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STATUTORY INSTRUMENTS

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1985 No. 240

**WATER, ENGLAND AND WALES**

**The East Anglian Water (Capital Powers) Order 1985**

*Made* - - - 21st February 1985

*Coming into Operation* 22nd February 1985

The Secretary of State for the Environment, in exercise of powers conferred on him by sections 23, 33 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:—

*Citation and commencement*

1.—(1) This order may be cited as the East Anglian Water (Capital Powers) Order 1985 and shall come into operation on 22nd February 1985.

(2) This order shall be included among the enactments which may be cited together as the East Anglian Water Acts and Orders 1853 to 1985.

*Interpretation*

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

“the Company” means the East Anglian Water Company;

“the existing enactments” means the East Anglian Water Acts and Orders 1853 to 1985;

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

*Incorporation of enactments*

3.—(1) The following enactments (so far as they are applicable for the purposes of, and are not inconsistent with, the provisions of the existing enactments and this order) are hereby incorporated with this order, subject to the modifications specified in subsection (2) below —

(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 thereof).

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(a) 1945 c.42.  
(d) 1863 c.118.

(b) S.I. 1951/142, 1900, 1970/1681.

(c) 1845 c.16.

- (2) (a) Section 98 of the Companies Clauses Consolidation Act 1845 (which requires proceedings to be entered in books) as so incorporated shall 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";
- (b) section 14 of the Companies Clauses Act 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 profits from previous years available for payment of dividends, 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";
- (c) section 22 of the Companies Clauses Act 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.

(3) In the construction of the enactments so incorporated with this order, the expression "the special Act" shall be read as a reference to this order and the expression "the Company" shall mean the Company.

(4) For the purposes of this order section 94 of the Third Schedule to the Water Act 1945 (which requires 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 is 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 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 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 existing enactments, twenty million 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) three times 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 an additional amount not exceeding ten 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 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 raised by the issue of any share capital 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 existing enactments shall cease to be exercisable.

#### *Temporary borrowing*

5. Section 3 (Temporary borrowing) of the East Anglian Water (Financial Provisions) Order 1962(a) shall have effect as if:—

- (a) after the words “or otherwise” there were inserted the words “(including bills of exchange and promissory notes)”; and
- (b) in the proviso, for the words “three hundred and fifty thousand pounds” there were substituted the words “one million pounds”.

#### *Application of Amendments*

6. The following enactments shall, so far as applicable, extend and apply to any share capital, debenture stock or mortgages created and issued or granted under the provisions of this order as if those enactments with any necessary modifications were re-enacted in this order —

##### Lowestoft Water and Gas Act 1931(b)

- section 72 (Debenture stock);
- section 73 (Priority of mortgages over other debts);
- section 74 (Priority of existing mortgages);
- section 75 (Appointment of receiver);

##### The East Anglian (Blyth, Eye, Hartismere and Saxmundham) Water Order 1963(c)

- section 23 (Additional capital to be part of general capital);
- section 24 (Application of money);

##### The East Anglian Water (Capital Powers) Order 1977(d)

- section 5 (Maximum rates of dividend);
- section 6 (Interest on borrowed money).

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(a) S.I. 1962/978.  
(d) S.I. 1977/295.

(b) 1931 c.xxvii.

(c) S.I. 1963/1595.

*Revocation*

7. Section 4 (Capital and borrowing powers) and section 7 (Temporary borrowing) of the East Anglian Water (Capital Powers) Order 1977 are hereby revoked.

*Costs of order*

8. The 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.

Signed by authority of  
the Secretary of State  
21st February 1985.

*J. A. L. Gunn,*  
An Under Secretary in  
the Department of the Environment.