

1987 No. 1434

**WATER, ENGLAND AND WALES**

**The East Surrey Water Order 1987**

*Made* - - - - - *6th August 1987*

*Coming into Force* *7th August 1987*

The Secretary of State for the Environment, in exercise of powers conferred by sections 23, 33, 50 and 59(1)(a), of the Water Act 1945(b) and now vested in him(c), 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 East Surrey Water Order 1987 and shall come into force on 7th August 1987.

(2) The East Surrey Water Acts and Orders 1862 to 1985 and this Order may be cited together as the East Surrey Water Acts and Orders 1862 to 1987.

(3) In this Order—

“the Company” means the East Surrey 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.

**Capital and borrowing powers**

2. For section 4 of the East Surrey Water (Capital Powers) Order 1978(d) (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) borrowing by 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 and still outstanding on that date;  
shall not exceed £40 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)

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(a) See the definition of “Minister”.

(b) 1945 c.42.

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

(d) S.I. 1978/1482.

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 purposes 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
- (b) in the case of any share capital or debenture stock issued 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) Sums to be raised by the Company may be raised 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) 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; and
- (c) any amounts standing to the credit of any reserve or contingency fund established and maintained in accordance with section 76 of the Third Schedule;

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

#### **Maximum rates of dividend**

3.—(1) The Company shall not in respect of any year pay dividends on their paid up share capital at rates greater than the following—

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

- (a) on capital subscribed before the date of commencement of this Order, the rates which they were empowered to pay immediately before that date;
- (b) on capital subscribed during the initial period, 10 per cent., or such higher rate not exceeding 12 per cent. as the Secretary of State for the Environment may allow;
- (c) on capital subscribed after the initial period, 7 per cent., or such higher rate not exceeding 12 per cent., as the Secretary of State for the Environment may allow.

(2) The Company shall be entitled to pay a dividend on ordinary capital at rates greater than those mentioned in paragraphs (b) and (c) of subsection (1) to make up deficiencies in previous dividends, but as respects the ordinary C stock of the Company and as respects ordinary capital created and issued after the commencement of the East Surrey Water Order 1953(a) this subsection shall apply only in relation to deficiencies arising during the five years preceding the year in respect of which a dividend is being paid.

(3) In this section the "initial period" means the period of five years beginning with the date of commencement of this Order.

#### **Modification of section 76 of the Third Schedule**

4. Section 76 of the Third Schedule (Reserve and contingency funds), as applied to the undertaking with modifications by section 3(3)(g) of the East Surrey Water Order 1963,(b) and further modified by section 8 of the East Surrey Water (Capital Powers) Order 1978,(c) 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 provision for liabilities or charges within paragraph 89 of Schedule 4 to the Companies Act 1985)"(d).

#### **Revocation**

5. Section 6 of the East Surrey Water (Capital Powers) Order 1978 (Maximum rates of dividend) and paragraphs (a), (b) and (c) of section 3 (Modification of enactments) of the East Surrey Water (No.2) Order 1985(e) are revoked.

#### **Costs of Order**

6. 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

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

6th August 1987

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(a) S.I. 1953/473.  
(b) S.I. 1963/657.  
(c) S.I. 1978/1482.  
(d) 1985 c.6.  
(e) S.I. 1985/716.