
STATUTORY INSTRUMENTS

1980 No. 722

WATER, ENGLAND AND WALES
The East Worcestershire Water (Capital Powers)
Order 1980

Made - - - 21st May 1980
Coming into Operation 1st June 1980

The Secretary of State for the Environment, in exercise of powers conferred by sections 23, 32 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 East Worcestershire Water (Capital Powers) Order 1980 and shall come into operation on 1st June 1980.

Citation and commencement.

(2) The East Worcestershire Water Acts and Orders 1877 to 1979 and this order may be cited together as the East Worcestershire Water Acts and Orders 1877 to 1980.

2. 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 East Worcestershire Waterworks Company;

“share” means share in the share capital of the Company and includes stock except where a distinction between stock and shares is expressed or implied and “share capital” shall be construed accordingly;

“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.

3.—(1) The following enactments (so far as they are applicable to the purposes of this order and are not inconsistent with the provisions of the East Worcestershire Water Acts and Orders 1877 to 1979) are hereby incorporated with this order—

Incorporation of enactments.

(a) 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);

(b) the Companies Clauses Act 1863(d), except Part IV (which relates to change of name):

(a) 1945 c. 42.
(c) 1845 c. 16.

(b) S.I. 1951/142, 1900, 1970/1681.
(d) 1863 c. 118.

Provided that—

- (i) section 98 of the said Act of 1845 (which requires proceedings to be entered in books), as so incorporated, shall have effect as if after the words “ shall be signed by the chairman of such meeting ” there were inserted the words “ or of the next succeeding meeting ”;
- (ii) section 14 of the said Act of 1863 (which relates to dividends on preference capital), as so incorporated, shall have effect as if—
 - (A) 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
 - (B) before the words “ profits available ” there were inserted the word “ such ”;
- (iii) 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) For the purposes of this order the provisions of 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 are 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.

Capital and
borrowing
powers.

4.—(1) Subject to and in accordance with the provisions of this order, the Company may from time to time 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, such sums as, when added to any money raised by the issue of share capital or borrowed by the issue of loan capital before the commencement of this order and in either case outstanding at the date, or respective dates, on which the Company exercise the powers of this section, shall be sufficient to produce in the aggregate £20 million:

Provided that the aggregate of any sums so borrowed shall not (when added to any sums so borrowed 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—

- (a) one and a half times the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the issue of share capital; and
- (b) with the consent of the Secretary of State an additional amount not exceeding 10 per cent. of such first-mentioned amount.

(2) For the purposes of the proviso to subsection (1) of this section the nominal amount of any ordinary or preference shares which have been or shall hereafter be issued for a consideration other than cash shall be deemed to have been the amount raised by the Company by the issue of such ordinary or preference shares, as the case may be.

(3) (a) The Company may raise sums by the creation and issue of the share capital under subsection (1) of this section by the creation and issue of ordinary shares or preference shares or wholly or partly by one or more of those modes.

(b) For the purposes of this section the amount raised or to be raised by the issue of share capital shall be taken to be the amount which has been or will be raised, as the case may be, after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(4) For the purposes of this section the Company may without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845 borrow money on mortgage of the undertaking.

(5) The Company shall not pay interest on any moneys borrowed or debenture stock issued under this section at a higher rate than 10 per cent. per annum or such higher rate as the Secretary of State may from time to time allow:

Provided that the consent of the 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 7 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) a firm of stockbrokers, being members of a recognised stock exchange (as defined in the Prevention of Fraud (Investments) Act 1958(a)) or the bankers who placed the mortgage or placed or underwrote the issue of the 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.

(6) The unexercised powers of the Company for raising money by the creation and issue of share capital under the East Worcestershire Water Acts and Orders 1877 to 1979 shall cease to be exercisable.

(7) Any share capital which the directors of the Company were before the coming into operation of this order authorised by a resolution of the Company to create and issue and which was not so created and issued before the coming into operation of this order may be created and issued by the directors of the Company under subsection (1) of this section and without any further requisite.

(8) Notwithstanding anything in any enactment for the time being relating to the Company, the directors of the Company may by virtue of this section and without further or other sanction or authority exercise any powers for the time being vested in the Company of borrowing and reborrowing on mortgage and of creating and issuing mortgages or debenture stock and of raising money by the issue of notes or bonds.

(9) No share created and issued under this section shall be of less nominal value than one pound.

(a) 1958 c. 45.

Maximum rates of dividend.

5.—(1) The Company shall not in respect of any year pay dividends on their paid-up share capital at rates greater than the following rates, that is to say:

- (a) on capital subscribed before the date on which this order comes into operation, the rates which they were entitled to pay thereon immediately before that date; and
- (b) on capital subscribed during the initial period—
 - (i) in the case of ordinary capital, 10 per cent.;
 - (ii) in the case of preference capital, 12 per cent.; and
- (c) on capital subscribed after the expiration of the initial period—
 - (i) in the case of ordinary capital, 7 per cent. or such higher rate not exceeding 10 per cent. as the Secretary of State may in respect of any subscription allow; or
 - (ii) in the case of preference capital, 7 per cent. or such higher rate not exceeding 12 per cent. as the Secretary of State may in respect of any subscription allow.

In this subsection “the initial period” means the period of five years beginning with the coming into operation of this order.

(2) Nothing in paragraphs (b) or (c) of subsection (1) of this section shall prevent the payment of a greater dividend on any capital referred to therein which is issued as ordinary capital in order to make up deficiencies in previous dividends thereon arising during the last five years before the year in respect of which a dividend is being paid.

Temporary borrowing.

6. In addition to the powers to borrow money on mortgage of the undertaking or to raise money by the creation and issue of debenture stock, which are for the time being exercisable by the Company, the Company may for the purposes of or in connection with the undertaking borrow by way of temporary loans or overdrafts from banks or otherwise any sums which they may temporarily require—

- (a) for the purpose of defraying expenses pending the receipt of revenues receivable by them in respect of the period of account in which those expenses are chargeable; and
- (b) for the purpose of defraying, pending the issue of shares or stock of any description or the borrowing of money in pursuance in either case of an authorisation in that behalf, expenses intended to be defrayed by means of such issue or borrowing, as the case may be:

Provided that the aggregate amount outstanding at any one time of the moneys so borrowed for the purposes mentioned in paragraph (a) of this section shall not exceed seven hundred thousand pounds.

Application of enactments.

7. Subject to the provisions of this order the following enactments shall apply and have effect for, or in connection with, the purposes of this order as if they were re-enacted in this order with any necessary modifications and in terms made applicable thereto—

East Worcestershire Water Act 1941(a)—
Section 60 (Debenture Stock);

(a) 1941 c. xvii.

- Section 61 (Priority of mortgages and debenture stock over other debts);
 Section 63 (Application of money);
 Section 64 (Appointment of receiver).

8. The following enactments are hereby repealed:

Repeals.

- The East Worcestershire Water Act 1902(a)—
 Section 19 (Power to apply funds and raise additional capital);
 The East Worcestershire Water Act 1934(b)—
 Section 44 (Power to Company to raise additional capital);
 Section 45 (Limits of dividend on additional capital);
 The East Worcestershire Water Act 1941—
 Section 56 (Additional capital);
 Section 58 (Dividends on additional capital);
 The East Worcestershire Water Order 1953(c)—
 Section 4 (Additional capital);
 The East Worcestershire Water Order 1959(d)—
 Section 4 (Additional capital);
 The East Worcestershire Water (Borough of Droitwich) Order 1960(e)—
 Section 18 (Temporary borrowing);
 The East Worcestershire Water (Droitwich Rural) Order 1960(f)—
 Section 17 (Additional capital);
 The East Worcestershire Water (Alcester Rural) Order 1960(g)—
 Section 18 (Additional capital);
 The East Worcestershire Water (Evesham) Order 1961(h)—
 Section 20 (Additional capital);
 The East Worcestershire Water (Capital Powers) Order 1963(i)—
 Section 4 (Additional capital);
 The East Worcestershire Water (Capital Powers) Order 1968(j)—
 In section 4 (Power to borrow), subsection (1);
 The East Worcestershire Water (Capital Powers) Order 1970(k)—
 Section 3 (Maximum rates of dividends);
 Section 4 (Maximum rates of interest).

G. May

Signed by authority of
 the Secretary of State
 21st May 1980.

An Under Secretary in the
 Department of the Environment.

(a) 1902 c. clv. (b) 1934 c. xviii. (c) S.I. 1953/565. (d) S.I. 1959/979.
 (e) S.I. 1960/661. (f) S.I. 1960/662. (g) S.I. 1960/1128. (h) S.I. 1961/726.
 (i) S.I. 1963/1256. (j) S.I. 1968/1438. (k) S.I. 1970/1701.