
STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services (Northern Ireland) Order 2006

PART X

REORGANISATION OF THE INDUSTRY

Introductory

Interpretation of this Part

268.—(1) In this Part—

- “the Companies Order” means the Companies (Northern Ireland) Order 1986 (NI 6);
- “debentures” includes debenture stock;
- “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
- “shares” includes stock;
- “subsidiary” has the meaning assigned to it by Article 4 of the Companies Order;
- “subsidiary undertaking” has the meaning assigned to it by Article 266 of the Companies Order;
- “the successor company” has the meaning assigned to it by Article 269(1);
- “the transfer scheme” has the meaning assigned to it by Article 270(1).

(2) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department; or
- (b) by a company which is itself wholly owned by the Crown.

The successor company

The successor company

269.—(1) The Department may by order nominate as the successor company for the purposes of this Part a company which—

- (a) is a company limited by shares, within the meaning of the Companies Order; and
- (b) is wholly owned by the Crown;

and references in this Part to “the successor company” are references to the company so nominated.

(2) The successor company shall not—

- (a) be regarded as the servant or agent of the Crown;

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(b) have any status, immunity or privilege of the Crown,
and its property shall not be regarded as property of, or held on behalf of, the Crown.

Transfer to successor company of certain assets and liabilities of the Department

Transfer scheme

270.—(1) The Department shall make a scheme (“the transfer scheme”) for the transfer to the successor company of—

- (a) specified water service assets and water service liabilities of the Department; and
- (b) such other assets and liabilities of the Department as may be specified.

(2) On such day as the Department may by order specify (the “transfer date”) the assets and liabilities specified for transfer to the successor company shall, by virtue of this paragraph, become assets and liabilities of that company.

(3) The provisions of Schedule 11 shall apply in relation to—

- (a) the transfer scheme; and
- (b) the transfer effected by paragraph (2);

and that paragraph shall have effect subject to the provisions of that Schedule.

(4) In this Article—

“specified” means specified in the transfer scheme;

“water service assets” and “water service liabilities” mean, respectively, the assets and liabilities which, either wholly or in part, subsist immediately before the transfer date for the purposes of, or in connection with, or are otherwise attributable to, the functions exercisable by the Department immediately before that date under the Water and Sewerage Services (Northern Ireland) Order 1973 (NI 2).

Ownership of the successor company

Initial Departmental holding in the successor company

271.—(1) As a consequence of the vesting in the successor company of any assets and liabilities under Article 270, the company shall issue such securities of the company as the Department may direct to the Department.

(2) The Department shall not give a direction under paragraph (1) at a time when the successor company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued at such time or times and on such terms as the Department may direct.

(4) Shares in the successor company which are issued under this Article—

- (a) shall be of such nominal value as the Department may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies Order as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) For the purposes of the Companies Order, the Insolvency (Northern Ireland) Order 1989 (NI 19) and the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), the Crown is not to be treated as a shadow director of the successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

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(6) Paragraph (5) applies to any subsidiary or subsidiary undertaking of the successor company as it applies to the successor company.

Departmental investment in securities of the successor company

272. The Department may at any time acquire—

- (a) securities of the successor company; or
- (b) rights to subscribe for any such securities.

Disposal of securities, etc

273.—(1) The Department shall not dispose of any securities or rights issued under Article 271 or acquired under Article 272 except—

- (a) in a case of a disposal requiring Assembly approval, with that approval; and
- (b) in the case of any other disposal, with the consent of DFP.

(2) A disposal requires Assembly approval if, in the opinion of the Department, the effect of the disposal would be that the successor company is no longer controlled by the Department.

(3) Assembly approval is given to a disposal if the disposal is approved by a resolution of the Assembly passed on a resolution specifying—

- (a) the size and nature of the disposal;
- (b) the person to whom it is to be made.

(4) For the purposes of this Article the successor company is controlled by the Department if the Department holds securities of the company entitling it to exercise or control the exercise of a majority of the voting rights in the company which are exercisable at a general meeting on all, or substantially all, matters.

Exercise of Departmental powers through nominees

274.—(1) The Department may, for the purposes of Article 271 or 272, appoint any person to act as the nominee, or one of the nominees, of the Department; and—

- (a) securities of the successor company may be issued under Article 271 to any nominee of the Department appointed for the purposes of that Article; and
- (b) any such nominee appointed for the purposes of Article 272 may acquire securities or rights under that Article,

in accordance with directions given by the Department.

(2) Any person holding any securities or rights as a nominee of the Department under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department may direct.

(3) For the purposes of Article 273—

- (a) any securities or rights held by a nominee of the Department shall be treated as held by the Department; and
- (b) any disposal by a nominee of the Department shall be treated as a disposal by the Department.

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Finances of the successor company

Statutory reserves

275.—(1) If the Department so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction shall be carried by the successor company to a reserve (“the statutory reserve”).

(2) The statutory reserve may only be applied by the successor company—

- (a) in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares; or
- (b) if the Department so directs, as if it were profits available for distribution within the meaning of Article 271(1) of the Companies (Northern Ireland) Order 1986.

(3) Notwithstanding paragraph (2), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of Article 272(3)(d) of the Companies Order; but for the purpose of determining under that Article whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve (excluding any amount which by virtue of paragraph (2)(b) is authorised to be, but has not yet been, applied as if it were profits available for distribution) shall be treated for the purposes of Article 272(3)(c) of that Order as if it were unrealised profits of the company.

Accounts, etc. of successor company

276.—(1) The Department shall, as soon as practicable, lay before the Assembly a copy of the documents mentioned in paragraph (2) which are laid before a general meeting of the successor company at a time when the company is wholly owned by the Crown.

(2) The documents referred to in paragraph (1) are—

- (a) the profit and loss account;
- (b) the group accounts;
- (c) the balance sheet;
- (d) the auditors' report;
- (e) the directors' report;

and expressions used in this paragraph have the same meaning as in the Companies Order.

(3) For the purposes of any statutory accounts of the successor company, the vesting in the successor company under Article 270 of assets and liabilities of the Department shall be taken to have been effected immediately after the end of the last complete financial year of the Department to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which the Department was entitled or subject immediately before the end of the year as are specified in the transfer scheme.

(4) The value of any asset and the amount of any liability which is taken under paragraph (3) to have been vested in the successor company shall be taken to have been—

- (a) the value or amount determined by or under the transfer scheme, or
- (b) (if no such provision is included in the transfer scheme) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the Department in respect of its last complete financial year to end on or before the transfer date.

(5) In this Article “statutory accounts” means any accounts (including group accounts) prepared for the purpose of any provision of the Companies Order.

Restrictions on borrowing, charging, etc.

277.—(1) If articles of association of the successor company confer on the Department powers exercisable with the consent of DFP for, or in connection with, restricting the sums of money which may be borrowed or raised by the successor company during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law or any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of the successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) The successor company may not, at any time before it ceases to be wholly owned by the Crown, charge any of its assets without the approval of the Department and DFP.

Departmental lending, guarantees, etc.

278.—(1) The Department may give financial assistance to the successor company in such form and upon such terms and conditions as the Department may determine.

(2) Without prejudice to the generality of paragraph (1), the Department may in exercise of its powers under that paragraph—

- (a) make loans or grants to the successor company;
- (b) write off the principal and interest of any loans so made or enter into an arrangement for the conversion into share capital of the principal and interest of loans so made;
- (c) guarantee obligations (arising out of loans or otherwise) incurred by the successor company.

(3) The Department may, upon such terms and conditions as it may determine, give to any person entering into a contract—

- (a) with the successor company; or
- (b) which in the opinion of the Department is directly or indirectly related to a contract entered or to be entered into by another person with the successor company,

any form of guarantee to meet any contingency arising out of or in connection with the contract.

(4) Immediately after any guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(5) If any sums are issued in fulfillment of a guarantee given under this Article the successor company shall make to the Department, at such times and in such manner as the Department may direct—

- (a) payments of such amounts as the Department may direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may direct.

(6) In this Article “guarantee” includes any form of indemnity or assurance.

(7) This Article applies to any subsidiary or subsidiary undertaking of the successor company as it applies to the successor company

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Exercise of certain functions of the Department under this Part

279. The Department shall not, except with the consent of DFP, exercise any power under any of the following provisions of this Part, namely—

- (a) Article 269(1);
- (b) Article 270(1);
- (c) Article 271(1) to (4);
- (d) Article 272;
- (e) Article 274;
- (f) Article 275(1);
- (g) Article 278(1) to (3) and (7);
- (h) paragraph 3 of Schedule 11.

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