



Statutory Water Companies Act 1991

1991 CHAPTER 58

PART II

CONVERSION OF STATUTORY WATER COMPANIES

11 Registration of statutory water companies under the Companies Act 1985

- (1) Chapter II of Part XXII of the 1985 Act (registration of companies not formed under that Act) shall have effect in relation to statutory water companies as if—
- (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.
- (2) It is hereby declared that nothing in the 1985 Act, the Water Act 1989, the Water Industry Act 1991 or this Act shall be construed as requiring a statutory water company to which a certificate has been issued under section 688 of the 1985 Act (certificates of registration under Chapter II of Part XXII) to be treated for the purposes of those Acts or any other purposes as if it had been a different person in law before the issue of that certificate.

12 Adoption of memorandum and articles

- (1) Where—
- (a) provision for the constitution and regulation of a statutory water company holding an appointment under Chapter I of Part II of the Water Industry Act 1991—
 - (i) is contained in local statutory provisions having effect in accordance with paragraph 5 of Schedule 21 to the 1985 Act (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;

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- (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 13 below.

- (2) The Secretary of State shall not make an order for the purposes of subsection (1)(c) above in relation to a proposal by any company unless it appears to him—
 - (a) that neither an application under section 13 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 period 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 (3) below in respect of each class the rights attached to which would be varied if the order were made.
- (3) A consent to or approval of a proposal is given for the purposes of subsection (2)(b) above in respect of a class of shares or stock if—
 - (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.
- (4) For the purpose of determining whether the requirements specified in subsection (2)(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 subsection (3) above.
- (5) Where an order has been made for the purposes of subsection (1)(c) above in relation to any company—
 - (a) nothing in sections 1 to 8 above 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 1985 Act, as if they were the company's registered memorandum and articles; and

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- (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.
- (6) Subsection (3) of section 6 of the 1985 Act (penalty for default in delivering documents to the registrar of companies) shall apply in relation to the obligation imposed by subsection (5)(c) above as it applies in relation to the obligations imposed by subsection (1) of that section.
- (7) The power to make an order for the purposes of subsection (1)(c) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
 - “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 1985 Act; 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 4 above if the meeting were a meeting of the company;
 - “registrar of companies” has the same meaning as in the 1985 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 13 below) a special resolution within the meaning of the 1985 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 4 above.

13 Review by High Court of resolution 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 (1) of section 12 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 (2)(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 (1) or for the purposes of subsection (2)(b) of that section).
- (2) Accordingly, in the case of such a special resolution for the purposes of section 12(1) above as incorporates a modification of the company’s objects—

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- (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 given—
 - (i) for the purposes of subsection (1)(b) or (2)(b) of section 12 above; or
 - (ii) for the purposes, in connection with the company's becoming a registered water company, of section 681 of the 1985 Act (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—
 - (a) the purchase by a company of the shares or stock of any members of the company; and
 - (b) 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 1985 Act (alteration of objects) if the company were entitled to alter its objects under that section.
- (7) The debentures entitling the holders to object under this section to a modification of a company's objects are any debentures secured on the company's undertaking which—

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- (a) were issued or first issued before 6th July 1989; or
- (b) 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 1985 Act.

14 Power to amend local statutory provisions

- (1) Where the Secretary of State makes an order for the purposes of section 12(1)(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.
- (2) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under this section 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.