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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

The Water and Sewerage Services  
(Northern Ireland) Order 2006

PART IV

WATER SUPPLY

CHAPTER III

QUALITY AND SUFFICIENCY OF SUPPLY

*Waste, contamination, misuse, etc.*

**Waste from water sources**

**111.**—(1) Subject to paragraphs (2) and (3), a person shall be guilty of an offence under this Article if—

- (a) he causes or allows any underground water to run to waste from any well, borehole or other work; or
- (b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.

(2) A person shall not be guilty of an offence by virtue of paragraph (1)(a) in respect of anything done for the purpose—

- (a) of testing the extent or quality of the supply; or
- (b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.

(3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this Article, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.

(4) A person who is guilty of an offence under this Article shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(5) On the conviction of a person under this Article, the court may—

- (a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or
- (b) make such other order as appears to the court to be necessary to prevent waste of water.

(6) If any person fails to comply with an order under paragraph (5), then, without prejudice to any penalty for contempt of court, the court may, on the application of DOE, authorise DOE to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.

(7) Any person designated for the purpose by DOE shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—

- (a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Article on or in connection with the premises;
- (b) to enter any premises for the purpose of executing any order of the court under this Article which DOE has been authorised to execute in those premises.

(8) Part I of Schedule 4 shall apply to the rights of entry conferred by paragraph (7).

### **Contamination of water sources**

**112.**—(1) Subject to paragraphs (2) and (3), a person is guilty of an offence under this Article if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—

- (a) for human consumption or domestic purposes; or
- (b) for manufacturing food or drink for human consumption,

is polluted or likely to be polluted.

(2) Nothing in this Article shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.

(3) Nothing in this Article shall be construed as restricting or prohibiting the reasonable use of oil or tar on any road so long as the Department takes all reasonable steps for preventing—

- (a) the oil or tar; and
- (b) any liquid or matter resulting from the use of the oil or tar,

from polluting the water in any waterworks.

(4) A person who is guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) In this Article “waterworks” includes—

- (a) any spring, well, adit, borehole, service reservoir or tank; and
- (b) any main or other pipe or conduit of a water undertaker.

### **Offences of contaminating, wasting and misusing water, etc.**

**113.**—(1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—

- (a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (b) that water that has been supplied by the undertaker to those premises is or is likely to be contaminated before it is used; or
- (c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (2) In any proceedings under paragraph (1) it shall be a defence to prove—
- (a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after the transfer date;
  - (b) that the works were carried out by or under the direction of a contractor approved for the purposes of regulations under Article 114; and
  - (c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those Regulations.

(3) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Where a person has committed an offence under paragraph (3), the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(5) For the purposes of this Article the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

### **Regulations for preventing contamination, waste, etc and with respect to water fittings**

**114.**—(1) The Department may by regulations make such provision as it considers appropriate for any of the following purposes, that is to say—

- (a) for securing—
  - (i) that water in a water main or other pipe of a water undertaker is not contaminated; and
  - (ii) that its quality and suitability for particular purposes is not prejudiced, by the return of any substance from any premises to that main or pipe;
- (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
- (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker to any premises; and
- (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may, for any of the purposes specified in that paragraph, make provision in relation to such water fittings as may be prescribed—

- (a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;
- (b) for requiring the fittings, for the purposes of provision made by virtue of sub-paragraph (a), to be of such a size, nature, strength or workmanship, to be made of such materials or

- in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;
- (c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;
  - (d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and
  - (e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.
- (3) Without prejudice as aforesaid, regulations under this Article may—
- (a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers and such other persons as may be prescribed;
  - (b) confer powers on a water undertaker to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;
  - (c) provide for the recovery by a water undertaker of expenses reasonably incurred by the undertaker in the exercise of any power conferred by virtue of sub-paragraph (b);
  - (d) repeal or modify the provisions of Article 113 or Article 115;
  - (e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;
  - (f) require prescribed charges to be paid to persons carrying out functions under the regulations;
  - (g) enable the Department to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;
  - (h) enable the Department to authorise a water undertaker (either instead of the Department or concurrently with it) to exercise any power conferred on the Department by regulations made by virtue of sub-paragraph (g); and
  - (i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.
- (4) Without prejudice to Articles 124 and 231, any person designated in writing for the purposes of this paragraph in such manner as may be prescribed may—
- (a) enter any premises for the purpose of—
    - (i) ascertaining whether any provision contained in or made or having effect under this Order with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;
    - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this Article should be exercised or performed; or
    - (iii) exercising any such power or performing any such duty; or
  - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this Article.

(5) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraph (4).

(6) Any sums received by the Department in consequence of the provisions of any regulations under this Article shall be paid into the Consolidated Fund.

(7) In this Article “safe” has the same meaning as in Part II of the Consumer Protection Act 1987 (c. 43)

**Power to prevent damage and to take steps to prevent contamination, waste, etc.**

**115.**—(1) Without prejudice to any power conferred on water undertakers by regulations under Article 114, where a water undertaker which provides a supply of water to any premises has reason for believing—

- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;
- (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or
- (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by paragraph (2) in relation to those premises.

(2) The power conferred by this paragraph in relation to any premises is—

- (a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and
- (b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.

(3) Where a water undertaker, in exercise of the power conferred by virtue of paragraph (2)(a), disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.

(4) The steps specified in a notice under paragraph (3) shall be the steps necessary to secure that, as the case may be—

- (a) the damage, contamination, waste, misuse or undue consumption; or
- (b) the likelihood of damage, contamination, waste, misuse or undue consumption,

would not recur if the supply were restored.

(5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with paragraph (3) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) A notice served for the purposes of paragraph (2)(b) shall—

- (a) specify the period, not being less than the period of 7 days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and
- (b) set out the powers of the undertaker under paragraphs (7) to (9).

(7) Where a water undertaker has served a notice for the purposes of paragraph (2)(b) in relation to any premises and—

- (a) the case becomes an emergency; or
- (b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,

the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises.

(8) Paragraphs (3) to (5) shall apply where a water undertaker exercises its power under paragraph (7) as they apply where such an undertaker exercises its power by virtue of paragraph (2)(a).

(9) Where, in a case not falling within paragraph (7)(a) or (b), any steps specified in a notice served by a water undertaker for the purposes of paragraph (2)(b) have not been taken by the end of the period so specified, the water undertaker shall have power—

- (a) to take those steps itself; and
- (b) subject to paragraph (10), to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served,

and any steps taken by a water undertaker by virtue of sub-paragraph (a) shall be necessary works for the purposes of Chapter II.

(10) Where any steps are taken by virtue of this Article and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in paragraph (2) or, as the case may be, (4), the water undertaker in question—

- (a) shall not be entitled to recover any expenses incurred by it in taking those steps; and
- (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.

### **Temporary hosepipe bans**

**116.—**(1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution by that undertaker exists or is threatened, that undertaker may, for such period as it thinks necessary, prohibit or restrict, as respects the whole or any part of its area, the use for the purpose of—

- (a) watering private gardens; or
- (b) washing private motor cars,

of any water supplied by that undertaker and drawn through a hosepipe or similar apparatus.

(2) A water undertaker imposing a prohibition or restriction under this Article shall, before it comes into force, give public notice of it, and of the date on which it will come into force, in two or more newspapers circulating in the locality affected by the prohibition or restriction.

(3) Any person who, at a time when a prohibition or restriction under this Article is in force, contravenes its provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Where a prohibition or restriction is imposed by a water undertaker under this Article, charges made by the undertaker for the use of a hosepipe or similar apparatus shall be subject to a reasonable reduction and, in the case of a charge paid in advance, the undertaker shall make any necessary repayment or adjustment.

(5) In this Article “private motor car” means any mechanically propelled vehicle intended or adapted for use on roads other than—

- (a) a public service vehicle, within the meaning of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#) ; or
  - (b) a goods vehicle within the meaning of that Order,
- and includes any vehicle drawn by a private motor car.