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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**The Water and Sewerage Services  
(Northern Ireland) Order 2006**

**PART II**

**REGULATORY AUTHORITIES AND GENERAL DUTIES**

*The Northern Ireland Authority for Utility Regulation*

**The Authority**

**3.—**(1) The body corporate established by Article 3 of the Energy Order as the Northern Ireland Authority for Energy Regulation shall hereafter be known as the Northern Ireland Authority for Utility Regulation.

(2) In addition to the functions referred to in paragraph (1) of that Article, the Authority shall carry out the functions conferred or imposed on it by or under this Order (referred to in this Order as the “water and sewerage functions” of the Authority).

(3) In Schedule 1 to the Energy Order for paragraph 1 (membership of the Authority) substitute—

“**1.—**(1) The Authority shall consist of—

- (a) a chairman; and
- (b) not fewer than three other members,

appointed by the Department of Finance and Personnel.

(2) The Department of Finance and Personnel shall consult the chairman before appointing any other member.”.

(4) In that Schedule for “the Department” in every other place where it occurs substitute “the Department of Finance and Personnel”.

**Forward work programme of the Authority**

**4.—**(1) The Authority 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 Order (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 Authority expects to incur during the year in the exercise of its functions under this Order.

(4) The forward work programme prepared under this Article may, if the Authority so decides, be combined in a single programme with the forward work programme of the Authority prepared under Article 5 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 Authority 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 Authority 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 Authority shall send a copy of any notice given by it under paragraph (5) to the Council and the Department.

#### **Annual report of the Authority**

**5.—**(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Department a report (the “annual report” for that year) on—

- (a) its activities during that year in the exercise of its functions under this Order; and
- (b) the activities of the Competition Commission during that year in respect of any references made by the Authority under this Order.

(2) The annual report for each year shall include—

- (a) a general survey of developments in respect of matters falling within the scope of the Authority’s functions under this Order;
- (b) a report on the progress of the projects described in the forward work programme for that year prepared under Article 4;
- (c) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part III during the year; and
- (d) a report on such other matters as the Department may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Department under Article 60(3).

(4) The Department shall consult the Authority before exercising the power under paragraph (2) (d) in relation to any matter.

(5) The annual report prepared under this Article may, if the Authority so decides, be combined in a single report with the annual report of the Authority prepared under Article 6 of the Energy Order.

(6) Where the annual report prepared under this Article is not so combined, the Department shall—

- (a) lay a copy of the report before the Assembly; and
- (b) arrange for the report to be published in such manner as the Department considers appropriate.

(7) The Authority may also—

- (a) prepare other reports with respect to any matter falling within the scope of its functions under this Order; and
- (b) arrange for any such report to be published in such manner as it considers appropriate.

(8) The Authority shall send—

- (a) a copy of each annual report published under paragraph (6)(b) to the Council; and
- (b) a copy of each report under paragraph (7) to the Department and the Council.

(9) In making or preparing any report under this Article the Authority 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 publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

### *General duties*

#### **General duties with respect to water industry**

**6.—**(1) This Article shall have effect for imposing duties on the Department and the Authority as to when and how they should carry out the following functions—

- (a) in the case of the Department, its functions under the provisions of this Order relating to the regulation of relevant undertakers; and
- (b) in the case of the Authority, its functions under the provisions of this Order relating to—
  - (i) the regulation of relevant undertakers;
  - (ii) the financial conditions of requisitions; or
  - (iii) the movement of certain pipes.

(2) The Department or, as the case may be, the Authority shall carry out the functions mentioned in paragraph (1) in the manner that it considers is best calculated—

- (a) to protect the interests of consumers in relation to the supply of water by water undertakers and the provision of sewerage services by sewerage undertakers, wherever appropriate by facilitating effective competition between persons engaged in, or in commercial activities connected with, the supply of water and the provision of sewerage services;
- (b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of Northern Ireland; and
- (c) to secure that companies holding appointments under Chapter I of Part III as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions of such undertakers.

(3) For the purposes of paragraph (2)(a) the Department or, as the case may be, the Authority 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 Department and the Authority may, in carrying out any of the functions mentioned in paragraph (1), have regard to—

- (a) any interests of consumers in relation to electricity supplied by authorised suppliers (within the meaning of the Energy Order);

- (b) any interests of consumers in relation to gas supplied by authorised suppliers (within the meaning of that Order);
  - (c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003 (c. 21)),
- which are affected by the carrying out of that function.

(5) Subject to paragraph (2), the Department or, as the case may be, the Authority shall carry out the functions mentioned in paragraph (1) in the manner that it considers is best calculated—

- (a) to promote economy and efficiency on the part of companies holding an appointment under Chapter I of Part III in the carrying out of the functions of a relevant undertaker;
- (b) to secure that no undue preference is shown, and that there is no undue discrimination, in the fixing by such companies of water and sewerage charges;
- (c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company's protected land;
- (d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Department or, as the case may be, the Authority to be connected with the company, and in particular by ensuring—
  - (i) that any transactions are carried out at arm's length;
  - (ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;
- (e) to contribute to the achievement of sustainable development.

(6) In carrying out any of the functions mentioned in paragraph (1) in accordance with the preceding provisions of this Article, the Department and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).

(7) In this Article the references to water and sewerage charges are references to—

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

(8) For the purposes of this Article—

- (a) subject to paragraph (9), the reference in paragraph (1) to the provisions of this Order relating to the regulation of relevant undertakers is a reference to the provisions contained in Part III (except Article 45), or in any of Articles 66, 69 to 73, 150, 152, 214, 243, 244, 253, 254 and 259 to 261;
- (b) the reference in that paragraph to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in Articles 77, 83, 88 and 155; and
- (c) the reference in that paragraph to the provisions relating to the movement of certain pipes is a reference to the provisions of Article 247.

(9) Paragraphs (2) to (6) do not apply in relation to anything done by the Authority in the exercise of functions assigned to it by Article 29(3) (Competition Act functions).

(10) The Authority may nevertheless when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (6) if it is a matter to which the OFT could have regard when exercising that function.

(11) The duties imposed by paragraphs (2) to (6) do not affect the obligation of the Department or, as the case may be, the Authority to perform or comply with any other duty or requirement (whether arising under this Order or another statutory provision, by virtue of any Community obligation or otherwise).

### **Guidance on social and environmental matters**

7.—(1) The Department may from time to time issue guidance about the making by the Authority in the exercise of its water and sewerage functions of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.

(2) In formulating guidance, the Department shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.

(3) The Authority shall, in exercising and performing the functions mentioned in Article 6(1) (subject to Article 6(6)), have regard to any guidance issued under this Article.

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

- (a) the Authority;
- (b) the Council;
- (c) relevant undertakers;
- (d) DOE; and
- (e) such other persons, if any, as the Department considers it appropriate to consult in relation to the guidance.

(5) A draft of any guidance proposed to be issued by the Department under this Article shall be laid before the Assembly.

(6) Guidance shall not be issued by the Department under this Article until after the statutory period beginning with the day on which the draft is laid before the Assembly.

(7) If, before the end of that period, the Assembly resolves that the guidance should not be issued, the Department shall not issue it.

(8) The Department shall arrange for any guidance issued by it under this Article to be published in such manner as it considers appropriate.

### **General environmental and recreational duties**

8.—(1) It shall be the duty of each of the following—

- (a) a Northern Ireland department;
- (b) the Authority; and
- (c) every company holding an appointment as a relevant undertaker,

in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by paragraphs (2) and (3).

(2) The requirements imposed by this paragraph in relation to any such proposals as are mentioned in paragraph (1) are—

- (a) a requirement, so far as may be consistent—
  - (i) with the purposes of any statutory provision relating to the functions of the undertaker; and
  - (ii) in the case of the Department and the Authority, with their duties under Article 6,

so to exercise any power conferred with respect to the proposals on the body subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation;

- (b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
- (c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(3) The requirements imposed by this paragraph in relation to any such proposals as are mentioned in paragraph (1) are, subject to the requirements imposed by paragraph (2)—

- (a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, cliff or foreshore and other places of natural beauty;
- (b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
- (c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(4) Paragraphs (1) to (3) shall apply so as to impose duties on the Authority and any company holding an appointment as a relevant undertaker in relation to any proposal relating to the functions of the Department, DOE or DARD as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this paragraph the reference in paragraph (2)(a) to the functions of the undertaker shall have effect as a reference to the functions of the department in question.

(5) It shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—

- (a) reasonably practicable; and
- (b) consistent with the purposes of the statutory provisions relating to the functions of the undertaker in question,

for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of paragraph (5), to take into account the needs of persons who are chronically sick or disabled.

(7) The obligations under this Article of a company holding an appointment as a relevant undertaker shall be enforceable under Article 30 by the Department.

(8) Nothing in this Article or the following provisions of this Order shall require recreational facilities made available by a relevant undertaker to be made available free of charge.

(9) References in this Article to the functions of a relevant undertaker shall be construed, without prejudice to Article 217(7), as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this Article “building” includes structure.

### **Environmental duties with respect to areas of special interest**

- 9.—(1) Where DOE is of the opinion that any area of land—
- (a) is of special interest by reason of its flora, fauna or geological or physiographical features; and
  - (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

DOE shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.

(2) Where a relevant undertaker has received a notification under paragraph (1) with respect to any land, that undertaker shall consult DOE before carrying out any works, operations or activities which appear to that undertaker to be likely to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(3) Paragraph (2) shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to DOE as soon as practicable after that thing is done.

(4) The obligations under this Article of a relevant undertaker shall be enforceable under Article 30 by the Department.

(5) Article 8(9) shall apply, as it applies in relation to that Article, for construing (in accordance with Article 13) any references in this Article to a relevant undertaker.

### **Codes of practice with respect to environmental and recreational duties**

10.—(1) The Department may by order approve any code of practice issued (whether by it or by another person) for the purpose of—

- (a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which Articles 8 and 9 have effect; and
- (b) promoting what appear to it to be desirable practices by such undertakers with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw its approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this Article shall not of itself constitute a contravention of any requirement imposed by Article 8 or 9 or give rise to any criminal or civil liability.

(3) But the Department, the other relevant Northern Ireland departments and any other public authority shall each be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise its powers in relation to any relevant undertaker by virtue of this Order or any other statutory provision.

- (4) An order under this Article shall be subject to negative resolution.
- (5) The Department shall not make an order under this Article unless it has first consulted—
  - (a) the other relevant Northern Ireland departments;
  - (b) the Sports Council for Northern Ireland; and
  - (c) such relevant undertakers and other persons as the Department considers it appropriate to consult.
- (6) In this Article “the other relevant Northern Ireland departments” means—
  - (a) DARD;
  - (b) DCAL; and

(c) DOE.

### **Co-operation between water regulators**

**11.**—(1) This Article imposes duties on each of the following—

- (a) the Department;
- (b) DOE; and
- (c) the Authority.

(2) It is the duty of each of those mentioned in paragraph (1) to make arrangements with each of the others with a view to promoting in the case of each pair of them—

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

(3) That duty relates only—

- (a) in the case of the Authority and the Department, to their functions under this Order relating to the regulation of water and sewerage undertakers;
- (b) in the case of DOE, to its functions under any statutory provision concerning water resources and water pollution so far as they relate to water and sewerage undertakers.

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

(5) The parties to any such arrangements shall keep them under review.

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

(7) Parties to arrangements required by this Article shall send a copy of their memorandum (and any revised memorandum) to the person mentioned in paragraph (1) who is not a party to the arrangements set out in it.

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

### **General duties with respect to the water industry**

**12.**—(1) It shall be the duty of a body to which this Article applies in exercising any of its powers under any statutory provision to have particular regard to the duties imposed under Parts IV to VI on any relevant undertaker which appears to that body to be or to be likely to be affected by the exercise of the power in question.

(2) It shall also be the duty of such a body—

- (a) in considering whether or not to exercise any of its powers under any statutory provision in relation to a relevant undertaker; or
- (b) in deciding the manner in which to exercise any such power,

to take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question.

(3) Paragraph (2) does not apply to the extent that it is unreasonable for the body to comply with it in view of the nature or purpose of the power or in the circumstances of the particular case.

(4) Paragraph (2) does not affect a body's obligations to discharge any duties, comply with any requirements or pursue any objectives imposed upon or given to it otherwise than under that paragraph.

(5) This Article applies to—



- (a) DOE;
- (b) DARD;
- (c) DCAL;
- (d) any other body which the Department may prescribe.