

WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 3336

EXPLANATORY MEMORANDUM

OVERVIEW OF THE ORDER

Part Iii - Appointment and Regulation of Undertakers

22. This Part sets out the arrangements for appointing water and sewerage undertakers, deals with general issues of enforcement and insolvency and extends the remit of the General Consumer Council for Northern Ireland.

Chapter I – Appointments

23. This chapter sets out arrangements for the appointment of water and sewerage undertakers including their modification. Article 13 enables the Department or, with the Department's consent, the Authority to appoint water and sewerage undertakers. The terms of appointment will be set out in a licence. The arrangements set out in this chapter apply equally to any replacement or additional appointments. It is the Government's intention to appoint a single Government owned company ("GoCo") as water and sewerage undertaker with effect from the commencement of this Order.
24. [Article 14](#) empowers the Department or the Authority to vary or terminate appointments in specified circumstances. The powers must be exercised so as to ensure that there is always an undertaker to provide water and sewerage services to all parts of Northern Ireland.
25. [Articles 15 to 17](#), together with Schedule 1 to the Order, set out the procedures to be followed in making new appointments or variations of existing ones and the making of transitional arrangements that may arise in the transfer of duties between undertakers.
26. [Articles 18 and 19](#) confer power on the Department or the Authority to impose conditions on the undertaker in an appointment or subsequently. They set out the circumstances in which conditions may be made and procedural matters, including references to the Competition Commission.
27. [Article 20](#) provides for the modification of the conditions of a company's appointment by the Authority with the undertaker's agreement and after following the procedures set out in Article 20.
28. [Article 21 to 27](#) provides for modifications of an appointment upon reference by the Authority to the Competition Commission where a condition of a company's appointment may operate against the public interest. The Competition Commission is obliged to investigate and report on the matter in accordance with the procedures set out in these Articles. Article 28 provides for modifications in other circumstances. Article 29 extends certain functions of the Office of Fair Trading concerning competition to

enable them to be concurrently exercised by the Authority in relation to water and sewerage.

Chapter II – Enforcement and Insolvency

29. Chapter II sets out the circumstances in which an enforcement order can be served and when financial penalties may be imposed on an undertaker.

Articles 30-34 Enforcement Orders

30. **Articles 30-34** set out the circumstances in which an enforcement authority is required to make an enforcement order to ensure an undertaker's compliance with any condition of its terms of appointment or any of its statutory obligations. The enforcement authority can be the Department, the Authority or either depending on the particular provision under which enforcement may take place. An enforcement order requires an undertaker to do or not do anything set out in the order (Article 30). Where there is a contravention of any condition of an undertaker's terms of appointment or any of its statutory obligations a final enforcement order must be made. However the Authority and the Department can make provisional orders in some cases and accept undertakings from the undertaker that remedial measures are being taken. The procedures which must be followed when making or revoking an enforcement order (Article 31) are set out (Article 32) as well as how the undertaker can appeal to the High Court against an order (Article 33). Article 34 deals with the undertaker's liability under an enforcement order.

Articles 35-39 Financial Penalties

31. **Articles 35-40** deal with the financial penalties which may be imposed on the undertaker where the enforcement authority has determined that there has been a contravention in any condition of its appointment, a failure to attain any performance standard or a contravention of its statutory duty. A penalty may not exceed 10% of the undertaker's turnover (turnover to be determined by order made by the Department). The steps to be followed by the enforcement authority when imposing penalties are listed in Article 35. Article 36 requires each enforcement authority to publish a statement of policy on penalties and Article 37 sets out time limits on when penalties can be imposed. An undertaker can appeal to the High Court against any penalty imposed upon it (Article 39).

Articles 41-44 Special Administration Orders

32. **Articles 41-44** state that the insolvency of an undertaker is to be dealt with through special administration orders made by the High Court. During the period of a special administration order all company affairs are managed by a person appointed by the High Court.

Chapter III – General Consumer Council

33. Chapter III extends the role of the General Consumer Council for Northern Ireland to confer upon it functions connected with the interests of consumers in relation to water and sewerage services. The Consumer Council, which is established under the General Consumer Council (NI) Order 1984, has similar statutory functions under legislation governing other utilities.
34. In carrying out its functions the Consumer Council has to have regard to the interests of certain groups and to the achievement of sustainable development (Article 45). It is also under a duty to make arrangements with the Authority and the Department to ensure co-operation between them (Article 47) and to publish an annual forward work plan (Article 46).

35. [Articles 48 to 52](#) place duties and confer powers upon the Consumer Council in relation to consumer information. Article 48 obliges the Council to obtain information about consumer matters, including the views of consumers; Article 49 allows the Council to make proposals about consumer matters and Articles 50 and 51 enable it to provide information to consumers and publish advice and information. Article 52 empowers the Consumer Council to direct the Authority and the undertaker to provide it with information and Article 58 obliges the Authority to consult the Consumer Council on the exercise of any of its functions. The Consumer Council, itself, may be required to supply information if directed to do so by the Authority or the Department (Article 53). Article 54 enables the Department to make regulations dealing with issues concerning the provision of information and Article 57 places general restrictions on the disclosure of information by the Consumer Council where that information relates to a particular individual or business or to anything that might be subject to criminal proceedings.
36. [Article 55](#) sets out the Consumer Council's role in relation to consumer complaints about an undertaker in carrying out its functions. Where a complaint is referred to the Consumer Council by, or on behalf of, the complainant, it is under a duty to investigate the complaint unless it is frivolous, might be better dealt with by other procedures under the legislation, cannot be resolved by the undertaker, or the undertaker has not been given a chance to resolve the complaint. The Consumer Council can pursue a complaint on behalf of a complainant and report to the Department or the Authority. Article 59 places the Consumer Council under a duty to publish statistical information about complaints concerning the undertaker regardless of which body the complaint has been made to.

Chapter IV – Miscellaneous

37. Chapter IV deals with a number of general matters concerning the regulation of undertakers.
38. [Article 60](#) places the Authority under a duty to review the performance of the undertaker and allows the Department to give general direction to the Authority in relation to the prioritisation of these duties. Article 61 specifies that, in dealing with any dispute under the Order, the Authority may determine the procedure to be followed including any matters relating to costs and expenses; the Authority is obliged to give reasons for its decisions where it determines a dispute. Article 62 requires an undertaker to make an annual statement to the Authority about any performance bonus awarded to directors of the company appointed as the undertaker. Article 63 requires undertakers to establish a complaints procedure following consultation with the Consumer Council, which it must publicise. The Authority can direct the undertaker to review and modify its complaints procedure.