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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

The Water and Sewerage Services  
(Northern Ireland) Order 2006

PART VII

FINANCIAL PROVISIONS

CHAPTER I

CHARGES

*Manner of fixing charges*

**Powers of undertakers to charge**

**200.**—(1) Subject to the following provisions of this Chapter, the powers of every relevant undertaker shall include power—

- (a) to fix charges for any services provided or other things done in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and
  - (b) to demand and recover charges fixed under this Article from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.
- (2) Subject to paragraphs (3) to (6), the powers conferred by paragraph (1) shall be exercisable—
- (a) by or in accordance with a charges scheme under Article 201; or
  - (b) by or in accordance with agreements with the persons to be charged.
- (3) Sub-paragraph (b) of paragraph (2) shall not have effect in relation to—
- (a) charges for the supply of water to a dwelling, or
  - (b) charges for the provision of sewerage services in respect of a dwelling.
- (4) In paragraph (3) “dwelling” means —
- (a) a private dwelling-house (which may be a building or part of a building);
  - (b) a caravan within the meaning of the Caravans Act (Northern Ireland) 1963 (c. 17);
  - (c) a boat or similar structure designed or adapted for use as a place of permanent habitation.

(5) Sub-paragraph (b) of paragraph (2) shall have effect in relation to the exercise of powers with respect to charges in connection with the carrying out of a sewerage undertaker’s trade effluent functions only in so far as provision for the fixing, demanding or recovery of such charges may be contained in an agreement entered into in accordance with Article 187.

(6) The power of a sewerage undertaker to charge, by virtue of paragraph (1), for any services provided in the course of carrying out its duty under Article 157(1) shall be exercisable only by or in accordance with a charges scheme under Article 201.

(7) Except in so far as this Chapter otherwise provides, a relevant undertaker may fix charges under this Article by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate.

(8) The powers in relation to which this Article has effect shall be exercisable notwithstanding any local statutory provision which provides that no charge shall be made for a particular service.

(9) Nothing in paragraphs (1) to (8) or in any charges scheme under Article 201 shall affect any power of a relevant undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.

### Charges schemes

**201.**—(1) A relevant undertaker may make a scheme (“a charges scheme”) which has effect in relation to a specified period of 12 months and does any one or more of the following, that is to say—

- (a) fixes the charges to be paid for any services provided or other things done by the undertaker in the course of carrying out its functions;
- (b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—
  - (i) a notice containing an application for a consent is served on the undertaker under Article 176;
  - (ii) such a consent as is necessary for the purposes of Chapter III of Part VI is given by the undertaker; or
  - (iii) a discharge is made in pursuance of such a consent; and
- (c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.

(2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of paragraph (1)(b) shall be the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) A charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in paragraph (1)(b) may impose—

- (a) a single charge in respect of the whole period for which the consent is in force;
- (b) separate charges in respect of different parts of that period; or
- (c) both such a single charge and such separate charges.

(4) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker’s costs of providing a sewer by virtue of its duty under Article 157(1), causes those costs to be borne by the undertaker’s customers generally; and a sewerage undertaker’s duty under this paragraph shall be enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(5) A charges scheme may contain supplemental, consequential and transitional provision for the purposes of the scheme.

(6) Nothing in any charges scheme shall affect—

- (a) any power of a relevant undertaker in a case not falling within Article 200(3) to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by the undertaker; or

- (b) the power of a sewerage undertaker to enter into any agreement under Article 187 on terms that provide for the making of payments to the undertaker.
- (7) A charges scheme shall not take effect unless it has been approved by the Authority.
- (8) The Department may give guidance to the Authority on the exercise of its power under paragraph (7); and the Authority shall have regard to that guidance in the exercise of that power.
- (9) The Department shall arrange for any guidance given by it under paragraph (8) to be published in such manner as it considers appropriate.
- (10) The Authority may not exercise its power under paragraph (7) for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.
- (11) The Department may, in relation to any relevant undertaker, make a scheme (“an initial scheme”) having effect in relation to a period of 12 months from the day appointed for the coming into operation of Article 200.
- (12) Subject to paragraph (13), an initial scheme—
  - (a) shall comply with the provisions of this Chapter relating to the contents of a charges scheme; and
  - (b) shall have effect for the purposes of this Order as if it were a charges scheme duly made by the undertaker under this Article.
- (13) Paragraphs (7) to (10) do not apply to an initial scheme.

### **Regulations as to provisions to be included in charges schemes**

- 202.**—(1) The provisions of any charges scheme under Article 201 must comply with any requirements prescribed by the Department by regulations.
- (2) Without prejudice to the generality of paragraph (1), regulations under this Article may—
    - (a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge;
    - (b) make provision as to the matters by reference to which charges may or must be fixed and as to methods and principles to be adopted in calculating and imposing charges;
    - (c) require alternative bases of charging to be made available to consumers;
    - (d) require special provision, including exemption from specified charges, to be made for the purpose of—
      - (i) assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Department to require special provision; or
      - (ii) promoting the efficient use of water.
  - (3) Regulations under this Article imposing requirements for the purpose mentioned in paragraph (2)(d)(i) may—
    - (a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as financial circumstances, age or ill-health;
    - (b) make provision as to the method of identifying those entitled to assistance under the regulations.
  - (4) The power to make regulations under this Article may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.

## Liability for charges

**203.**—(1) Subject to the following provisions of this Article and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—

- (a) supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied; and
- (b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Chapter as provided to the occupiers for the time being of any premises which—
  - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or
  - (ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

(2) Subject to paragraph (3), charges which, under the preceding provisions of this Chapter, are fixed in relation to any premises may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises.

(3) A person shall not be made liable by virtue of paragraph (2) for any charges fixed in relation to any premises by any relevant undertaker, except where—

- (a) he fails to inform the undertaker of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and
- (b) the charges are in respect of a period ending no later than with the first relevant day.

(4) For the purposes of paragraph (3), “the first relevant day”, in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say—

- (a) where that person informs the undertaker of the ending of his occupation of the premises less than two working days before, or at any time after, he ceases to occupy them, the twenty-eighth day after he so informs the undertaker;
- (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
- (c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.

(5) Where—

- (a) any person who is the occupier of any premises to which a supply of water is provided by a water undertaker has served notice on the undertaker for the purposes of Article 101; and
- (b) that notice is given otherwise than in connection with that person’s ceasing to be the occupier of the premises in a case in which provision is made by virtue of paragraph (2) for a person who has ceased to be the occupier of the premises to be made liable for any charges,

then, notwithstanding that that person continues to be the occupier of those premises, he shall not be liable to the undertaker (otherwise than in pursuance of a demand for a supply made since the service of the notice) for any charges in respect of any supply of water to those premises after the appropriate time.

(6) In paragraph (5) “the appropriate time”, in relation to a case in which a notice has been served for the purposes of Article 101, means whichever is the later of—

- (a) the expiry of the notice; and
- (b) the end of the period of two working days beginning with the service of the notice.

(7) In this Article any reference to two working days is a reference to a period of 48 hours calculated after disregarding any time falling on—

- (a) a Saturday or Sunday; or
- (b) Christmas Day, Good Friday or any day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971 (c. 80).

### **Right of consumer to elect for charging by reference to volume**

**204.**—(1) Where—

- (a) water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home; and
- (b) charges in respect of those premises are fixed by virtue of any charges scheme under Article 201 without reference to the volume of water supplied; and
- (c) the consumer falls within any description prescribed for the purposes of this Article,

the consumer may at any time give the undertaker a notice (in this Article referred to as a “measured charges notice”) requiring the undertaker to fix charges in respect of the supply by reference to the volume of water supplied.

(2) Subject to paragraph (3), a water undertaker must give effect to a measured charges notice before the end of a period determined in accordance with the undertaker’s charges scheme.

(3) A water undertaker is not obliged to give effect to a measured charges notice if—

- (a) it is not reasonably practicable to fix charges in respect of the premises by reference to the volume of water supplied; or
- (b) to do so would involve the incurring by the undertaker of unreasonable expense.

(4) Any dispute between a water undertaker and a consumer as to the application of sub-paragraph (a) or (b) of paragraph (3) may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) Where—

- (a) either the conditions in paragraph (6) or the conditions in paragraph (7) are satisfied in relation to premises in respect of which a measured charges notice has been given; and
- (b) such other conditions as may be prescribed are also satisfied in relation to the premises,

the consumer may at any time before the end of the period of 12 months beginning with the day on which the supply began to be measured by volume for charging purposes, revoke the measured charges notice by notice to the water undertaker.

(6) The conditions in this paragraph are—

- (a) that the person who gave the measured charges notice had not given any previous measured charges notice in relation to the premises; and
- (b) that he remains the consumer in respect of the premises.

(7) The conditions in this paragraph are—

- (a) that the person who gave the measured charges notice has, since the notice was given, ceased to be the consumer in respect of the premises,
- (b) that neither he nor the person who has become the consumer had given any previous measured charges notice in respect of the premises, and

- (c) that any person who was in occupation of the premises when the measured charges notice was given remains in occupation.
- (8) Where a measured charges notice has been revoked under paragraph (5), the water undertaker must—
- (a) if reasonably practicable, before the end of the period of 12 months referred to in that paragraph, or
  - (b) in any other case, as soon as reasonably practicable after the end of that period,
- revert to fixing the charges for the supply in respect of the premises without reference to the volume of water supplied.
- (9) If and so long as a water undertaker is obliged under paragraph (2) to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied, a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume.
- (10) If a water undertaker is obliged under paragraph (8) to fix charges without reference to volume, a sewerage undertaker is under a corresponding obligation in respect of charges for services provided by it.
- (11) Any charges scheme under Article 201—
- (a) must contain provision for determining the period mentioned in paragraph (2); and
  - (b) shall have effect subject to the preceding provisions of this Article.

### **Restriction on undertakers' power to require fixing of charges by reference to volume**

- 205.**—(1) Paragraph (2) applies where—
- (a) water is supplied to any premises in which, or in any part of which, a person has his home;
  - (b) charges in respect of those premises have previously been fixed without reference to volume; and
  - (c) such conditions as may be prescribed are satisfied in relation to the premises.
- (2) Where this paragraph applies, a relevant undertaker may not by virtue of any charges scheme under Article 201 begin to fix the charges in respect of those premises by reference to volume unless either—
- (a) the consumer—
    - (i) has given the undertaker a measured charges notice under Article 204 which has not been revoked under that Article; or
    - (ii) has consented to the charges in respect of the premises being so fixed and has not revoked that consent under Article 204; or
  - (b) there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.
- (3) A change in the persons occupying any premises does not constitute a change in the occupation of the premises for the purposes of paragraph (2)(b) if any person who was in occupation of the premises before the change remains in occupation after the change.
- (4) Where a consumer gives consent for the purposes of paragraph (2)(a)(ii) in relation to premises in which, or in any part of which, a person has his home, he shall be treated for the purposes of paragraphs (5) to (8) of Article 204 as having given a measured charges notice under that Article.

## Connection charges

**206.**—(1) Subject to paragraph (2), nothing in this Chapter or in any other statutory provision shall entitle any relevant undertaker to fix, demand or recover an initial charge for its becoming, or for its taking steps for the purpose of becoming—

- (a) the person who provides a supply of water for domestic purposes to any premises; or
- (b) the person who provides sewerage services for the purposes of the drainage for domestic sewerage purposes of any premises.

(2) Subject to paragraph (3), nothing in paragraph (1) or in any other statutory provision shall be construed as prohibiting the fixing, demand or recovery by a relevant undertaker of—

- (a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or after the coming into operation of the restriction contained in this Article) been connected to a supply of water provided for domestic purposes by a water undertaker or by any other authority or body which at that time provided supplies of water in the course of carrying out functions under any statutory provision; or
- (b) a charge for the connection to a public sewer of premises which have never at any previous time (whether before or after the coming into operation of the restriction contained in this Article) been connected to a sewer used for the drainage for domestic sewerage purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions under any statutory provision.

(3) Nothing in this Chapter or in any other statutory provision or in the terms of any agreement under Article 161 shall authorise a sewerage undertaker to require any payment to be made to the undertaker in respect of the making by the undertaker of any declaration of vesting under Chapter II of Part VI or in respect of any agreement to make such a declaration.

(4) The preceding provisions of this Article, so far as they restrict the making of certain charges, shall be without prejudice—

- (a) to statutory provisions by virtue of which a relevant undertaker may recover expenses incurred by it in carrying out works; and
- (b) to the power of any such undertaker, by virtue of Article 200(7), to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.

(5) In this Article “domestic sewerage purposes” has the same meaning as in Chapter II of Part VI.

## Charging for emergency use of water

**207.**—(1) Notwithstanding anything in Article 200 or in any charges scheme under Article 201 or in any agreement as to charges in respect of any supply of water, no charge may be made by any water undertaker in respect of—

- (a) water taken for the purpose of extinguishing fires or taken by the Northern Ireland Fire and Rescue Service Board for any other emergency purposes;
- (b) water taken for the purpose of testing apparatus installed or equipment used for extinguishing fires or for the purpose of training persons for fire-fighting; or
- (c) the availability of water for any purpose mentioned in sub-paragraph (a) or (b).

(2) This Article shall not prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the purposes mentioned in sub-paragraph (a) or (b) of paragraph (1).

(3) This Article shall not have the effect, where any water is used or made available for any of the purposes mentioned in sub-paragraph (a) or (b) of paragraph (1), of requiring a reduction in

the charges imposed in respect of the provision for other purposes of the supply from which that water is taken.