
STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services
(Northern Ireland) Order 2006

PART VI

SEWERAGE SERVICES

CHAPTER II

PROVISION OF SEWERAGE SERVICES

Requisition of public sewer or lateral drain

Duty to comply with sewer and lateral drain requisition

154.—(1) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—

- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by the owner or occupier of any premises in that locality;
- (b) the premises in that locality the drainage of which would be by means of that sewer are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(2) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

- (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by the owner or occupier of premises the drainage of which would be by means of that lateral drain;
- (b) the premises the drainage of which would be by means of that lateral drain are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(3) The duty of a sewerage undertaker under this Article to provide a public sewer or a lateral drain shall be owed to the person who requires the provision of the sewer or lateral drain or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of paragraph (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a sewerage undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) In this Article the reference to domestic purposes, in relation to the drainage of premises to which a requirement under this Article relates, is a reference—

- (a) where there are buildings on those premises, to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and
- (b) where any person is proposing to erect buildings on those premises, to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

Financial conditions of compliance

155.—(1) The conditions mentioned in Article 154(1)(c) and (2)(c) are satisfied in relation to a requirement for the provision of a public sewer or, as the case may be, lateral drain by a sewerage undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with paragraph (2) have been given by the person or persons who have required the provision of the sewer or lateral drain; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under paragraph (3), may be required to secure his undertakings.

(2) The undertakings which a sewerage undertaker may require for the purposes of paragraph (1) in respect of any public sewer or lateral drain are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that sewer or lateral drain, as determined in accordance with the undertaker's charges scheme; and
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of paragraph (1)(b) a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, lateral drain if he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every three months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by the Authority for the purposes of paragraph (4)

- (a) may be given or made in relation to the provision of a particular public sewer or lateral drain, in relation to the provision of public sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and
- (b) may be revoked at any time.

- (6) Any dispute between a sewerage undertaker and any other person as to—
 - (a) the undertakings or security required by the undertaker for the purposes of this Article; or
 - (b) the amount required to be paid in pursuance of any such undertaking,may be referred to the Authority for determination under Article 61 by either party to the dispute.

Determination of completion date and route for requisitioned sewer or lateral drain

156.—(1) A sewerage undertaker shall not be in breach of a duty imposed by Article 154 in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—

- (a) the period of 6 months beginning with the relevant day has expired; and
 - (b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—
 - (i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or
 - (ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,at the place or places determined under paragraph (3).
- (2) The period mentioned in paragraph (1)(a) may be extended—
- (a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
 - (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under paragraph (4).
- (3) The places mentioned in paragraph (1)(b) shall be—
- (a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
 - (b) in default of agreement, such place or places as are determined by the Authority on a reference under paragraph (4) to be the place or places at which it is reasonable, in all the circumstances—
 - (i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or
 - (ii) in relation to the provision of a lateral drain, for the lateral drain to communicate with a public sewer vested in the undertaker and for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.
- (4) A reference for the purposes of paragraph (2) or (3) may be made to the Authority for determination under Article 61 by either party to the dispute.
- (5) In this Article “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—
- (a) the day on which the conditions specified in Article 155 are satisfied in relation to the requirement; and
 - (b) the day on which the place or places where (as the case may be)—
 - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or

- (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,
are determined under paragraph (3).

Provision of sewers other than by requisition

Further duty to provide sewers

157.—(1) Without prejudice to Article 154, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in paragraph (2) are satisfied.

(2) The conditions mentioned in paragraph (1) are—

- (a) that the premises in question, or any of those premises, are premises on which there are buildings;
- (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
- (c) that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this Article by the Department and all other relevant considerations, to provide a public sewer for the drainage for domestic purposes of the premises in question.

(3) Without prejudice to the generality of paragraph (2)(c), regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this Article—

- (a) the geology of the locality in question or of any other locality;
- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
- (c) the costs of providing that sewer;
- (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises, or, as the case may be, the locality in question not being drained by means of a public sewer; and
- (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this Article or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Department under this Article may—

- (a) relate to how regard is to be had to the considerations mentioned in sub-paragraphs (a) to (e) of paragraph (3);
- (b) relate to any other matter which it considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
- (c) set out considerations, other than those mentioned in sub-paragraphs (a) to (e) of paragraph (3), to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this Article;
- (d) relate to how regard is to be had to any such consideration as is mentioned in sub-paragraph (c); and

(e) without prejudice to sub-paragraphs (a) to (d), relate to how a sewerage undertaker is to discharge its functions under this Article.

(5) Before issuing guidance under this Article the Department shall consult—

- (a) DOE;
- (b) the Authority;
- (c) sewerage undertakers; and
- (d) such other bodies or persons as it considers appropriate;

and the Department shall arrange for any guidance issued by it under this Article to be published in such manner as it considers appropriate.

(6) Subject to the following provisions of this Article, the duty of a sewerage undertaker by virtue of paragraph (1) shall be 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.

(7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—

- (a) whether the undertaker is under a duty by virtue of paragraph (1) to provide a public sewer to be used for any such drainage of those premises as is mentioned in that paragraph;
- (b) the domestic sewerage purposes for which any such sewer should be provided; or
- (c) the time by which any such duty of the undertaker should be performed,

shall be determined by the Authority, and may be referred to the Authority for determination by either of the parties to the dispute.

(8) The Authority—

- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under paragraph (7); and
- (b) may make any such recommendation, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.

(9) The decision of the Authority on any dispute referred to it under paragraph (7) shall be final.

(10) A sewerage undertaker shall only be taken to be in breach of its duty under paragraph (1) where, and to the extent that, it has accepted, or the Authority has determined under this Article, that it is under such a duty and where any time accepted by it, or determined by the Authority under this Article, as the time by which the duty is to that extent to be performed has passed.

Power to construct lateral drains following provision of public sewer

158.—(1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by Article 154 or Article 157, the undertaker may, at the request of the person mentioned in paragraph (2), also provide at the same time one or more lateral drains to be used for the drainage for domestic sewerage purposes of premises in its area and to communicate with that sewer.

(2) A request under paragraph (1) may be made—

- (a) in the case of a public sewer to be provided under Article 154, by the person who requires the provision of the sewer under that Article; and
- (b) in the case of a public sewer to be provided under Article 157, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that Article (but any request may only be for the provision of a lateral drain to his premises).

(3) The person making a request under this Article shall pay to the sewerage undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.

(4) Any dispute between the sewerage undertaker and the person making a request under this Article as to—

- (a) whether a lateral drain should be provided pursuant to the request; or
- (b) the costs reasonably incurred in the provision of a lateral drain,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this Article shall belong to the undertaker.

Adoption of sewers and waste water treatment works

Adoption of sewers and waste water treatment works

159.—(1) Subject to the following provisions of this Article and to Articles 160, 162 and 206(3), a sewerage undertaker may at any time declare that—

- (a) any sewer which is situated within its area or which serves the whole or any part of that area; or
- (b) any lateral drain which communicates or is to communicate with a public sewer which—
 - (i) is so situated or serves the whole or any part of that area; and
 - (ii) is vested in that undertaker; or
- (c) any waste water treatment works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer, lateral drain or waste water treatment works with respect to which a sewerage undertaker might make a declaration under this Article may make an application to that undertaker requesting it to make a declaration under this Article with respect to the sewer, lateral drain or works.

(3) A declaration or application under this Article may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this Article—

- (a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question; and
- (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under Article 162 or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this Article, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
- (b) whether the sewer or lateral drain is constructed under a road or under land reserved by a planning scheme for a street;

- (c) the number of buildings which the sewer or lateral drain is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
- (d) the method of construction and state of repair of the sewer, lateral drain or works; and
- (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(6) Any person who immediately before the making of a declaration under this Article was entitled to use the sewer or lateral drain in question shall be entitled to use it, or any sewer or lateral drain substituted for it, to the same extent as if the declaration had not been made.

(7) No declaration may be made under this Article in respect of—

- (a) any sewer or works the construction of which was completed before 1st October 1973;
- (b) any lateral drain the construction of which was completed before the transfer date.

Adoption under Article 159: supplementary

160.—(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under Article 159 with respect to—

- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker;
- (b) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or
- (c) any waste water treatment works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under paragraph (1) to another undertaker, no declaration under Article 159 shall be made by the former undertaker until either—

- (a) the other undertaker has consented to the declaration; or
- (b) the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

(3) Where—

- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any waste water treatment works are vested, in a relevant body; and
- (b) in the case of a sewer, part of a sewer, lateral drain or works vested in a railway undertaking or harbour authority, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to that operator or authority and held or used by that operator or authority for the purposes of its undertaking,

a sewerage undertaker shall not make a declaration under Article 159 with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.

(4) Where a sewerage undertaker makes a declaration under Article 159 with respect to—

- (a) a sewer or lateral drain which is situated within the area of another sewerage undertaker; or

(b) any waste water treatment works which are so situated,
it shall forthwith give notice of the fact to that other undertaker.

(5) In this Article “relevant body” means any sewerage undertaker, district council, railway undertaking or harbour authority.

Agreements to adopt sewer, drain or waste water treatment works at future date

161.—(1) Subject to paragraph (7) and Article 206(3), a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
 - (i) any sewer;
 - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
 - (iii) any waste water treatment works; or
- (b) any person at whose expense the undertaker is, by virtue of an agreement under Article 221, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or waste water treatment works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

(2) A person mentioned in sub-paragraph (a) or (b) of paragraph (1) may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this Article.

(3) An application under paragraph (2) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to paragraph (4) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

- (a) a person who has made an application to a sewerage undertaker under paragraph (2) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 162, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(5) Any agreement made under this Article by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer, lateral drain or works to which it relates.

(6) Without limiting the terms which may be included in an agreement under this Article—

- (a) such terms may include terms as to the provision of such security as the undertaker may reasonably require for the discharge of any obligations imposed on the other party to the agreement; and
- (b) such terms relating to a drain may include in particular —
 - (i) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;

- (ii) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
 - (iii) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
 - (iv) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.
- (7) A sewerage undertaker shall not make an agreement under this Article with respect to—
- (a) a sewer, drain or waste water treatment works situated within the area of another sewerage undertaker; or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated; or
 - (ii) is vested in another sewerage undertaker,until one of the conditions mentioned in paragraph (8) is satisfied.
- (8) The conditions are—
- (a) that the other undertaker has consented to the making of the agreement; or
 - (b) that the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

Appeals with respect to adoption

162.—(1) An owner of any sewer, lateral drain or waste water treatment works may appeal to the Authority if—

- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under Article 159; or
 - (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.
- (2) Subject to Article 161(4), a person constructing or proposing to construct a drain or sewer or any waste water treatment works may appeal to the Authority where a sewerage undertaker—
- (a) has refused an application under Article 161;
 - (b) has offered to grant such an application on terms to which that person objects; or
 - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (3) The time for the making of an appeal under paragraph (1) by the owner of any sewer, lateral drain or waste water treatment works shall be—
- (a) in the case of an appeal by virtue of sub-paragraph (a) of that paragraph, any time within two months after notice of the proposal is served on that owner; and
 - (b) in the case of an appeal by virtue of sub-paragraph (b) of that paragraph, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this Article, the Authority may—

- (a) in the case of an appeal under paragraph (1), allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
- (b) in the case of an appeal under paragraph (2)—
 - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;
 and any declaration made under sub-paragraph (a) shall have the same effect as if it had been made by the undertaker in question.
- (5) Where the Authority makes a declaration under paragraph (4)(a), it may, if it thinks fit—
 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the Authority makes an agreement under paragraph (4)(b) on behalf of a sewerage undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as the Authority considers appropriate for ensuring that the terms of the agreement are reasonable.
- (7) The Authority, in deciding on an appeal under this Article whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in Article 159(5); and for the purposes of this paragraph, in its application in relation to an appeal under paragraph (2), sub-paragraphs (a) to (e) of Article 159(5) shall have effect with the necessary modifications.

Communication of drains and private sewers with public sewers

Right to communicate with public sewers

- 163.**—(1) Subject to the provisions of this Article—
- (a) the owner or occupier of any premises, or
 - (b) the owner of any private sewer which drains premises,
- shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.
- (2) In this Article, and in Articles 164 to 166, 168, 170 to 173, 175, 176, 182, 185, 198 and 206—
- (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
 - (b) for the purposes of sub-paragraph (a)—
 - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under Article 159 or under an agreement made under Article 161; and
 - (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.
- (3) Subject to the provisions of Chapter III of this Part, nothing in paragraph (1) shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any statutory provision; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
 - (i) foul water into a sewer provided for surface water; or
 - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(4) A person whose private sewer or drains do not communicate with a public sewer and who is desirous of availing himself of his entitlement under this Article shall give notice of his proposals to the sewerage undertaker in question.

(5) At any time within 21 days after a sewerage undertaker receives a notice under paragraph (4), the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer—

- (a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system.

(6) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under paragraph (4) relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

(7) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under Article 159.

(8) Any question arising under paragraphs (4) to (7) between a sewerage undertaker and a person proposing to make a communication as to—

- (a) the reasonableness of the undertaker's refusal to permit a communication to be made; or
- (b) as to the reasonableness of any requirement under paragraph (6) or (7),

may, on the application of that person, be determined by the Authority under Article 61 and, accordingly, Article 162 shall not apply to any requirement under paragraph (7).

(9) In this Article “factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20).

Right of sewerage undertaker to undertake the making of communications with public sewers

164.—(1) Where a person gives to a sewerage undertaker notice under Article 163 of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—

- (a) within 21 days after the receipt of the notice; or
- (b) if any question arising under the notice requires to be determined by the Authority, within 21 days after the determination of that question,

give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given to any person under paragraph (1), that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) Where a sewerage undertaker has given a notice under paragraph (1)—

- (a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but
- (b) it shall not be obligatory on the undertaker to make the communication until either—
 - (i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or
 - (ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

(4) If any payment made to a sewerage undertaker under paragraph (3) exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess shall be repaid by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover summarily as a civil debt the expenses, or the balance of them, from the person for whom the work was done.

(5) Any dispute between a sewerage undertaker and any other person as to—

- (a) whether the undertaker's estimate of the cost of works given under paragraph (3)(b)(i) is reasonable,
- (b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or
- (c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under paragraph (4), or the amount of any such excess or expenses,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(6) For the purposes of this Article, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

Communication works by person entitled to communication

165.—(1) Where a sewerage undertaker does not under Article 164 elect itself to make a communication to which a person is entitled under Article 163, the person making it shall—

- (a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and
- (b) afford any such person all reasonable facilities for superintending the carrying out of the work.

(2) For the purpose—

- (a) of exercising his rights under Article 163; or
- (b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by Articles 219 and 222(1).

(3) The provisions of Part VIII of this Order shall apply, with the necessary modifications, in relation to the power conferred by paragraph (2) as they apply in relation to the power conferred by Articles 219 and 222(1).

Unlawful communications

166.—(1) Any person who causes a drain or sewer to communicate with a public sewer—

- (a) in contravention of any of the provisions of Article 163 or 165; or
- (b) before the end of the period mentioned in paragraph (5) of Article 163,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this Article, such an undertaker may—

- (a) close any communication made in contravention of any of the provisions of Article 163 or 165; and
- (b) recover summarily as a civil debt from the offender any expenses reasonably incurred by the undertaker in so doing.

Connections between public sewers

New connections with public sewers

167.—(1) Where, on the application of any qualifying person—

- (a) it appears to the Authority that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application (“the established undertaker”) should permit a main connection into its sewerage system and
- (b) the Authority is satisfied that the making of such a connection cannot be secured by agreement,

the Authority may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this Article “qualifying person” means—

- (a) a sewerage undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) In paragraph (1) a “main connection” means a connection—

- (a) between a sewer or disposal main and a sewer or disposal main; or
- (b) a connection which allows a sewer or disposal main to discharge directly into a waste water treatment works.

(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this Article in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

(5) Subject to paragraph (4), an order under this Article shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Authority on the application of either party to the agreement, as well as by agreement between the parties.

(6) The Authority shall not make an order under this Article unless it has first consulted the Department.

(7) In exercising its functions under this Article, the Authority shall have regard to the desirability of—

- (a) facilitating effective competition within the sewerage services industry;
- (b) the existing undertaker's recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the existing undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.

Provisions protecting public sewers

Restrictions on use of public sewers

168.—(1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer or into any waste water treatment works—

- (a) any matter likely to—
 - (i) injure the sewer, drain or works,
 - (ii) interfere with the free flow of its contents or
 - (iii) affect prejudicially the treatment and disposal of its contents,
 either alone or in combination with the contents of the sewer, drain or works; or
- (b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than 43 degrees Celsius, as is by virtue of paragraph (2) a prohibited substance; or
- (c) any petroleum spirit or carbide of calcium.

(2) For the purposes of paragraph (1), chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that paragraph is a prohibited substance if (either alone or in combination with the contents of the sewer, drain or works in question) it is or, in the case of the liquid, is when so heated—

- (a) dangerous;
- (b) the cause of a nuisance; or
- (c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this Article shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) For the purposes of so much of paragraph (3) as makes provision for the imposition of a daily penalty—

- (a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and
- (b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.

(5) In this Article the expression “petroleum spirit” means any such—

- (a) crude petroleum;
- (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or
- (c) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13), gives off an inflammable vapour at a temperature of less than 23 degrees Celsius.

Requirement that proposed drain or sewer be constructed so as to form part of general system

169.—(1) Where—

- (a) a person proposes to construct a drain or sewer; and
- (b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

(2) If any person on whom requirements are imposed under this Article by a sewerage undertaker is aggrieved by the requirements, he may within 28 days appeal to the Authority.

(3) On an appeal under paragraph (2) with respect to any requirements, the Authority may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this Article to comply with those requirements.

(5) The duty of any person by virtue of paragraph (4) to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this Article shall—

- (a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and
- (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

(7) Nothing in this Article shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertaking or harbour authority in or on land which—

- (a) belongs to that undertaking or authority; and
- (b) is held or used by it for the purposes of its undertaking.

Power to alter drainage system of premises in area

170.—(1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—

- (a) is not adapted to the general sewerage system of the area; or
- (b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by paragraph (1) shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

- (a) is equally effectual for the drainage of the premises; and
- (b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this Article shall give notice of its proposals to the owner of the premises in question.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may refer the matter to the Authority for determination under Article 61.

(5) The Department may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this Article.

(6) In this Article—

“cesspool” includes a settlement tank, septic tank or other tank for the reception or disposal of foul matter from buildings; and

“trade effluent” has the same meaning as in Chapter III.

Power to investigate defective drain or sewer

171.—(1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—

- (a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or
- (b) that any such drain or private sewer is so defective as to admit subsoil water,

the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.

(2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

Use of pipes for sewerage purposes

Use of road drains as sewers and vice versa

172.—(1) Subject to the provisions of this Article, the Department and a sewerage undertaker may agree that—

- (a) any drain or sewer which is vested in the Department for the purposes of its functions under the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or roads;
- (b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the Department for conveying surface water from roads.

(2) Where a sewer or drain with respect to which the Department and a sewerage undertaker propose to make an agreement under this Article discharges, whether directly or indirectly, into the sewers or waste water treatment works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

(3) Subject to paragraph (4), a consent given by a sewerage undertaker for the purposes of paragraph (2) may be given on such terms as that undertaker thinks fit.

(4) Neither the Department nor a sewerage undertaker shall—

- (a) unreasonably refuse to enter into an agreement for the purposes of this Article; or
- (b) insist unreasonably upon terms unacceptable to the other party;

and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.

(5) Any question arising under this Article as to whether or not the Department or any sewerage undertaker is acting unreasonably may be referred by either party to the Appeals Commission.

(6) Nothing in this Article affects the powers of the Department under Article 45 of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (road drains).

Power to close or restrict use of public sewer

173.—(1) Subject to paragraph (3), a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.

(2) A discontinuance or prohibition under this Article may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

(3) Before any person who is lawfully using a sewer for any purpose is deprived under this Article by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—

- (a) provide a sewer which is equally effective for his use for that purpose; and
- (b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this paragraph.

(4) Any dispute arising under paragraph (3)(a) between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Authority for determination under Article 61 by either party to the dispute.

Interpretation of Chapter II

Interpretation of Chapter II

174.—(1) In this Chapter “domestic sewerage purposes”, in relation to any premises, means any one or more of the following purposes, that is to say—

- (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
- (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and
- (c) the removal, from such buildings and such land, of surface water;

but does not, by virtue of sub-paragraph (b), include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Chapter to the construction of a sewer or of any waste water treatment works include references to the extension of any existing sewer or works.

(3) Every application made or consent given under this Chapter shall be made or given in writing.

(4) Nothing in Articles 159 to 166 or in Articles 168 to 173 shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—

- (a) in contravention of any applicable provision of the Water Order; or
 - (b) for the purpose of conveying foul water into any natural or artificial watercourse, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in that watercourse, pond or lake.
- (5) A sewerage undertaker shall so carry out its functions under Articles 159 to 162, 169, 172 and 173 as not to create a nuisance.