

SCHEDULE 2

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART I

APPLICATIONS FOR WATER OR SEWERAGE SERVICES

Water supply

1.—(1) Any application made to the Department under Article 17(1)(a) of the 1973 Order which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) where it relates to the supply of water for domestic purposes to premises that consist in the whole or any part of a building—
 - (i) as if it were a demand made to the water undertaker for the purposes of Article 91(2) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application were a condition imposed by the water undertaker under Article 92 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with any duty under Article 91 of the 2006 Order is subject, but without prejudice to the right of the water undertaker to impose such other conditions under Article 92 of that Order as it thinks fit; or
- (b) in any other case, as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date.

(2) References in Article 91(5) of the 2006 Order to the time when the demand is made shall be taken, in relation to an application having effect as a demand by virtue of sub-paragraph (1)(a) (i), as references to the time when the application was made to the Department under Article 17(1) (a) of the 1973 Order.

Connection of a service pipe

2.—(1) Any application made to the Department under Article 17(1)(c) of the 1973 Order for the connection of a service pipe with an existing main vested in the Department which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) where it relates to the connection of a service pipe for the purpose of providing a supply of water for domestic purposes to premises which consist in the whole or any part of a building or are premises on which any person is proposing to erect any building or part of a building—
 - (i) as if it were a notice served on the water undertaker for the purposes of Article 79(1) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application were a condition imposed by the water undertaker under the relevant provision of Article 81 or 82 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 79 of that Order is subject, but without prejudice to the right of the

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water undertaker to impose such other conditions as it is required to impose under Article 81 or is permitted or thinks fit to impose under Article 82 of that Order;

- (b) in any other case, as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date.

(2) Without prejudice to the generality of sub-paragraph (1), in relation to an application having effect as a connection notice by virtue of sub-paragraph (1)(a)(i)—

- (a) Article 82(4) of the 2006 Order shall not apply;
- (b) except where paragraph 3(1)(c)(iii) applies, the reference in Article 85(6)(a) of the 2006 Order to the day on which the notice was served on the undertaker shall be taken as a reference to the transfer date;
- (c) Article 85(2) of the 2006 Order shall not apply; and
- (d) Article 85(1)(b) of the 2006 Order shall not apply.

(3) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 82(2)(a) of the 2006 Order, those sums shall, in so far as they are transferred to the water undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 83(1) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

Water main requisitions

3.—(1) Any application made to the Department under Article 17(1)(d) of the 1973 Order for an existing main vested in the Department to be extended or augmented, and for the connection of a service pipe with that extended or augmented main, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) in so far as it relates to the provision of a main to be used for providing such supplies of water as are sufficient for domestic purposes to premises in a particular locality consisting in buildings or parts of buildings or premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out—
 - (i) as if it were a notice served on the water undertaker for the purposes of Article 76(1)(a) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application which relate to the payment of, or the provision of any security for, the costs of or charges for providing the main were a condition imposed by the water undertaker under Article 77 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 76 of that Order is subject, but without prejudice to the right of the water undertaker to impose such other conditions under Article 77 of that Order as it thinks fit;
- (b) in so far as it relates to the provision of a main otherwise than as mentioned in sub-paragraph (a), as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date to the extent that such request gives rise to a duty to take steps in order to enable the undertaker to provide a supply of water; and
- (c) in so far as it relates to the connection of the service pipe, for the purpose of providing a supply of water for domestic purposes, to premises which consist in the whole or any part of a building or are premises on which any person is proposing to erect any building or part of a building, as if—

- (i) it were a notice served on the water undertaker for the purposes of Article 79(1) of the 2006 Order on the day on which the main provided in accordance with sub-paragraph 1(a) is brought into operation; and
 - (ii) paragraph 2(1)(a) and 2(a), applied in relation to it as it applies in relation to an application made under Article 17(1)(c) of the 1973 Order; and
 - (iii) without prejudice to the generality of head (i), in the application of Article 85(6) of the 2006 Order in relation to it the reference in sub-paragraph (a) of that paragraph to the day on which the notice was served on the undertaker were a reference to the day on which the main provided in accordance with sub-paragraph 1(a) is brought into operation;
- (d) in so far as it relates to the connection of the service pipe in any other case as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order to the extent that such request gives rise to a duty to take steps in order to enable the undertaker to provide a supply of water.

(2) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 77 of the 2006 Order, those sums shall, in so far as they are transferred to the water undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 77(4)(b) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

- (3) In relation to an application having effect as mentioned in sub-paragraph (1)(a)—
- (a) the reference in Article 78(1)(a) of the 2006 Order to the period of 3 months beginning with the relevant day having expired shall be taken as a reference to that period having expired and the period of 3 months beginning with the transfer date having expired; and
 - (b) any place determined by the Department and notified to the applicant before the transfer date as the place at which any service pipe will connect with the main shall be treated for the purposes of that Article as a place determined by agreement between the water undertaker and the person or persons who applied for the provision of the main.

Connection of a drain or private sewer and discharge of domestic sewage or surface water

4.—(1) Any application made to the Department under Article 17(1)(b) of the 1973 Order to discharge domestic sewage or surface water (in each case, as defined in the 1973 Order) into a sewer vested in the Department, and any application under Article 17(1)(c) of the 1973 Order for the connection of a drain or private sewer with an existing sewer vested in the Department, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) as if it were a notice served on the sewerage undertaker for the purposes of paragraph (4) of Article 163 of the 2006 Order (in the case of an application under the said Article 17(1)(b), in so far as it relates to the entitlement under the said Article 163 to discharge, and in the case of an application under the said Article 17(1)(c), in so far as it relates to the entitlement under the said Article 163 to communicate) on the transfer date; and
- (b) in the case of an application under Article 17(1)(c) of the 1973 Order, as if any term or condition imposed by the Department under Article 17(3) of that Order in respect of the application were a requirement or condition imposed by the sewerage undertaker under Article 163(7) or (where the Department had, before the transfer date, notified the applicant of its intention to make the connection itself) under Article 164(3) of the 2006 Order, in so far as it is one which may be imposed by a sewerage undertaker under the relevant Article, or otherwise were a condition to the satisfaction of which any entitlement

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under Article 163(1) of that Order is subject, but without prejudice to the right of the sewerage undertaker to impose such other requirements or conditions under Article 163 of that Order as it thinks fit; and

- (c) in the case of an application under Article 17(1)(c) of the 1973 Order, where the Department had, before the transfer date, notified the applicant of its intention to make the connection itself, as if the sewerage undertaker had given notice under Article 164(1) of the 2006 Order in respect of the notice within 21 days of receipt of the notice.

(2) Without prejudice to the generality of sub-paragraph (1), in relation to an application having effect as a notice served on the sewerage undertaker for the purposes of Article 163(4) of the 2006 Order by virtue of sub-paragraph (1)—

- (a) the reference in Article 163(5) of the 2006 Order to the period of 21 days after the sewerage undertaker receives the notice shall be taken as a reference to the period of 21 days after the transfer date;
- (b) the reference in Article 164(1)(a) of the 2006 Order to the period of 21 days after receipt of the notice shall be taken as a reference to the period of 21 days after the transfer date.

Sewer requisitions

5.—(1) Any application made to the Department under Article 17(1)(d) of the 1973 Order for an existing sewer vested in the Department to be extended or augmented, and for the connection of a drain or private sewer with that extended or augmented sewer, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) in so far as it relates to the provision of a public sewer to be used for the drainage for domestic purposes of premises in a particular locality on which there are buildings or on which there will be buildings when proposals made by any person for the erection of any buildings are carried out—
 - (i) as if it were a notice served on the sewerage undertaker for the purposes of Article 154(1)(a) and, as the case may be, (2)(a) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application which relates to the payment of, or the provision of any security for, the costs of or charges for providing the sewer or, as the case may be, lateral drain were a condition imposed by the sewerage undertaker under Article 155 of the 2006 Order, in so far as it is one which may be imposed by a sewerage undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 154 of that Order is subject, but without prejudice to the right of the sewerage undertaker to impose such other conditions under Article 155 of that Order as it thinks fit;
- (b) in so far as it relates to the provision of a sewer otherwise than as mentioned in sub-paragraph (a), as if it were a request to the sewerage undertaker made on the transfer date to enter into an agreement under Article 221(1) of the 2006 Order; and
- (c) in so far as it relates to the connection of a drain or private sewer with the sewer mentioned in sub-paragraph (a) or (b) as if—
 - (i) it were a notice served on the sewerage undertaker for the purposes of Article 163(4) of the 2006 Order on the day on which the sewer provided, or, if later, the lateral drain provided, in accordance with sub-paragraphs (1)(a) or (b) pursuant to the application is brought into operation; and
 - (ii) subject to head (i), paragraph 4 above applied in relation to it as it applies to an application made under Article 17(1)(c) of the 1973 Order.

(2) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 155 of the 2006 Order, those sums shall, in so far as they are transferred to the sewerage undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 155(4)(b) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

(3) In relation to an application having effect as mentioned in sub-paragraph (1)(a)—

- (a) the reference in Article 156(1)(a) of the 2006 Order to the period of 6 months beginning with the relevant day having expired shall be taken as a reference to that period having expired and the period of 6 months beginning with the transfer date having expired; and
- (b) any place determined by the Department and notified to the applicant before the transfer date as the place at which any drain or private sewer will connect with the public sewer shall be treated for the purposes of that Article as such a place determined by agreement between the sewerage undertaker and the person or persons who applied for the provision of the public sewer.

Agreements for the provision or adoption of works

6. — Without prejudice to the transfer of rights and liabilities under the agreement in accordance with a scheme made under Article 270 of the 2006 Order any agreement made under Article 17(4) of the 1973 Order, or under Article 19 of the 1973 Order as originally enacted, which is in force immediately before the transfer date and which relates to the provision of a sewer, and any works connected with such sewer, by a person other than the Department and to the adoption by the Department of such sewer and works shall have effect on and after the transfer date as if it were an agreement made under Article 161(1) of the 2006 Order provided that—

- (a) Article 161(5) of the 2006 Order shall not apply to such agreement; and
- (b) the reference in Article 206(3) of the 2006 Order to any agreement under Article 161 shall be construed accordingly.

Appeals

7.—(1) Where an appeal made to the Appeals Commission in accordance with Article 17(5) of the 1973 Order has not been determined before the transfer date, it may be determined by the Appeals Commission on or after that date notwithstanding the repeal of that Article.

(2) Where a person has a right to appeal to the Appeals Commission under Article 17(5) of the 1973 Order within the period of 28 days from the date on which he has received notice of the decision of the Department and—

- (a) that right has not been exercised; and
- (b) that period has not expired,

before the transfer date, the right may be exercised within the said period and, if so exercised, the appeal may be determined by the Appeals Commission notwithstanding the repeal of that Article.

(3) Notwithstanding its repeal by the 2006 Order, the provisions of Article 8 of the 1973 Order shall continue to have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph but subject to the transfer effected in accordance with a scheme made under Article 270 of the 2006 Order.

(4) In the application of Article 8 of the 1973 Order to an appeal in accordance with this paragraph, references to the Department shall be taken as references to the Authority.

(5) Notwithstanding its repeal by the 2006 Order, Article 4 of the 1973 Order shall continue to have effect for the purpose of an appeal determined by the Appeals Commission in accordance with

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this paragraph, but subject to the transfer effected in accordance with a scheme made under Article 270 of the 2006 Order.

(6) Where a person has a right to appeal to the Appeals Commission in relation to a decision of the Department in accordance with this paragraph, no reference may be made by that person under Article 77(6), 79(8), 81(4), 82(6), 88(5) or 92(4) of the 2006 Order in relation to any condition imposed by, or other matter relating to, that decision.

Interpretation

8.—(1) In paragraphs 1 to 5 references to any application under Article 17 of the 1973 Order which is outstanding immediately before the transfer date are references to an application—

- (a) which has not before the transfer date been—
 - (i) withdrawn by the applicant;
 - (ii) refused by the Department in circumstances where the period for appeal under that Article has expired, and no right of appeal under that Article was exercised, before that date; or
 - (iii) refused by the Department in circumstances where the right of appeal under that Article was exercised and the refusal of the Department was upheld, before that date, and
- (b) in respect of which all steps to be taken by the Department in order to enable it to provide the service, connection, extension or augmentation applied for have not been taken before the transfer date.

(2) In paragraphs 1 to 5 references to any condition imposed by an undertaker under an Article of the 2006 Order include references to any requirement compliance with which is a condition of the undertaker's duty and references to any requirement compliance with which satisfies such a condition.