STATUTORY INSTRUMENTS

1973 No. 498

WATER SUPPLY, ENGLAND AND WALES

The West Hampshire Water Order 1973

Made - - -	19*th March* 1973
Coming into Operation	1*st April* 1973

The Secretary of State for the Environment, in exercise of powers conferred by sections 23, 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 West Hampshire Water Order 1973 and shall come into operation on 1st April 1973.

(2) The West Hampshire Water Acts and Orders 1893 to 1972 and this order may be cited together as the West Hampshire Water Acts and Orders 1893 to 1973.

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 West Hampshire Water Company;

"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 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 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

(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.
(d) 1863 c. 118.

relates to change of name) are, so far as applicable for the purposes of and subject to the provisions of this order, hereby incorporated with this order:

Provided that—

(*a*) section 6 of the said Act of 1845 (which relates to the division of capital into shares) as so incorporated shall have effect as if at the end thereof there were added the following proviso:—

"Provided that, if at any time all the issued shares of the Company, or all the issued shares of the Company of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up";

(*b*) section 9 of the said Act of 1845 (which relates to the registration of shareholders) as so incorporated shall have effect as if after the words "its number" there were inserted the words "(so long as the share has a number)";

(*c*) 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";

(*d*) section 14 of the said Act of 1863 (which relates to dividends on preference capital) 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";

(*e*) 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) The following provisions of the Third Schedule, that is to say:—

(*a*) subsection (3) of section 74 (which subsection relates to trustee stocks), and

(*b*) section 75 (which relates to the sale of stock by auction or tender),

are hereby incorporated with this order with the modification that in section 75:—

(i) the word "stock" shall include shares;

(ii) in paragraph (*a*) of the proviso to subsection (2) the words "in each of two successive weeks" shall be omitted; and

(iii) in subsection (2) before the words "the undertakers" where they occur the second time and in subsection (3) before the words "the undertakers" there shall be inserted the words "the directors of,".

(4) For the purposes of this order the provisions of section 94 of the Third Schedule (which requires 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.

Capital and borrowing powers.

4.—(1) Subject to and in accordance with the provisions of this order, the Company may 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 shall not exceed in the aggregate, when added to the amount which has been raised by the Company by the creation and issue of share capital and by borrowing under the West Hampshire Water Acts and Orders 1893 to 1963, and which is outstanding at the date or respective dates on which the Company exercise the powers of this section, five million five hundred thousand pounds:

Provided that the aggregate of any sums so 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) the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the creation and issue of share capital; and

(ii) with the consent of the Secretary of State for the Environment an additional amount not exceeding five per cent. of such first mentioned amount.

(2) For the purposes of this section the Company may raise additional share capital by the creation and issue of further amounts of ordinary stock or of preference stock or by the creation and issue of new ordinary shares or stock or new preference shares or stock or wholly or partly by one or more of those modes respectively.

(3) For the purposes of this section the amount of any share capital raised shall be taken to be the amount raised after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(4) The Company may exercise their powers of borrowing money under this section without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845.

(5) For the purposes of this section the nominal amount of any share capital or debenture stock which has been or shall hereafter be issued for a consideration other than cash shall be deemed to have been raised by the issue of such share capital or debenture stock.

(6) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the West Hampshire Water Acts and Orders 1893 to 1963 shall cease to be exercisable.

(7) 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.

(8) Section 14 of the Companies Clauses Act 1863, as modified by section 3(1) of this order, shall apply to any capital raised under the West Hampshire Water Acts and Orders 1893 to 1963 and such of the provisions of the said Acts and Orders as are inconsistent with the said section 14 as incorporated and modified by this order shall cease to have effect.

Application of certain enactments.

5. The following enactments shall (subject to the provisions of this order) so far as possible extend and apply to any ordinary or preference shares, debenture stock or mortgages 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:—

The West Hampshire Water Act 1935(b)—

Section 17 (New shares or stock to be subject to same incidents as other shares or stock);

Section 19 (Restriction as to votes in respect of preference shares or stock);

Section 28 (Priority of mortgages and debenture stock over other debts);

The West Hampshire Water Order 1951(c)—

Section 8 (Debenture stock);

Section 10 (Priority of existing mortgages);

Subsection (1) of section 11 (Appointment of receiver);

The West Hampshire Water Order 1955(d)—

Section 6 (As to dividends on different classes of ordinary capital).

Maximum rates of dividends.

6.—(1) Subject to the provisions of this section, 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 date of the coming into operation of this order, the rates they were entitled to pay thereon immediately before that date; and

---

(a) 1958 c. 45.
(b) 1935 c. li.
(c) S.I. 1951/1069.
(d) S.I. 1955/1452.

(*b*) on capital subscribed after that date—

(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 for the Environment 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 for the Environment may in respect of any subscription allow; or

(iii) in the case of capital entitled by the terms of subscription to a rate of dividend lower than the rates of dividend authorised by this paragraph that lower rate.

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

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

Provided that, as respects any such capital created and issued after the coming into operation of the West Hampshire Water Order 1951, this subsection shall apply only in relation to deficiencies arising during the last five years before the year in respect of which a dividend is being paid.

Temporary borrowing.

7. In addition to the powers conferred upon the Company by this order to borrow money, the Company may for the purposes of or in connection with the undertaking 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 pending the issue of stock or shares of any description or the borrowing of money on mortgage of the undertaking (such issue or borrowing being within the statutory powers of the Company at the time of the exercise of their temporary powers under this section) expenses intended to be defrayed by means of such issue or borrowing as the case may be; and

(*b*) 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:

Provided that the aggregate amount outstanding at any time of the moneys so borrowed for the purpose mentioned in paragraph (*b*) of this section shall not exceed two hundred thousand pounds.

Exercise of borrowing powers by directors.

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.

Repeal.

9. The following enactments are hereby repealed:—

The West Hampshire Water Act 1893(a)—
Section 12 (As to conversion of borrowed money into capital);

The West Hampshire Water Act 1902(b)—
Section 17 (Profits of Company Limited);

The West Hampshire Water Order 1919(c)—
Section 4 (Dividend on preference capital);

The West Hampshire Water Act 1926(d)—
Section 30 (Limit of profit on additional capital);

The West Hampshire Water Act 1935—
Section 16 (Limit of profit on additional capital);
Section 21 (Sale of shares or stock by auction or tender);
Section 29 (Company may incur temporary loans);

The West Hampshire Water Order 1951—
Section 6 (Power to borrow);
Section 7 (Amendment of section 29 of the Act of 1935);
Section 9 (Limit of interest on borrowed money);

The West Hampshire Water Order 1955—
Section 5 (Power to borrow);

The West Hampshire Water Order 1959(e)—
Section 5 (Power to borrow);
Section 6 (Amendment of section 29 of West Hampshire Water Act 1935);
Section 7 (Maximum rates of dividend);

The West Hampshire Water Order 1962(f)—
The whole 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 may in whole or in part be defrayed out of revenue.

Signed by authority of
the Secretary of State
19th March 1973

J. E. Beddoe,
An Under Secretary
in the Department
of the Environment

(a) 1893 c. ccv.
(b) 1902 c. cv.
(c) See 1919 c. cix.
(d) 1926 c. lxxxii.
(e) S.I. 1959/1501.
(f) S.I. 1962/2116.

Printed in England by McCorquodale Printers Ltd., and published by Her Majesty's Stationery Office
150/P47524/7 E 83 K7 3/73

8p net

SBN 11 030498 5