

1973 No. 497

WATER SUPPLY, ENGLAND AND WALES

The York Water Order 1973

Made - - - 19th March 1973

Coming into operation 26th March 1973

The Secretary of State for the Environment, in exercise of powers conferred by sections 23 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:—

1.—(1) This order may be cited as the York Water Order 1973 and shall come into operation on 26th March 1973. Citation and commencement.

(2) The York Water Acts and Orders 1846 to 1969 and this order may be cited together as the York Water Acts and Orders 1846 to 1973.

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— Interpretation.

“the Company” means the York Waterworks Company;

“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 subsequent enactment, including this order.

3.—(1) The Companies Clauses Consolidation Act 1845(c), 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) and the Companies Clauses Act 1863(d) except Part IV (which relates to change of name) 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.

(a) 1945 c. 42.

(b) S.I. 1951/142, 1900, 1970/1681 (1951 I, pp. 1348, 1347; 1970 III, p. 5551).

(c) 1845 c. 16.

(d) 1863 c. 118.

Provided that—

- (a) section 14 of the said Act of 1863 (which relates to dividends on preference capital) 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 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) 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.

(3) For the purposes of this order the provisions of section 94 of the Third Schedule (which require undertakers to keep a copy of the special Act at their principal office, and to deposit copies with certain officers) shall apply to the undertaking and are hereby incorporated with this order.

Capital and
borrowing
powers.

4.—(1) Subject to and in accordance with the provisions of this order, the Company may raise by the creation and issue of share capital or by borrowing on mortgage of the undertaking or by the creation and issue of debenture stock or wholly or partly by any one or more of those modes respectively such sums as shall not exceed in the aggregate, when added to the amount which has been raised by the Company by the creation and issue of share capital and by borrowing under the York Water Acts and Orders 1846 to 1969, four million five hundred thousand pounds:

Provided that the aggregate of any sums so borrowed shall not (when added to any money borrowed on mortgage or raised by the creation and issue of debenture stock by the Company and still outstanding at the date or respective dates on which the Company exercise the powers of this section) exceed in the whole—

- (i) the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the creation and issue of share capital; and
- (ii) with the consent of the Secretary of State for the Environment an additional amount not exceeding five per cent. of such first mentioned amount.

(2) For the purposes of this section the Company may raise additional share capital by the creation and issue of further amounts of ordinary stock or of preference stock or by the creation and issue of new ordinary shares or stock or new preference shares or stock or wholly or partly by one or more of those modes respectively.

(3) For the purposes of this section the amount of any share capital raised shall be taken to be the amount raised after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(4) The Company may exercise their powers of borrowing money under this section without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845.

(5) For the purposes of this section the nominal amount of any share capital which has been or shall hereafter be issued for a consideration other than cash shall be deemed to have been raised by the issue of such share capital.

(6) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the York Water Acts and Orders 1846 to 1969 shall cease to be exercisable.

(7) Section 2 (Extension of power to borrow) of the York Water Order 1968(a) is hereby repealed.

(8) The Company shall not pay interest on any moneys borrowed or debenture stock issued under this section at a higher rate than seven per cent. per annum or such higher rate as the Secretary of State for the Environment may from time to time allow:

Provided that the consent of the said 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(b)), 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.

5. The following provisions of the York Waterworks Act 1932(c) shall (subject to the provisions of this order) so far as possible extend and apply to any ordinary or preference shares or stock, debenture stock or mortgages created and issued or granted under the provisions of this order or to any moneys raised thereby as if those sections with any necessary modifications were re-enacted in this order:—

Application of certain enactments.

Section 12 (New capital to rank with existing capital of same class);

Section 17 (Special provision for benefit of small investors);

Section 18 (Power to issue capital to employees and consumers);

Section 19 (Provisions as to payment of commission on sale of capital);

Section 21 (Debenture stock);

Section 22 (Priority of money raised on mortgage or debenture stock over other claims);

Section 24 (Appointment of receiver);

Section 27 (Application of moneys).

6.—(1) As from the commencement of this order, section 5 of the York Water Order 1959(d) (which prescribes the maximum rates of dividend) shall have effect as if:—

Maximum rates of dividend.

(a) S.I. 1968/923.

(b) 1958 c. 45.

(c) 1932 c. xiv.

(d) S.I. 1959/1459.

- (a) in paragraph (a), for the words “commencement of this order” there were substituted the words “commencement of the York Water Order 1973”;
- (b) for subparagraph (i) of paragraph (b), there were substituted the following subparagraph:—
- “(i) in the case of ordinary capital subscribed during the initial period, ten per cent. and, in the case of ordinary capital subscribed thereafter seven per cent. or such higher rate not exceeding ten per cent. as the Secretary of State may allow; or”
- (c) in subparagraph (ii) of paragraph (b), after the word “capital” there were inserted the words “subscribed during the initial period, twelve per cent. and, in the case of preference capital subscribed thereafter”;
- (d) at the end thereof there were inserted the words—
- “In this subsection ‘the initial period’ means the period of five years beginning with the commencement of the York Water Order 1973”.

(2) Section 12 of the York Waterworks Act 1895(a) is hereby repealed.

Costs of order.

7. The costs, charges and expenses of and incidental to the application for, and the preparation and making of, this order may in whole or in part be defrayed out of revenue.

Signed by authority of
the Secretary of State
19th March 1973

J. E. Beddoe,
An Under Secretary in
the Department of the
Environment

(a) 1895 c. xxxix.