

This Explanatory Memorandum refers to the Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006(N.I. 15)

WATER AND SEWERAGE SERVICES (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 2006

S.I. 2006/1946 (N.I. 15)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (“the Order”) was made on 19 July 2006.
2. This Explanatory Memorandum has been prepared jointly by the Department for Regional Development (DRD) and the Department of the Environment (DOE) in order to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order has two main purposes;
 - a. To introduce provisions relating to information sharing in connection with water and sewerage charges (Articles 3 and 4); and
 - b. To extend the scope of the enabling powers in Article 20 of the Water (Northern Ireland) Order 1999 (the “1999 Order”) and to make other amendments to enable the DOE to make regulations to introduce controls on the abstraction and impounding of water (Article 5).

INTRODUCTORY (ARTICLES 1 AND 2)

4. The first part of the Order relates to the Order as a whole. Article 1 of the Order sets out the title of the Order and provides that it will come into operation on 1 August 2006. Article 2 defines certain terms used in the Order.

INFORMATION SHARING (ARTICLES 3 AND 4)

BACKGROUND AND POLICY OBJECTIVES

5. In 2002 the Government announced its intention to place the provision of water and sewerage services in Northern Ireland on a self-financing basis. This included

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the introduction of domestic water and sewerage charges to help generate the revenue needed to sustain investment in Northern Ireland's water and sewerage infrastructure. (It should be noted that the Order does not implement these charges; this will be done under proposed legislation – the draft Water and Sewerage Services (Northern Ireland) Order – which was published for consultation on 1 June 2006). Since 2002 extensive consultation and impact analysis has taken place on the Government's policies for reform of the delivery of water and sewerage services. The main proposals of relevance were set out in the consultation exercise on water reform launched in November 2004 and confirmed in the response to consultation published in December 2005. These are:

- Northern Ireland's water and sewerage services should be provided by a Government-owned company (GoCo);
 - All households should pay a direct charge for water and sewerage services received, with a standing charge and a variable element for each service determined by the capital value of the property;
 - Householders in receipt of certain "passport benefits" (housing benefit, rate rebate or a proposed rate relief scheme under the proposed Rates (Amendment) (Northern Ireland) Order) should receive assistance, in the form of an affordability tariff, with their water and sewerage bills.
6. Legislation to implement these and other aspects of water reform was published for consultation on 1 June 2006 in the form of a proposal for a draft Water and Sewerage Services (Northern Ireland) Order (referred to as "the main water reform Order" in this memorandum.
7. Articles 3 and 4 of the Order deal with a very specific aspect of charging policy in advance of the main water reform Order. They provide the basis for the Department of Finance and Personnel (in practice, that Department's Rates Collection and Valuation and Lands Agencies) and the Northern Ireland Housing Executive, which already possess information which could be used to identify those entitled to assistance with water and sewerage charges and other customers, to share that information with DRD. This is specifically so that DRD can establish a customer billing and contact service and provide automatic assistance to those entitled to the proposed affordability tariff in advance of the introduction of billing from April 2007. The details of how customer billing and the assistance for eligible groups will be handled will be set out under the main water reform Order. It is important to stress that the Order does not, in itself, provide additional powers to make charges for domestic water and sewerage services and it remains the Government's aim to introduce domestic charges only from April 2007 onwards.

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8. As part of the preparatory steps towards the billing of customers and implementation of special assistance for eligible groups, DRD's Water Service announced (16 January 2006) the selection of outsourced partners, Crystal Alliance, who will provide customer billing and enquiry management services to support the proposed Government owned company to be established to deliver water and sewerage services by the main water reform Order.

CONSULTATION

9. The Government has consulted extensively on water reform since its announcement in December 2002. An initial consultation paper entitled "The Reform of Water and Sewerage Services in Northern Ireland" (March 2003) focused on the need for investment in Northern Ireland's water and sewerage infrastructure and invited views on how this could be achieved, including the issue of domestic charging. The results of consultation were published later that year. Detailed reform measures were announced in summer 2004 and a draft Integrated Impact Assessment was published in November 2004 for public consultation on the reform proposals. Following public consultation, the Government published its response to comments in a Consultation Report, Final Integrated Impact Assessment and Regulatory Impact Assessment in December 2005. All of the above consultation papers can be viewed at www.waterreformni.gov.uk.

MAIN ELEMENTS OF ARTICLES 3 AND 4 OF THE ORDER

10. Articles 3 and 4 of the Order provides the legal basis for the sharing of certain information between DRD and the Department of Finance and Personnel (DFP) and the Northern Ireland Housing Executive (NIHE). In practice, in the case of DFP, it is that Department's Rates Collection and Valuation and Lands Agencies which will be asked to provide information under the Order. The purpose of the information sharing is to facilitate the establishment of an accurate and effective customer billing and contact service for implementation in April 2007 and to identify those who may be entitled to assistance with charges. The Order restricts the circumstances in which information can be shared and provides sanctions to ensure information is handled appropriately.
11. The information sharing provisions contained in the Order are, effectively, temporary because information cannot be requested after April 2007. However, in the case of information necessary to identify those eligible for assistance, the Government has included provisions in the main water reform Order to allow continued information sharing. This will enable those eligible to receive assistance to continue to do so automatically without having to make applications.

COMMENTARY ON ARTICLES

12. Article 3 provides that certain information held by DFP and NIHE must be provided to DRD if an authorised officer of DRD requests it for the purpose of making arrangements in connection with the development, introduction and implementation of a charges scheme. A charges scheme is a scheme for charging for water and sewerage services provided to any premises. The Government has announced that it will bring such a scheme into force in April 2007 (under the main water reform Order). Paragraph (6) of Article 3 makes it clear that the arrangements referred to include identifying owners and occupier of premises, identifying individuals who may be entitled to assistance with their bills and for the billing and recovery of water and sewerage service charges.
13. Requests for information must be made before April 2007 (in order to coincide with the implementation of water reform) and cannot be dealt with after that date. Only information held by DFP for the purposes of rating, valuation or the administration of housing benefit, and by NIHE for the purposes of housing legislation or the administration of housing benefit, can be requested and a request must specify the information which is to be supplied. In practice, the information sought will concern the name and address details of water and sewerage service customers and any entitlement to housing benefit. The Government has announced that it will provide assistance to those who are in receipt of housing benefit with their water and sewerage bills.
14. Article 4 provides for it to be an offence to disclose any information relating to an individual which was obtained under the Order without lawful authority. The offence applies to those working for DRD or providing services to it (i.e. any commercial body assisting DRD in delivering its services). An offence is not committed if information has already been properly disclosed or disclosed with lawful authority. The latter expression covers disclosures made in the course of someone's work, with the consent of the person to whom the information relates or in accordance with statutory or legal requirements. The penalty for unlawful disclosure is either a fine or imprisonment; the latter only on conviction on indictment.

ABSTRACTION AND IMPOUNDING OF WATER (ARTICLE 5)

BACKGROUND AND POLICY OBJECTIVES

15. DOE is introducing legislation to control the abstraction and impoundment of water in order to meet European obligations.

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16. The Habitats Directive (92/43/EEC) does not explicitly require Member States to introduce a licensing regime for water abstraction, but it does require that any plan or project, either alone or in combination with other projects, that might have a significant impact on a protected site must be subject to appropriate assessment before it receives consent to proceed. The absence of any legislative framework within which to incorporate the appropriate assessment required under the Habitats Directive has necessitated the introduction of a licensing scheme for the abstraction and impoundment of water as a means of identifying the effects of such activities on protected sites. In response to a current infraction case under that Directive DOE, as part of the overall UK response, has given a commitment to having an abstraction control scheme in place by 31 December 2006.
17. Article 11 of the Water Framework Directive (2000/60/EC) (the WFD) requires that the programme of measures established for river basin districts should include controls over abstraction and impoundment. While the programme of measures does not have to be established until 2009, or become operational until 2012, the introduction of the scheme now will provide valuable information for the river basin planning process and enable business and DOE to plan ahead to meet the required WFD standards.
18. DOE currently has powers under Article 20 of the 1999 Order to introduce controls over water abstraction and impoundment by means of regulations. Article 5 of the Order extends the purposes for which such regulations may be made and makes other amendments to the 1999 Order to ensure the controls are sufficient to meet European obligations and to make provision for effective enforcement.
19. The regulations to be made under the amended Article 20 will make it unlawful to abstract or impound water unless authorised under the regulations. Two levels of authorisation are envisaged:-
 - **Permitted Controlled Activities** - are low risk activities such as abstractions below a certain volume i.e. 20 cubic metres per day which would be authorised under the regulations without the need for a licence; and
 - **Licences** - these would be either Simple Licences – where environmental impacts are predictable but where cumulative impacts are likely or Full Licences – to control those activities posing the greatest risk to the environment and where site specific conditions would apply.
20. The Environment and Heritage Service (EHS) of DOE will have the responsibility for the implementation and enforcement of this new legislation. Detailed guidance will be produced by EHS and will be provided to all applicants.
21. DOE published The Draft Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (“the draft Regulations”) for consultation on

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8 May 2006. In order to meet the infraction commitment it is intended, subject to Parliamentary approval of the draft Order, to bring the regulations into operation by 31 December 2006.

CONSULTATION

22. The provisions of Article 5 of the Order have not been the subject of consultation. The provisions are purely enabling in nature and make only technical amendments to the 1999 Order. The outworking of the provisions is reflected in the Regulations which have been subject to a full consultation procedure.

MAIN ELEMENTS OF ARTICLE 5 OF THE ORDER

23. Article 5 of the Order amends the 1999 Order to make provision for the introduction (by Regulations) of controls on the abstraction and impoundment of water in Northern Ireland which will be compatible with European obligations.

COMMENTARY ON ARTICLES

24. Article 5 of the Order makes several amendments to the 1999 Order
25. Paragraph (2) of Article 5 provides for the substitution of Article 20 of the 1999 Order which already confers powers on DOE to make regulations in connection with the abstraction and impounding of water. The new Article restates many of the enabling powers in the current Article 20. However, it also extends the purposes for which such regulations can be made to include controlling, restricting or prohibiting the operation of impounding works.
26. It introduces new provisions relating to the taking of prescribed steps for preventative or remedial action and confers on courts power to order the taking of remedial action. New provisions are also provided relating to access to carry out works on land owned or occupied by another person, and for the payment of compensation in connection with such access. It also provides for the increase in the level of fines capable of being imposed, and for the initiation of proceedings in the Crown Court.
27. Paragraph (3) of Article 5 amends Article 21(1) of the 1999 Order to include the licensing of the operation of impounding works, and the surrender of abstraction licences as matters for which DOE may require payment. Paragraphs (4) and (5) of Article 5 provide that certain information associated with the application for or subsistence of a licence is admissible as evidence in any court proceedings.

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28. Paragraphs (6) and (7) of Article 5 amend Article 28 of the 1999 Order to empower DOE to issue directions to operators of impounding works, in order to obtain information. This replicates the existing provision in connection with abstraction and discharge.
29. Paragraph (8) of Article 5 amends Article 29(b) of the 1999 Order to apply the penalties for false information to abstraction and impounding licences.
30. Paragraph (9) of Article 5 enables DOE to provide, in regulations, that prescribed matters relating to the abstraction and impounding of water must be recorded in a register which is available to the public.
31. Paragraph (10) of Article 5 adds a new Article 38A to the 1999 Order to bind the Crown to the provisions of Article 20 and any regulations made under it. The main purpose of this provision is to enable abstraction licences to be granted to DRD's Water Service prior to the proposed transfer of responsibility for water and sewerage services to a Government owned company on 1 April 2007.

COMMENCEMENT

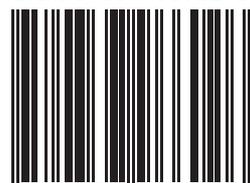
32. The Order came into operation on 1 August 2006.

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