STATUTORY INSTRUMENTS

1986 No. 13

WATER, ENGLAND AND WALES

The South Staffordshire Water Order 1986

Made - - - *9th January* 1986

Coming into Operation *10th January* 1986

The Secretary of State for the Environment, in exercise of powers conferred on him 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 makes the following order:—

Citation and commencement

1.—(1) This order may be cited as the South Staffordshire Water Order 1986 and shall come into operation on 10th January 1986.

(2) The existing enactments and this order may be cited together as the South Staffordshire Water Acts and Orders 1853 to 1986.

Interpretation

2. In this order—

"the Company" means the South Staffordshire Waterworks Company;

"the existing enactments" means the South Staffordshire Water Acts and Orders 1853 to 1979;

"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 existing enactments) are hereby incorporated with this order—

(*a*) the Companies Clauses Consolidation Act 1845(**c**), 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);

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

(*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, Part III (relating to debenture stock) of the Companies Clauses Act 1863(**a**):

Provided that—

(i) 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 was inserted the word "such";

(ii) 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 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) References in the enactments so incorporated to "the special Act" and "the company" shall be read as references to this order and to the Company respectively.

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 or borrowed by the issue of 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 sixty-five million pounds:

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) exceed in the whole—

(*a*) three times 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

(*b*) with the consent of the Secretary of State an additional amount not exceeding ten per cent. of such first mentioned amount.

(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 the amount raised by the Company by the issue of such ordinary or preference shares, as the case may be.

(**a**) 1863 c.118.

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

(*b*) 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 re-issue thereof.

(4) 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.

(5) 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.

(6) 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.

(7) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the existing enactments shall cease to be exercisable.

Temporary borrowing

5. 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 purpose of or in connection with the undertaking borrow by way of temporary loan, or overdraft, the issue of bills or promissory notes 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 to which those expenses are chargeable; and

(*b*) for the purpose of defraying, pending the issue of shares or stock 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 aggregate amount outstanding at any one time of moneys so borrowed for the purpose mentioned in paragraph (*a*) of this section shall not exceed two million pounds.

Application of certain provisions of Act of 1939

6. The following provisions of the South Staffordshire Waterworks Act 1939(**a**) 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 enactments with any necessary modifications were re-enacted in this order:—

Section 30 (New capital to rank with existing capital of same class);

Section 33 (Application of money);

Section 36 (Debenture Stock);

Section 37 (Priority of mortgages over other debts);

Section 39 (Appointment of receivers).

Making and dates for payment of water rates

7. For section 55 of the Third Schedule (which applies to the undertaking with modifications by virtue of section 3 of the South Staffordshire Water Order 1977) there shall be substituted the following section —

"**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 (hereinafter called "the relevant period"), 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.

(2) Any such rate shall be payable by one of the following methods, namely—

(*a*) by equal half-yearly instalments on such dates within the first and seventh months of a relevant period as the undertakers may determine and specify; or

(*b*) if the undertakers so resolve, and the person who is liable to pay the water rate in respect of any premises so elects—

(i) a single payment on or before such date within the relevant period as the undertakers may specify;

(ii) subject to subsection (10), not more than ten equal instalments at intervals of not less than one month on such dates within the relevant period as the undertakers may specify.

(3) 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.

(4) If the person who is, or who, but for the provisions of section 54 above, would be liable to pay any water rate is in occupation of premises for part only of a relevant period, that person or, as the case may be, the

(**a**) 1939 c.lxii.

owner of the premises, shall be entitled to recover from the undertakers a due proportion of the rate calculated at a daily rate in respect of any period after the date upon which the first-mentioned person ceased to be in occupation.

(5) If, and so long as, any water rate is payable 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.

(6) Subject to subsections (4) and (5), where a person accepts a supply of water to any premises, either for the first time or after a discontinuance of supply, he shall be liable to pay any instalment or amount due in respect of the water rate 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 the supply.

(7) A person who elects to pay a water rate in instalments in accordance with subsection (2)(*b*)(ii) shall give notice to that effect to the undertakers on or before such date within the relevant period as the undertakers may resolve and specify.

(8) Subject to subsection (9) any notice mentioned in subsection (7) shall continue to have effect in each successive relevant period until withdrawn by a further notice to the undertakers.

(9) A notice mentioned in subsection (7) shall cease to have effect if any payment or instalment is not made on or before the due date in a relevant period, and the undertakers give written notice to that effect to the person in default and thereupon any sum due shall be recoverable by the undertakers as if a notice mentioned in subsection (7) had not been given.

(10) Where any water rate is payable by instalments the undertakers may adjust the amount of the first or last instalment so that no instalment comprises or includes an amount of less than a penny."

(11) In this section "specify" means specified in a written notice sent by the undertakers to a person liable to pay any water rate.

Reserve and contingency fund

8. Section 76 (power to create reserve and contingency funds) of the Third Schedule, as applied to the undertaking by section 3 of the South Staffordshire Water Order 1957(**a**) subject to the modifications specified in subsection (3)(*c*) of the said section 3, shall have effect as if—

(*a*) in subsection (4) as so modified for the word "twenty" there were substituted the words "thirty"; and

(*b*) in subsection (5) as so modified for the word "two" there were substituted the words "three".

(**a**) S.I. 1957/1154.

Carry forward

9. Subsection (1) of section 77 (Limitation on balance carried forward) of the Third Schedule, as applied to the undertaking by section 3 of the South Staffordshire Water Order 1957, shall have effect as if—

(*a*) in paragraph (*a*), after the word "interest" there were inserted the words "(including any tax payable in respect of any such dividend)"; and

(*b*) in paragraph (*c*), at the end there were inserted the words "(including any tax payable in respect of any such dividends)".

Revocation

10. The following orders are hereby revoked—

(*a*) Subsection (3)(*c*) of section 3 (The Third Schedule incorporated with local enactments) of the South Staffordshire Water Order 1957;

(*b*) the South Staffordshire Water (Financial Provisions) Order 1956(**a**); and

(*c*) the South Staffordshire Water Order 1977(**b**).

Costs of Order

11. All 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.

Signed by authority of
the Secretary of State
9th January 1986.

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

(**a**) S.I. 1956/782.

(**b**) S.I. 1977/1079.

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