
STATUTORY INSTRUMENTS

1978 No. 1482

WATER, ENGLAND AND WALES

The East Surrey Water (Capital Powers) Order 1978

Made - - - - 12th October 1978

Coming into Operation 23rd October 1978

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 East Surrey Water (Capital Powers) Order 1978 and shall come into operation on 23rd October 1978. Citation and commencement.

(2) The East Surrey Water Acts and Orders 1862 to 1977 and this order may be cited together as the East Surrey Water Acts and Orders 1862 to 1978.

2.—(1) In this order unless the context otherwise requires— Interpretation.

“the Company” means the East Surrey Water 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 Secretary of State” means the Secretary of State for the Environment;

“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) Except where the context otherwise requires, references in this order to any enactment shall be construed as references 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 they are applicable for the purpose of, and are not inconsistent with, the provisions of the East Surrey Water Acts and Orders 1862 to 1977 and this order) hereby incorporated with and form part of this order: Incorporation of enactments

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

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

Provided that—

(a) section 14 of the said Act of 1863 (which relates to dividends on preference shares) 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”; and

(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) The provisions of subsection (3) of section 74, and section 75 of the Third Schedule shall apply to the undertaking and are hereby incorporated (so far as they are applicable for the purposes thereof) with this order, with the modification that in section 75 the word “stock” shall be deemed to include shares and that paragraph (a) of the proviso to section 75(2) shall have effect as if the words “in each of two successive weeks” were omitted therefrom.

(4) For the purposes of this order the provisions of section 94 of the Third Schedule shall apply to the undertaking.

(5) In this order the several words and expressions to which meanings are assigned by the enactments incorporated herewith shall, unless the context otherwise requires, have the same respective meanings.

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 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 twenty-five million pounds:

Provided that the aggregate of any sums so borrowed shall not (when added to other 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) twice 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 ten 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) Notwithstanding anything contained in Part III of the Companies Clauses Act 1863 or in any Act or order previous to this order, the interest of all debenture stock and of all mortgages at any time created and issued or granted by the Company under any previous Act or order or this order or any subsequent Act or order shall (subject to the provisions of any subsequent Act or order) rank *pari passu* without respect to the dates of the securities or of the Acts of Parliament, orders or resolutions by which the stock and mortgages were authorised and shall have priority over all principal moneys secured by such mortgages. Notice of the effect of this enactment shall be endorsed on all such mortgages and certificates of debenture stock issued after the commencement of this order whether under the existing Acts and orders or this order.

(4)(a) The Company may raise sums by the creation and issue of share capital under 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.

(5) 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:

(6) 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 The Stock Exchange 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.

(7) The East Surrey Water Company pre-preference stock created and issued under and by virtue of the East Surrey Water Act 1896(a) shall as to both capital and interest rank in priority to the preference stock of the Company or any new preference shares created under this section.

(8) The unexercised powers of the Company for raising money by the creation and issue of share capital under the East Surrey Water Acts and Orders 1862 to 1970 shall cease to be exercisable.

(9) 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

(a) 1896 c. cxxvii.

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.

(10) 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.

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

Application
of certain
enactments.

5. The following enactments shall (subject to the provisions of this order) so far as possible extend and apply to any ordinary or preference shares, 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:—

The East Surrey Water Order 1912(a)—

Section 19 (Application of money);

Section 25 (Priority of mortgages over other debts);

Section 27 (Receipts in case of persons not sui juris);

Section 29 (Application of existing funds).

The East Surrey Water Act 1921(b)—

Section 27 (Appointment of receiver).

Maximum
rates of
dividend.

6.—(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 commencement of this order, the rates which they were entitled to pay thereon immediately before that commencement;

(b) on capital subscribed during the initial period, ten per cent. or such higher rate not exceeding twelve per cent. as the Secretary of State may in respect of any subscription allow; and

(c) on capital subscribed after the expiration of the initial period, 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 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 the last foregoing subsection 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:

Provided that as respects the ordinary C stock of the Company and as respects ordinary share capital subscribed after the 26th March 1953 this subsection shall apply only to deficiencies arising during the last five years before the year in respect of which the dividend is being paid.

(a) Confirmed by 1912 c. clxiii.

(b) 1921 c. xliii.

(3) Subsection (2) of section 15 of the East Surrey Water Order 1953(a) (which relates to the ranking of different classes of ordinary share capital for dividend) shall be read and have effect as if for the reference to section 12 of that order there were substituted a reference to section 6 of this order.

7. Except as by this order otherwise provided any share capital created and issued by the Company under the powers of this order shall be part of the general capital of the Company and the shares or stock therein and the holders thereof respectively shall in proportion to the amount of their shares or stock be entitled to the like rights of voting and any other rights, qualifications and privileges and be subject to the like provisions and liabilities as if that capital were part of the capital of the Company created and issued under the East Surrey Water Acts and Orders 1862 to 1970 of the same class or description and the shares or stock were shares or stock in that capital. Share capital issued under order to be part of general capital.

8. Section 76 of the Third Schedule (which provides for the establishment of reserve and contingency funds) as applied to the undertaking by the East Surrey Water Order 1963(b) shall have effect as if in subsection (4) thereof for the words "twelve and a half" there were substituted the word "twenty" and as if in subsection (5) thereof for the words "one and a quarter" there were substituted the word "two". Modification of section 76 of Third Schedule.

9. 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— Temporary borrowing.

(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 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 amount outstanding at any time of the moneys borrowed for the purpose mentioned in paragraph (a) of this section shall not exceed seven hundred thousand pounds.

10. The provisions of the East Surrey Water Acts and Orders 1862 to 1970 specified in the Schedule to this order shall be repealed on the coming into force of this order. Repeals.

11. 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. Costs of order.

(a) S.I.1953/473.

(b) S.I. 1963/657.

SCHEDULE

The Caterham Water Order 1873(a)—

The whole order.

The Caterham Spring Water Company's Act 1881(b)—

Section 7 (Power for Company to raise further capital);
Section 8 (Incidents of debenture stock);
Section 23 (Debenture stock);
Section 24 (Existing mortgages to have priority);
Section 25 (Priority of mortgages and debenture stock);
Section 26 (Application of moneys raised under this Act).

The East Surrey Water Act 1885(c)—

Section 8 (Application of funds);
Section 20 (Debenture stock);
Section 21 (Existing mortgages to have priority);
Section 22 (As to priority of mortgages and debenture stock);
Section 23 (Application of moneys raised under this Act).

The East Surrey Water Order 1894(d)—

The whole order.

The East Surrey Water Act 1896(e)—

Section 38 (Application of premium arising on issue of shares or stock);
Section 42 (Existing mortgages to have priority);
Section 43 (Debenture stock);
Section 44 (Priority of mortgages and debenture stock over other debts);
Section 46 (Application of moneys).

The East Surrey Water Order 1900(f)

The whole order.

The East Surrey Water Order 1912—

Section 23 (Power to create debenture stock);
Section 24 (Existing mortgages to have priority).

The East Surrey Water Act 1921—

Section 26 (Debenture stock);
Section 28 (Application of sections of Order of 1912).

The East Surrey Water Act 1927(g)—

Section 5 (Consideration for transfer);
Section 6 (Creation of shares and debenture stock of Company for purposes of transfer);
Section 7 (Rights of holders of substituted East Surrey B shares);
Section 8 (Ranking of substituted East Surrey debenture stock and interest thereon);
Section 32 (Debenture stock);
Section 33 (Application of sections of Order of 1912 and Act of 1921);
Section 34 (Application of funds).

(a) Confirmed by 1873 c. xlii.

(b) 1881 c. ccvii.

(c) 1885 c. xxviii.

(d) Confirmed by 1894 c. cxix.

(e) 1896 c. cxxvii.

(f) Confirmed by 1900 c. clxxiii.

(g) 1927 c. civ.

The East Surrey Water Act 1930(a)—

- Section 5 (Consideration for transfer);
- Section 6 (Creation of shares and debenture stock of Company for purposes of transfer);
- Section 7 (Rights of holders of substituted East Surrey B shares);
- Section 8 (Ranking of substituted East Surrey debenture stock and interest thereon);
- Section 47 (Application of sections of Order of 1912 and Acts of 1921 and 1927).

The East Surrey Water Order 1935(b)—

- In section 9 (Provisions as to payment of commission on sale of shares or stock) the words “with the approval of the Minister and subject to such conditions as the Minister may think fit to impose” and the words “not exceeding one and a half per centum”;
- Section 10 (Priority of principal moneys secured by existing mortgages);
- Section 12 (Application of sections of order of 1912 and Acts of 1921 and 1927);
- Section 14 (Amendment of section 47 of Act of 1930).

The East Surrey Water Order 1946(c)—

- Section 2 (Incorporation of Companies Clauses Acts);
- Section 17 (Application of sections of existing Acts and Orders);
- Section 18 (Application of funds).

The East Surrey Water Order 1953—

- Section 4 (Conversion of existing ordinary shares);
- Section 5 (Conversion of existing preference shares);
- Section 6 (As to pre-preference stock);
- Section 7 (Rights of holders of substituted securities);
- Section 8 (Transfers of existing ordinary shares and preference shares to operate as transfers of substituted stock);
- Section 9 (Certificates of the existing ordinary and preference shares to be called in and others issued);
- Section 10 (As to unexercised powers of raising share capital);
- Section 11 (Additional share capital);
- Section 13 (Additional share capital to be part of general capital);
- Section 14 (Amount of authorised capital of Company);
- Section 19 (Application of sections of East Surrey Acts and Orders 1862 to 1946).

The East Surrey Water Order 1957(d)—

- Section 4 (Additional capital, and borrowing powers);
- Section 5 (As to preference capital);
- Section 6 (Maximum rates of dividend of share capital);
- Section 7 (Additional share capital to be part of general capital);
- Section 8 (Debenture stock);
- Section 10 (Application of certain enactments);
- Section 11 (Temporary borrowing);
- Section 12(2) (Amendment and repeal).

(a) 1930 c. lxi. (b) Confirmed by 1935 c. lxx. (c) S.I. 1946/2119. (d) S.I. 1957/1383.

The East Surrey Water Order 1958(a)—

- Section 5 (Creation of preference stock and debenture stock);
- Section 6 (Issue of preference stock and debenture stock);
- Section 7 (Saving of existing capital powers);
- Section 8 (Receipt for consideration);
- Section 9 (Rights of holders of substituted securities);
- Section 10 (As to outstanding transfers and closing of transfer books);
- Section 11 (Receipts in case of persons not sui juris).

The East Surrey Water Order 1960(b)—

- Section 7 (Additional capital and borrowing powers);
- Section 8 (As to preference capital);
- Section 9 (Additional share capital to be part of general capital);
- Section 10 (Application of certain enactments).

The East Surrey Water Order 1961(c)—

The whole order.

The East Surrey Water (Additional Capital) Order 1963(d)—

The whole order.

The East Surrey Water Order 1963—

Section 5(6) (Repeal and amendment).

The East Surrey Water (Bough Beech Reservoir) Order 1965(e)—

- Section 15 (Additional capital and borrowing powers);
- Section 16 (Amendment of section 11 of East Surrey Water Order 1957).

The East Surrey Water (Borrowing Powers) Order 1967(f)—

The whole order.

The East Surrey Water (Capital Powers) Order 1970(g)—

The whole order.

A. G. Semple,

Signed by authority of the
Secretary of State

An Under Secretary in the
Department of the Environment.

12th October 1978.

(a) S.I. 1958/2060.

(b) S.I. 1960/1746.

(c) S.I. 1961/911.

(d) S.I. 1963/323.

(e) S.I. 1965/902.

(f) S.I. 1967/676.

(g) S.I. 1970/556.