STATUTORY INSTRUMENTS

1977 No. 799

WATER, ENGLAND AND WALES

The Wrexham and East Denbighshire Water (Financial Provisions) Order 1977

Made - - - -	*28th April* 1977
Coming into Operation	*29th April* 1977

The Secretary of State for Wales, in exercise of powers conferred 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 orders as follows:—

Citation and commencement

1.—(1) This order may be cited as the Wrexham and East Denbighshire Water (Financial Provisions) Order 1977 and shall come into operation on 29th April 1977.

(2) The Wrexham and East Denbighshire Water Acts and Orders 1864 to 1975 and this order may be cited together as the Wrexham and East Denbighshire Water Acts and Orders 1864 to 1977.

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 Wrexham and East Denbighshire Water Company;

"the Order of 1933" means the Wrexham and East Denbighshire Water Order 1933(**c**);

"share" means share in the 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 other enactment, including this order.

(**a**) 1945 c. 42. (**b**) S.I. 1951/142, 1900, 1965/319 (1951 I, pp. 1348, 1347; 1965 I, p. 785).
(**c**) confirmed by 1933 c. lviii.

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 Wrexham and East Denbighshire Water Acts and Orders 1864 to 1975) are hereby incorporated with this order—

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

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

Provided that—

(i) 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";

(ii) 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 were inserted the word "such";

(iii) 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) 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.

Additional capital

4.—(1) The Company may from time to time raise by the creation and issue of ordinary stock or preference stock, or wholly or partly by either of those modes, additional capital to such nominal amount as shall be sufficient to produce, after taking into account any premiums or discounts (if any) which may be obtained or allowed on the issue or reissue thereof, the sum of one million two hundred and fifty thousand pounds.

(2) The Company shall not in respect of any year pay dividends on any paid-up capital raised after the commencement of this order under subsection (1) of this section, subsection (1) of section 4 (Additional capital) of the Wrexham and East Denbighshire Water (Financial Provisions) Order 1971(**c**)

(**a**) 1845 c. 16. (**b**) 1863 c. 118. (**c**) S.I. 1971/349.

or subsection (1) of section 17 (Additional capital) of the Wrexham and East Denbighshire (Maelor and Llantysilio) Water Order 1973(a) at rates greater than the following rates, that is to say—

(*a*) on capital subscribed before the date on which this order comes into operation, the rates which they were entitled to pay thereon immediately before that date; and

(*b*) on capital subscribed during the initial period—

(i) in the case of ordinary capital, ten per cent;

(ii) in the case of preference capital, twelve per cent; and

(*c*) on capital subscribed after the expiration of the initial period—

(i) in the case of ordinary capital, 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, 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.

(3) Nothing in paragraphs (*b*) or (*c*) of subsection (2) of this section shall prevent the payment (subject to the provisions of section 24 (Back dividends) of the Order of 1933) of a greater dividend on the ordinary capital created and issued in pursuance of subsection (1) of this section in order to make up deficiencies in previous dividends except that in the case of any further issues of ordinary capital such payments shall be limited to deficiencies arising during the last five years before the year in respect of which a dividend is being paid.

Power to borrow

5. (a) Notwithstanding anything contained in any previous enactment, the Company may for the purposes of the undertaking and without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845 borrow, either by way of mortgage of the undertaking or by the creation and issue of debenture stock, or partly by one and partly by the other of those modes, any sum or sums not exceeding in the whole (when added to any money already borrowed on mortgage or by the creation and issue of debenture stock and still outstanding on the date of the exercise of the foregoing power of borrowing):—

(i) the amount (including premiums and allowing for discounts) which at the time of borrowing has been raised by the Company by the creation and 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 section the nominal amount of any ordinary or preference shares or stock which have been or shall hereafter be issued for a consideration other than cash shall be deemed to have been raised by the issue of such ordinary or preference shares or stock, as the case may be.

(a) S.I. 1973/2235.

Maximum rates of interest

6. The Company shall not pay interest on any moneys borrowed on mortgage or debenture stock issued under section 5 (Power to borrow) of this order 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 the duly appointed auditor or auditors of the Company or a person qualified to be so appointed.

Application of enactments

7. Subject to the provisions of this order the undermentioned enactments shall, so far as applicable, extend and apply to any stocks created and issued under the powers of this order and to any moneys raised thereby as if those enactments with any necessary modifications were re-enacted in this order:—

The Order of 1933—

Section 22 (New stock to be subject to same incidents as existing stock);

Section 25 (Provisions as to sale of stock and payment of commissions);

Section 28 (Debenture stock);

Section 29 (Priority of existing mortgages).

The Wrexham and East Denbighshire Water Act 1936(b)—

Section 38 (Priority of mortgages over other debts).

Repeal

8. Section 5 (Power to borrow) of the Wrexham and East Denbighshire Water (Financial Provisions) Order 1971 is hereby repealed.

Costs of Order

9. All costs, charges and expenses of and incidental to the application for, and the preparation and making of this order may be paid by the Company in whole or in part out of revenue.

P. J. Hosegood,
An Under Secretary in
the Welsh Office.

Signed by authority of
the Secretary of State.
28th April 1977.

(a) 1958 c. 45.

(b) 1936 c. cvii.

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