STATUTORY INSTRUMENTS

1986 No. 301

HARBOURS, DOCKS, PIERS AND FERRIES

The Sutton Harbour Revision Order 1986

Made - - - -	*17th February* 1986
Coming into Operation	*21st February* 1986

The Secretary of State for Transport in exercise of the powers conferred by section 14 of the Harbours Act 1964(**a**) and now vested in him (**b**) and of all other powers enabling him in that behalf, and on the application of the Sutton Harbour Improvement Company, hereby makes the following Order:—

Citation and commencement

1.— (1) This Order may be cited as the Sutton Harbour Revision Order 1986 and shall come into operation on 21st February 1986.

(2) The Sutton Harbour Acts and Order 1847 to 1969 and this Order may be cited together as the Sutton Harbour Acts and Orders 1847 to 1986.

Incorporation of Companies Clauses Acts

2.— (1) The Companies Clauses Consolidation Act 1845(**c**), 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(**d**), except sections 17 to 21 (which relate to the disposal of new shares or stock) and the provisions thereof which limit the rate of dividend on preference capital, are, so far as they are applicable for the purpose of and subject to the provisions of this Order, hereby incorporated with this Order:

Provided that—

(a) section 11 of the said Act of 1845 (which relates to issue of share certificates) shall have effect as if the words "Except as otherwise provided by the conditions of issue thereof" were inserted at the beginning of that section;

(b) section 15 of the said Act of 1845 (which relates to registration of share

(**a**) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56); section 18 and Schedule 6, paragraph 4(1) to (8).
(**b**) *See* S.I. 1981/238.
(**c**) 1845 c. 16.
(**d**) 1863 c. 118.

transfer) shall have effect as if for the words "on demand" there were substituted "within two months following any demand therefor";

(c) section 39 of the said Act of 1845 (which relates to power to reborrow) shall have effect as if the words "but such power" to the end of the section were omitted;

(d) section 91 of the said Act of 1845 (which relates to powers exercisable only at a general meeting) shall have effect as if the words "auditors, treasurer and secretary" were omitted;

(e) section 98 of the said Act of 1845 (which relates to the entry of proceedings in books) shall have effect as if after the words "shall be signed by the chairman of such meeting" there were inserted the words "or of the next succeeding meeting";

(f) section 22 of the said Act of 1863 (which contains regulations as to the creation and issue of debenture stock) shall have effect as if the words "and to the same amount as" were omitted;

(g) section 25 of the said Act of 1863 (which relates to the appointment of a receiver) shall have effect as if the words "or the sum of ten thousand pounds whichever of the two last-mentioned sums is the smaller sum" were omitted; and

(h) section 31 of the said Act of 1863 (which relates to rights of debenture stock holders) shall have effect as if after the words "other than" there were inserted the words "in the case of holders of perpetual debenture stock".

(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.

Interpretation

3. In this Order, unless the context otherwise requires:—

"the Company" means the Sutton Harbour Company;

"the Order of 1969" means the Sutton Harbour Revision Order 1969(a);

"share" means share in the share capital of the Company and includes stock except where a distinction between stock and shares is express or implied, and "share capital" and "shareholder" shall be construed accordingly;

"the undertaking" means the undertaking of the Company as for the time being existing.

Change of name

4.— (1) The name of the Sutton Harbour Improvement Company is hereby changed to the Sutton Harbour Company.

(2) Part IV with respect to change of name, of the Companies Clauses Act

(a) S.I. 1969/1735.

1863 as incorporated with this Order shall have effect for the purposes of paragraph (1) above.

Directors

5.— (1) Section 24 of the Sutton Harbour Act 1847(**a**) is hereby amended by the substitution for the word "ten" of the words "not less than five nor more than ten".

(2) The provisions of the Sutton Harbour Act 1847 and the Order of 1969, mentioned in Part I of the Schedule to this Order, are hereby repealed.

Capital and borrowing powers

6.— (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 (without in either case obtaining a certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845), 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 (including the Sutton Harbour Rent Redemption Stock issued under section 41 of the Sutton Harbour Act 1889(**b**)) 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 £10,000,000.

(2)*(a)* The Company may raise sums by the creation and issue of share capital under this article, 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 article 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.

(c) The powers of the Company for raising money by the creation and issue of share capital under the Sutton Harbour Acts and Order 1847 to 1969 shall, insofar as unexercised at the coming into operation of this Order, cease to be exercisable.

(d) 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 before the coming into operation of this Order may be created and issued by the directors of the Company under paragraph (1) of this article and without any further requisite.

(3) The Company may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act 1863, as amended in its application to the Company, but notwithstanding anything therein contained the principal moneys secured by and interest on all mortgages, debentures and

(**a**) 1847 c.ccxcvii. (**b**) 1889 c.cxcii.

debenture stock created and issued by the Company under this Order or any subsequent Order shall, subject to the provisions of any such subsequent Order, rank pari passu. Notice of the effect of this paragraph and of the priority, by section 41 of the Sutton Harbour Act 1889, given to Sutton Harbour Rent Redemption Stock shall be endorsed on all mortgages and certificates of debenture stock issued after the coming into operation of this Order.

(4) The powers conferred by this article shall be without prejudice to the right of the Company to re-borrow from time to time any amounts which, having been raised by borrowing on mortgage or by the creation and issue of redeemable debenture stock, are thereafter paid off.

Issue of convertible securities

7.— (1) Any securities to which this article applies may have attached to them a right to the holder to have issued to him in substitution for the whole or any part of his holding of such securities a holding of ordinary shares or stock at such time or times and subject to such terms and conditions as the Company think fit.

(2) Any such securities in respect of which the right to convert into ordinary shares or stock has been exercised shall, upon the right being exercised, be deemed to have been paid off and cancelled, and in relation to any such securities, being preference shares or stock, article 6 (Capital and borrowing powers) of this Order shall have effect as if such securities had never been created and issued.

(3) The securities to which this article applies are—

(a) any preference shares or stock or debenture stock created and issued under the said article 6;

(b) any unsecured loan stock created and issued under article 8 (Unsecured loan stock) of this Order.

Unsecured loan stock

8.— (1) The Company may raise all or any part of the money which for the time being they are authorised to raise on mortage of the undertaking or by the creation and issue of debenture stock by the creation and issue, at such times, in such amounts and manner, on such terms and conditions, and with such rights and privileges, as the Company think fit, of unsecured loan stock instead of the whole or any part of the money which they may from time to time have power to raise on mortgage of the undertaking or by the creation and issue of debenture stock.

(2) Any unsecured loan stock issued by the Company under this article may be issued as redeemable stock and the provisions of article 26 (Redeemable preference shares and stock and debenture stock) of the Order of 1969 shall apply to such redeemable stock as if it were stock (as defined in that article).

Borrowing on mortgage of assets, etc.

9.— (1)*(a)* The Company may borrow money on mortgage of any of the property or other assets of the Company.

(b) The power to borrow on mortgage conferred by the foregoing subparagraph may be exercised by the creation and issue of debenture stock, unsecured loan stock or other securities on such terms as the directors of the Company think expedient.

(2) Borrowing by the Company under paragraph (1) above shall, to any amount borrowed in manner authorised by that paragraph and for the time being outstanding, be deemed to have been in the exercise of the powers of the Company to borrow on mortgage of the undertaking or by the creation and issue of debenture stock or unsecured loan stock.

(3) Notwithstanding anything in article 25 (Application of moneys) of the Order of 1969 as applied by this Order, the purposes to which moneys raised by the Company are properly applicable shall be deemed to include the payment of any interest falling due within the five years following the date of a borrowing on any sum of money borrowed by the Company.

Temporary borrowing

10. Article 27 (Company may incur temporary loans) of the Order of 1969 is hereby amended as follows:—

(a) after the words "debenture stock" there shall be inserted the words "or unsecured loan stock, for the time being";

(b) the words "by article 20 (Power to borrow) of this Order" shall be omitted; and

(c) in the proviso to paragraph *(a)* for the word "fifty" there shall be substituted the words "five hundred".

Capitalisation of profits and reserves

11.— (1) The Company in general meeting may, upon the recommendation of the directors, resolve to capitalise in whole or in part any sum standing to the credit of any of the Company's reserve accounts, the Company's profit and loss account or the Company's share premium account (being the aggregate of premiums on shares issued at a premium), or any sum otherwise available for distribution.

(2) A sum the subject of a resolution under paragraph (1) above shall be distributed amongst the shareholders who would have been entitled thereto if distributed by way of dividend and in the same proportions, but so that, subject to paragraph (3) below, the same be not paid in cash but applied either in or towards paying up any amounts for the time being unpaid on any shares held by such shareholders respectively or in or towards paying up in full unissued shares or debentures of the Company to be alloted and distributed credited as fully paid up to, and amongst, those shareholders and in those proportions, or partly in the one way and partly in the other.

(3) The directors of the Company shall make all appropriations and applications of any sum resolved to be capitalised by any resolution passed under paragraph (1) above and all allotments and issues of fully paid shares or

debentures, if any, and generally shall do all acts and things required to give effect thereto, and in particular—

(a) without prejudice to the provisions of article 18 (Minimum holdings of stock and debenture stock) of the Order of 1969, may make provision by payment in cash or otherwise for shares or debentures becoming distributable in fractions; and

(b) may authorise any person to enter, on behalf of all the shareholders entitled thereto, into an agreement with the Company providing for—

(i) the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation; or

(ii) for the payment up by the Company on behalf of such shareholders by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares;

and any agreement made under such authority shall be effective and binding on all such shareholders.

Application of share premiums

12. The amount or value of premiums on shares issued at a premium in the Company's share premium account may be applied by the Company in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the Company or in providing for the premium payable on redemption of debentures of the Company.

Incorporation of provisions of Order of 1969 relating to finance

13. The following provisions of the Order of 1969 shall, subject to the provisions of this Order, extend and apply to any share capital created and issued or debenture stock or mortgages created and issued or granted under this Order, or to any moneys raised thereby, as if those provisions with any necessary modifications were re-enacted in this Order:—

Article 16 (Additional share capital to be part of general capital);
Article 17 (Issue of new capital);
Article 22 (Priority of principal moneys secured by existing mortgages);
Article 23 (Priority of mortgages and debenture stock over other debts);
Article 24 (Appointment of receiver);
Article 25 (Application of money);
Article 38 (Saving for powers of Treasury):

Provided that—

(a) the said article 22 shall have effect as if for the reference therein to the Sutton Harbour Acts 1847 to 1924 there were substituted reference to the Sutton Harbour Acts and Order 1847 to 1969;

(b) the said article 25 shall have effect as if for each of the references therein to the Sutton Harbour Acts and Order 1847 to 1969 there were substituted reference to the Sutton Harbour Acts and Orders 1847 to 1985.

Repeals

14. The provisions of the Sutton Harbour Act 1847 and the Order of 1969 mentioned in Part II of the Schedule to this Order, are hereby repealed.

Costs of Order

15. The costs, charges and expenses of and incidental to the preparing and obtaining of this Order and otherwise in relation thereto shall be paid by the Company and may in whole or in part be defrayed out of revenue.

J. W. S. Dempster,
An Under Secretary in the
Department of Transport.

Signed by authority of
the Secretary of State
17th February 1986.

SCHEDULE Articles 5(2) and 14.

ENACTMENTS REPEALED

PART I—PROVISIONS AS TO NOMINEE DIRECTORS

Sutton Harbour Act 1847—

Section 28 (Appointment of such Nominee Directors).
Section 29 (As to Nominee Directors going out of Office).
Section 30 (Continuance in Office of the other first Directors).
In Section 31 (Retirement of future Directors not being Nominees), the words "not being respectively such Nominee Directors", the words "except such as the Board of Directors of the London and South-western Railway Company shall for the Time being be entitled to fill" and the words "(exclusive of such Company)".

Sutton Harbour Revision Order 1969(a)—

Article 35 (Nomination of directors by British Railways Board).

PART II—OTHER PROVISIONS

Sutton Harbour Act 1847—

Section 25 (Qualification of Directors).

Sutton Harbour Revision Order 1969—

Article 21 (Debenture stock).
In Part II of the Schedule, the item relating to Section 25 (Qualification of Directors).

(a) S.I. 1969/1735.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides for the change of name of the Sutton Harbour Improvement Company and also authorises the Company to raise additional capital, to borrow further money and in other respects to extend their powers in relation to finance. The Order also provides for the alteration of the number and composition of the Directors and for the repeal or amendment of certain provisions of the Sutton Harbour Acts and Order 1847 to 1969.

Printed in the UK for HMSO by Burgess & Son (Abingdon) Ltd.
850/853148G D76 C8 3/86

ISBN 0 11 066301 2