

1988 No. 1094

WATER, ENGLAND AND WALES

The Sutton District Water Order 1988

Made - - - - - *20th June 1988*

Coming into force *21st June 1988*

The Secretary of State for the Environment, on the application of the Sutton District Water Company, being statutory water undertakers(a), and in exercise of powers conferred by sections 23, 32, 33, 50 and 59(1)(b) of the Water Act 1945(e) and now vested in him(d), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Sutton District Water Order 1988 and shall come into force on 21st June 1988.

(2) The Sutton District Water Acts and Orders 1871 to 1985 and this Order may be cited together as the Sutton District Water Acts and Orders 1871 to 1988.

(3) In this Order –

“the Company” means the Sutton District Water 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.

Modification of provisions of Third Schedule

2.—(1) Section 75 of the Third Schedule (which requires shares and stock of the Company to be offered for sale by auction or tender) as applied to the undertaking by the Sutton District Water Order 1963(e) and modified in its application by the Sutton District Water Order 1971(f) shall be further modified to have effect as if at the end of that section there were added the following subsections:–

“(5) Nothing in this section shall preclude the undertakers from offering stock for subscription to employees of the undertakers and to consumers of water supplied by the undertakers or to one or other of these classes of person and the undertakers may so offer any stock which they may for the time being be authorised to issue.

(a) See the Water Act 1973 (c.37), section 11(6). (b) See the definition of “Minister”. (c) 1945 c.42; there are amendments to sections 23 and 32, but none relevant to this Order. (d) S.I. 1951/142, 1900, 1970/1681. (e) S.I. 1963/2128. (f) S.I. 1971/270.

(6) The undertakers may pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any stock offered for sale by the undertakers or for his procuring or agreeing to procure subscriptions whether absolute or conditional for such stock:

Provided that –

- (a) the payment of the commission and the amount or rate per centum of the commission paid or agreed to be paid shall be disclosed in every prospectus, advertisement or other document of the undertakers relating to the offer for sale of the stock; and
- (b) nothing in this section contained shall affect any power of the undertakers to pay brokerage.

(7) In this section “stock” includes “share”.

(2) Section 76 of the Third Schedule (which provides for the establishment of reserve and contingency funds) as applied to the undertaking with modifications by the Sutton District Water Order 1963 shall be further modified to have effect as if in subsection (1) there were inserted after the words “as they think fit” the words “(not being provisions for liabilities or charges within paragraph 89 of Schedule 4 to the Companies Act 1985(a))”.

(3) Section 77 of the Third Schedule (which places a limitation on the balance carried forward at the end of the year) as applied to the undertaking by the Sutton District Water Order 1963 shall have effect as if after the word “dividend” in paragraph (a) and after the word “dividends” in paragraph (c) there were inserted the words “together with the advance corporation tax associated therewith.”.

Capital and borrowing powers

3. For section 4 of the Sutton District Water Order 1983(b) (capital and borrowing powers) there shall be substituted the following section –

“4.—(1) The Company may raise capital by –

- (a) the issue of shares;
- (b) borrowing on mortgage of the undertaking;
- (c) the issue of debenture stock.

(2) Any sums to be raised in accordance with subsection (1), when added to –

- (a) the sums raised by the issue of existing share capital before the relevant date; and
- (b) other amounts raised by borrowing on mortgage or the issue of debenture stock and still outstanding on that date;

shall not exceed £18 million.

(3) Subject to subsection (4), the Company shall take such steps as may be necessary to ensure that the amounts raised as mentioned in paragraphs (b) and (c) of subsection (1) which are at any time outstanding do not exceed twice the aggregate of –

- (a) the sums raised by the issue of existing share capital; and
- (b) the amount of the Company’s reserves.

(4) With the consent of the Secretary of State, the Company may raise an additional amount as mentioned in paragraphs (b) and (c) of subsection (1) not exceeding ten per cent. of the total on the relevant date of the sums and amount specified in paragraphs (a) and (b) of subsection (3).

(5) For the purpose of this section –

- (a) the amount raised by the issue of share capital or debenture stock is the amount raised after taking into account any premiums or discounts; and

(a) 1985 c.6. (b) S.I. 1983/78.

(b) in the case of any share capital or debenture stock issue for a consideration other than cash the nominal value shall be taken to have been the amount raised by that issue.

(6) The Company's powers of borrowing may be exercised without obtaining a certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845(a).

(7) The Company may raise sums under subsection (1)(a) by the issue of new ordinary shares or stock or new preference shares or stock or, at the Company's option, by any of those methods.

(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 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 section 16(1) of the Company Securities (Insider Dealing) Act 1985(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.

(9) The directors of the Company may, without further authorisation, raise the same amount of share capital as they were authorised to raise, but which they had not so raised before the coming into force of this Order.

(10) In this section –

“the Company's reserves” means the aggregate of any of the following amounts appearing in the Company's last audited balance sheet –

(a) any capital reserve;

(b) any sum carried forward in accordance with section 77 of the Third Schedule to the Water Act 1945; and

(c) any amounts standing to the credit of any reserve or contingency fund established and maintained in accordance with section 76 of that Schedule;

“the relevant date” means the date on which the Company exercise the powers mentioned in subsection (1).”.

Further amendment of Sutton District Water Order 1983

4.—(1) In subsection (1) of section 5 of the Sutton District Water Order 1983 (maximum rates of dividend) for the words “the commencement of this order”, wherever they occur there shall be substituted the words “. . . 1988”.

(2) In section 6 of the Sutton District Water Order 1983 (temporary borrowing) for the words “five hundred thousand pounds” there shall be substituted the words “one million pounds”.

Minimum number of directors

5. In section 34 of the Sutton District Waterworks Act 1871(c) (number of directors) for the word “five” there shall be substituted the word “three”.

(a) 1845 c.16. (b) 1985 c.8. (c) 1871 c.xv.

Closing of transfer books

6.—(1) The directors of the Company may close a relevant register for a period or periods not exceeding 30 days in any calendar year.

(2) Any transfer lodged for registration after a relevant register has been closed shall as between the Company and any person claiming under the transfer be treated as having been made immediately after the next payment of any dividend, interim dividend or interest as the case may be.

(3) Notwithstanding its incorporation with the Sutton District Water Acts and Orders 1871 to 1985, section 17 of the Companies Clauses Consolidation Act 1845 (closing of transfer books) shall cease to apply to the Company.

(4) "Relevant register" means a register of transfers of any class of ordinary or preference stock, debentures, debenture stock or mortgages.

Repeal

7. Section 11 of the Sutton District Waterworks Act 1929(a) (Provisions as to sale of stock &c. and payments of commission) is hereby repealed.

Application of section 94 of the Third Schedule

8. For the purpose of this Order, section 94(b) of the Third Schedule (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.

Costs of Order

9. 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
20th June 1988

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

(a) 1929 c.xxviii. (b) Section 94(1) was amended by S.I. 1986/1.

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