



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER VI

STATUTORY WATER COMPANIES

97 General powers of appointed companies

- (1) Subject to the following provisions of this section, a statutory water company holding an appointment under Chapter I of this Part as a water undertaker for any area—
- (a) shall have power to do anything (whether in that area or elsewhere) which, in the opinion of the company, is calculated to facilitate, or is conducive or incidental to, the carrying out of the functions which are functions of the company by virtue of the appointment;
 - (b) without prejudice to the generality of that power, shall have power, for the purposes of, or in connection with, the carrying out of those functions—
 - (i) to acquire and dispose of land and other property;
 - (ii) to carry out such engineering or building operations at such places (whether in that area or elsewhere) as the company considers appropriate; and
 - (iii) to supply water fittings to any person to whom they supply water and to install, repair and alter such a person's water fittings, whether or not supplied by the company;
- and
- (c) without prejudice as aforesaid, shall have power—
 - (i) to provide for any person outside the United Kingdom advice or assistance, including training facilities, as respects any matter in which the company has skill or experience;

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- (ii) to become a member of any body formed for the purpose of promoting the interests of water undertakers or any description of water undertakers; and
 - (iii) to make donations and incur expenditure for the benefit of its officers and employees and in particular to pay, or make provision (whether by contributory or non-contributory schemes or otherwise) for the payment of, pensions, allowances or gratuities to or in respect of any persons who have been or are officers or employees of the company.
- (2) Nothing in this section with respect to the carrying out of works shall be construed as conferring any power otherwise than for the purpose of removing such a limitation on the capacity of a statutory water company as would, apart from this section, exist by virtue of the company's constitution; and, accordingly, without prejudice to the provisions of Part IV of this Act, this section shall be disregarded for the purpose of determining whether a statutory water company is liable, on grounds other than such a limitation, for any act or omission in exercise of a power to carry out works conferred by this section.
- (3) Nothing in this section shall be construed as authorising a statutory water company to carry on the business of a manufacturer of water fittings.
- (4) In this section—
- “supply”, in relation to water fittings, has the same meaning as it has in Part II of the Consumer Protection Act 1987 by virtue of section 46 of that Act; and
 - “water fittings” has the same meaning as in Chapter II of this Part.

98 Relaxation of limits on capital, borrowing and dividends

- (1) Subject to the following provisions of this section, so much of any provision contained in any local statutory provision or having effect by virtue of anything done under any local statutory provision, under section 41(5) of the 1945 Act (rate of dividend or interest etc. on redeemable stock) or under the Statutory Companies (Redeemable Stock) Act 1915, as—
- (a) imposes any limit to which this section applies in relation to any statutory water company; or
 - (b) otherwise relates to any such limit,
- shall have effect subject to such modifications as may be approved by special resolution of the company.
- (2) This section applies, in relation to a statutory water company, to the following limits (whether they are expressed by reference to a specified sum or percentage or by reference to the respective proportions of, or of different descriptions of, capital raised and sums borrowed or to any other matter), that is to say—
- (a) a limit on the amount of capital, or of capital of a particular description, that may be raised by the company;
 - (b) a limit on the amount that may be borrowed, or borrowed in a particular way or in particular circumstances, by the company; and
 - (c) a limit on the dividends payable on shares or stock in the company, or on shares or stock of a particular description.
- (3) Where there is a division of the shares or stock of a statutory water company into different classes, no modification of a limit falling within subsection (2)(c) above shall have effect by virtue of this section unless a consent to or approval of the modification

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has been given under subsection (4) below in respect of each class the rights attached to which are varied in consequence of the modification.

- (4) A consent or approval is given for the purposes of subsection (3) above in respect of a class of shares or stock if—
- (a) consent in writing to the modification has been given by not less than three-quarters, in nominal value, of the members of the company holding shares or stock of that class; or
 - (b) a resolution approving the modification is passed by not less than three-quarters, in nominal value, of the members of the company holding shares or stock of that class who are present (whether in person or by proxy) at a meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution, has been duly given;
- and for the purpose of determining whether the requirements of subsection (3) above are satisfied in relation to any two or more classes of shares or stock in a statutory water company, it shall be immaterial that consents and approvals have been given in respect of different classes in accordance with different paragraphs of this subsection.
- (5) Where subsection (3) above applies in relation to a modification specified in a resolution passed for the purposes of this section, the holders of not less, in the aggregate, than fifteen per cent., in nominal value, of the issued shares or stock of any class of shares or stock of the company (being persons who have not for the purposes of this section consented to the modification or voted in favour of any resolution for the modification) may apply to the High Court to have the modification cancelled.
- (6) An application to the High Court under subsection (5) above—
- (a) may be made on behalf of the shareholders or stockholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose; but
 - (b) shall not be made in relation to any modification more than twenty-one days after the date of the giving of the last consent or approval to the modification to be given for the purposes of subsection (1) or (3) above.
- (7) Where an application is made under subsection (5) above—
- (a) the modification to which it relates shall have no effect unless and until it is confirmed by the High Court; and
 - (b) the High Court, after hearing the applicant and any other persons who apply to that Court to be heard and appear to that Court to be interested in the application—
 - (i) if satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders or stockholders of the class represented by the applicant, may disallow the modification; and
 - (ii) if not so satisfied, shall confirm it;and the decision of the High Court on an application under subsection (5) above shall be final.
- (8) Provision having effect by virtue of a resolution passed in accordance with this section may be modified by a subsequent such resolution.
- (9) Without prejudice to the definition in section 189(1) below of “modifications” and cognate expressions, references in this section, in relation to a statutory water

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company, to the modification of any provision imposing a limit to which this section applies—

- (a) include references to the removal of that limit and to the replacement of that provision with a provision imposing a different such limit in relation to that company; but
 - (b) do not include, in the case of a limit falling within subsection (2)(a) above, any modification having the effect of reducing the authorised share capital, or the authorised capital stock, of that company.
- (10) In this section “special resolution”, in relation to a statutory water company, means a resolution passed by a majority of not less than three-quarters of such of the members of the company as (being entitled to do so) vote (whether in person or by proxy) at a meeting of the company of which not less than twenty-one days' notice, specifying the intention to propose the resolution, has been duly given; and in computing any majority for the purposes of this subsection the regulations contained in any local statutory provision as to the number of votes to which each member is entitled shall apply.

99 Removal of restrictions on payment of interest and application of profits etc

- (1) Nothing in so much of any local statutory provision as imposes a requirement as to the rate of interest at which sums may be borrowed by a statutory water company, or as to the rate at which interest on sums so borrowed is to be paid, shall apply in relation to any borrowing by a statutory water company after the coming into force of this subsection.
- (2) Notwithstanding the provisions of any local statutory provision, every statutory water company shall have power to form and maintain reserve and contingency funds by setting apart such sums in such circumstances, and to invest those funds in such manner, as it thinks fit.
- (3) Nothing in subsection (2) above shall authorise any failure by a statutory water company to meet any obligation imposed on it by virtue of any local statutory provision to pay any sum to any other person.
- (4) Nothing in so much of any local statutory provision as imposes a limit on the amount that may be carried forward at the end of any period to the credit of the profit and loss (net revenue) account of a statutory water company shall apply in relation to any such company after the coming into force of this subsection.

100 Sale of shares or stock

Nothing in any local statutory provision shall have effect at any time after the coming into force of this section so as to require any shares or stock in a statutory water company to be offered for sale to the public or so as to require any offer for the sale of any such shares or stock to be an offer for sale by auction or tender.

101 Registration of statutory water companies under the Companies Act 1985

- (1) Chapter II of Part XXII of the Companies Act 1985 (registration of companies not formed under that Act) shall have effect in relation to statutory water companies as if—

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- (a) any reference in that Chapter to a joint stock company included a reference to such a statutory water company as would not fall to be treated as a joint stock company for the purposes of that Chapter apart from this paragraph; and
- (b) any reference in that Chapter to an Act of Parliament included a reference to a local statutory provision which is not contained in an Act of Parliament;

and it is hereby declared that nothing in this Act or in the said Act of 1985 shall be construed as requiring a statutory water company to which a certificate has been issued under section 688 of that Act (certificates of registration under Chapter II of Part XXII) to be treated for the purposes of this Act or any other purposes as if it had been a different person in law before the issue of that certificate.

(2) Where—

- (a) provision for the constitution and regulation of a statutory water company holding an appointment under Chapter I of this Part—
 - (i) is contained in local statutory provisions having effect in accordance with paragraph 5 of Schedule 21 to the said Act of 1985 (enactments to have effect as if contained in memorandum and articles); or
 - (ii) would, apart from this subsection, be so contained if the company became a registered water company;
- (b) the company has by special resolution proposed (whether before or after becoming a registered water company) that provision contained in a memorandum and articles shall have effect in substitution for those local statutory provisions;
- (c) the proposal that a memorandum and articles shall so have effect in relation to the company has been approved by order made by the Secretary of State; and
- (d) in the case of a company that has not already done so, the company becomes a registered water company,

those local statutory provisions shall cease to have effect on such date as may, for the purposes of this subsection, be specified or described in that order and the proposed memorandum and articles shall come into force on that date subject to any modifications, terms or conditions contained in any order made by the High Court under section 102 below.

(3) The Secretary of State shall not make an order for the purposes of subsection (2)(c) above in relation to a proposal by any company unless it appears to him—

- (a) that neither an application under section 102 below with respect to the company's proposal nor an appeal with respect to the subject-matter of such an application is pending and that the time within which any such application or appeal may be made or brought has expired; and
- (b) where there is —
 - (i) a division of the shares or stock of the company into different classes; and
 - (ii) such a proposed difference between the memorandum and articles and the local statutory provisions which they will replace as will vary the rights attached to any such class,

that a consent to or approval of the difference has been given under subsection (4) below in respect of each class the rights attached to which would be varied if the order were made.

(4) A consent to or approval of a proposal is given for the purposes of subsection (3)(b) above in respect of a class of shares or stock if—

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- (a) consent in writing to the proposal has been given by the holders of not less than three-quarters, in nominal value, of the issued shares or stock of that class; or
- (b) an extraordinary resolution approving the proposal is passed at a separate general meeting of holders of shares or stock of that class;

and for the purpose of determining whether the requirements specified in subsection (3)(b) above are satisfied in relation to any two or more classes of shares or stock in a company, it shall be immaterial that consents and approvals have been given in respect of different classes in accordance with different paragraphs of this subsection.

- (5) Where an order has been made for the purposes of subsection (2)(c) above in relation to any company—

- (a) nothing in sections 97 to 100 above or in section 41 of the 1945 Act (power to issue redeemable stock) shall have effect on and after the date specified or described in the order so as to confer powers in relation to the company in addition to those conferred by virtue of the company's memorandum and articles;
- (b) on and after that date, the memorandum and articles which come into force by virtue of the order shall have effect, in accordance with section 14 and the other provisions of the Companies Act 1985, as if they were the company's registered memorandum and articles; and
- (c) the company shall, before the end of the period of fifteen days beginning with the day after that date, deliver to the registrar of companies a printed copy of the memorandum and articles which have so come into force;

and subsection (3) of section 6 of the said Act of 1985 (penalty for default in delivering documents to the registrar of companies) shall apply in relation to the obligation imposed by paragraph (c) above as it applies in relation to the obligations imposed by subsection (1) of that section.

- (6) Where the Secretary of State makes an order for the purposes of subsection (2)(c) above in relation to any company and it appears to him to be appropriate to do so for the purposes of, or in consequence of, the approval contained in the order, he may by order repeal or amend any local statutory provision.

- (7) The power to make an order for the purposes of subsection (2)(c) above or an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and an order under subsection (6) above may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

- (8) In this section and section 102 below—

“extraordinary resolution”—

- (a) in relation to a meeting held after the company in question has become a registered water company, means an extraordinary resolution within the meaning of the Companies Act 1985; and
- (b) in relation to a meeting held before that company becomes a registered water company, means such a resolution as would be a special resolution within the meaning of section 98 above if the meeting were a meeting of the company;

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“memorandum and articles” means a document containing only such provision as may be contained in a memorandum and articles of association registered under that Act;

“registrar of companies” has the same meaning as in that Act; and

“special resolution”—

(a) in relation to a time after the company in question has become a registered water company, means (subject to subsection (2) of section 102 below) a special resolution within the meaning of that Act; and

(b) in relation to a time before that company becomes a registered water company, means (subject to that subsection) a special resolution within the meaning of section 98 above;

and in this section and section 102 below a reference to a company’s becoming a registered water company is a reference to the issue to that company (whether before or on or after the transfer date) of a certificate under section 688 of that Act.

102 Procedure for cancelling resolutions for substituting memorandum and articles

(1) Where a special resolution has been passed containing a proposal, in relation to a company, for a memorandum and articles to have effect as mentioned in subsection (2) of section 101 above, an application for the resolution to be cancelled may be made to the High Court—

(a) by the holders of not less, in the aggregate, than fifteen per cent., in nominal value of the company’s issued share capital or issued stock;

(b) by the holders of not less, in the aggregate, than fifteen per cent., in nominal value, of the issued shares or stock of any class in respect of which a consent to or approval of the proposal to which the resolution relates is required for the purposes of subsection (3)(b) of that section; or

(c) if the resolution incorporates a modification of the company’s objects, by the holders of not less than fifteen per cent. of such of the company’s debentures as entitle the holders to object under this section to such a modification;

but an application under this section shall not be made by any person who has consented to or voted in favour of the proposal (whether for the purposes of subsection (2) or subsection (3)(b) of that section).

(2) Accordingly, in the case of such a special resolution for the purposes of section 101(2) above as incorporates a modification of the company’s objects—

(a) the same notice as is given for the purposes of that resolution to members of the company is required to be given to the holders of debentures entitling the holders to object under this section to a modification of the company’s objects; and

(b) in the absence of any local statutory provision regulating the giving of that notice, that notice shall be given in accordance with the provisions regulating the giving of the notice to the members.

(3) An application under this section—

(a) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose; but

(b) shall not be made in relation to any special resolution more than twenty-one days after the date of the last resolution, consent or approval to be passed or

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given for the purposes of subsection (2)(b) or (3)(b) of section 101 above or for the purposes, in connection with the company's becoming a registered water company, of section 681 of the Companies Act 1985 (procedural requirements for registration).

- (4) The powers of the High Court on an application under this section shall be to do one or more of the following, that is to say—
- (a) to make an order, on such terms and conditions as it thinks fit, cancelling the resolution to which the application relates or confirming the proposal contained in that resolution either subject to such modifications of the proposed memorandum and articles as may be specified in the order or without modifications;
 - (b) if it thinks fit, to adjourn the proceedings in order that arrangements may be made to the Court's satisfaction for the purchase of the interests of dissentient members or for the payment of compensation to such members;
 - (c) to give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
 - (d) to require that provision contained in any memorandum and articles, as confirmed by the Court, shall not at any time be modified in the respects specified in the Court's order except with the leave of the Court.
- (5) Without prejudice to the powers conferred by subsection (4)(c) above, an order of the High Court under this section may (if the Court thinks fit) provide for the purchase by a company of the shares or stock of any members of the company and for the reduction accordingly of the company's capital; and an order which so provides shall not confirm a proposal for a memorandum and articles to have effect in substitution for any local statutory provisions except subject to such modifications (if any) as may be required in consequence of that purchase and reduction.
- (6) The High Court shall not on an application under this section confirm any proposal in so far as it incorporates such an alteration of a company's objects as could not be made under section 4 of the Companies Act 1985 (alteration of objects) if the company were entitled to alter its objects under that section.
- (7) The debentures entitling the holders to object to a modification of a company's objects are any debentures secured on the company's undertaking which were issued or first issued before the day on which this Act is passed or which form part of the same series as any debentures so issued but have been issued on or after that date; and in this section "debentures" has the same meaning as in the said Act of 1985.