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STATUTORY INSTRUMENTS

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**2006 No. 3336**

The Water and Sewerage Services  
(Northern Ireland) Order 2006

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

*Making of appointments*

**Appointment of relevant undertakers**

13.—(1) Subject to the following provisions of this Chapter, a company may be appointed—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority,

to be the water undertaker or sewerage undertaker for any area.

(2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—

- (a) of requiring the company to perform any duty imposed by or under any statutory provision on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
- (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any statutory provision on an undertaker of that description;
- (c) of requiring statutory provisions authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any statutory provision to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.

(3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.

(4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.

(5) A company shall not be appointed to be a water undertaker or a sewerage undertaker unless it is a limited company.

(6) As soon as practicable after making an appointment under this Chapter, the Department shall send a copy of the appointment to the Authority.

**Continuity of appointments, replacement appointments, etc.**

14.—(1) It shall be the duty of the Department to secure that such appointments are made under this Chapter as will ensure that for every area of Northern Ireland there is at all times both—

- (a) a company holding an appointment under this Chapter as water undertaker; and
- (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.

(2) Subject to the following provisions of this Article—

- (a) the Department; and
- (b) with the consent of or in accordance with a general authorisation given by the Department, the Authority,

shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.

(3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—

- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

(4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—

- (a) that company consents to the appointment or variation;
  - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that company;
  - (c) the appointment or variation relates only to parts of that area and the conditions mentioned in paragraph (5) are satisfied in relation to each of the premises in those parts which are served by that company; or
  - (d) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.
- (5) The conditions are that—
- (a) the premises are, or are likely to be, supplied with not less than 100 megalitres of water in any period of 12 months; and
  - (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.

(6) The Department may, after consulting the Authority, make regulations amending paragraph (5)(a) by substituting, for the quantity of water for the time being specified there, such smaller quantity as the Department considers appropriate.

#### **Procedure with respect to appointments and variations**

**15.—**(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.

(2) Within 14 days after making an application under this Article, the applicant shall—

- (a) serve notice of the application on the existing appointee and DOE; and
- (b) publish a copy of the notice in such manner as may be prescribed.

(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall give notice—

- (a) stating that it proposes to make the appointment or variation;
- (b) stating the reasons why it proposes to make the appointment or variation; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Department or, as the case may be, the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
- (b) by serving a copy of the notice on the existing appointee and DOE.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall—

- (a) serve a copy of the appointment or variation on the existing appointee; and
- (b) serve notice of the making of the appointment or variation on DOE.

(6) As soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Department shall send a copy of the variation to the Authority.

(7) In this Article “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

(8) The Department may by regulations impose such additional procedural requirements as it considers appropriate for any case where the conditions mentioned in Article 14(5) are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.

#### **Duties affecting making of appointments and variations**

**16.—**(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall consider any representations or objections which have been duly made in pursuance of the notice under Article 15(3) and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Department shall consult the Authority.

(3) In determining whether to make an appointment or variation by virtue of Article 14(4)(b) or (c) in relation to any part of an area, the Department or, as the case may be, the Authority shall have

regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.

(4) It shall be the duty of the Department or, as the case may be, of the Authority—

- (a) in making an appointment or variation replacing a company as a relevant undertaker; and
- (b) where it makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or sewerage charges,

to ensure, so far as may be consistent with its duties under Part II, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this Article—

“existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

“new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

“water or sewerage charges” means—

- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
- (b) amounts of any other description which such an undertaker is authorised by or under any statutory provision to require any person to pay.

### **Transitional provision with respect to replacement appointments**

17.—(1) Schedule 1 shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

(2) Paragraphs (3) and (4) apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

(3) Such provisions of this Order as the Department may prescribe shall apply (with any prescribed modifications) in relation to the new undertaker as if the appointment or variation had come into force.

(4) Such of the conditions imposed on the new undertaker under Article 18 as the Authority may specify in a notice given by it to the undertaker shall have effect, in relation to the operation of any provision prescribed under paragraph (3) before the appointment or variation comes into force, as if the appointment or variation had come into force.

### *Conditions of appointment*

### **Power to impose conditions**

18.—(1) An appointment under this Chapter may include—

- (a) such conditions as appear to the Department or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on it by Part II;
- (b) conditions for the purposes of Article 14(4)(d); and

- (c) conditions requiring the rendering to the Department or, as the case may be, the Authority of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of paragraph (1)(a) in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the carrying out of the functions under any statutory provision of water undertakers or sewerage undertakers.

(3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(4) Any provision included by virtue of paragraph (3) in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.

(5) For the purposes of this Order where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this Article shall have effect, irrespective of their subject-matter, as conditions of both appointments.

(6) Where an instrument of appointment has been served under paragraph (3) of Article 13 on any company, the coming into force of the appointment for the purposes specified in paragraph (2) of that Article shall not be affected by any contravention of the requirements of this Order with respect to the provision contained by way of conditions of appointment in that instrument.

(7) If the Department considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in paragraph (6), it may by order direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.

(8) Any sums received by the Department or the Authority in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

### **Determinations under conditions of appointment**

**19.**—(1) Without prejudice to the generality of sub-paragraph (a) of Article 18(1), conditions included in an appointment by virtue of that sub-paragraph may—

- (a) require the appointed company to comply with any direction given by the Authority as to such matters as are specified in the appointment or are of a description so specified; and
- (b) require the appointed company, except in so far as the Authority consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

- (a) the Department or the Authority; or
- (b) on a reference by the Authority, the Competition Commission,

of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Authority, as are specified in the appointment or are of a description so specified.

(3) Where any question or other matter falls to be determined by the Competition Commission in pursuance of a provision contained in an appointment under this Chapter—

- (a) it shall be the duty of the Authority, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
  - (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of sub-paragraph (a) in accordance with the principles which apply, by virtue of Part II, in relation to determinations under this Chapter by the Authority.
- (4) For the purposes of paragraph (3), where—
- (a) the question or matter referred to the Competition Commission concerns the review of a price control imposed on the company holding the appointment; and
  - (b) the Commission is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,
- the Commission shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.
- (5) Paragraphs (4) and (5) of Article 21, and Articles 26 and 27 apply to references to the Competition Commission under this Article as they apply to references under Article 21.
- (6) A report of the Competition Commission on a reference under this Article—
- (a) shall be made to the Authority; and
  - (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of its reasons for those conclusions as, in the opinion of the Commission, is expedient for facilitating a proper understanding of those questions or other matters and of its conclusions,
- and paragraphs (10) and (11) of Article 24 apply to such a report as they apply to a report on a reference under Article 21.

#### *Modification of appointment conditions*

#### **Modification by agreement**

**20.—**(1) Subject to the following provisions of this Article, the Authority may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.

- (2) Before making modifications under this Article, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (3) A notice under paragraph (2) shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the company and on the Department.

(4) The Authority shall not under this Article make any modifications which the Department has, within the time specified in the notice under paragraph (2), directed the Authority not to make.

(5) The Department shall not give a direction under paragraph (4) in relation to any modification unless—

- (a) the modification is a modification of provision contained in the appointment for the purposes of Article 14(4)(d);
- (b) the modification is a modification of a provision of the appointment which relates to the disposal of a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
- (c) it appears to the Department that the modification should be made, if at all, under Article 25.

### **Modification references to Competition Commission**

**21.**—(1) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.

(2) The Authority may, at any time, by notice given to the Competition Commission vary a reference under this Article by—

- (a) adding to the matters specified in the reference; or
- (b) excluding from the reference some or all of the matters so specified;

and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Authority may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in its opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this Article or a variation of such a reference, the Authority shall—

- (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
- (b) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) It shall be the duty of the Authority, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this Article or in carrying out functions under Article 26, to give to the Commission—

- (a) any information in the Authority's possession which relates to matters falling within the scope of the investigation or the carrying out of those functions, and which is either—

- (i) requested by the Commission for that purpose; or
- (ii) information which, in the Authority's opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to them for that purpose under this paragraph.

(6) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Department and the Authority by Part II.

#### **References under Article 21: time limits**

**22.**—(1) Every reference under Article 21 shall specify a period (not longer than 6 months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under Article 21 shall not have effect (and no action shall be taken in relation to it under Article 25) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under paragraph (3).

(3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than 6 months.

(4) No more than one extension is possible under paragraph (3) in relation to the same reference.

(5) The Authority shall, in the case of an extension made by it under paragraph (3)—

- (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by the Authority under sub-paragraph (a) to the company whose appointment is mentioned in the reference.

#### **References under Article 21: powers of investigation**

**23.**—(1) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 21 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.



- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.

(4) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.

(5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

### **Reports on modification references**

- 24.**—(1) In making a report on a reference under Article 21, the Competition Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as, in its opinion, is expedient for facilitating a proper understanding of those questions and of its conclusions;
  - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company’s appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) For the purposes of Article 25, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41).

(3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 21 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 21.

(5) In making any report on a reference under Article 21 the Competition Commission must have regard to the following considerations before disclosing any information.

(6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

- (7) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.

(8) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (7)(a) or (b) is necessary for the purposes of the report.

(9) A report of the Competition Commission on a reference under Article 21 shall be made to the Authority.

(10) Subject to paragraph (11), the Authority—

- (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Department; and
- (b) shall, not less than 14 days after that copy is received by the Department, publish another copy of that report in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(11) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 14 days mentioned in sub-paragraph (b) of paragraph (10), direct the Authority to exclude that matter from every copy of the report to be published by virtue of that sub-paragraph; and the Authority shall comply with any such direction.

### **Modifications following report**

**25.—**(1) Where a report of the Competition Commission on a reference under Article 21—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this Article, make such modifications of the conditions of that appointment as appear to the Authority requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this Article, the Authority shall have regard to the modifications specified in the report.

(3) Before making modifications under this Article, the Authority shall give notice—

- (a) stating that it proposes to make the modifications and setting out their effect;
- (b) stating the reasons why it proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.

(5) After considering any representations or objections made in response to proposals set out in a notice under paragraph (3), the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

(6) The Authority shall include with the notice under paragraph (5) a copy of any representations or objections received in relation to the notice under paragraph (3).

(7) If the period of 4 weeks from the date on which the notice under paragraph (5) is given elapses without a direction under Article 26(1)(a) having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under Article 26(1)(b) has been given, make the modifications which are not specified in the direction.

(8) The Authority shall not under this Article make any modification of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of Article 14(4)(d); or

(b) being provisions relating to the disposal of a company's protected land, are stated in the appointment to be provisions which cannot be modified.

#### **Commission's power of veto following report**

**26.**—(1) The Competition Commission may, within the period of 4 weeks after the date on which it is given a notice under Article 25(5), direct the Authority—

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Department may, within the period of 4 weeks after the date on which the Commission is given a notice under Article 25(5) and on the application of the Commission, direct that the period for giving a direction under paragraph (1) (and, accordingly, the period mentioned in Article 25(7)) shall be extended by 14 days.

(3) The power to give a direction under paragraph (1) may only be exercised in respect of such of the modifications set out in the notice under Article 25(5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under paragraph (1), it—

(a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 25(7)(b).

(5) In exercising its power under paragraph (4)(b), the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.

(6) Before making modifications under paragraph (4)(b) the Commission shall give notice—

(a) stating that it proposes to make the modifications and setting them out;

(b) stating the reason why it proposes to make them;

- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under paragraph (4)(a) or (6) shall be given—

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.

(8) The Commission may not make any modification under this Article which the Authority could not make under Article 25.

(9) After making modifications under this Article the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

#### **Commission's power of veto following report: supplementary**

**27.**—(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (9) of Article 26.

(2) In giving any notice under paragraph (4)(a) or (6) of Article 26, or publishing any notice under paragraph (9) of that Article, the Competition Commission must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4)(a) or (b) is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs (7) and (8), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under Article 26, as they apply for the purposes of any investigations on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(7) Section 110 shall, in its application by virtue of paragraph (6), have effect as if—

- (a) subsection (2) were omitted;

- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction has been given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of paragraph (6), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction is given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (6), have effect in relation to those sections as applied by virtue of that paragraph.
- (10) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

### **Modification by order under other statutory provisions**

**28.**—(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State makes a relevant order, the order may, subject to paragraph (3), also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to the OFT, the Commission or (as the case may be) the Secretary of State to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (2) In paragraph (1) “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or
  - (b) an order under section 160 or 161 of the Enterprise Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition is—
    - (i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or
    - (ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.
- (3) No modification shall be made by virtue of this Article of any provisions of a company’s appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of Article 14(4)(d); or
  - (b) being provisions relating to the disposal of a company’s protected land, are stated in the appointment to be provisions which cannot be modified.

(4) Expressions used in paragraph (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act have the same meanings in that paragraph as in that Part.

### *Competition*

#### **Functions of the Authority with respect to competition**

**29.**—(1) The functions to which paragraph (2) apply shall be concurrent functions of the Authority and the OFT.

(2) This paragraph applies to the functions of the OFT under Part 4 of the Enterprise Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.

(3) The Authority shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (c. 41) (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of that treaty,

in relation to commercial activities connected with the supply of water or securing the supply of water or the provision or securing the provision of sewerage services.

(4) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (1) and (2), references in Part 4 of the Enterprise Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).

(5) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the OFT are to be read as including a reference to the Authority (except in sections 31D(1) to (6), 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).

(6) Before the OFT or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (1), it shall consult the other.

(7) Neither the OFT nor the Authority shall exercise in relation to any matter any functions which are exercisable concurrently by virtue of paragraph (1) if functions which are so exercisable have been exercised in relation to that matter by the other.

(8) It shall be the duty of the Authority, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference made to the Commission by the Authority by virtue of paragraph (2), to give to the Commission—

- (a) any information which is in the Authority's possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to it for that purpose under this paragraph.

(9) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) Part 4 of the Enterprise Act; or

(b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), by or in relation to the Authority on the ground that it should have been done by or in relation to the OFT.

(10) Section 117 of the Enterprise Act (offence of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of paragraph (1) as if the reference in section 117(1)(a) and (2) to the OFT included a reference to the Authority.

## CHAPTER II

### ENFORCEMENT AND INSOLVENCY

#### *Enforcement orders*

#### **Orders for securing compliance with certain provisions**

**30.**—(1) Subject to paragraph (2) and Articles 31 and 32, where in the case of any company holding an appointment under Chapter I an enforcing authority is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment in relation to which it is the relevant enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this Article and in relation to which it is the relevant enforcement authority; or

(b) that that company is likely to contravene any such condition or requirement,

it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to Article 31, where in the case of any company holding an appointment under Chapter I—

(a) it appears to an enforcement authority as mentioned in sub-paragraph (a) or (b) of paragraph (1); and

(b) it appears to that authority that it is requisite that a provisional enforcement order be made, the enforcement authority may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to it requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional enforcement order be made, an enforcement authority shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this Article, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to Articles 31 and 32, where an enforcement authority has made a provisional enforcement order, it shall confirm the order, with or without modifications, if—

(a) it is satisfied that the company to which the order relates—

- (i) is contravening any condition or statutory or other requirement in relation to which it is the enforcement authority; or
    - (ii) is likely to contravene any such condition or requirement; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) An enforcement order—
  - (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the enforcement authority which made it.
- (6) For the purposes of this Article and the following provisions of this Order—
  - (a) the statutory and other requirements which are enforceable under this Article in relation to a company holding an appointment under Chapter I are such of the requirements of any statutory provision as—
    - (i) are imposed in consequence of that appointment; and
    - (ii) are made so enforceable by that statutory provision;
  - (b) the Authority shall be the relevant enforcement authority in relation to the conditions of an appointment under Chapter I; and
  - (c) the relevant enforcement authority in relation to each of the statutory and other requirements enforceable under this Article shall be—
    - (i) the Department;
    - (ii) the Authority; or
    - (iii) either of the above,according to whatever provision is made by the statutory provision by which the requirement is made so enforceable.
- (7) In this Article and the following provisions of this Chapter—
  - “enforcement authority” means—
    - (a) the Department; or
    - (b) the Authority;
  - “enforcement order” means a final enforcement order or a provisional enforcement order;
  - “final enforcement order” means an order under this Article other than a provisional enforcement order;
  - “provisional enforcement order” means an order under this Article which, if not previously confirmed in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order.
- (8) Where any act or omission constitutes a contravention of a condition of an appointment under Chapter I or of a statutory or other requirement enforceable under this Article, the only remedies for that contravention, apart from those available by virtue of this Article, shall be those for which express provision is made by or under any statutory provision and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.



### **Exceptions to the duty to enforce**

**31.**—(1) An enforcement authority shall not be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if it is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
- (b) that, in such circumstance or subject to such conditions as may be prescribed, the company has given, and is complying with, an undertaking to take all such steps as it appears to the enforcement authority for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- (c) that the duties imposed on the enforcement authority by Part II preclude the making or, as the case may be, the confirmation of the order; or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(2) The requirement to comply with an undertaking given for the purposes of paragraph (1)(b) shall be treated as a statutory requirement enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(3) Where an enforcement authority, having notified a company that it is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in sub-paragraph (a), (b), (c) or (d) of paragraph (1), it shall—

- (a) serve notice that it is so satisfied on the company;
- (b) publish a copy of the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (c) in a case where the enforcement authority is satisfied as mentioned in the said sub-paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that sub-paragraph on the other enforcement authority.

(4) The requirements of paragraph (3) shall not apply, in the case of any proposed order or confirmation in respect of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

### **Procedure for enforcement orders**

**32.**—(1) Before making a final order or confirming a provisional order, an enforcement authority shall give notice—

- (a) stating that it proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in the enforcement authority's opinion, constitute or would constitute contraventions of that condition or requirement; and
  - (iii) the other facts which, in its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (2) A notice under paragraph (1) shall be given—
  - (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and on the other enforcement authority.
- (3) An enforcement authority shall not make a final order with modifications, or confirm a provisional order with modifications, except—
  - (a) with the consent to the modifications of the company to which the order relates; or
  - (b) after complying with the requirements of paragraph (4).
- (4) The requirements mentioned in paragraph (3) are that the enforcement authority shall—
  - (a) serve on the company to which the order relates such notice as appears to it to be requisite of its proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making an enforcement order or confirming a provisional order, the enforcement authority shall—
  - (a) serve a copy of the order on the company to which the order relates and on the other enforcement authority; and
  - (b) publish such a copy in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final enforcement order or a provisional order which has been confirmed, the enforcement authority shall give notice—
  - (a) stating that it proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (7) If, after giving a notice under paragraph (6), the enforcement authority decides not to revoke the order to which the notice relates, it shall give notice of that decision.
- (8) A notice under paragraph (6) or (7) shall be given—
  - (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the company to which the order relates and on the other enforcement authority.
- (9) The requirements of the preceding provisions of the Article shall not apply, in the case of any order in respect of contravention of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

### **Validity and effect of enforcement orders**

**33.**—(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of Article 30; or

(b) that any of the requirements of Article 32 have not been complied with in relation to it,

the company may, within 42 days from the date of service on it of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatsoever.

### **Effect of enforcement order**

**34.**—(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed under paragraph (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against a company in pursuance of paragraph (2), other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of Article 108(1)(a), it shall be a defence for the company to prove that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

(4) Without prejudice to any right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings for an injunction or for any other appropriate relief at the suit of the body which is the relevant enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

### *Financial penalties*

### **Financial penalties**

**35.**—(1) Where the Authority is satisfied in the case of any company holding an appointment under Chapter I that the company—

(a) has contravened or is contravening any condition of the appointment; or

(b) has failed or is failing to achieve any standard of performance prescribed under Article 66(2) or 150(2),

the Authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where an enforcement authority is satisfied in the case of any company holding an appointment under Chapter I that the company has contravened or is contravening any statutory or other requirement which is enforceable under Article 30 and in relation to which it is the relevant enforcement authority, the enforcement authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(3) Before imposing a penalty on a company under paragraph (1) or (2) an enforcement authority shall give notice—

- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the relevant condition or requirement or the standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) Before varying any proposal stated in a notice under paragraph (3)(a) the enforcement authority shall give notice—

- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—

- (a) stating that it has imposed a penalty on the company and its amount;
- (b) setting out the condition, requirement or standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
- (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the company, by which the penalty is required to be paid.

(6) The company may, within 28 days of the date of service on it of a notice under paragraph (5), make an application to the enforcement authority for it to specify different dates by which different portions of the penalty are to be paid.

(7) Any notice required to be given by an enforcement authority under this Article shall be given

- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
- (b) by serving a copy of the notice on the company to which it relates;
- (c) by serving a copy of the notice on the Council; and
- (d) by serving a copy of the notice on the other enforcement authority.

(8) Any sums received by an enforcement authority by way of penalty under this Article shall be paid into the Consolidated Fund.

(9) The power of an enforcement authority to impose a penalty under this Article is not exercisable in respect of any contravention or failure before the coming into operation of this Article.

(10) No penalty imposed by an enforcement authority under this Article may exceed 10 per cent. of the turnover of the company (determined in accordance with provisions specified in an order made by the Department subject to negative resolution).

(11) An enforcement authority shall not impose a penalty under this Article where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

### **Statement of policy with respect to penalties**

**36.**—(1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the enforcement authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) An enforcement authority may revise its statement of policy and where it does so shall publish the revised statement.

(4) Publication under this Article shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) An enforcement authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

### **Time limits on the imposition of financial penalties**

**37.**—(1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

- (a) the notice under Article 35(3) relating to the penalty is served on the company under Article 35(7); or
- (b) a notice relating to the contravention or failure is served on the company under Article 261(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 35(3) was served on the company under Article 35(7)—

- (a) within 3 months from the confirmation of the provisional order or the making of the final order; or
- (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

### **Interest and payment of instalments**

**38.**—(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being prescribed under Article 127 of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#).

(2) If an application is made under paragraph (6) of Article 35 in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the enforcement authority grants an application under that paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that paragraph, that authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

**Appeals**

**39.**—(1) If the company on which a penalty is imposed is aggrieved by—

- (a) the imposition of the penalty;
- (b) the amount of the penalty; or
- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the company may make an application to the High Court under this Article.

(2) An application under paragraph (1) must be made—

- (a) within 42 days from the date of service on the company of a notice under Article 35(5); or
- (b) where the application relates to a decision of an enforcement authority on an application by the company under Article 35(6), within 42 days from the date the company is notified of the decision.

(3) On any such application, where the High Court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within paragraph (4), that Court—

- (a) may quash the penalty;
- (b) may substitute a penalty of such lesser amount as that Court considers appropriate in all the circumstances of the case; or
- (c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.

(4) The grounds falling within this paragraph are—

- (a) that the imposition of the penalty was not within the power of the enforcement authority under Article 35;
- (b) that any of the requirements of paragraphs (3) to (5) or (7) of Article 35 have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or
- (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this Article in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the High Court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the High Court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this Article it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this Article, the validity of a penalty shall not be questioned by any legal proceedings whatsoever.

**Recovery of penalties**

**40.** Where a penalty imposed under Article 35(1) or (2), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under Article 39 during the period within which such an application can be made; or

(b) an application has been made under that Article and determined, the enforcement authority may recover from the company, as a civil debt due to it, any of the penalty and any interest which has not been paid.

### *Special administration orders*

#### **Meaning and effect of special administration order**

**41.**—(1) A special administration order is an order of the High Court made in accordance with Article 42 or 43 in relation to a company holding an appointment under Chapter I of this Part and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—

- (a) for the achievement of the purposes of such an order; and
  - (b) in a manner which protects the respective interests of the members, creditors and customers of the company.
- (2) The purposes of a special administration order made in relation to any company shall be—
- (a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
  - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).
- (3) The Department may by regulations—
- (a) make provision for applying provisions of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (with or without modifications) in relation to a special administration order or an application for such an order;
  - (b) make consequential or supplementary provision (including provision modifying other statutory provisions) in relation to special administration orders.
- (4) Schedule 1 shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter I of this Part in pursuance of a special administration order.

(5) In this Article “business” and “property” have the same meanings as in the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#).

#### **Special administration orders made on application of Department or Authority**

**42.**—(1) If, on an application made to the High Court—

- (a) by the Department; or
- (b) with the consent of the Department, by the Authority,

that Court is satisfied in relation to any company which holds an appointment under Chapter I that any one or more of the grounds specified in paragraph (2) is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

- (2) The grounds mentioned in paragraph (1) are, in relation to any company—
- (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under

- paragraph (3) of Article 31, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—
- (i) is not for the time being the subject-matter of proceedings brought by virtue of Article 33(1); and
  - (ii) if it is a provisional enforcement order, has been confirmed,
- as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (c) that the company is or is likely to be unable to pay its debts;
- (d) that, in a case in which DETI has certified that it would be appropriate, but for Article 43, for it to petition for the winding up of the company under Article 104A of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (winding-up on grounds of public interest), it would be just and equitable, as mentioned in that Article, for the company to be wound up if it did not hold an appointment under Chapter I; or
- (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Department or the Authority to be necessary by reason of, or in connection with, a proposal for the making by virtue of Article 14(4)(d) of any appointment or variation replacing a company as a relevant undertaker.
- (3) Notice of any application under this Article for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under Article 359 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#); and no such application shall be withdrawn except with the leave of the High Court.
- (4) For the purposes of this Article a company is unable to pay its debts if—
- (a) it is a limited company which is deemed to be so unable under Article 103 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of Articles 186 to 188 of that Order, to be so unable for the purposes of Article 185 of that Order (winding up of unregistered companies).
- (5) In this Article “principal duty”, in relation to a company, means a requirement imposed on the company by Article 65 or 149.

#### **Power to make special administration order on winding-up petition**

- 43.** On an application made to any court for the winding up of a company which holds an appointment under Chapter I —
- (a) the court shall not make a winding-up order in relation to the company; but
  - (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make a special administration order in relation to the company.

#### *Restrictions on voluntary winding up and insolvency proceedings*

#### **Restrictions on voluntary winding up and insolvency proceedings**

- 44.—**(1) Where a company holds an appointment under Chapter I—
- (a) the company shall not be wound up voluntarily;



- (b) no administration order or appointment of an administrator shall be made in relation to the company under Schedule B1 to the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);
  - (c) no appointment shall be made under Part IV of that Order (receivers and managers) in relation to the company; and
  - (d) no other step shall be taken by any person to enforce any security over the company's property except where that person has served 14 days' notice of his intention to take that step on the Department and on the Authority.
- (2) In this Article “security” and “property” have the same meanings as in Parts II to VII of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#).

### CHAPTER III

#### CONSUMER PROTECTION: THE GENERAL CONSUMER COUNCIL

##### **The General Consumer Council: preliminary**

**45.**—(1) This Chapter confers functions on the General Consumer Council for Northern Ireland (“the Council”) in relation to consumer matters.

(2) In this Chapter—

“consumer matter” means any matter connected with the interests of consumers;

“the interests of consumers” means the interests of consumers in relation to—

- (a) the supply of water to premises by water undertakers; and
  - (b) the provision of sewerage services by sewerage undertakers.
- (3) In considering the interests of consumers the Council shall have regard to the interests of—
- (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Council shall carry out its functions under this Chapter in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(5) The Council shall establish a group in connection with the exercise of its functions under this Chapter.

(6) Accordingly, in paragraph 10(1) of Schedule 1 to the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#) (“the 1984 Order”) after head (bb) there shall be inserted—

“(bbb) a group in connection with the exercise of its functions under Chapter III of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.”.

(7) Nothing in paragraph (5) or (6) or Article 9(1) or (2) of the Energy Order (establishment of group in relation to energy) affects the power conferred by paragraph 10(8) of Schedule 1 to the 1984 Order (power by order to reduce number of groups); and accordingly an order under paragraph 10(8) of that Schedule may repeal paragraphs (5) and (6) and Article 9(1) and (2) of the Energy Order.

(8) Nothing in Article 4 of the 1984 Order authorises or requires the Council to carry out any function in relation to a consumer matter otherwise than in accordance with this Chapter.

(9) The Council shall send to the Department a copy of every annual report prepared by it under paragraph 12 of Schedule 1 to the 1984 Order.

### **Forward work programme of the Council**

46.—(1) The Council shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its functions under this Chapter (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its functions under this Chapter.

(4) The forward work programme prepared under this Article may, if the Council so decides, be combined in a single programme with the forward work programme of the Council prepared under Article 10 of the Energy Order.

(5) Before publishing the forward work programme for any year (other than one which is combined as mentioned in paragraph (4)), the Council shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) The notice under paragraph (5) shall be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(7) The Council shall send a copy of any notice given by it under paragraph (5) to the Authority and the Department.

### **Co-operation between the Council and other authorities**

47.—(1) This Article imposes duties on—

- (a) the Authority and the Council;
- (b) the Council and the Department;

but those duties extend only to their respective functions under this Order.

(2) It shall be the duty of the bodies mentioned in each sub-paragraph of paragraph (1) to make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) the consistent treatment of matters which affect both of them.

(3) As soon as practicable after agreement is reached on any arrangements required by this Article, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this Article shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this Article, the parties shall revise their memorandum.

(6) Parties to arrangements required by this Article shall send a copy of their memorandum, and any revised memorandum, to each other body mentioned in paragraph (1) who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Department shall lay a copy of every memorandum or revised memorandum under this Article before the Assembly.

### **Acquisition and review of information**

**48.**—(1) The Council shall obtain and keep under review—

- (a) information about consumer matters; and
- (b) information about the views of consumers on such matters.

(2) Where the Authority is required by any provision of this Order to publish a notice or any other document, it shall send a copy of the document to the Council.

### **Provision of advice and information to public authorities and other persons**

**49.** Subject to Article 57, the Council may—

- (a) make proposals, or provide advice and information, about consumer matters; and
- (b) represent the views of consumers on such matters,

to public authorities, companies holding an appointment under Chapter I and other persons whose activities may affect the interests of consumers.

### **Provision of information to consumers**

**50.**—(1) The Council may provide information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.

(2) That power may be exercised by—

- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
- (b) furnishing information to any consumer (whether in response to a request or otherwise).

### **Power to publish information and advice about consumer matters**

**51.** Subject to Article 57, if it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

### **Provision of information to the Council**

**52.**—(1) The Council may direct—

- (a) the Authority; or
- (b) a company holding an appointment under Chapter I,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions under this Chapter.

(2) A body to which a direction under this Article is given shall comply with it as soon as reasonably practicable.

(3) Before giving a direction under this Article and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to which the direction is given.

(4) If the Authority fails to comply with the direction under this Article it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

(5) Subject to Article 57, the Council may publish a notice given to it under paragraph (4).

### **Provision of information by the Council**

**53.**—(1) The Authority or the Department may direct the Council to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as the Authority or the Department may require for the purpose of exercising its functions under this Order.

(2) The Council shall comply with a direction under this Article as soon as reasonably practicable.

(3) Where the Council fails to comply with a direction under this Article it shall give to the body which gave the direction notice of its reason for the failure, and that body may publish that notice in such manner as it considers appropriate.

(4) A body publishing a notice under this Article shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

### **Articles 52 and 53: supplementary**

**54.**—(1) The Department may make regulations prescribing—

- (a) descriptions of information which a body to which a direction is given under Article 52 or 53 may refuse to supply; or
- (b) circumstances in which such a body may refuse to comply with a direction given under either of those Articles.

(2) The Council may, if no person is prescribed for the purpose under paragraph (3), refer a failure by a company holding an appointment under Chapter I to comply with a direction under Article 52 to the Authority.

(3) The Department may make regulations for the purpose of enabling a failure to comply with a direction under Article 52 or 53 to be referred by the body which gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under paragraph (2) or regulations under paragraph (3)) shall—

- (a) consider any representations made by either party;
- (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
- (c) give notice of his determination and any order under sub-paragraph (b), with reasons, to both parties.

(5) The duty of a company holding an appointment under Chapter I to comply with an order under this Article shall be enforceable by the Authority under Article 30.

(6) Subject to Article 57, a notice under paragraph (4) may be published by either party to the reference.

### **Consumer complaints**

**55.**—(1) This Article applies to a complaint which any person (“the complainant”) has against a relevant undertaker in relation to any matter connected with the functions of that undertaker.

(2) Where a complaint to which this Article applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to paragraph (8)) investigate the complaint for the purpose of determining whether it is appropriate to take any action under paragraph (9).

(3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under Article 243, the Council shall refer the complaint to the Authority.

(4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under Article 30 or 35 is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.

(5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence under this Order, the Council shall refer the matter to the Department.

(6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Order, the Council shall, if the complainant consents, refer the matter to the Authority.

(7) A referral under paragraph (6) shall have effect for the purposes of Article 61 as if it were a referral by the complainant of a dispute for determination by the Authority.

(8) The Council is not required to investigate any matter if it appears to the Council that—

- (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker;
- (b) the relevant undertaker has not been given a reasonable opportunity to deal with the complaint; or
- (c) in a case mentioned in paragraph (3), (4), (5) or (6), it is inappropriate to do so.

(9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this Article, the Council shall make representations on behalf of the complainant to the relevant undertaker about anything to which the complaint relates.

(10) After investigating a complaint the Council may make a report to the Authority or the Department.

(11) A report under paragraph (10) may include information about—

- (a) any representations made by the Council under paragraph (9); and
- (b) the response of the relevant undertaker to the complaint or any such representations.

(12) No report under paragraph (10) or information about a complaint referred to the Council under this Article, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority or the Department in the exercise of any power under this Order without the consent of the complainant.

(13) Where a representation made to the Authority or the Department about any matter (other than a representation appearing to it be frivolous or vexatious) appears to that body—

- (a) to be about a matter which is or amounts to a complaint to which this Article applies; and
- (b) to have been made by or on behalf of the complainant,

that body shall refer the matter to the Council.

### **Power of the Council to investigate other matters**

**56.**—(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

(2) Where the Council has investigated a matter under this Article it may make a report on that matter to the Authority, the Department, the OFT or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

(3) Subject to Article 57, the Council may—

- (a) send a report on any matter investigated under this Article to any person who appears to the Council to have an interest in that matter; and
- (b) publish any such report in such manner as the Council thinks appropriate.

**Restrictions on disclosure of information by the Council**

57.—(1) This Article applies to the functions of the Council—

- (a) in preparing so much of its annual report under paragraph 12 of Schedule 1 to the 1984 Order as relates to its functions under this Chapter;
- (b) in exercising its functions under Article 49 or 50;
- (c) in publishing anything under Article 51;
- (d) in publishing a notice under Article 52(5) or 54(6); and
- (e) in sending or publishing a report under Article 56(3).

(2) Subject to paragraph (7), information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of a function to which this Article relates unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

- (a) the individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of paragraph (3)(c) above, the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3) (c) to the information or as to the desirability or otherwise of its disclosure;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to paragraph (7), the Council shall not in the exercise of any function to which this Article applies disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in paragraph (5), the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Department or the Director of Public Prosecutions for Northern Ireland.

(7) Where this Article applies by virtue of paragraph (1)(b), paragraphs (2) to (5) do not apply to a disclosure of information which is made to the Authority, the Department, the Competition Commission or any other public authority.

(8) The disclosure by the Council of information in the exercise of a function to which this Article applies does not contravene Article 265 (restriction on disclosure of information).

(9) In this Article “disclosure” includes publication.

**Duty to consult the Council**

58.—(1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

- (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
- (b) the Authority considers that it would be clearly inappropriate to consult the Council.

(2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

#### **Provision of statistical information about complaints**

**59.**—(1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to(

- (a) complaints made by consumers about any matter relating to the activities of relevant undertakers; and
- (b) the handling of such complaints.

(2) In paragraph (1) “complaints” includes complaints made directly to relevant undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council or the Department.

### CHAPTER IV

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

#### **General duty of the Authority to keep matters under review**

**60.**—(1) It shall be the duty of the Authority, so far as it appears to it practicable to do so, to keep under review the carrying on both in Northern Ireland and elsewhere of activities connected with the matters in relation to which water undertakers or sewerage undertakers carry out functions.

(2) It shall also be the duty of the Authority, so far as it appears to it practicable to do so, to collect information with respect to—

- (a) the carrying out by companies appointed under Chapter I of the functions of relevant undertakers; or
- (b) any such company,

with a view to its becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on it by or under any statutory provision.

(3) The Department may give general directions indicating considerations to which the Authority should have particular regard in determining the order of priority in which matters are to be brought under review in performing its duty under paragraph (1) or (2); and it shall be the duty of the Authority to comply with any such directions.

(4) It shall be the duty of the Authority, where either it considers it expedient or it is requested by the Department or the OFT to do so, to give information, advice and assistance to the Department or the OFT with respect to any matter relating to—

- (a) the functions of either description of relevant undertaker; or
- (b) the carrying out of any such functions by a company holding an appointment under Chapter I.

#### **Determination of disputes by the Authority**

**61.**—(1) In this Article “relevant dispute” means a dispute which, by virtue of any provision of this Order, may be referred to the Authority for determination under this Article.

(2) The practice and procedure to be followed in connection with the reference to the Authority of any relevant dispute shall be such as it considers appropriate.

(3) Where the Authority determines any dispute under this Article it shall give its reasons for reaching its decision with respect to the dispute.

(4) On making a determination under this Article the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it considers appropriate.

(5) A determination under this Article—

- (a) shall be final; and
- (b) shall be enforceable as if it were a money judgment (within the meaning of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#)), in so far as it includes such provision as to costs or expenses as is mentioned in paragraph (4).

(6) The Authority shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(7) In including in any determination under this Article any provision as to costs or expenses, the Authority shall have regard to the conduct and means of the parties and any other relevant circumstances.

### **Remuneration and standards of performance**

**62.**—(1) This Article applies to any company holding an appointment under Chapter I.

(2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—

- (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within paragraph (3); and
- (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

(3) Arrangements fall within this paragraph if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.

(4) A description under paragraph (2)(b) must include in particular—

- (a) a statement of when the arrangements were made;
- (b) a description of the standards of performance in question;
- (c) an explanation of the means by which the standards of performance are assessed; and
- (d) an explanation of how the remuneration was calculated.

(5) The statement required by paragraph (2) must also state—

- (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within paragraph (3); or
- (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

(6) A description under paragraph (5) must—

- (a) include in particular the matters listed in paragraph (4)(a), (b) and (c); and
- (b) where the arrangements described are different from any arrangements described under paragraph (2)(b), state the likely effect of those differences on the remuneration of each director of the company.



(7) The statement required by paragraph (2) must be made to the Authority in such manner as may be required by the Authority.

(8) The statement required by paragraph (2)—

- (a) shall be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
- (b) may be published by the Authority in such manner as it may consider appropriate.

(9) The duty of a company under this Article applies in respect of any person who has at any time been a director of the company.

(10) In this Article—

“remuneration” in relation to a director of a company—

- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
- (b) includes remuneration in respect of any of his services while a director of the company; “standards of performance”, in relation to any company, include any standards which are—
  - (a) set by or under any conditions of the company’s appointment under Chapter I;
  - (b) contained in or prescribed by regulations made under Article 66(1)(b) or (2) or Article 150(1)(b) or (2); or
  - (c) set or agreed to by the company.

(11) Any requirement imposed by this Article shall be treated as a statutory requirement enforceable under Article 30 by the Authority.

### **Procedure for dealing with complaints**

**63.**—(1) Each relevant undertaker shall establish a procedure for dealing with complaints made by its customers in connection with the supply of water or, as the case may be, the provision of sewerage services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

- (a) the relevant undertaker has consulted the Council; and
- (b) the proposed procedure or modification has been approved by the Authority.

(3) The relevant undertaker shall—

- (a) publicise the procedure in such manner as may be approved by the Authority; and
- (b) send a description of the procedure, free of charge, to any person who asks for one.

(4) The Authority may give a direction to a relevant undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under paragraph (4)—

- (a) may specify the manner in which the review is to be conducted; and
- (b) shall require a written report of the review to be made to the Authority.

(6) Where the Authority receives a report under paragraph (5)(b), it may, after consulting the relevant undertaker, direct the undertaker to make such modifications of—

- (a) the procedure; or
- (b) the manner in which the procedure operates,

as may be specified in the direction.

(7) Paragraph (2) does not apply to any modification made in compliance with a direction under paragraph (6).

(8) The duty of a relevant undertaker to comply with paragraph (1) and with any direction given to it under paragraph (4) or (6) shall be enforceable by the Authority under Article 30.

(9) Where the Authority is considering whether to exercise its powers under paragraph (4) or (6) in relation to a relevant undertaker, it shall be the duty of that undertaker to give the Authority such information as the Authority may reasonably require for the purpose of assisting it in coming to a decision.

(10) Article 260 shall have effect, with the necessary modifications, in relation to information which the Authority requires for that purpose as it has effect in relation to information which the Department requires for purposes mentioned in paragraph (1) of that Article.

### *Supplementary*

#### **Interpretation of Part III**

**64.**—(1) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following—

- (a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or
- (b) a variation by virtue of which the area for which a company holds an appointment under Chapter I is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

(2) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I—

- (a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises are supplied with water by means of a connection with a distribution main of that company; and
- (b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises are drained by means of a relevant sewer or drain.

(3) In this Article—

- (a) “distribution main” means a water main that is not a trunk main; and
- (b) “relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following—
  - (i) a public sewer or lateral drain vested in that company;
  - (ii) a sewer or lateral drain in relation to which that company has made a declaration of vesting under Article 159 which has not yet taken effect;
  - (iii) a sewer or lateral drain in relation to which that company has entered into an agreement under Article 161.

(4) In this Part “the 1984 Order” means the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#).