
DRAFT STATUTORY INSTRUMENTS

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The Water and Sewerage Services
(Northern Ireland) Order 2006

PART IV
WATER SUPPLY
CHAPTER II
SUPPLY DUTIES

Major supplies

Bulk supplies

74.—(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 securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application (“the supplier”) should give a supply of water in bulk to the applicant, and
- (b) the Authority is satisfied that the giving and taking of such a supply cannot be secured by agreement,

the Authority may by order require the supplier to give and the applicant to take such a supply 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 water undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) Where the application is made by a person who is a qualifying person by virtue of paragraph (2)(b), an order made under this Article in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.

(4) Subject to paragraph (3), an order under this Article shall have effect as an agreement between the supplier and the applicant.

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

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

- (a) facilitating effective competition within the water supply industry;

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

Variation and termination of bulk supply agreements

75.—(1) This Article applies where, on the application of any party to a bulk supply agreement—

- (a) it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it; and
- (b) the Authority is satisfied that that cannot be achieved by agreement between the parties to the agreement.

(2) The Authority may by order—

- (a) vary the agreement by—
 - (i) varying the period for which the supply of water is to be given; or
 - (ii) varying any of the terms or conditions on which that supply is to be given; or
- (b) terminate the agreement.

(3) Before making any order under this Article the Authority shall consult the Department.

(4) Where an order is made under this Article the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.

(5) An order under this Article may require the payment of compensation by any party to the agreement to any other party.

(6) The obligations of a water undertaker under paragraph (5) shall be enforceable under Article 30 by the Authority.

(7) In exercising its functions under this Article, the Authority shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—

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

“bulk supply agreement” means an agreement between one or more water undertakers for the supply of water in bulk and includes—

- (a) an order under Article 74 which is deemed to be an agreement by virtue of paragraph (4) of that Article; and
- (b) any agreement which has been varied by order under this Article; and

“supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.

In this Article—

Duty to comply with water main requisition

76.—(1) It shall be the duty of a water undertaker (in accordance with Article 78) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—

- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under paragraph (2) are entitled to require the provision of the main for that locality;
- (b) the premises in that locality to which those supplies would be provided by means of that main are—
 - (i) premises consisting in buildings or parts of buildings; or
 - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out; and
- (c) the conditions specified in Article 77 are satisfied in relation to that requirement.

(2) Each of the following persons shall be entitled to require the provision of a water main for any locality—

- (a) the owner of any premises in that locality;
- (b) the occupier of any premises in that locality.

(3) The duty of a water undertaker under this Article to provide a water main shall be owed to the person who requires the provision of the main 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 water 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.

Financial conditions of compliance

77.—(1) The conditions mentioned in Article 76(1)(c) are satisfied in relation to a requirement for the provision of a water main by a water 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 main; 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 water undertaker may require for the purposes of paragraph (1) in respect of any water main are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that main, as determined in accordance with the undertaker's charges scheme;
- (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 water main if—

- (a) it was by virtue of Article 76(2)(a) or (b) that he required, or joined in requiring, the provision of the main; and

(b) he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a water 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 3 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 water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and

(b) may be revoked at any time.

(6) Any dispute between a water 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 routes for requisitioned main

78.—(1) A water undertaker shall not be in breach of a duty imposed by Article 76 in relation to any locality unless—

(a) the period of 3 months beginning with the relevant day has expired; and

(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—

(i) service pipes to premises in that locality; or

(ii) a water main which is the subject of an agreement under Article 86 (“the self-laid main”),

to connect with the main at the place or places determined under paragraph (3).

(2) The period mentioned in paragraph (1)(a) may be extended in any case—

(a) by agreement between the water undertaker and the person or persons who required the provision of the main; 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 places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or

(b) in default of agreement, such places as are determined by the Authority, on a reference under paragraph (4), to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question, or (as the case may be) the self-laid main, to connect with the water main.

(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 water main, means the day after whichever is the later of the following—

- (a) the day on which the conditions specified in Article 77 are satisfied in relation to the requirement; and
- (b) the day on which the place or places where (as the case may be)—
 - (i) service pipes to premises in the locality in question; or
 - (ii) the self-laid main,will connect with the main are determined under paragraph (3).