STATUTORY INSTRUMENTS

1986 No. 1776

WATER, ENGLAND AND WALES

The West Hampshire Water Order 1986

Made - - - - -	13*th October* 1986
Coming into Operation	14*th October* 1986

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 makes the following order:—

Citation and commencement

1.—(1) This order may be cited as the West Hampshire Water Order 1986 and shall come into operation on 14th October 1986.

(2) The West Hampshire Water Acts and Orders 1893 to 1978 and this order may be cited together as the West Hampshire Water Acts and Orders 1893 to 1986.

Interpretation

2. In this order—

"the Company" means the West Hampshire Water Company;

"the Order of 1973" means the West Hampshire Water Order 1973(c);

"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.

Capital and borrowing powers

3. For section 4 (Capital and borrowing powers) of the Order of 1973 there shall be substituted the following section—

"**4.**—(1) The Company may raise capital by—

(*a*) the issue of shares;

(*b*) borrowing on mortgage of the undertaking;

(*c*) borrowing by the issue of debenture stock.

(2) Any sums to be raised in accordance with subsection (1), when added to—

(*a*) the sums raised by the issue of existing share capital before; and

(*b*) other amounts raised by borrowing and still outstanding on;

the relevant date, shall not exceed £12 million.

(a) 1945 c. 42.
(b) S.I. 1951/142, 1900, 1970/1681.
(c) S.I. 1973/498.

(3) Subject to subsection (4), the Company shall take such steps as may be necessary to ensure that the amounts raised as mentioned in paragraphs (*b*) and (*c*) of subsection (1) which are at any time outstanding do not exceed twice the aggregate of—

(*a*) the sums raised by the issue of existing share capital; and

(*b*) the amount of the Company's reserves.

(4) With the consent of the Secretary of State, the Company may raise an additional amount, as mentioned in paragraphs (*b*) and (*c*) of subsection (1), not exceeding ten per cent. of the total on the relevant date of the sums and amount specified in paragraphs (*a*) and (*b*) of subsection (3).

(5) For the purposes of this section—

(*a*) the amount raised by the issue of share capital or debenture stock is the amount raised after taking into account any premiums or discounts; and

(*b*) in the case of any share capital or debenture stock issued for a consideration other than cash the nominal value shall be taken to have been the amount raised by that issue.

(6) The Company's powers of borrowing may be exercised without obtaining a certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845**(a)**.

(7) Sums to be raised by the Company may be raised by the issue of new ordinary shares or stock or new preference shares or stock or, at the Company's option, by any of those methods.

(8) 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 Company Securities (Insider Dealing) Act 1985**(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.

(a) 1845 c. 16. **(b)** 1985 c. 8.

(9) In this section—

"the Company's reserves" means the aggregate of any of the following amounts appearing in the Company's last audited balance sheet—

(*a*) any capital reserve;

(*b*) any sum carried forward in accordance with section 77 of the Third Schedule; and

(*c*) any amounts standing to the credit of any reserve or contingency fund established and maintained in accordance with section 76 of the Third Schedule;

"the relevant date" means the date on which the Company exercise the powers mentioned in subsection (1).".

Temporary borrowing

4. Section 7 (Temporary borrowing) of the Order of 1973 shall have effect as if in the proviso for the words "five hundred thousand pounds" there were substituted the figure "£750,000".

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—

(*a*) on capital subscribed before the date of commencement of this order, the rates which they were empowered to pay immediately before that date;

(*b*) on ordinary capital subscribed—

(i) during the initial period, 10 per cent., or

(ii) thereafter, 7 per cent. or such higher rate not exceeding 10 per cent. as the Secretary of State for the Environment may approve;

(*c*) on preference capital—

(i) during the initial period, 12 per cent., or

(ii) thereafter 7 per cent. or such higher rate not exceeding 12 per cent. as the Secretary of State for the Environment may approve; or

(*d*) on any other capital which in accordance with the terms of subscription or issue bears a rate of dividend lower than the rates mentioned in paragraphs (*b*) and (*c*), that lower rate.

(2) The Company shall be entitled to pay a dividend on ordinary capital at rates greater than those mentioned in subsection (1) to make up deficiencies in previous dividends, but as respects any such capital created and issued after the commencement of the West Hampshire Water Order 1951(**a**) this subsection shall apply only in relation to deficiencies arising during the five years preceding the year in respect of which a dividend is being paid.

(3) In this section the "initial period" means the period of five years beginning with the date of commencement of this order.

(**a**) S.I. 1951/1069.

Modification of the Third Schedule

6. The Third Schedule, as applied with modifications to the undertaking by section 3 of the West Hampshire Water Order 1960(a) and section 3 of the Order of 1973, shall be amended as follows.

7. For section 55 (making and dates for payment of water rates) there shall be substituted the following sections—

"**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 rate made in respect of a relevant period shall be payable in respect of any premises 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 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 made in respect of a relevant period shall unless and until a new rate is made under subsection (1), continue to have effect in respect of each successive period of twelve months.

(4) If the person who 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 owner of the premises, shall be liable to pay a due proportion of the rate calculated at a daily rate in respect of any period of 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 receives 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.

(a) S.I. 1960/1410.

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

(8) Subject to subsection (9) a notice mentioned in subsection (7) shall continue to have effect in each subsequent 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 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 set out in a written notice sent by the undertakers to a person liable to pay any water rate.

55A.—(1) The undertakers may once only make a water rate by fixing a rate poundage in respect of a period of three months following the expiration of a relevant period mentioned in section 55 above.

(2) Any such rate shall be payable in full on the first day of that three month period.

(3) Subsections (4) and (6) of section 55 shall have effect in relation to a rate made in accordance with this section.".

8. In section 76 (reserve and contingency funds)—

(*a*) in subsection (1) there shall be inserted after the words "as they think fit" the words "(not being provisions for liabilities or charges within paragraph 89 of Schedule 4 to the Companies Act 1985**(a)**)"; and

(*b*) in subsections (4) and (5) respectively there shall be substituted—

(i) for the word "twenty" the words "twenty-five"; and

(ii) for the word "two" the words "two and a half".

9. In subsection (1) of section 77 (limitation on balance carried forward at the end of a year) there shall be inserted—

(*a*) in paragraph (*a*) after the word "dividend", and

(*b*) in paragraph (*b*) after the word "dividends",

respectively, the words "together with the advance corporation tax associated therewith".

Appointment of proxies

10. Section 76 (manner of voting) of the Companies Clauses Consolidation Act 1845 as incorporated with the West Hampshire Water Acts and Orders 1893 to 1978 shall have effect subject to the following provisions, namely—

(a) 1985 c. 6.

(*a*) a proxy appointed to vote for or on behalf of a member of the Company need not himself be such a member,

(*b*) any member of the Company may in writing authorise an attorney to appoint a proxy to vote on his behalf, and where the member is a corporation an officer or attorney may be so authorised, and

(*c*) a copy or (in the case of an instrument deposited with the central office of the Supreme Court) an office copy of any instrument mentioned in paragraph (*b*) shall be sent to the Company at the same time as any instrument appointing a proxy.

Repeals and revocations

11.—(1) Section 69 (appointment of proxies) of the West Hampshire Water Act 1926**(a)** and section 82(3)(*c*) (amendment of existing enactments) of the West Hampshire Water Act 1935**(b)** are repealed.

(2) The orders mentioned in column 1 of the following table are revoked to the extent mentioned in column 2.

TABLE

Column 1 (Order)	Column 2 (Extent of revocation)
The West Hampshire Water Order 1960	Section 3(*g*)(iii) and (iv).
The Order of 1973	Sections 4(7) and 6.
The West Hampshire Water Order 1978**(c)**	The whole order.

Costs of Order

12. 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.

Signed by authority of
the Secretary of State
13th October 1986.

J. Hobson,
An Under Secretary in the
Department of the Environment.

(a) 1926 c. lxxxii.
(b) 1935 c. li.
(c) S.I. 1978/1240.

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