxxiv.

Section 30 (Former mortgages to have priority);
Section 31 (Application of sums raised under this Act).

The Newcastle and Gateshead Water Works Act 1866(a)—
Section 21 (Additional share capital may be raised);
Section 22 (Terms of issue of the additional share capital);
Section 24 (Restriction as to issue of shares or stock);
Section 25 (Calls);
Section 28 (Existing mortgages to have priority);
Section 29 (Application of moneys);
Section 30 (Application of additional funds).

The Newcastle and Gateshead Waterworks Act 1870(b)—
Section 19 (Power to raise additional share capital);
Section 20 (New shares to be subject to same provisions as existing shares);
Section 21 (No share or stock to be issued until one-fifth paid);
Section 23 (Existing mortgages to have priority);
Section 25 (Application of money).

The Newcastle and Gateshead Waterworks Act 1876(c)—
Section 22 (Company may raise additional capital);
Section 23 (Shares not to vest until one-fifth part paid up);
Section 30 (Existing mortgages to have priority);
Section 32 (Application of sums raised under this Act).

The Newcastle and Gateshead Waterworks Act 1889(d)—
Section 19 (Company may raise additional capital);
Section 20 (As to vesting of new shares);
Section 28 (Application of premium arising on issue of shares or stock);
Section 32 (Existing mortgages to have priority).

The Newcastle and Gateshead Waterworks Act 1890(e)—
Section 15 (Company may raise additional capital);
Section 16 (As to vesting of new shares);
Section 24 (Application of premium arising on issue of shares or stock);
Section 28 (Existing mortgages to have priority);
Section 31 (Application of sums raised under this Act).

The Newcastle and Gateshead Waterworks Act 1894(f)—
Section 34 (Company may raise additional capital);
Section 35 (As to vesting of new shares);
Section 43 (Application of premium arising on issue of shares or stock);
Section 47 (Existing mortgages to have priority);
Section 50 (Application of sums raised under this Act).

The Newcastle and Gateshead Waterworks Act 1898(g)—
Section 24 (Company may raise additional capital);
Section 25 (As to vesting of new shares);
Section 33 (Application of premiums arising on issue of shares or stock);
Section 37 (Existing mortgages to have priority);
Section 40 (Application of sums raised under this Act).

The Newcastle and Gateshead Waterworks Act 1902(h)—
Section 32 (Company may raise additional capital);
Section 35 (New preference stock to rank pari passu with others if so determined);
Section 40 (Application of premium arising on issue of stock);
Section 45 (Existing mortgages to have priority);
Section 47 (Priority of mortgages and debenture stock over other debts);
Section 49 (Application of sums raised under this Act).

The Newcastle and Gateshead Waterworks Act 1904(i)—
Section 19 (Company may raise additional capital);
Section 22 (New preference stock to rank pari passu with subsequently created preference stock if so determined);

(a) 1866 c. xlix. (b) 1870 c. cxxiii. (c) 1876 c. cxcii.
(d) 1889 c. xxxvi. (e) 1890 c. cvi. (f) 1894 c. lxxi.
(g) 1898 c. ccxxxi. (h) 1902 c. xliii. (i) 1904 c. ccxxxvi.

Section 27 (Application of premium arising on issue of stock);
Section 32 (Existing mortgages to have priority);
Section 34 (Priority of mortgages and debenture stock over other debts);
Section 36 (Application of sums raised under this Act).

Newcastle and Gateshead Waterworks Act 1935(a)—
Section 4 (Additional capital);
Section 5 (Additional capital to form part of general capital);
Section 9 (Priority of mortgages and debenture stock over other debts);
Section 10 (Priority of principal moneys secured by existing mortgages);
Section 15 (Application of money);
Section 16 (Consolidation and conversion of preference stock);
Section 17 (Consolidation of debenture stocks);
Section 18 (Creation of preference stock and debenture stocks for purposes of consolidation and conversion);
Section 22 (Exchange of certificates).

Newcastle and Gateshead Waterworks Act 1938—
Section 43 (Additional capital).

Newcastle and Gateshead Water Order 1958—
Subsection (3)(*f*)(ii) of section 5 (Application of Third Schedule to the undertaking).

Newcastle and Gateshead Water Order 1960(b)—
Section 3 (Temporary borrowing).

Newcastle and Gateshead Water (Additional Capital) Order 1963(c)—
The whole order.

Newcastle and Gateshead Water (Financial Provisions) Order 1969(d)—
The whole order.

Newcastle and Gateshead Water Order 1972(e)—
The whole order.

Newcastle and Gateshead Water (Capital Powers) Order 1975(f)—
The whole order.

Newcastle and Gateshead Water Order 1977—
The whole order.

Signed by authority of
the Secretary of State
28th July 1980.

G. May,
An Under Secretary in the
Department of the Environment.

(a) 1935 c. xxx. (b) S.I. 1960/246. (c) S.I. 1963/1516.
(d) S.I. 1969/1201. (e) S.I. 1972/867. (f) S.I. 1975/993.