

1973 No. 2235

WATER SUPPLY, ENGLAND AND WALES

**The Wrexham and East Denbighshire (Maelor and
Llantysilio) Water Order 1973**

Made - - - - 20th December 1973

Coming into Operation 24th December 1973

ARRANGEMENT OF SECTIONS

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SCHEDULE.

The Secretary of State for Wales, in exercise of powers conferred by sections 9(1), 23, 32 and 33 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 (Maelor and Llantysilio) Water Order 1973 and shall come into operation on 24th December 1973.

(2) The Wrexham and East Denbighshire Water Acts and Orders 1864 to 1971 and this order may be cited together as the Wrexham and East Denbighshire Water Acts and Orders 1864 to 1973.

Interpretation.

2.—(1) In this order, unless the context otherwise requires—

“the Act of 1945” means the Water Act 1945;

“the added limits” means the parish of Llantysilio in the rural district of Wrexham in the county of Denbigh and so much of the rural district of Maelor within the county of Flint as is not within the existing limits;

“the Company” means the Wrexham and East Denbighshire Water Company;

“the Councils” means the Maelor Council and the Wrexham Council and “Council” means either one of those Councils;

“the day of transfer” means 1st January 1974;

“the existing Acts and Orders” means the Wrexham and East Denbighshire Water Acts and Orders 1864 to 1971;

“the existing limits” means the limits within which the Company are immediately before the day of transfer authorised to supply water;

“the limits of supply” means the limits within which the Company are for the time being authorised to supply water;

“the Maelor Council” means the rural district council of Maelor;

“the Third Schedule” means the Third Schedule to the Act of 1945;

“the transferred undertakings” means the water undertakings of the Councils situated within the added limits and described in the Schedule to this order;

“the undertaking” means the undertaking of the Company as for the time being authorised by any enactment;

“the Wrexham Council” means the rural district council of Wrexham; and any expression to which a meaning is assigned by the Third Schedule shall have the meaning so assigned.

(2) Except where the context otherwise requires, references in this order to any enactment shall be construed as references to that enactment as amended by, or having effect by virtue of, any subsequent 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).

3.—(1) 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 relate to the keeping and depositing of copies of the special Act), and the Companies Clauses Act 1863(b), except Part IV (which relates to change of name), as amended by subsequent Acts, are, so far as applicable for the purposes of and subject to the provisions of this order, hereby incorporated with this order:

Incorporation
of enactments.

Provided that:—

(a) section 14 of the Companies Clauses Act 1863 (which relates to dividends on preference shares) 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”;

(b) section 22 of the said Act (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 therefrom.

(2) For the purposes of this order 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 is 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.

4. On the day of transfer the transferred undertakings shall by virtue of this order be transferred to and vest in the Company and shall become part of the undertaking.

Transfer of
water
undertakings.

5.—(1) In consideration of the transfer to and vesting in the Company of the transferred undertakings the Company shall pay to each of the Councils in the year current on the day of transfer and in each year thereafter any amounts which, in pursuance of arrangements in force immediately before the day of transfer for the redemption of loan and the payment of interest thereon would, but for this order, have fallen on or after the day of transfer to be debited in the accounts of the water undertaking of that Council for that period in respect of money borrowed for the purposes of that undertaking:

Consideration
for transfer of
transferred
undertakings.

Provided that—

(a) the Company shall not be liable to pay so much of any amount as aforesaid as is attributable to any period before the day of transfer and any such amount shall be calculated as if the amount due in respect of redemption of loan and payment of interest thereon accrued from day to day;

(a) 1845 c.16.

(b) 1863 c.118.

(b) in calculating the amount which would have fallen to be debited in respect of any loan regard shall be had to—

- (i) the income earned by any sinking fund established for the redemption of the loan; and
- (ii) any sum received by the Council concerned under the Rural Water Supplies and Sewerage Acts 1944 to 1961 as amended by the Rural Water Supplies and Sewerage Act 1971(a) or under any other enactment towards the financing of the liability in respect of which the loan was raised.

(2) Any sum payable under subsection (1) of this section shall, unless otherwise agreed, be paid not later than the date on which the amount to which it is referable becomes payable by the Council concerned.

(3) Any question which may arise as to the method of calculating any amount for the purposes of subsection (1) of this section shall be determined by an arbitrator to be appointed either by agreement between the parties, or, in default of agreement, by the President of the Institute of Chartered Accountants in England and Wales.

(4) Any payment made by the Company under the foregoing provisions of this section in respect of the liability for the redemption of a loan shall be deemed to be a capital payment and any other such payment (other than a payment in respect of debt management expenses) shall be deemed to be an annual payment.

(5) In this section references to redemption of loan shall include a reference to repayment of advances.

Guarantee
of revenue
of Company
by Maelor
Council.

6.—(1) Subject to the provisions of this section, if in respect of any period of twelve months beginning on 1st January during the period beginning on the day of transfer and ending on 31st September 1978, the revenue receivable by the Company from water rates and charges including minimum charges for water supplied for domestic purposes and after allowing for cash discounts levied and made by the Company in accordance with the provisions of this order in that part of the added limits which is within the rural district of Maelor is less than the sum of £17,700, the Maelor Council shall pay to the Company an amount equal to the difference between the amount of the revenue so receivable as aforesaid and the said sum of £17,700

(2) For the purposes of this section revenue from water rates and charges receivable by the Company in respect of any such period of twelve months as aforesaid shall include any payments under section 36 or section 37 of the Act of 1945.

(3) The amount of the payments to be made to the Company under this section shall, failing agreement between the Company and the Maelor Council, be referred to a single arbitrator to be appointed by agreement between the parties or in default of agreement by the President of the Institute of Chartered Accountants in England and Wales.

Extension of
limits of supply
and as to water
rates and
charges.

7.—(1) On and after the day of transfer the limits of supply shall include the added limits and, except as otherwise expressly provided by this order, the provisions of the existing Acts and Orders shall with any necessary modifications apply and have effect within the added limits

(a) 1971 c.49.

and, except as aforesaid, the Company within the added limits shall have and may exercise the like powers, rights, privileges and authorities and shall be subject to the like duties and obligations as they now have and are subject to within the existing limits:

Provided that nothing in this order shall be construed as extending or enlarging the scope of any of the provisions of the existing Acts and Orders which only apply to or affect a specified portion of the existing limits.

(2) Notwithstanding the foregoing provisions of this section the water rates and charges which were in force in the added limits immediately before the day of transfer shall continue in force until 1st April 1974.

8. Any licence issued to a Council before the day of transfer under the Water Resources Act 1963(a) in so far as it is a licence to abstract water by means of works transferred by this order shall on the day of transfer be transferred by virtue of this order to the Company and the Company shall thereupon by virtue of section 32(5) of the said Act of 1963 to that extent become the holder of such licence for the purposes of that Act.

Transfer of licences under Water Resources Act 1963.

9.—(1) The Company may as from the day of transfer continue and maintain the reservoirs, wells, boreholes, adits, pumping stations, mains, pipes and other works and apparatus transferred to them by virtue of this order.

Power to maintain, etc., transferred works.

(2) Any mains, pipes or other works transferred to the Company by virtue of this order shall for all purposes be deemed to have been laid or constructed by the Company.

10. Any action, arbitration or other proceeding or any cause of action, arbitration or other proceeding, pending or existing on the day of transfer by or against or in favour of a Council in respect of the transferred undertakings shall not abate or be discontinued or be in anywise prejudicially affected by the transfer to the Company of that undertaking or by anything in this order but may be continued, prosecuted and enforced by or against or in favour of the Company as and when it might have been continued, prosecuted and enforced by or against or in favour of that Council if this order had not been made but not further or otherwise.

Pending actions not to abate.

11. Subject to the provisions of this order all agreements, conveyances, contracts, deeds and other instruments entered into or made with or by a Council in respect of the transferred undertakings and in force at the day of transfer (other than contracts the benefits of, and liabilities under, which are not transferred by this order) shall as from that day be as binding and of as full force and effect in every respect against or in favour of the Company and may be enforced as fully and effectually as if instead of that Council the Company had been a party thereto but nothing in this order or done thereunder shall prejudice or affect the right of the Company to terminate any such contract or agreement at such time and in such manner as it might have been terminated if this order had not been made.

Contracts to be binding on Company.

12.—(1) Each of the Councils shall be entitled to and may recover all rates, rents, charges, profits and sums of money and shall discharge and

Recovery and apportionment of debts, etc.

pay all debts and liabilities in respect of the transferred undertaking of that Council which accrue due or become payable before the day of transfer and, subject to the provisions of this order, the Company shall be entitled to and may recover all such revenues and shall discharge or pay all such outgoings which accrue due or become payable on or after that day:

Provided that (except so far as may be otherwise agreed between a Council and the Company) so much of any amount recovered or paid by that Council by virtue of this section as is attributable to any period beginning on or after the day of transfer shall (as the case may require) be paid by them to, or be repaid to them by, the Company and so much of any amount so recovered or paid by the Company as is attributable to any period before the day of transfer shall (as the case may require) be paid to them to, or be repaid to them by, that Council.

(2) Where necessary for the purposes of this section, any revenues and outgoings shall be apportioned between the Company and a Council.

(3) Any question which may arise under this section shall be determined by an arbitrator to be appointed either by agreement between the parties or, in default of agreement, by the President of the Institute of Chartered Accountants in England and Wales.

Books, etc.,
to remain
evidence.

13.—(1) All books and other documents which, if this order had not been made, would have been evidence in respect of any matter for or against a Council in respect of their transferred undertaking shall on and after the day of transfer be admissible in evidence in respect of the same matter for or against the Company.

(2) All officers and persons who on the day of transfer have in their possession or under their control any deeds, contracts, plans, specifications, books and other documents, moneys or effects forming part of the transferred undertakings shall be liable to account for and deliver them up to the Company or to such persons as the Company may appoint to receive them and subject to the same consequences on refusal or neglect as if they had been appointed by and become possessed thereof for the Company:

Provided that a Council shall be entitled to have access at all reasonable times and for all reasonable purposes to any books, papers and documents previously forming part of the transferred undertaking of which the Company shall have received possession under this section.

Carrying on
of transferred
undertakings.

14.—(1) After the commencement of this order and until the day of transfer the transferred undertakings shall be carried on by the Councils with due regard to the interests of the Company as prospective owners of the transferred undertakings on and after the day of transfer and accordingly the Councils may incur all such proper expenditure and liabilities as they shall deem necessary for carrying on the transferred undertakings in the ordinary course of business:

Provided that, except with the consent of the Company, the Councils shall not—

(a) enter into any contract or incur any liability otherwise than in the ordinary course of carrying on their transferred undertakings extending beyond the day of transfer or make any unnecessary

expenditure or any exceptional expenditure other than expenditure in respect of necessary legal, engineering and accountancy charges incidental to the transfer of those undertakings;

- (b) incur any expenditure on capital account;
- (c) increase the remuneration, salaries or emoluments of such of their officers or servants as are employed for the purposes of their transferred undertakings (except in accordance with any contract of service or scale of remuneration or at the instance of any wages board or joint industrial council or in pursuance of any compulsory arbitration award) beyond their usual remuneration, salaries and emoluments at the rate operative immediately before the commencement of this order;
- (d) vary any rates or charges which were being demanded or taken by the Councils immediately before the commencement of this order.

(2) The consent of the Company required by the proviso to the foregoing subsection shall not be unreasonably withheld and any question whether it is unreasonably withheld shall be determined by arbitration, the arbitrator unless otherwise agreed being appointed by the President of the Law Society.

15.—(1) For the purposes of the application of the Water Officers (Compensation) Regulations 1964(a) to any person in consequence of this order or anything done in pursuance thereof the compensating authority shall be the Council concerned.

Compensation to officers.

(2) For the purpose of the application as aforesaid of regulations 12(2) and 13 and 13(1)(a) of the said Regulations of 1964 the material date shall be the day of transfer.

16.—(1) If the transferred undertaking includes—

- (a) an asset which is held or used in part for the purposes of the transferred undertaking and in part for other purposes of a Council; or
- (b) an asset which forms part only of a building or other property of a Council;

Assets partly used for transferred undertakings.

an agreement may before the day of transfer be entered into between the Council and the Company in relation to that asset and, without prejudice to the generality of this provision, any such agreement may—

- (i) provide for the exclusion of the asset from the transfer;
- (ii) provide for the inclusion in the transfer of other property of the Council in connection with which the asset is used;
- (iii) provide for the joint user of the asset;
- (iv) provide where necessary for the granting of easements or rights over or in respect of land to be transferred or land to be retained by the Council; and
- (v) state the terms and conditions of such agreement (including payments to be made in respect thereof) and (if thought fit) the period for which it shall operate.

(a) S.I. 1964/26 (1964 I, p.23).

(2) Where any such agreement provides for the exclusion of the asset from the transfer or for the joint user of the asset such asset shall not be transferred to the Company by virtue of this order.

(3) Where any such agreement provides for the inclusion in the transfer of other property of a Council in connection with which the said asset is used, such property shall on the day of transfer or on a date stated in the agreement be transferred to the Company by virtue of this order.

(4) Where under subsection (1) of this section a question has arisen between a Council and the Company whether—

- (a) an asset should be excluded from the transfer;
- (b) there should be included in the transfer other property of the Council in connection with which the said asset is used; or
- (c) the said asset should be used jointly;

and the matter has not been agreed between the Council and the Company before the day of transfer, the said asset shall not on that day be transferred to the Company but may be used by the Company on such terms as may be agreed between the Council and the Company or failing agreement as may subsequently be determined by arbitration and in such a case—

- (i) if it is afterwards agreed or determined by arbitration that the said asset shall be excluded from the transfer or shall be used jointly by the Council and the Company, subsection (2) of this section shall apply as if it had been so agreed before the day of transfer;
- (ii) if it is afterwards agreed or determined by arbitration that the said asset shall be included in the transfer or that there shall be included in the transfer other property of the Council in connection with which the said asset is used, the said asset or such other property (as the case may be) shall accordingly be transferred to the Company by virtue of this order on a date stated in such agreement or in the award of the arbitrator (as the case may be).

(5) In default of agreement between a Council and the Company on any matter referred to in this section, the question shall be referred to arbitration and the award of the arbitrator may provide for any matter for which an agreement under this section might have provided.

(6) For the purposes of any arbitration under this section the arbitrator shall, unless otherwise agreed between the parties, be appointed by the President of the Institution of Civil Engineers on the application of either party after giving notice in writing to the other.

Additional
capital.

17.—(1) The Company may from time to time raise by the creation and issue of ordinary stock or preference stock, or partly by one and partly by the other of those modes, additional capital to such nominal amounts 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 re-issue thereof, the sum of £400,000.

(2) No stock issued under the powers of this order shall vest in the person accepting the same unless and until the full price thereof including any premium obtained upon the sale thereof shall have been paid in respect thereof.

(3) Subsections (2) and (3) of section 4 (Additional capital) of the Wrexham and East Denbighshire Water (Financial Provisions) Order 1971(a) shall extend and apply to capital raised under this section as if in the said subsection (2) after the words "Order of 1964" there were inserted the words "or under subsection (1) of section 17 (Additional capital) of the Wrexham and East Denbighshire (Maelor and Llantysilio) Water Order 1973".

18. Subject to the provisions of this order, the following enactments shall, so far as applicable, extend and apply and have effect for and in connection with the purposes of this order as if those enactments with any necessary modifications were re-enacted in this order:—

Application of enactments.

The Wrexham and East Denbighshire Water Order 1933(b)—

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

Section 25 (Provisions as to sale of stock and payment of commission).

19.—(1) Any order made under section 113 of the Public Health Act 1936(c) and in force immediately before the day of transfer, authorising a Council to supply water in an area which is not within the limits of supply, shall, as from the day of transfer, have effect in respect of that area as if it were an order made under section 11 of the Act of 1945 authorising the Company to supply water in that area.

Fringe orders.

(2) Save as aforesaid any order authorising a Council to supply water under section 113 of the Public Health Act 1936 shall, as from the day of transfer, cease to have effect.

(3) Where immediately before the day of transfer statutory water undertakers (other than the Councils) were supplying water within the limits of supply by virtue of consent given by a Council under section 113 of the Public Health Act 1936 or section 11 of the Act of 1945, that consent shall be deemed to have been given by the Company.

Application of sections 76 and 77 of Third Schedule.

20.—(1) Sections 76 and 77 of the Third Schedule (which relate respectively to the reserve and contingency funds of a company and to the limitation on the balance carried forward at the end of the year) are hereby applied to the undertaking and shall be incorporated in the Wrexham and East Denbighshire Water Acts and Orders 1864 to 1973.

(2) For the purposes of computing the aggregate amount which may stand to the credit of the reserve fund and contingency fund authorised by section 76 of the Third Schedule as applied to the undertaking by this order, and of computing the aggregate amount which may be carried by the Company in any year to the formation or maintenance of the said funds, the capital expenditure incurred by the Company for the purposes of the undertaking shall be deemed to be increased by £426,000 during such period as the Company are the lessees of the Twll intake and pump-house as defined in section 2 of the Wrexham and East Denbighshire Water Order 1951(d).

(a) S.I. 1971/349
(c) 1963 c.49.

(b) confirmed by 1933 c. lviii.
(d) S.I. 1951/576

(3) In the application of section 76 of the Third Schedule to the undertaking by this order the capital expenditure incurred by the Company for the purposes of the undertaking in relation to the transferred undertakings shall be deemed to be increased by £93,460 in respect of the water undertaking of the Maelor Council and by £26,540 in respect of the undertaking of the Wrexham Council.

(4) Section 8 of the Wrexham and East Denbighshire Water Order 1951 is hereby repealed.

Costs of
order.

21. All costs, charges and expenses of and incidental to the application for this order and the preparation and making of this order (including all such costs, charges and expenses incurred by the Councils) shall be paid by the Company and may in whole or in part be defrayed out of revenue.

SCHEDULE

DESCRIPTION OF THE TRANSFERRED UNDERTAKINGS

Section 2

The water undertakings of the Councils as existing immediately before the day of transfer, including (subject to the provisions of this order)—

- (a) all the lands, buildings, easements, waterworks, water, sources of supply, machinery, mains, pipes, meters, plant, stock, spare parts, tools, apparatus, vehicles, stores and other real and personal property, assets and effects, rights, powers and privileges vested in or enjoyed by the Councils for or in relation to their respective water undertakings immediately before the day of transfer and all liabilities and obligations to which they were then subject in relation to the said undertakings;
 - (b) the benefits of and liabilities under all contracts (other than contracts for the employment of officers or servants) in force immediately before the day of transfer in respect of the said undertakings;
 - (c) all registers, books of account, maps, plans, specifications, engineering reports and other documents relating solely to those undertakings;
- but excluding—
- (i) any funds, money or securities for money of the Council's whether invested or in hand other than consumers' deposits;
 - (ii) any liabilities or obligations in respect of any sum borrowed by the Councils respectively for the purposes of their said undertakings;
 - (iii) any right to receive payments under the Rural Water Supplies and Sewerage Acts 1944 to 1961 as amended by the Rural Water Supplies and Sewerage Act 1971 or payments of a similar nature under any other enactment in respect of expenditure in connection with either of the said undertakings.

Signed by authority of the Secretary of State.

Owen Morris,
An Under Secretary, Welsh Office.

20th December 1973.