STATUTORY INSTRUMENTS

1981 No. 1311

WATER, ENGLAND AND WALES

The West Kent Water (Capital Powers) Order 1981

Made - - - - *9th September* 1981
Coming into Operation *22nd September* 1981

The Secretary of State for the Environment, in exercise of powers conferred by sections 23 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 Kent Water (Capital Powers) Order 1981 and shall come into operation on 22nd September 1981.

(2) The West Kent Water Acts and Orders 1878 to 1979 and this order may be cited together as the West Kent Water Acts and Orders 1878 to 1981.

Interpretation.

2. In this order unless the context otherwise requires—

"the Company" means the West Kent 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 are not inconsistent with, the provisions of the West Kent Water Acts and Orders 1878 to 1979 and this order) hereby incorporated with and form part of this order:

Provided that—

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

(*a*) 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"; and

(*b*) 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 provisions of subsection (3) of section 74, and section 75 of the Third Schedule shall apply to the undertaking and are hereby incorporated (so far as they are applicable for the purposes thereof) with this order, with the modification that in section 75 the word "stock" shall be deemed to include shares and that paragraph (a) of the proviso to section 75(2) shall have effect as if the words "in each of two successive weeks" were omitted therefrom.

(4) For the purposes of this order the provisions of section 94 of the Third Schedule shall apply to the undertaking.

(5) 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 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 ten 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*) 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

(*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:

(*a*) the sum of thirty-three thousand five hundred and sixteen pounds added on the conversion by section 4 (Conversion and consolidation of existing ordinary capital) of the Sevenoaks and Tonbridge Water Order 1948 of the then existing ordinary capital into consolidated ordinary stock; and

(*b*) 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 consolidated ordinary stock or such ordinary or preference shares, as the case may be.

(3) 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.

(4) (*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.

(5) 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.

(6) 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

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(**a**) 1958 c.45.

(*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.

(7) The unexercised powers of the Company for raising money by the creation and issue of share capital under the West Kent Water Acts and Orders 1878 to 1979 shall cease to be exercisable.

(8) 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.

(9) 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.

(10) No share created and issued under this section shall be of less nominal value than one pound.

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 Sevenoaks and Tonbridge Water Order 1948(**a**)—

Section 22 (Existing mortgages to have priority);

Section 23 (Appointment of receiver);

Section 26 (Application of money).

The Sevenoaks and Tonbridge Water Order 1957(**b**)—

Section 6 (Additional share capital to be part of general capital).

The Sevenoaks and Tonbridge Water Order 1960(**c**)—

Subsection (1) of section 6 (Debenture stock).

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 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.

(**a**) S.I. 1948/1907. (**b**) S.I. 1957/1113. (**c**) S.I. 1960/1875.

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:

Provided that as respects ordinary share capital subscribed after 14th February 1972 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 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 two hundred and fifty thousand pounds.

Quorum for general meetings.

8. For the purpose of constituting a meeting of the Company, whether ordinary or extraordinary, the prescribed quorum referred to in section 72 of the Companies Clauses Consolidation Act 1845, as incorporated with the enactments of the Company, shall be five holders of stock of the Company.

Repeals.

9. The provisions of the West Kent Water Acts and Orders 1878 to 1979 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 Sevenoaks Water Order 1957
Section 11 (Temporary borrowing).

The Sevenoaks and Tonbridge Water Order 1972 (a)
Section 3 (Maximum rates of dividend).

The West Kent Water Order 1973 (b)
Section 4A (Quorum);
Section 24 (Capital and borrowing powers).

The West Kent Water (No. 2) Order 1977 (c)
Section 4 (West Kent Water Order 1973 amended).

Signed by authority of
the Secretary of State
9th September 1981.

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

(a) 1972/147 (b) 1973/1669 (c) 1977/1647