STATUTORY INSTRUMENTS

1988 No. 861

WATER, ENGLAND AND WALES

The North Surrey Water Order 1988

Made - - - -	*6th May 1988*
Coming into force	*9th May 1988*

The Secretary of State for the Environment, on the application of the North Surrey Water Company, being statutory water undertakers(a), and in exercise of powers conferred by sections 23, 32, 33, 40 and 59(1)(b) of the Water Act 1945(c) 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 North Surrey Water Order 1988 and shall come into force on 9th May 1988.

(2) The North Surrey Water Acts and Orders 1877 to 1986 and this Order may be cited together as the North Surrey Water Acts and Orders 1877 to 1988.

(3) In this Order –

"the 1973 Order" means the North Surrey Water Order 1973(e);

"the 1983 Order" means the North Surrey Water Order 1983(f);

"the 1986 Order" means the North Surrey Water Order 1986(g);

"the Company" means the North Surrey Water Company;

"the conversion date" means such date as may be determined by resolution of the directors of the Company;

"the initial period" means the period of 5-years beginning with the coming into force of this Order;

"the 3.5% Ordinary Stock" means the 3.5% ordinary stock of the Company;

"the old 3.5% stock" means the 3.5% (formerly 5%) ordinary stock of the Company;

"the Third Schedule" means the Third Schedule to the Water Act 1945 as it applies to the undertaking;

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

(a) *See* the Water Act 1973, 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. 1973/1604. (f) S.I. 1983/156. (g) S.I. 1986/249.

Capital and borrowing powers

2.—(1) For section 4 of the 1983 order (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 so raised by borrowing and still outstanding on that date;

shall not exceed £25 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 on the relevant date ten per cent of the aggregate mentioned in 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 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 be the amount raised by that issue.

(6) The Company's powers of borrowing may be exercised without obtaining the 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 stocks or new preference shares or stocks or, at the Company's option, by any of those methods.

(8) 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).".

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

(**a**) 1845 c.16.

Maximum rates of dividend

3. For section 5 of the 1983 order (maximum rates of dividend) there shall be substituted the following section –

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

(a) on capital subscribed before the date of commencement of this Order, the rates which they were entitled to pay thereon immediately before that date;

(b) on ordinary capital –

(i) during the initial period, 10 per cent, or

(ii) thereafter 7 per cent or such higher rate not exceeding 10 per cent as the Secretary of State may approve;

(c) on preference capital –

(i) during the initial period, 12 per cent, or

(ii) thereafter 7 per cent or such higher rate not exceeding 12 per cent as the Secretary of State may approve.

(2) The Company may pay a dividend on ordinary capital at rates greater than those mentioned in subsection (1) to make up deficiencies in previous dividends arising –

(a) in the case of the stock referred to in section 5(1)(a) and (b) of the 1973 Order, at any time;

(b) in the case of any other ordinary capital, 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 5-years beginning with 13th May 1988.".

Conversion of old 3.5% stock

4.—(1) On the conversion date the old 3.5% stock shall become and be re-named "3.5% Ordinary Stock" and shall thereafter be included in a single class with the 3.5% Ordinary Stock.

(2) The incidents attaching to the old 3.5% stock shall not be affected by the conversion effected by this article and except as provided by paragraph (1) the 3.5% Ordinary Stock shall in all respects be the same as the old 3.5% stock.

(3) The Company shall take such steps as are reasonably necessary to notify stockholders of the conversion effected by this article, and may do such other acts of an administrative nature as appear to them to be desirable.

(4) Without prejudice to paragraph (3), the Company shall amalgamate the registers of transfers and any other registers relating to the old 3.5% stock into a single register or group or registers relating to the 3.5% Ordinary Stock.

(5) In addition to any period during which the directors of the Company may close a relevant register under section 5 of the 1986 Order (closing of transfer books), they may close the registers referred to in paragraph (4) for a period not exceeding 14 days at any time between the coming into force of this Order and the conversion date.

(6) Where any transfer of the old 3.5% stock is lodged for registration with the Company at a time when any register of transfers is so closed, the transfer shall, as between the Company and the person claiming under the transfer but not otherwise, be deemed to be made on the date when that register is re-opened.

(7) As from the conversion date each certificate of the old 3.5% stock shall be deemed to represent a holding of 3.5% Ordinary Stock to the same nominal value as the holding of old 3.5% stock shown on that certificate.

Modification of the Third Schedule

5. Sections 75(**a**) and 76(**b**) of the Third Schedule shall be modified as follows –

(a) In section 75 (sale of stock by auction or tender): –

(i) in subsection (2), omit the words "public auction or";

(ii) omit subsection (2)(a);

(iii) in subsection (2)(b), omit the words from "and notice thereof" to the end;

(iv) omit subsection (2)(c);

(v) in subsection (2)(d), omit the words "in the case of a sale by tender," and by "by tender";

(vi) omit subsection (2)(e);

(vii) in subsection (2)(f), omit the words "of the auction or" and ", as the case may be";

(viii) omit subsection (4);

(b) In section 76(1) (reserve and contingency funds), after the words "think fit" insert "(not being provisions for liabilities or charges within paragraph 89 of Schedule 4 to the Companies Act 1985(**c**))".

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.

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

Signed by authority of
the Secretary of State
6th May 1988

(**a**) Section 75 was applied to the undertaking with modifications by S.I. 1965/1681. (**b**) Section 76 was applied to the undertaking by S.I. 1965/1681, and was modified by S.I. 1986/249. (**c**) 1985 c.6.

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