
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER IV

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

General duty of the Authority to keep matters under review

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

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

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

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

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

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

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

Determination of disputes by the Authority

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

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

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

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

(5) A determination under this Article—

(a) shall be final; and

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

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

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

Remuneration and standards of performance

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

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

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

(b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

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

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

(a) a statement of when the arrangements were made;

(b) a description of the standards of performance in question;

(c) an explanation of the means by which the standards of performance are assessed; and

(d) an explanation of how the remuneration was calculated.

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

(a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within paragraph (3); or

(b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

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

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

(a) include in particular the matters listed in paragraph (4)(a), (b) and (c); and

- (b) where the arrangements described are different from any arrangements described under paragraph (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by paragraph (2) must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by paragraph (2)—
 - (a) shall be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
 - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this Article applies in respect of any person who has at any time been a director of the company.
- (10) In this Article—
 - “remuneration” in relation to a director of a company—
 - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
 - (b) includes remuneration in respect of any of his services while a director of the company;
 - “standards of performance”, in relation to any company, include any standards which are—
 - (a) set by or under any conditions of the company’s appointment under Chapter I;
 - (b) contained in or prescribed by regulations made under Article 66(1)(b) or (2) or Article 150(1)(b) or (2); or
 - (c) set or agreed to by the company.
- (11) Any requirement imposed by this Article shall be treated as a statutory requirement enforceable under Article 30 by the Authority.

Procedure for dealing with complaints

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

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

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

(3) The relevant undertaker shall—

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

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

(5) A direction under paragraph (4)—

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

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

- (a) the procedure; or

(b) the manner in which the procedure operates,
as may be specified in the direction.

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

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

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

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

Supplementary

Interpretation of Part III

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

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

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

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

(3) In this Article—

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

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