

1973 No. 2236

WATER SUPPLY, ENGLAND AND WALES

**The Wrexham and East Denbighshire (Ceiriog)
Water Order 1973**

Made - - - - 21st 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), 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 (Ceiriog) Water Order 1973 and shall come into operation on 24th December 1973.

Interpretation.

(2) This order shall be included among the enactments which may be cited together as the Wrexham and East Denbighshire Water Acts and Orders 1864 to 1973.

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

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

“the added limits” means so much of the rural district of Ceiriog in the County of Denbigh as lies within the catchment area of the river Dee;

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

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

“the Council’s undertaking” means so much of the water undertaking of the Council as is situate within the added limits and described in the Schedule to this order;

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

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

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.

Application of section 94 of Third Schedule.

3. 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.

Transfer of Council’s undertaking.

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

(a) 1945 c. 42.

(b) S.I. 1951/142, 1900, 1965/319 (1951 I, pp. 1348, 1347; 1965 I, p. 785).

5.—(1) In consideration of the transfer to and vesting in the Company of the Council's undertaking the Company shall on the day of transfer or as soon as the amount to be paid has been ascertained pay to the Council—

Consideration
for transfer of
undertaking.

- (a) a sum equal to the amount of the loans raised by the Council for the purposes of the Council's undertaking and outstanding on that day;
- (b) the amount of any capital expenditure incurred by the Council for the purposes of the Council's undertaking not defrayed from loan moneys for which statutory borrowing powers had been or could have been conferred and which it is anticipated would but for the transfer have been exercised;
- (c) a sum equal to the value immediately before that day of all loose tools, plant and consumable stores held otherwise than on capital account and forming part of the Council's undertaking (other than such stores purchased out of loans raised as aforesaid).

(2) The amount of the payments to be made under sub-section (1) of this section shall, failing agreement between the Council and the Company, be referred to a single arbitrator to be agreed upon by them or, failing agreement, to be appointed on the application of either of them by the President of the Institute of Chartered Accountants in England and Wales.

(3) If the sums payable by the Company to the Council in accordance with subsection (1) of this section or any part of such sums not are paid on the day of transfer, the Company shall pay to the Council interest on such sums or such part thereof (as the case may be) at the rate of five per cent. per annum or at the rate of one per cent. above the rate equivalent to Bank of England minimum lending rate from time to time prevailing (whichever is the greater) from the day of transfer to the actual date of payment less income tax at the standard rate then prevailing.

6.—(1) Subject to the provisions of this section, if in respect of any of the following periods the revenue receivable by the Company from water rates including minimum charges for water supplied for domestic purposes and after allowing for cash discounts levied by the Company in accordance with the provisions of this order in the added limits is less than the sum specified below in respect of each such period, the 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 respective sum:—

Guarantee of
revenue of
Company by
Council.

- (a) the period of twelve months beginning on 1st January
1974... .. £9,000
- (b) the period of twelve months beginning on 1st January
1975... .. £12,000
- (c) the period of twelve months beginning on 1st January
1976... .. £16,000

(2) For the purposes of this section revenue from water rates 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 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.

7. 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 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.

Rates and charges in added limits.

8.—(1) During the following periods the water rates to be levied in respect of water supplied for domestic purposes to premises in the added limits shall be less than the corresponding water rates for the time being levied by the Company in respect of water supplied for domestic purposes to premises in the existing limits—

(a) for the period of nine months beginning on 1st April 1974, by thirty-three and one third per cent.; and

(b) for the period of twelve months beginning on 1st January 1975, by sixteen and two thirds per cent.

(2) Notwithstanding the provisions of section 7 of this order 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.

Transitional arrangements for payments of water rates in added limits.

9. In relation to the period between 1st April 1974 and 31st December 1974, section 55 of the Third Schedule as incorporated with and applied to the undertaking by the Wrexham and East Denbighshire Water (No. 2) Order, 1954(a) shall in its application to the added limits have effect as if the directors of the Company had not determined that water rates are to be payable by equal half-yearly instalments and, notwithstanding anything in the said section 55, the Company may demand payments of rates for water supplied for domestic purposes in the added limits during that period by a single payment on 1st April 1974:

Provided that in relation to the said period, subsection (3) of the said section 55 shall have effect as if such single payment was a half-yearly instalment and as if for references therein to a half-year there were substituted references to the said period of nine months.

Transfer of licences under Water Resources Act 1963.

10. Any licence issued to the Council before the day of transfer under the Water Resources Act 1963(b) in so far as it is a licence to abstract water be 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.

(a) S.I. 1954/813.

(b) 1963 c. 38.

11.—(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.

12. 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 the Council in respect of the Council's undertaking 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 the Council if this order had not been made but not further or otherwise.

Pending actions not to abate.

13. Subject to the provisions of this order all agreements, conveyances, contracts, deeds and other instruments entered into or made with or by the Council in respect of the Council's undertaking 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 the 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.

14.—(1) The Council shall be entitled to and may recover all rates, rents, charges, profits and sums of money and shall discharge and pay all debts and liabilities in respect of the Council's undertaking 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:

Recovery and appointments of debts., etc.

Provided that (except so far as may be otherwise agreed between the Council and the Company) so much of any amount recovered or paid by the 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 by them to, or be repaid to them by, the Council.

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

15.—(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 the Council in respect of the Council's 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 Council's undertaking shall be liable to account for and deliver them up to the Company or to such persons as the Company may appoint to receive the 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 the 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 Council's undertaking of which the Company shall have received possession under this section.

Carrying on
of Council's
undertaking.

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

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

- (a) enter into any contract or incur any liability otherwise than in the ordinary course of carrying on the Council's undertaking 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 that undertaking;
- (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 the Council's undertaking (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 Council 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.

17.—(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.

Compensation to officers.

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

18.—(1) If the Council's undertaking includes—

Assets partly used for Council's undertaking.

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

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.

(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 the 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 the 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—

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

- (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 the 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 part after giving notice in writing to the other.

Fringe orders.

19.—(1) Any order made under section 113 of the Public Health Act 1936(a) and in force immediately before the day of transfer, authorising the 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.

(2) Save as aforesaid any order authorising the 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 a local authority (other than the Council) were supplying water within the limits of supply by virtue of consent given by the Council under section 113 of the Public Health Act 1936, that consent shall be deemed to have been given by the Company.

Extension of application of section 76 of Third Schedule.

20. In the application of section 76 of the Third Schedule to the undertaking by virtue of section 20(1) of the Wrexham and East Denbighshire (Maelor and Llantysilio) Water Order 1973 the capital expenditure incurred by the Company for the purposes of the undertaking in relation to the Council's water undertaking shall be deemed to be increased by £78,000.

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 Council) shall be paid by the Company and may in whole or in part be defrayed out of revenue.

(a) 1936 c. 49.

SCHEDULE

Section 2.

DESCRIPTION OF THE COUNCIL'S UNDERTAKING

So much of the water undertaking of the Council as existing immediately before the day of transfer as is situate within the added limits, 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 Council for or in relation to that part of their water undertaking immediately before the day of transfer and all liabilities and obligations to which they were then subject in relation to that part of the said undertaking;
- (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 part of the said undertaking;
- (c) all registers, books of account, maps, plans, specifications, engineering reports and other documents relating solely to the said part of the said undertaking;

but excluding—

- (i) any funds, money or securities for money of the Council whether invested or in hand other than consumer's deposits;
- (ii) any liabilities or obligations in respect of any sum borrowed by the Council for the purposes of the said part of their said undertaking.

Signed by authority of the Secretary of State.

Owen Morris,
An Under Secretary,
Welsh Office.

21st December 1973.