STATUTORY INSTRUMENTS

1974 No. 997

WATER, ENGLAND AND WALES

The Sutton District Water (Capital Powers) Order 1974

Made - - -	10*th June* 1974
Coming into Operation	24*th June* 1974

The Secretary of State for the Environment, in exercise of the powers conferred by section 23 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 Sutton District Water (Capital Powers) Order 1974 and shall come into operation on 24th June 1974.

(2) The Sutton District Water Acts and Orders 1871 to 1973 and this order may be cited together as the Sutton District Water Acts and Orders 1871 to 1974.

Interpretation.

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

"the Act of 1929" means the Sutton District Waterworks Act 1929(c);

"the Company" means the Sutton District Water Company;

"the Order of 1964" means the Sutton District Water (Capital Powers) Order 1964(d);

"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 amended by any subsequent enactment, including this order.

Incorporation of enactments.

3.—(1) The Companies Clauses Consolidation Act 1845(e), except sections 56 to 60 (which relate to the conversion of borrowed money into capital), section 145 (which relates to the publication of penalties) and sections 161 and 162 (which provide for affording access to the special Act) and the Companies Clauses Act 1863(f) are so far as applicable for the purpose of and subject to the provisions of this order hereby incorporated with and form part of this order:

(a) 1945 c. 42.
(b) S.I. 1951/142, 1900, 1970/1681 (1951 I, pp. 1348, 1347; 1970 III, p. 5551).
(c) 1929 c. xxviii.
(d) S.I. 1964/944.
(e) 1845 c. 16.
(f) 1863 c. 118.

[DOE 18054]

Provided that the said Act of 1863 shall have effect as if—

(i) section 14 (which relates to dividends on preference capital) were incorporated subject to the modifications prescribed by section 7 (Modification of section 14 of the Companies Clauses Act 1863) of the Sutton District Water Order 1971(a); and

(ii) the words "and to the same amount as" were omitted from section 22 (which contains regulations as to the creation and issue of debenture stock).

(2) In the construction of the enactments so incorporated with this order the expressions "the special Act" and "the company" shall be read as references to this order and to the Company respectively.

(3) For the purposes of this order the provisions of section 94 of the Third Schedule to the Water Act 1945 (which requires copies of the special Act to be kept by undertakers in their office, and to be deposited with certain officers), shall apply to the undertaking and are 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, when added to any money raised by the issue of share capital before the commencement of this order or borrowed by the issue of loan capital before the commencement of this order 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 seven million pounds.

(2) (*a*) The Company may raise sums by the creation and issue of share capital under subsection (1) of this section by the creation and issue of ordinary shares or preference shares or wholly or partly by one or more of these modes respectively.

(*b*) For the purposes of this section the amount raised or to be raised by the issue of any 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.

(3) (*a*) 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:

Provided that the aggregate of any sums 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—

(a) S.I. 1971/270.

(i) the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the issue of the share capital; and

(ii) with the consent of the Secretary of State for the Environment an additional amount not exceeding five per cent. of such first-mentioned amount;

(*b*) For the purposes of this subsection 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 raised by the Company by the issue of such ordinary or preference shares (as the case may be).

(4) 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 for the Environment may from time to time allow:

Provided that the consent of the said 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 the Prevention of Fraud (Investments) Act 1958(**a**)), 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.

(5) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the Sutton District Water Acts and Orders 1871 to 1967 shall cease to be exercisable.

(6) In this section "share" includes stock and "share capital" shall be construed accordingly.

Maximum rates of dividend.

5.—(1) Subject to the provisions of this section the Company shall not in respect of any year pay dividends on their paid-up capital at rates greater than the following rates—

(*a*) on capital created or subscribed before the date of coming into operation of this Order, the rates which the Company were entitled to pay thereon immediately before the said date;

(*b*) on capital subscribed on or after the coming into operation of this order, as follows—

(**a**) 1958 c. 45.

(i) in the case of ordinary capital ten per cent. during the initial period and thereafter seven per cent. or such higher rate, not exceeding ten per cent. as the Secretary of State may in respect of any subscription allow; or

(ii) in the case of preference capital, twelve per cent. during the initial period and thereafter 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 commencement of this order.

(2) Nothing in the foregoing subsection shall prevent the payment of a greater dividend on so much of the paid-up share capital as is issued as ordinary capital in order to make up deficiencies in previous dividends:

Provided that as respects ordinary capital created or subscribed after 1st January 1964 and that referred to in sub-paragraph (*b*) (i) of subsection (1) of this section this subsection shall apply only in respect of deficiencies arising during the last five years before the year in respect of which a dividend is being paid.

Application of provisions of Act of 1929 and Order of 1964.

6. The following provisions of the Act of 1929 and the Order of 1964 shall, with any necessary modifications, extend and apply to the exercise of the powers of this order as if re-enacted herein—

The Act of 1929—

Section 7 (Appointment of receiver);

Section 8 (Debenture Stock);

Section 9 (Priority of mortgages over other debts).

The Order of 1964—

Section 5 (Additional share capital to be part of general capital);

Section 7 (Application of money).

Repeals.

7. The following enactments are hereby repealed—

Sutton District Waterworks Act 1871(**a**)—
Section 20 (Capital).

Suton District Waterworks Act 1887(**b**)—
Section 8 (Power for Company to raise further capital).

Sutton District Waterworks Act 1903(**c**)—
Section 22 (Power to raise additional capital).

Sutton District Waterworks Act 1921(**d**)—
Section 24 (Power to raise additional capital).

The Act of 1929—

Section 4 (Additional capital).

(**a**) 1871 c. xv. (**b**) 1887 c. lxxxix.
(**c**) 1903 c. xviii. (**d**) 1921 c. xxiv.

The Order of 1964—

Section 4 (Additional Capital);

Section 6(2) (Power to borrow).

Sutton District Water Order 1967(a)—

Section 2 (Extension of power to borrow).

Sutton District Water Order 1971—

Section 5 (Extension of power to borrow).

Section 6 (Amendment of section 6 of Order of 1964).

8. All 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.

J. R. Niven
An Under Secretary in the
Department of the Environment

Signed by authority of
the Secretary of State
10th June 1974

(a) S.I. 1967/683