

1975 No. 1771

WATER, ENGLAND AND WALES

**The Tendring Hundred Water (Financial Provisions)
Order 1975**

Made - - - 31st October 1975

Coming into Operation 17th November 1975

The Secretary of State for the Environment, in exercise of the 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 Tendring Hundred Water (Financial Provisions) Order 1975 and shall come into operation on 17th November 1975. Citation and commencement.

(2) The Tendring Hundred Water Acts and Orders 1884 to 1973 and this order may be cited together as the Tendring Hundred Water Acts and Orders 1884 to 1975.

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 Tendring Hundred Waterworks Company;

“share” means share in the capital of the Company and includes stock except when 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.

(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 following enactments (so far as they are applicable to the purposes of this order and are not inconsistent with the provisions of enactments. Incorporation of enactments.

(a) 1945 c. 42.

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

of the Tendring Hundred Water Acts and Orders 1884 to 1973) are hereby incorporated with this order:—

- (a) 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 provide for affording access to the special Act);
- (b) Part I (relating to cancellation and surrender of shares), Part II (relating to additional capital), except the provisions thereof which limit the rate of dividend on preference capital, and Part III (relating to debenture stock) of the Companies Clauses Act 1863(b):

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 respectively, such sums as, when added to any money raised by the issue of share capital before the commencement of this order 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 six million pounds.

(2) (a) The Company may raise sums by the creation and issue of share capital under subsection (1) of this section by the creation and issue of

(a) 1845 c. 16.

(b) 1863 c. 118.

ordinary shares or preference shares or wholly or partly by one or more of those modes respectively.

(b) For the purposes of this section the amount raised or to be raised by the issue of any 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.

(3) (a) 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:

Provided that the aggregate of any sums 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 the 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.

(b) For the purposes of this subsection 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 raised by the Company by the issue of such ordinary or preference shares (as the case may be).

(4) No shares created and issued under this section shall be of less nominal value than ten pounds.

5.—(1) Subject to the provisions of this section, 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— Maximum rates of dividend.

- (a) on share 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, ten per cent.;
 - (ii) in the case of preference capital, twelve per cent.; and
- (c) on capital subscribed after the expiration of the initial period—
 - (i) in the case of ordinary capital, seven per cent., or such higher rate not exceeding ten per cent. as the Secretary of State may in respect of any subscription allow; or
 - (ii) in the case of preference capital, seven per cent., or such higher rate not exceeding twelve per cent. as the Secretary of State may in respect of any subscription allow.

In this section “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 ordinary shares or

stock in order to make up deficiencies in previous dividends except that in the case of further issues of ordinary capital such payments shall be limited to deficiencies arising during the last five years before the year in respect of which a dividend is being paid.

Interest on borrowed money.

6. The Company shall not pay interest on any moneys borrowed or debenture stock issued under section 4 (Capital and borrowing powers) of this order at a higher rate than seven 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 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(a)), 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.

Additional capital to be subject to the same incidents as existing capital.

7. Except as otherwise expressly provided by this order or by the enactments applied for the purposes of this order, the capital in shares or stock created by the Company in pursuance of this order and the shares or stock therein and the holders thereof respectively shall be subject and entitled to the same powers, provisions, liabilities, rights, privileges and incidents whatsoever in all respects (but not so as to prevent the Company from creating shares or stock bearing rates of dividend different from the rates of dividend borne by the shares of the Company existing at the commencement of this order) as if the capital were part of the capital of the Company of the same class or description existing at the commencement of this order and the shares or stock were shares or stock in that capital:

Provided that except as may be otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any shares or stock created by the Company in pursuance of this order to which a preferential dividend shall be assigned.

Priority of mortgages and debenture stock over other debts.

8. All money to be raised by the Company on mortgage or debenture stock under the provisions of this order shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the commencement of this order:

Provided always that this priority shall not affect any claim against the Company or their property in respect of any rent-charge granted or to be granted by them in pursuance of the Lands Clauses Acts or in respect of any rent or sum reserved by or payable under any lease granted or made by the Company which is entitled to rank in priority to or *pari passu* with the interest on their mortgage or debenture stock.

9. All costs, charges and expenses of and incidental to the application for, and the preparation and making of, this order shall be paid by the Company and may in whole or in part be defrayed out of revenue. ^{Costs of order.}

J. R. Niven

An Under Secretary in the
Department of the Environment.

Signed by authority of
the Secretary of State

31st October 1975.