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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART VIII**

**UNDERTAKERS' POWERS AND WORKS**

**CHAPTER III**

**SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS**

*Vesting of works in undertaker*

**Vesting of works in undertaker**

**241.**—(1) Subject to paragraph (3) and to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—

- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
- (b) every water treatment works or waste water treatment works constructed by a relevant undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

(2) In addition—

- (a) every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter II of Part IV takes effect shall also vest in that undertaker; and
- (b) every sewer, lateral drain or waste water treatment works with respect to which a declaration of vesting made by a sewerage undertaker under Chapter II of Part VI takes effect shall also vest in that undertaker.

(3) Paragraph (1) shall not apply—

- (a) to a service pipe laid in a street other than the street in which the water main with which it connects is situated;
- (b) to a service pipe laid otherwise than in a street where that pipe is laid—
  - (i) in pursuance of the duty imposed by virtue of Article 80(4); or
  - (ii) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.

(4) If any water fittings let for hire by a water undertaker are suitably marked, they—

- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
- (b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this paragraph affects the valuation for rating of any rateable hereditament.

(5) The preceding provisions of this Article are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of—

- (a) any transfer scheme under Article 270 or Schedule 1;
- (b) the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.

(6) In this Article—

“relevant pipe”—

- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
  - (b) in relation to a sewerage undertaker, means any sewer, lateral drain or disposal main; and
- “water fittings” has the same meaning as in Part IV.

(7) For the purposes of this Article water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this Article if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

### **Compensation for loss or damage caused by works etc.**

**242.**—(1) In executing any works under this Part a relevant undertaker shall—

- (a) cause as little detriment and inconvenience and do as little damage as possible; and
- (b) make good, or pay compensation for, any loss or damage caused by, or in consequence of, the execution of the works.

(2) Compensation shall not be payable to any person under paragraph (1)(b) in relation to any matter as to which he has been in default.

(3) Any question arising as to—

- (a) the entitlement of any person to compensation under this Article; or
- (b) the amount payable by way of that compensation,

shall, in default of agreement, be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) shall apply with appropriate modifications to such determination.

(4) Compensation under this Article in respect of damage to land shall not be payable to any person from whom any land has been acquired by the undertaker under this Order and to whom any compensation is payable under Article 8(1) to (3) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) by the undertaker in respect of injurious affection of the first-mentioned land.

(5) In assessing compensation under this Article in respect of damage to land regard shall be had to any benefit which the person entitled to the compensation may derive from any works which have been or are to be carried out, or any use of land, by the person causing the damage.

(6) In assessing compensation under this Article in respect of damage to land regard shall also be had to any undertaking given by the person causing the damage—

- (a) to make alterations or additions to any works;
- (b) to construct additional works;
- (c) to vary or abandon any use of land;
- (d) to abandon part of any land acquired or any ancillary rights; or
- (e) to grant other lands or easements.

(7) Where for the purpose of assessing the amount of any compensation payable under this Article the value of any land is required to be determined, that value shall be determined in accordance with rules (2) to (4) of Article 6(1) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#).

### **Complaints with respect to the exercise of works powers on private land, etc**

**243.**—(1) Subject to paragraph (2), it shall be the duty of the Authority to investigate any complaint made or referred to it with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or under Article 220, 221 (3) or 222(2).

(2) The Authority shall not be required to investigate any such complaint as is mentioned in paragraph (1) if—

- (a) the complaint appears to the Authority to be vexatious or frivolous;
- (b) the Authority is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it;
- (c) the complaint was first made to the Authority or the Council more than 12 months, or such longer period as the Authority may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant; or
- (d) in the case of a complaint referred to the Council under Article 55, it appears to the Authority that the complaint is likely to be resolved under that Article.

(3) Where the Authority, in pursuance of its duty under this Article, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—

- (a) it shall be the duty of that undertaker to provide the Authority with all such information and assistance as it may reasonably require for the purposes of its investigation; and
- (b) it shall be the duty of the Authority, before giving any direction under paragraph (4), to consider any representations made to it by the complainant or by that undertaker with respect to the subject-matter of the complaint.

(4) If on a complaint under paragraph (1) with respect to the exercise of any powers by a relevant undertaker, the Authority is satisfied that that undertaker—

- (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
- (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

the Authority may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

(5) The Authority shall not under paragraph (4) direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other statutory provision except in so far as it appears to the Authority appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.

(6) The duties of a relevant undertaker by virtue of paragraph (3)(a) shall be enforceable under Article 30 by the Authority.

(7) A person to whom any amount is required, in pursuance of a direction under paragraph (4), to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this Article.

(8) The Department may by regulations substitute a different amount for the amount for the time being specified in paragraph (4).

### **Codes of practice with respect to work on private land**

**244.**—(1) For the purposes of Article 243 it shall be the duty of every company holding an appointment under Chapter I of Part III as a relevant undertaker—

- (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Department for its approval a code of practice with respect to the exercise by the undertaker of any powers conferred by or under Article 220 or 222(2); and
- (b) if required to do so by the Department at any subsequent time, to submit proposed modifications of that code to the Department for its approval.

(2) The Department, if it considers it appropriate to do so for the purpose of promoting what appear to it to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part III as a relevant undertaker, of any powers conferred by or under Article 220 or 222(2), may at any time by order, in relation to that company—

- (a) approve any code of practice with respect to the exercise of those powers which has been submitted to it (whether or not under paragraph (1)) by that company for its approval;
- (b) approve any modifications of such a code which have been so submitted; or
- (c) withdraw its approval for any such code or modification.

(3) A contravention of a code of practice as for the time being approved under this Article in relation to a company shall not—

- (a) affect the powers conferred on that company as a relevant undertaker by this Part;
- (b) of itself entitle any person to be paid any amount under paragraph (4) of Article 243; or
- (c) give rise to any criminal or civil liability;

but the Authority shall take into account whether there has been any such contravention in determining whether to give a direction under that paragraph to that company and in determining the amount to which any such direction relates.

(4) The Department shall not make an order under paragraph (2) unless it has first consulted all such persons as the Department considers it appropriate to consult.

(5) The duties of a relevant undertaker under paragraph (1) shall be enforceable under Article 30 by the Department.

### **Protection for particular undertakings**

**245.** Schedule 10 shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

### **Power of certain undertakers to alter public sewers, etc.**

**246.**—(1) DARD, the Civil Aviation Authority or any harbour authority, railway undertaking or airport operator may, after giving reasonable notice to the sewerage undertaker concerned, at its own

expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—

- (a) are vested in the undertaker; and
- (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
  - (i) any watercourse or other works vested in or under the control of DARD for the purposes of its functions under the Drainage Order;
  - (ii) any property of the Civil Aviation Authority;
  - (iii) any river or works forming part of the undertaking of the harbour authority;
  - (iv) the railway of the railway undertaking; or
  - (v) the airport in question.

(2) In paragraph (1) “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will in the opinion of the sewerage undertaker concerned—

- (a) be equally effectual; and
- (b) entail no additional expense for the sewerage undertaker.

(3) In this Article “airport operator” means the person who is the airport operator for the purposes of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#) in relation to an airport to which Article 25 of that Order applies.

#### **Duty to move pipes etc. in certain cases**

**247.**—(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an estate in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an estate.

(2) Subject to paragraphs (3) and (4), where a notice is served on a relevant undertaker under paragraph (1), it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this Article shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under paragraph (1) that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under paragraph (5).

(5) Where a relevant undertaker carries out any works under this Article by virtue of a notice having been served by any person under paragraph (1), the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under paragraph (5), 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.

(7) An approval or determination by the Authority for the purposes of paragraph (6) may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this Article shall be enforceable under Article 30 by the Authority.

(9) In this Article—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in Article 219.

### **Protective provisions in respect of watercourses etc.**

**248.**—(1) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

- (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
- (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Order, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(2) Any dispute as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions shall be referred, at the option of the party complaining, to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

### **Works in tidal lands etc.**

**249.**—(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State and the Crown Estate Commissioners.

(2) An approval for the purposes of paragraph (1) shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.

(3) In paragraph (1) the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of Articles 219, 220, 222, 224 and 226, except the power conferred by Article 222(3).

### **Power to sell materials deriving from works**

**250.**—(1) A relevant undertaker may sell any materials which—

- (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect any provision of this Order; and
- (b) are not before the end of 3 days from the date of their removal claimed by the owner and taken away by him.

(2) Where a relevant undertaker sells any materials under this Article, it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses incurred by the undertaker.

(3) This Article—

- (a) does not apply to refuse removed by a relevant undertaker; and
- (b) is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this Article do not apply.

### **Rights as to sewage**

**251.** A sewerage undertaker—

- (a) shall be entitled to all sewage discharged into its sewers or waste water treatment works; and
- (b) may process, sell or otherwise dispose of such sewage.

### *Interpretation*

### **Interpretation of Part VIII**

**252.**—(1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under Article 226.

(2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of Article 219) as the pipe replaced.

(3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.

(4) A relevant undertaker proposing to exercise any of its powers under Article 219 or 220 outside its own area shall, if paragraph (5) applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that paragraph applies, shall not carry out its proposal—

- (a) without the consent of that other undertaker; or
- (b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Authority.

(5) This paragraph applies where the proposal is to lay—

- (a) a water main which is not intended to be—
  - (i) a trunk main; or
  - (ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.

(6) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

- (a) to maintain a pipe or a connection with it; or
- (b) to alter a pipe only where certain conditions are satisfied,

as are imposed on the undertaker by or under any statutory provision.

(7) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.