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STATUTORY INSTRUMENTS

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**2006 No. 3336**

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

**PART IV**

**WATER SUPPLY**

**CHAPTER I**

**GENERAL DUTIES OF WATER UNDERTAKERS**

*General water supply duties*

**General duty to maintain water supply system, etc.**

**65.—**(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—

- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,

as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.

(2) The duty of a water undertaker under this Article 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.

(3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this Article or Article 66 and shall not be in any way qualified by any such provision.

**Standards of performance in connection with water supply**

**66.—**(1) For the purpose—

- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by Article 65; or
- (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,

the Department may, in accordance with Article 69, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Order as breaches of that duty.

(2) The Department may, in accordance with Article 69, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in its opinion, ought to be achieved in individual cases.

(3) Regulations under paragraph (2) may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.

(4) Without prejudice to the generality of the power conferred by paragraph (2), regulations under that paragraph may—

- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
- (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Authority;
- (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
- (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.

(5) Where the Authority determines any dispute in accordance with regulations under this Article it shall, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.

### **Information with respect to levels of performance**

**67.—**(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation paid by water undertakers under regulations under Article 66(2); and
- (b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.

(2) At such times as the Authority may direct, each water undertaker shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under Article 66(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
- (b) as respects each standard established by regulations under Article 66(1)(b), such information with respect to the level of performance achieved by the undertaker as may be prescribed.

(3) A water undertaker who without reasonable excuse fails to do anything required of him by paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it under this Article as it may appear to the Authority expedient to give to customers or potential customers of water undertakers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

#### **Information to be given to customers about overall performance**

**68.**—(1) Each water undertaker shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers of—

- (a) the standards of overall performance established under Article 66(1)(b) which are applicable to that undertaker; and
- (b) that undertaker's level of performance as respects each of those standards.

(2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.

(3) The duty of a water undertaker to comply with this Article shall be enforceable by the Authority under Article 30.

#### **Procedure for making regulations under Article 66**

**69.**—(1) The Department shall not make any regulations under Article 66 unless—

- (a) the Authority has made to the Department a written application complying with paragraph (3);
- (b) the Department is satisfied that a copy of the application has been served by the Authority on—
  - (i) every water undertaker specified in the application; and
  - (ii) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations;
- (c) such period as the Department considers appropriate has been allowed for the making—
  - (i) by the Authority; and
  - (ii) by any affected water undertaker or person or body on whom a copy of the application has been served under sub-paragraph (b)(ii),of representations or objections with respect to the Authority's proposals and any modifications proposed by the Department; and
- (d) the Department has considered the summary mentioned in paragraph (3)(c), the Authority's reasons for its proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.

(2) Before making an application to the Department under this Article the Authority shall arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.

(3) An application made by the Authority to the Department complies with this paragraph if it—

- (a) sets out draft provisions proposed by the Authority for inclusion in regulations under Article 66;
- (b) specifies the water undertaker or undertakers in relation to which it is proposed those provisions should apply;

- (c) is accompanied by a written summary of the results of the research carried out in accordance with paragraph (2); and
  - (d) summarises the Authority's reasons for its proposals.
- (4) The Department shall not make any regulations under Article 66 except where—
- (a) the only provisions of the regulations are the provisions proposed by the Authority in its application or those provisions with such modifications as the Department considers appropriate; and
  - (b) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Authority; and
    - (ii) to any water undertaker appearing to the Department to be likely to be affected by the modifications.

*Water resource management and drought plans*

**Water resources management plans: preparation and review**

**70.**—(1) It shall be the duty of each water undertaker to prepare and maintain a water resources management plan.

(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.

- (3) A water resources management plan shall address in particular—
- (a) the water undertaker's estimate of the quantities of water required to meet those obligations;
  - (b) the measures which the water undertaker intends to take or continue for the purpose set out in paragraph (2);
  - (c) the likely sequence and timing for implementing those measures; and
  - (d) such other matters as the Department may specify in directions.

(4) The procedure for preparing a water resources management plan (including a revised plan) is set out in Article 71.

(5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall—

- (a) review its plan; and
  - (b) send a statement of the conclusions of its review to the Department.
- (6) The water undertaker shall prepare a revised plan in each of the following cases—
- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
  - (b) if directed to do so by the Department, after consultation with DOE;
  - (c) in any event, not later than the end of the period of 5 years beginning with the date when the plan (or revised plan) was last published,

and shall follow the procedure in Article 71 (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

- (7) The Department may give directions specifying—
- (a) the form which a water resources management plan must take;

- (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
  - (a) the Authority;
  - (b) the Council;
  - (c) the Department; and
  - (d) DOE.
- (9) In this Article, in relation to a water resources management plan, “published” means published in accordance with Article 71(8)(a).

### **Water resources management plans: publication and representations**

- 71.—**(1) A water undertaker shall—
- (a) send a draft water resources management plan to the Department;
  - (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
  - (c) give the Department the name of each such other person and his address for service of a notice under paragraph (2)(a).
- (2) If the water undertaker states that it so appears in relation to any such information, the Department shall—
- (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless paragraph (10) applies, is required to be published under this Article; and
  - (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
    - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
    - (ii) of making representations to the Department for the purpose of justifying any such objection,
- and shall determine, taking any objections and representations under sub-paragraph (b) into account, whether the information is or is not commercially confidential.
- (3) A water undertaker shall—
- (a) (subject to paragraph (10)) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
  - (b) publish with it a statement—
    - (i) whether any information has been excluded from the published draft plan by virtue of paragraph (10) and, if it has, the general nature of that information; and
    - (ii) that any person may make representations in writing about the plan to the Department before the end of a period specified in the statement; and
  - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Department shall—

- (a) send to the water undertaker a copy of any representations it receives following publication of the draft plan under paragraph (3); and
- (b) give the water undertaker a reasonable period of time within which to comment on the representations;

but the Department may exclude from any representation sent under sub-paragraph (a) any information contained therein which the Department determines to be commercially confidential (as regards any person other than the water undertaker).

(5) The Department may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.

(6) Regulations under paragraph (5) may provide for the Department to cause a local inquiry to be held in connection with the draft water resources management plan.

(7) The Department may direct a water undertaker that its water resources management plan must differ from the draft sent to it under paragraph (1) in ways specified in the direction, and (subject to paragraph (9)) it shall be the duty of the water undertaker to comply with the direction.

(8) The water undertaker shall—

- (a) (subject to paragraph (10)) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
- (b) publish with it a statement whether any information has been excluded from the published plan by virtue of paragraph (10) and, if it has, the general nature of that information.

(9) If the water undertaker considers that publishing a water resources management plan complying with a direction under paragraph (7) would mean including in the published plan any information (other than any information in relation to which the Department has already made a determination under paragraph (2)) which might be commercially confidential (as regards itself or another person)—

- (a) the water undertaker shall send the Department a notice saying so, and giving the Department the name of any such other person and his address for service of a notice under paragraph (2)(a) as applied by sub-paragraph (b); and
- (b) paragraph (2) shall apply in relation to that information as it applies in relation to the information referred to there;

and the Department may either confirm its direction under paragraph (7) (which is to be treated as a new direction under paragraph (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

(10) The published version of a draft water resources management plan published under paragraph (3)(a), and a water resources management plan published under paragraph (8)(a), shall exclude any information which—

- (a) the Department has determined under paragraph (2) (or that paragraph as applied by paragraph (9)) is commercially confidential; or
- (b) the Secretary of State directs the water undertaker to exclude on the ground that it appears to the Secretary of State that its publication would be contrary to the interests of national security.

(11) Any steps to be taken by a water undertaker under this Article shall be completed by such time or within such period as the Department may direct.

#### **Water resources management plans: supplementary**

**72.—**(1) Directions given under Article 70 or 71 may be—

(a) general directions applying to all water undertakers; or  
(b) directions applying only to one or more water undertakers specified in the directions,  
and shall be given by an instrument in writing.

(2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(3) The duties of a water undertaker under Articles 70 and 71 and under this Article shall be enforceable by the Department under Article 30.

### **Drought plans: preparation and review**

**73.**—(1) It shall be the duty of each water undertaker to prepare and maintain a drought plan.

(2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders under Article 137.

(3) The duties referred to in paragraph (2) include in particular those imposed under or by virtue of—

(a) Article 65

(b) Articles 107 to 109.

(4) A drought plan shall address, in particular, the following matters—

(a) what measures the water undertaker might need to take to restrain the demand for water within its area;

(b) what measures the water undertaker might need to take to obtain extra water from other sources;

(c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;

(d) such other matters as the Department may specify in directions.

(5) Article 71 (water resources management plans: publication and representations), including any power in that Article to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.

(6) Each water undertaker shall review (or further review) its drought plan and prepare a revised plan in each of the following cases—

(a) if there is a material change of circumstances;

(b) if directed to do so by the Department after consultation with DOE;

(c) in any event, not later than the end of the period of 3 years beginning with the date when the plan (or revised plan) was last published in accordance with Article 71(8)(a) as applied by paragraph (5),

and shall follow the procedure in Article 71 as applied by paragraph (5) (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—

(a) the Authority;

(b) the Council;

(c) the Department; and

(d) DOE.

(8) The Department may give directions specifying the form which a drought plan must take.

(9) Directions given under this Article (including directions given under Article 71 as applied by paragraph (5)) may be—

- (a) general directions applying to all water undertakers; or
  - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.

(10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(11) The duty of a water undertaker under this Article shall be enforceable by the Department under Article 30.

## 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.

(8) In this Article—

“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.

**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).

### *Domestic connections*

#### **Duty to make connections with main**

**79.**—(1) Subject to the following provisions of this Article and to Articles 80 and 82, it shall be the duty of a water undertaker (in accordance with Article 85) to make a connection under this Article where the owner or occupier of any premises which—

- (a) consist in the whole or any part of a building; or
  - (b) are premises on which any person is proposing to erect any building or part of a building,
- serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

(2) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

- (a) paragraph (1) is subject to Article 89(1); and
- (b) any such service pipe which is to vest in the undertaker by virtue of an agreement under Article 86 shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.

(3) Where a notice has been served for the purposes of this Article, the duty imposed by paragraph (1) shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under Articles 82 to 84 have been satisfied;

and, subject to Article 85, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(4) A notice for the purposes of this Article—

- (a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and
- (b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of Article 80(4), shall set out the matters that have given rise to the imposition of that requirement;

but, subject to Article 85(5) and without prejudice to the effect (if any) of any other contravention of this paragraph, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(5) The duty imposed on a water undertaker by this Article shall be owed to the person who served the notice by virtue of which the duty arises.

(6) Where a duty is owed by virtue of paragraph (5) 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.

(7) Where a water undertaker carries out any works which it is its duty under this Article to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

(8) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(9) Nothing in this Article or in Articles 80 to 85 shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(10) In the following provisions of this Chapter a notice served for the purposes of this Article is referred to as a connection notice.

#### **Duty to carry out ancillary works for the purpose of making domestic connection**

**80.**—(1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this Article applies as need to be carried out before the connection can be made.

(2) This Article applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.

(3) In a case where—

- (a) the water main with which the service pipe is to be connected is situated in a street;
- (b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
- (c) the service pipe to those premises will—
  - (i) enter the premises otherwise than through an outer wall of a building abutting on the street; and
  - (ii) have a stopcock fitted to it by the undertaker in the premises,

this Article applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.

(4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by DOE under Article 119, this Article applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by DOE—

- (a) to have unreasonably refused his consent to the laying of the service pipe; or
- (b) to have sought to make the giving of his consent subject to unreasonable conditions.

(5) Where a water main is alongside a street and within 18 metres of the middle of that street, paragraphs (2) to (4) shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.

(6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

(7) Paragraphs (5) to (8) of Article 79 shall have effect—

- (a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this Article; and
- (b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this Article at another person's expense,

as they have effect by virtue of that notice in relation to the duty which arises under that Article or, as the case may be, to works which the undertaker carries out under that Article at another person's expense.

(8) Subject to paragraph (9), a water undertaker may comply with any duty under this Article to lay a service pipe by laying a water main instead; but nothing in Article 79 or this Article shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.

(9) Where a water undertaker exercises its power under paragraph (8) to lay a water main instead of a service pipe—

- (a) sub-paragraph (a) of Article 85(1) shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that sub-paragraph for the laying of the service pipe; but
- (b) the expenses recoverable by virtue of Article 79(7) and paragraph (7) shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.

### **Conditions of connection concerning metering**

**81.—**(1) Where the owner or occupier of any premises ("the relevant premises") serves a connection notice on a water undertaker, the undertaker shall make compliance with the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—
  - (i) by the undertaker; or
  - (ii) in accordance with specifications approved by the undertaker;
- (b) a requirement that—
  - (i) subject to Article 89(1), so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and
  - (ii) the plumbing of the premises,
 comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in sub-paragraph (a) to be installed and connected as so mentioned.

(3) Specifications approved by any water undertaker for the purposes of paragraph (2)(a) or (b) may be approved—

- (a) in relation to particular premises; or
- (b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.

(4) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under this Article may be referred by either party for determination by the Authority under Article 61.

### **Conditions of connection with water main**

**82.**—(1) Subject to paragraph (3) and Articles 83 and 84, where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of Article 79(7) or 80(7) (b) on the person who served the connection notice;
- (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person’s failure to pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—
  - (i) in respect of a supply of water to the relevant premises; or
  - (ii) in respect of expenses reasonably incurred in the making of the disconnection;
- (c) a requirement that a separate service pipe has been provided—
  - (i) to each house or building on the relevant premises; or
  - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;
- (d) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under Article 106 has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;
- (e) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this sub-paragraph; and
- (f) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) No condition shall be imposed by a water undertaker under paragraph (2)(c) unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.

(4) A condition shall not be imposed by a water undertaker under this Article or Article 81 on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of 14 days beginning with the day after the service of the connection notice.

(5) Any dispute as to whether any requirement of a kind mentioned in paragraph (2)(a), (b), (c) or (d) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

- (6) Any dispute between a water undertaker and any other person as to whether—
- (a) any security required by a condition imposed under paragraph (2)(a) was reasonably required,
  - (b) the expenses referred to in paragraph (2)(b)(ii) were incurred reasonably, or
  - (c) in a particular case, paragraph (3) prevents a water undertaker from imposing a condition under paragraph (2)(c),

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(7) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Interest on sums deposited in pursuance of the deposit condition**

**83.**—(1) Where for the purposes of paragraph (2)(a) of Article 82 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.

(2) An approval or determination by the Authority for the purposes of this Article—

- (a) may be given or made in relation to a particular case or description of cases or generally; and
- (b) may be revoked at any time.

### **Restrictions on imposition of condition requiring separate service pipes**

**84.**—(1) This Article applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.

(2) Where this Article applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this Article, may be imposed by virtue of Article 82(2)(c) unless the undertaker would have been entitled under Article 104 to require the provision of a separate service pipe if the reconnection had already been made.

### **Time for performance of connection etc. duties**

**85.**—(1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—

- (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
- (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of 14 days beginning with the relevant day.

(2) In any case in which a water undertaker is subject to any such duty as is mentioned in paragraph (1)(a), it shall be presumed, unless the contrary is shown in relation to that case, that the period of 21 days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

- (a) to lay so much of any service pipe; and



- (b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

- (3) Where—

- (a) a connection notice is served in respect of any premises; and
- (b) at the time when the notice is served, the customer's part of the service pipe to those premises has not been laid,

the duties of the undertaker under Articles 79 and 80 shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in paragraphs (3) to (5) of Article 80.

(4) In paragraph (3) the reference to the customer's part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of Article 80.

- (5) Where—

- (a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under Article 79(4)(a) to supplement that notice with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this Article "the relevant day", in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

- (a) the day on which the notice was served on the undertaker;
- (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
- (c) the day on which all such conditions are satisfied as the undertaker has, under Articles 81 to 84, made conditions of its compliance with that duty.

#### *Adoption of water mains and service pipes*

#### **Agreements to adopt water main or service pipe at a future date**

**86.—**(1) Subject to paragraphs (2) and (10), a water undertaker may agree with any person constructing or proposing to construct—

- (a) any water main; or
- (b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as

the undertaker could otherwise, by virtue of Articles 79 to 85, be required to lay, to be vested in that undertaker.

(2) Paragraph (1) shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

- (a) nothing in this Article shall prevent a water undertaker from agreeing apart from this Article to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
- (b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which paragraph (1) applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this Article.

(4) An application under paragraph (3) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to paragraph (5) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

- (a) a person who has made an application to a water undertaker under paragraph (3) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 87, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under paragraph (3), a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under paragraph (1) relating to a water main may, in particular, include terms—

- (a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—
  - (i) that person; or
  - (ii) the water undertaker,
 of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;
- (b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;
- (c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—
  - (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and

- (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;
  - (d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;
  - (e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.
- (8) The terms of an agreement under paragraph (1) relating to a service pipe may, in particular, include terms—
- (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;
  - (b) for such requirements of the kind referred to in Article 82(2) as may be applicable to be complied with before connection takes place.
- (9) An agreement made under this Article by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.
- (10) A water undertaker shall not make an agreement under this Article with respect to a water main or a service pipe situated within the area of another water undertaker, until either—
- (a) that other undertaker has consented in writing to the making of the agreement; or
  - (b) the Authority, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as the Authority may think fit to impose.

### **Appeals with respect to adoption**

- 87.**—(1) Subject to Article 86(5), a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—
- (a) has refused an application under Article 86;
  - (b) has offered to grant such an application on terms to which that person objects; or
  - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (2) On the hearing of an appeal under this Article, the Authority may—
- (a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
  - (b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.
- (3) Where the Authority makes an agreement under paragraph (2)(b) on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.
- (4) An agreement entered into on behalf of a water undertaker under paragraph (2)(b) shall be deemed, for the purposes of this Order, to have been entered into under Article 86.
- (5) In deciding on an appeal under this Article, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision

as to costs or expenses shall be enforceable as if it were a money judgment within the meaning of the [Judgments \(Enforcement\) \(Northern Ireland\) Order 1981\(NI 6\)](#).

### **Financial conditions of compliance**

**88.**—(1) This Article applies where an agreement is, or is to be, entered into under Article 86 in relation to a water main (“the adopted main”) by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.

(2) Where this Article applies, the water undertaker may, as a condition of the undertaker’s compliance with the agreement, require that person to pay to it the reasonable costs incurred by it in connection with the adopted main as determined in accordance with the undertaker’s charges scheme.

(3) For the purposes of any payment required to be made by virtue of paragraph (2), the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of paragraphs (4) and (5) of Article 77 shall apply to any security so required as they apply to security required under that Article.

(4) Where this Article applies, the water undertaker shall pay to the person referred to in paragraph (1), upon declaring the water main to be vested in the undertaker—

- (a) such sum as may be determined in accordance with the charges scheme of the undertaker; or
- (b) if no such provision has been made in the charging scheme, such sum as the undertaker may with the approval of the Authority determine.

(5) Except in a case to which paragraph (4)(b) applies, any dispute between the water undertaker and the other person as to the payments required to be made or the security required to be provided by virtue of this Article may be referred to the Authority for determination under Article 61 by either party to the dispute.

### **Prohibition on connection without adoption**

**89.**—(1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.

(2) In paragraph (1), “the relevant extent” means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.

(3) The prohibition imposed on a water undertaker by paragraph (1) shall be enforceable under Article 30 by the Authority.

### **Articles 86 to 89: supplementary**

**90.**—(1) For the purposes of Articles 86 to 89, the definition of “water main” in Article 2(2) shall be treated as if the words “not being a pipe for the time being vested in a person other than the undertaker” were omitted.

(2) In Article 86, references to so much of the service pipe as the undertaker could otherwise, by virtue of Articles 79 to 85, be required to lay shall be construed disregarding Article 80(8).

(3) In this Order, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.

### *Domestic supplies*

#### **The domestic supply duty**

**91.—**(1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—

- (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises.

(2) Subject to the following provisions of this Article and to Article 92, a water undertaker shall owe a domestic supply duty in relation to any premises to which this Article applies if—

- (a) a demand for a supply of water for domestic purposes has been made, in accordance with paragraph (5), to the undertaker in respect of those premises; or
- (b) those premises are premises to which this Article applies by reason of a supply of water provided before the transfer date,

and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the transfer date.

(3) This Article applies to any premises if—

- (a) they consist in the whole or any part of a building and are connected by means of a service pipe to one of the undertaker's water mains; and
- (b) the requirements of paragraph (4) are satisfied in relation to those premises.

(4) The requirements of this paragraph are satisfied in relation to any premises if—

- (a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;
- (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before the transfer date;
- (c) the condition specified in sub-paragraph (b) would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before the transfer date; or
- (d) the condition specified in any of the preceding sub-paragraphs—
  - (i) has been satisfied in relation to the premises at any time on or after the transfer date; and
  - (ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).

(5) For the purposes of this Article a demand in respect of any premises is made in accordance with this paragraph if it is made—

- (a) by the person who is the occupier of the premises at the time when the demand is made; or
- (b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.

(6) For the purposes of this Article—

- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of

any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and

- (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.

(7) Nothing in this Article shall impose any duty on a water undertaker—

- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
  - (i) for the supply of water to those premises to be cut off or reduced; or
  - (ii) for the pipe to be disconnected,

for the purposes of the carrying out of any necessary works.

(8) In this Article references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of Articles 99 to 101 and 115.

### **Conditions of compliance with domestic supply duty**

**92.**—(1) Where a demand for the purposes of Article 91(2) has been made to a water undertaker in respect of any premises (“the relevant premises”), the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of providing his first supply of water in compliance with that demand.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person’s failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—
  - (i) in respect of a supply of water to the relevant premises; or
  - (ii) in respect of expenses reasonably incurred in cutting off any such supply;
- (b) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under Article 106 has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;
- (c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,
 of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph; and
- (d) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in paragraph (2)(a) or (b) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) Any dispute between a water undertaker and any other person as to whether the expenses referred to in paragraph (2)(a)(ii) were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Enforcement of domestic supply duty**

**93.**—(1) A duty imposed on a water undertaker under Article 91—

- (a) to provide a supply of water to any premises; or
- (b) to maintain a connection between a water main and a service pipe by which such a supply is provided,

shall be owed to the consumer.

(2) Where a duty is owed by virtue of this Article 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.

### *Other supplies*

### **Supplies for non-domestic purposes**

**94.**—(1) This Article applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—

- (a) the premises are premises which do not consist in the whole or any part of a building; or
- (b) the requested supply is for purposes other than domestic purposes.

(2) Where this Article applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under Article 95—

- (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
- (b) having taken any such steps, to provide that supply.

(3) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in sub-paragraph (a).

(4) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—

- (a) the supply of water to those premises; or
- (b) the use of water in those premises,

of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph.

(5) Where—

- (a) a request has been made by any person to a water undertaker for the purposes of paragraph (2); and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

(6) Nothing in this Article shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.

(7) The duty of a water undertaker to supply water under this Article at the request of any person, and any terms and conditions determined under Article 95 in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.

(8) Except so far as otherwise provided by the terms and conditions determined under Article 95 in relation to any supply, the duties of a water undertaker under this Article shall have effect subject to the provisions of Articles 99 to 102 and 115.

### **Determinations on requests for non-domestic supplies**

**95.**—(1) Subject to paragraph (3), any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of Article 94 shall be determined—

- (a) by agreement between that person and the water undertaker; or
- (b) in default of agreement, by the Authority according to what appears to it to be reasonable.

(2) Subject to paragraph (3), the Authority shall also determine any dispute arising between any person and a water undertaker by virtue of paragraph (3) or (4) of Article 94.

(3) The Authority may, instead of itself making a determination under paragraph (1) or (2), refer any matter submitted to it for determination under that paragraph to the arbitration of such person as it may appoint.

(4) For the purposes of any determination under this Article by the Authority or any person appointed by the Authority, it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of Article 94.

(5) The charges in respect of a supply provided in compliance with any request made for the purposes of Article 94—

- (a) shall not be determined by the Authority or a person appointed by the Authority, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under Article 201 in respect of supplies of the applicable description; and
- (b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—
  - (i) recovering the expenses of complying with its obligations under Article 94; and
  - (ii) securing a reasonable return on its capital.



(6) To the extent that paragraph (5)(a) excludes any charges from a determination under this Article, those charges shall be fixed from time to time by a charges scheme under Article 201, but not otherwise.

(7) The determination of any matter under this Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Duty to provide a supply of water etc. for fire-fighting**

**96.**—(1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.

(2) Every water undertaker shall, at the request of the Northern Ireland Fire and Rescue Service Board (“the Board”), fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.

(3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.

(4) It shall be the duty of a water undertaker to ensure that the Board has been supplied by the undertaker with all such keys as the Board may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.

(5) Where a fire-hydrant is removed (other than at the request of the Board) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Subject to Article 97(3), the expenses incurred by a water undertaker in complying with its obligations under paragraphs (2) to (4) shall be borne by the Board.

(7) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

(8) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Department.

(9) In addition, where a water undertaker is in breach of its obligations under this Article, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(10) In any proceedings against any water undertaker for an offence under paragraph (9) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Specially requested fire hydrants**

**97.**—(1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.

(2) For the purposes of paragraph (1) a water main or other pipe is suitable, in relation to a factory or place of business, if—

- (a) it is situated in a road which is in or near to that factory or place of business; and
- (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

(3) Paragraph (6) of Article 96 shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under paragraphs (3) and (4) of that Article.

(4) Any expenses incurred by a water undertaker—

- (a) in complying with its obligations under paragraph (1); or
- (b) in complying, in relation to a specially requested fire-hydrant, with its obligations under Article 96(3) or (4),

shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.

(5) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Paragraphs (7) to (10) of Article 96 shall apply in relation to the obligations of a water undertaker under this Article as they apply to the obligations of a water undertaker under that Article.

(7) In this Article—

“factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20); and

“specially requested fire-hydrant” means a fire-hydrant which—

- (a) is fixed on a water main or other pipe of a water undertaker; and
- (b) was fixed on that main or pipe in pursuance of a request made by the owner or occupier of a factory or place of business.

### **Supplies for other public purposes**

**98.**—(1) A water undertaker shall, at the request of a sewerage undertaker, the Department or a district council, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains or for cleansing and watering roads.

(2) A supply of water provided by a water undertaker under this Article shall be provided upon such terms and conditions as may be reasonable.

(3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this Article if and only if it has a fire-hydrant fixed on it.

(4) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

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

### *Disconnections*

### **Disconnections for the carrying out of necessary works**

**99.**—(1) Subject to the following provisions of this Article, a water undertaker may—

- (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises,

if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

(2) The power of a water undertaker under this Article to cut off a supply of water shall include power to reduce a supply of water.

(3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this Article to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.

(4) Where a water undertaker exercises its power under this Article to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—

- (a) that those works are carried out with reasonable dispatch; and
- (b) that any supply of water to those premises for domestic purposes is interrupted for more than 24 hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(5) Any breach by a water undertaker of the duty owed by virtue of paragraph (4) which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

### **Disconnections for non-payment of charges**

**100.**—(1) Subject to the following provisions of this Article, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises—

- (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
- (b) has failed to do so before the end of the period of 7 days beginning with the day after he is served with notice requiring him to do so.

(2) The power conferred by paragraph (1) is not exercisable in relation to any premises specified in Schedule 2.

(3) Where—

- (a) a water undertaker has served a notice for the purposes of sub-paragraph (b) of paragraph (1) on a person; and
- (b) within the period of 7 days mentioned in that sub-paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that paragraph in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in paragraph (4).

(4) For the purposes of paragraph (3) charges are enforceable in a manner specified in this paragraph against a person if—

- (a) the undertaker is able to enforce a judgment against that person for the payment of the charges; or
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

(5) A water undertaker which exercises its power under this Article to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.

(6) Where—

- (a) a water undertaker has power under this Article to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
- (b) a supply of water is provided to those premises and to other premises wholly or partly by the same service pipe,

the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.

### **Disconnections at request of customer**

**101.**—(1) Subject to the following provisions of this Article, a water undertaker may—

- (a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises,

if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.

(2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this Article.

### **General duties of undertakers with respect to disconnections**

**102.**—(1) Where a water undertaker—

- (a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and
- (b) does so without restoring the supply to that house before the end of the period of 24 hours beginning with the time when it is cut off,

the undertaker shall, no later than 48 hours after that time, serve notice that it has cut off that supply on the district council in whose district the house is situated.

(2) A water undertaker which fails, without reasonable excuse, to serve a notice on a district council as required by paragraph (1) shall be guilty of an offence under this Article.

(3) A water undertaker shall be guilty of an offence under this Article if—

- (a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under Articles 99 to 101, Article 115 or any other statutory provision; or
- (b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.

(4) A water undertaker which 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.

### *Use of limiting devices*

### **Prohibition of use of limiting devices**

**103.**—(1) A water undertaker shall be guilty of an offence under this Article if it uses a limiting device in relation to any premises specified in Schedule 2, with the intention of enforcing payment

of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this Article “a limiting device”, in relation to any premises, means any device or apparatus which—

- (a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and
- (b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this Article by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Means of supply*

#### **Supply by means of separate service pipes**

**104.**—(1) Subject to the following provisions of this Article, a water undertaker may require the provision of a separate service pipe to any premises which—

- (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
- (b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until—

- (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
- (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
- (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
- (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
- (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in sub-paragraph (d) is likely to take place.

(3) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in paragraph (2) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) If, in the case of any such premises as are described in paragraph (1), the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under paragraph (5)—

- (a) that consumer shall, within 3 months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of sub-paragraph (b);

- (b) Articles 79 to 85 shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
  - (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
    - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of Article 91 that such a supply is provided by means of the separate service pipe; and
    - (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice; and
  - (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.
- (5) If a person upon whom a notice has been served for the purposes of paragraph (4) fails to comply with the notice, the water undertaker may—
- (a) itself carry out the works which that person was required to carry out; and
  - (b) recover the expenses reasonably incurred by the undertaker in doing so from that person.
- (6) Without prejudice—
- (a) to the power of a water undertaker by virtue of sub-paragraph (b) of paragraph (4) to impose conditions under Article 82; or
  - (b) to the power conferred by virtue of sub-paragraph (d) of that paragraph,
- any works carried out by a water undertaker by virtue of the provisions of the said sub-paragraph (b) or of paragraph (5) shall be necessary works for the purposes of this Chapter.

### **Duties of undertakers as respects constancy and pressure**

**105.**—(1) Subject to the following provisions of this Article, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—

- (a) are used for providing supplies of water for domestic purposes; or
- (b) have fire-hydrants fixed on them,

to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.

(2) Nothing in paragraph (1) shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.

(3) For the purposes of this Article a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.

(4) Nothing in paragraph (1) shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

(5) The Department may by order modify the application of the preceding provisions of this Article in relation to any water undertaker.

(6) The Department shall not make an order under paragraph (5) except—

- (a) in accordance with Schedule 3; and

- (b) on an application made in accordance with that Schedule by the Authority or by the water undertaker in relation to which the order is made.
- (7) Subject to paragraph (6), an order under paragraph (5) shall be subject to negative resolution.
- (8) An order under paragraph (5) may—
  - (a) require the payment of compensation by a water undertaker to persons affected by the order; and
  - (b) contain such supplemental, consequential and transitional provision as the Department considers appropriate.
- (9) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Authority.
- (10) In addition, where a water undertaker is in breach of a duty under this Article, the undertaker shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (11) In any proceedings against any water undertaker for an offence under paragraph (10) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

#### **Requirements by undertaker for maintaining pressure**

**106.**—(1) A water undertaker may require that any premises consisting in—

- (a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Order, be constantly laid on under pressure; or
- (b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,

shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.

(2) A water undertaker may, in the case of such a house as is mentioned in sub-paragraph (b) of paragraph (1), require that a cistern the provision of which is required under that paragraph shall be capable of holding sufficient water to provide an adequate supply to the house for a period of 24 hours.

(3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—

- (a) to provide a cistern in accordance with a requirement under this Article; or
- (b) to put any such cistern and its float-operated valve into good repair,

the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.

(4) The period specified for the purposes of paragraph (3) in a notice under this Article shall be a period of not less than 28 days beginning with the day after the service of the notice.

(5) Where a water undertaker provides a cistern or carries out any repairs under paragraph (3), it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.

(6) In this Article “relevant house” means any house other than a house in relation to which the following two conditions are satisfied, that is to say—

- (a) the erection of the house was commenced before the transfer date; and
- (b) no such requirement as is mentioned in paragraph (1) or (2) could have been imposed by the Department in relation to the house under any statutory provision having effect immediately before that date.

### CHAPTER III

#### QUALITY AND SUFFICIENCY OF SUPPLY

##### *Standards of wholesomeness*

##### **Standards of wholesomeness**

**107.**—(1) The Department may by regulations make provision that water supplied to any premises by a water undertaker is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.

(2) DOE may by regulations make provision that water supplied to any premises by means of a private supply is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.

(3) Without prejudice to the generality of paragraphs (1) and (2), regulations under this Article may, for the purpose of determining the wholesomeness of any water—

- (a) prescribe general requirements as to the purposes for which the water is to be suitable;
- (b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
- (c) prescribe specific requirements as to other characteristics of the water;
- (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
- (e) enable the Department (in the case of regulations under paragraph (1)) or DOE (in the case of regulations under paragraph (2)) to authorise such relaxations of and departures from the prescribed requirements (or from any of them) 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.

##### *General obligations of water undertakers*

##### **Duties of water undertakers with respect to water quality**

**108.**—(1) It shall be the duty of a water undertaker—

- (a) when supplying water to any premises for domestic or food production purposes to supply only water which is wholesome at the time of supply; and
- (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that undertaker supplies water to premises for domestic or food production purposes, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.

(2) For the purposes of this Article and Article 109 and subject to paragraph (3), water supplied by a water undertaker to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.



(3) Where water supplied by a water undertaker to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—

- (a) it has ceased to be wholesome after leaving the undertaker's pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
- (b) it has so ceased in consequence of the failure of the undertaker, before supplying the water, to take such steps as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker's pipes.

(4) The provisions of this Article shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Order.

(5) The duties of a water undertaker under this Article shall be enforceable under Article 30 by the Department.

### **Regulations for preserving water quality**

**109.**—(1) The Department may by regulations require a water undertaker to take all such steps as may be prescribed for the purpose of securing compliance with Article 108.

(2) Without prejudice to the generality of the power conferred by paragraph (1), regulations under that paragraph may impose an obligation on a water undertaker—

- (a) to take all such steps as may be prescribed for monitoring and recording whether the water which that undertaker supplies to premises for domestic or food production purposes is wholesome at the time of supply;
- (b) to take all such steps as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which that undertaker uses or is proposing to use for supplying water to any premises for domestic or food production purposes;
- (c) to ensure that a source which that undertaker is using or proposing to use for supplying water for domestic or food production purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
- (d) to keep records of the localities within which all the premises supplied with water for domestic or food production purposes by that undertaker are normally supplied from the same source or combination of sources;
- (e) to comply with prescribed requirements with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.

(3) Without prejudice to paragraphs (1) and (2), the Department may by regulations make provision with respect to the use by water undertakers, for the purposes of or in connection with the carrying out of their functions—

- (a) of such processes and substances; and
- (b) of products that contain or are made with such substances or materials,

as it considers might affect the quality of any water.

(4) Without prejudice to the generality of the power conferred by paragraph (3), regulations under that paragraph may—

- (a) forbid the use by water undertakers of processes, substances and products which have not been approved under the regulations or which contravene the regulations;

- (b) for the purposes of provision made by virtue of sub-paragraph (a), require processes, substances and products used by water undertakers to conform to such standards as may be prescribed by or approved under the regulations;
  - (c) impose such other requirements as may be prescribed with respect to the use by water undertakers of prescribed processes, substances and products;
  - (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, 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;
  - (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;
  - (f) provide for a contravention of the regulations to constitute—
    - (i) 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; or
    - (ii) an offence triable either summarily or on indictment and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine; and
  - (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (5) The Department may by regulations require a water undertaker—
- (a) to publish information about the quality of water supplied for domestic or food production purposes to any premises by that undertaker; and
  - (b) to provide information to prescribed persons about the quality of water so supplied.
- (6) Regulations under paragraph (5)—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
  - (b) may require the provision of information by a water undertaker to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker of a prescribed charge; and
  - (c) may impose such other conditions on the provision of information by a water undertaker to any person as may be prescribed.

### **Offence of supplying water unfit for human consumption**

**110.**—(1) Subject to paragraph (3), where a water undertaker supplies water by means of pipes to any premises and that water is unfit for human consumption, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000; or
- (b) on conviction on indictment, to a fine.

(2) For the purposes of section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) and any other statutory provision under which an individual is guilty of an offence by virtue of paragraph (1), the penalty on conviction on indictment of an offence under this Article shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.

(3) In any proceedings against any water undertaker for an offence under this Article it shall be a defence for that undertaker to show that it—

- (a) had no reasonable grounds for suspecting that the water would be used for human consumption; or
  - (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving its pipes or was not used for human consumption.
- (4) Proceedings for an offence under this Article shall not be instituted except by the Department or the Director of Public Prosecutions for Northern Ireland.

*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.



*Insufficient or unwholesome piped supplies*

**Functions of the Department where piped supplies insufficient or unwholesome**

**117.**—(1) This Article applies to a case in which it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes.

(2) In any case to which this Article applies, it shall be the duty of the Department, if it is satisfied—

- (a) that the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
- (b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,

to require the undertaker, under paragraph (3), to provide a supply of water to those premises otherwise than in pipes.

(3) Where, in a case to which this Article applies—

- (a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the premises in question is such as to cause a danger to life or health;
- (b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (c) the Department notifies the undertaker of the danger to life or health and requires the undertaker to provide a supply otherwise than in pipes,

it shall be the duty of the undertaker, for such period as may be required by the Department, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by the Department.

(4) Where under this Article the Department requires the provision by a water undertaker of a supply of water to any premises, the Department—

- (a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part VII in respect of the provision of that supply; but
- (b) shall have power to recover the whole or any part of any charges paid by virtue of this paragraph from the owner or occupier of the premises to which the supply is provided.

(5) In this Article references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.

(6) The duty of a water undertaker under paragraph (3) shall be enforceable under Article 30 by the Authority.

*Private supplies*

**General functions of DOE in relation to private supplies**

**118.**—(1) DOE shall—

- (a) take all such steps as it considers appropriate for keeping itself informed about the wholesomeness and sufficiency of private supplies;

- (b) maintain a register of private supplies used for domestic or food production purposes.

(2) Where DOE is satisfied—

- (a) that any private supply used for domestic or food production purposes to any premises is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic and sanitary purposes; and
- (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health;

DOE shall notify the district council for the district, and the Health and Social Services Board for the area, in which the premises are, and the supply is, situated.

(3) DOE may by regulations make such provision, supplementing the provisions of this Article, as DOE considers appropriate for—

- (a) obtaining information about the quality and sufficiency of private supplies, including information as to the source of the supplies and the premises supplied by such supplies;
- (b) regulating the performance of any function under this Article; and
- (c) prescribing the particulars in respect of each private supply to be recorded in the register maintained under paragraph (1)(b).

(4) Without prejudice to the generality of paragraph (3), regulations under that paragraph may—

- (a) prescribe the matters to be taken into account in determining, for the purposes of paragraph (1), what is appropriate;
- (b) provide, for the purposes of this Article, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
- (c) provide for functions under this Article to be carried out by prescribed persons;
- (d) provide for the recovery by DOE from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by DOE under this Article.

### **Remedial powers in relation to private supplies**

**119.—**(1) Subject to the following provisions of this Article, where DOE is satisfied in relation to any premises which are supplied with water for domestic or food production purposes by means of a private supply—

- (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
- (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,

DOE may serve a notice in relation to that private supply on one or more of the relevant persons.

(2) A notice under this Article in relation to a private supply of water to any premises shall—

- (a) give particulars of the matters mentioned in paragraph (1) in respect of which the notice is served;
- (b) specify the steps which, in the opinion of DOE, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
- (c) specify a period, ending not less than 28 days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by DOE; and

- (d) state the effect in relation to that notice of Article 120(2) and (3).
- (3) Subject to Articles 120 and 121, where DOE serves a notice under this Article on any relevant person it may do one or more of the following, that is to say—
  - (a) by that notice designate as steps to be taken by DOE itself such of the steps specified in the notice as DOE considers it appropriate so to designate;
  - (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
  - (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to DOE such payments as may be so determined in respect of expenses reasonably incurred by that other person or DOE in taking any step specified in the notice;
  - (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.
- (4) The steps that a relevant person may be required by a notice under this Article to take in relation to any premises shall include—
  - (a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and
  - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (5) For the purposes of this Article and Articles 120 to 122 the relevant persons, in relation to a private supply of water to any premises, are—
  - (a) the owners and occupiers of those premises; and
  - (b) the owners and occupiers of the premises where the source of that supply is situated and any other person who exercises powers of management or control in relation to that source;and in Articles 120 to 122 a notice under this Article is referred to as a private supply notice.

### **Confirmation of private supply notices**

**120.**—(1) Subject to paragraph (2), a private supply notice served by DOE shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by DOE.

(2) Where any written representation or objection with respect to a private supply notice served by DOE is received by it, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—

- (a) the notice is submitted by DOE to the Appeals Commission and is confirmed by the Appeals Commission either with or without modifications; or
  - (b) the representation or objection is withdrawn.
- (3) If DOE submits a private supply notice to the Appeals Commission for confirmation, the Appeals Commission—
- (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;
  - (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct DOE to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;
  - (c) if it is satisfied that the person on whom any notice to be served in pursuance of a direction under sub-paragraph (b) has had a proper opportunity of having his representations or

objections with respect to the proposal for the direction considered, may dispense, in relation to the notice so served, with the provisions of paragraphs (1) and (2) and of Article 119(2)(c) and (d).

(4) Where the Appeals Commission confirms a private supply notice (whether with or without modifications)—

- (a) DOE shall serve notice of that confirmation on every person originally served with the notice under Article 119; and
- (b) that notice shall take effect, with any modifications made by the Appeals Commission, at such time as may be specified in the notice served under this paragraph.

### **Enforcement and variation of private supply notice**

**121.**—(1) Where any relevant person who is required by virtue of a private supply notice to take any step in relation to any premises fails to take that step within the period specified in the notice, DOE may, in accordance with any applicable provision having effect by virtue of Article 122 or 124, take that step itself.

(2) Where any step is taken by DOE in relation to any premises by virtue of paragraph (1)—

- (a) DOE may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by it in taking that step; and
- (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than DOE, sums paid by virtue of sub-paragraph (a) in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.

(3) Nothing in this Order shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a private supply notice.

(4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable summarily as a civil debt by that person from the person who is required to pay it.

(5) Any requirement which—

- (a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and
- (b) is expressed to bind those premises in relation to the owners or occupiers from time to time, shall bind successive owners or, as the case may be, occupiers of those premises and shall be a statutory charge.

(6) Subject to paragraph (7), DOE may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this paragraph (including a notice which has been confirmed, with or without modifications, by the Appeals Commission).

(7) The person on whom the notice is served may, within 28 days from the date of service of the notice, appeal to the Appeals Commission except where the notice—

- (a) extends the period within which any step is required to be taken by that person; or
- (b) discharges, postpones or abates any obligation of that person to make a payment to DOE.

### **Powers to do works in relation to private supplies**

**122.**—(1) For the purposes of the taking of any steps falling to be taken by DOE by virtue of a designation under paragraph (3)(a) of Article 119 the provisions of Part VIII shall have effect—

- (a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on DOE for the purpose of ensuring that a supply of water provided by means of a private supply to any premises is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
- (b) as if any such power, so far as it is conferred on a water undertaker in relation to things belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of sub-paragraph (a) on DOE in relation to things belonging to or operated or used by DOE, or a relevant person, in connection with the provision of water by means of a private supply;
- (c) as if references to a water undertaker in any provision of Part VIII relating to a relevant works power, except the references in Articles 243 and 244, included references to DOE; and
- (d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of Article 241(1), to an interest in the pipe.

(2) Where by virtue of this Order DOE has power to acquire (whether compulsorily or otherwise) any land for the purpose of ensuring that private supplies of water to premises are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power shall include power to acquire land in order, for that purpose, to dispose of the land to a person who is a relevant person in relation to such a private supply.

(3) In this Article “relevant works powers” means the powers conferred on water undertakers by Articles 219, 220, 222, 224 and 226.

### **Power of DOE to obtain information relating to private supplies**

**123.**—(1) DOE may serve on any person a notice requiring him to furnish DOE, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by DOE for the purpose of exercising or performing any power or duty conferred or imposed on DOE by or under any of Articles 118 to 121.

(2) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Enforcement*

### **Rights of entry**

**124.**—(1) Any person designated for the purpose by the Department or DOE shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of Article 112 in relation to any waterworks on those premises.

(2) Any person designated in writing for the purpose by DOE may—

- (a) enter any premises for the purpose, in relation to any private supply, of—
  - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on DOE by or under any of Articles 118 to 121 should be exercised or performed; or
  - (ii) exercising any such power or performing any such duty;

- (b) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as DOE—
  - (i) considers appropriate for the purposes of any such power or duty; and
  - (ii) has authorised that person to carry out or take away.
- (3) Any person designated in writing for the purpose by the Department 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 Article 114 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 that Article.
- (4) Part I of Schedule 4 shall apply to the right of entry conferred by paragraph (1); but nothing in that paragraph or in that Part of that Schedule shall entitle any person designated for the purposes of that paragraph by DOE to have access to any waterworks belonging to a water undertaker.
- (5) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraphs (2) and (3).
- (6) In this Article “waterworks” has the same meaning as in Article 112.

#### **Assessors for the enforcement of water quality**

- 125.**—(1) The Department may for the purposes of this Article appoint inspectors to act on its behalf in relation to some or all of—
- (a) the powers and duties conferred or imposed on it by or under Articles 107 to 110 and 117 so far as relating to the quality and sufficiency of water supplied by a water undertaker; and
  - (b) such other powers and duties in relation to the quality and sufficiency of water supplied by a water undertaker as are conferred or imposed on the Department by or under any other statutory provision.
- (2) DOE may for the purposes of this Article appoint inspectors to act on its behalf in relation to some or all of—
- (a) the powers and duties conferred or imposed on it by or under Articles 107 and 118 to 123 in relation to the quality and sufficiency of water supplied by means of a private supply; and
  - (b) such other powers and duties in relation to the quality and sufficiency of water supplied by means of a private supply as are conferred or imposed on DOE by or under any other statutory provision.
- (3) A person may be appointed under both paragraph (1) and (2); and the Department and DOE (acting jointly) may designate a person so appointed as the Chief Inspector of Drinking Water.
- (4) An inspector appointed under paragraph (1) shall—
- (a) carry out such investigations as the Department may require him to carry out for the purpose of—

- (i) ascertaining whether any duty or other requirement imposed on an undertaker by or under any of Articles 108 to 110 or Article 117 is being, has been or is likely to be contravened; or
  - (ii) advising the Department as to whether, and if so in what manner, any of its powers in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on it by or under any of Articles 107 to 110 and 117 should be exercised; and
- (b) make such reports to the Department with respect to any such investigation as the Department may require.
- (5) An inspector appointed under paragraph (2) shall—
  - (a) carry out such investigations as DOE may require him to carry out for the purpose of advising DOE as to whether, and if so in what manner, any of its powers (including the powers to make regulations) which are conferred on it by or under any of Articles 107 and 118 to 121 should be exercised; and
  - (b) make such reports to DOE with respect to any such investigation as DOE may require.
- (6) Without prejudice to the powers conferred by paragraphs (7) and (8), it shall be the duty of a water undertaker—
  - (a) to give an inspector appointed under paragraph (1) all such assistance; and
  - (b) to provide an inspector so appointed with all such information,as that inspector may reasonably require for the purpose of carrying out any such investigation as is mentioned in paragraph (4).
- (7) An inspector appointed under paragraph (1) who is designated in writing for the purpose by the Department may—
  - (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in paragraph (4);
  - (b) carry out such inspections, measurements and tests on premises entered by that person or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that person considers appropriate for the purpose of enabling him to carry out any such investigation; or
  - (c) at any reasonable time require any water undertaker to supply him with copies of, or of extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker by or under any of Articles 108 to 110 or Article 117.
- (8) An inspector appointed under paragraph (2) who is designated in writing for the purpose by DOE may—
  - (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in paragraph (5);
  - (b) carry out such inspections, measurements and tests on premises entered by that person or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that person considers appropriate for the purpose of enabling him to carry out any such investigation.
- (9) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraph (7) or (8).
- (10) Any water undertaker which fails to comply with the duty imposed on it by virtue of paragraph (6) shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.

(11) Proceedings for an offence under this Article or in relation to the quality and sufficiency of water supplied by a water undertaker may be instituted and carried on in the name of the Chief Inspector of Drinking Water.

## CHAPTER IV FLUORIDATION

### Fluoridation of water supplies at request of DHSSPS

**126.**—(1) If requested in writing to do so by DHSSPS, a water undertaker shall enter into arrangements with DHSSPS to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.

(2) But a water undertaker shall not be required by paragraph (1) to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of Article 133 to the water undertaker.

(3) The area specified in arrangements under this Article may be such area comprising the whole or any part of Northern Ireland as DHSSPS may determine.

(4) The arrangements shall be on such terms as may be agreed between DHSSPS and the water undertaker or, in the absence of agreement, determined in accordance with Article 128.

(5) Those terms shall include provision—

- (a) requiring DHSSPS to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
- (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
- (c) for the variation of the arrangements at the request of DHSSPS.

(6) DHSSPS shall consult the Authority in relation to the terms to be included in any arrangements under this Article (in particular, terms which affect the operation of the water undertaker's supply system).

(7) Before carrying out the consultation required by paragraph (1) of Article 132 in relation to a step mentioned in sub-paragraph (a), (b) or (c) of paragraph (2) of that Article, DHSSPS shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).

### Target concentration of fluoride

**127.**—(1) Arrangements under Article 126(1) shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.

(2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if DHSSPS considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).

(3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

(4) If, in relation to any area ("area A"), an order under Article 131(1) specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this paragraph, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of paragraphs (2) and (3)).



(5) If the result of the operation of paragraph (4) in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and paragraph (4) shall apply accordingly.

(6) An order under Article 131(1) which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of paragraph (4) or (5)) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).

(7) In this Article “specified area” means the area specified in arrangements under Article 126(1).

#### **Fluoridation arrangements: determination of terms**

**128.**—(1) This Article applies if DHSSPS and a water undertaker fail to agree—

- (a) the terms of arrangements requested by DHSSPS pursuant to paragraph (1) of Article 126; or
- (b) a variation in the terms of those arrangements following a request by DHSSPS pursuant to paragraph (5)(c) of that Article.

(2) DHSSPS may refer the matter to the Authority for determination and following such a reference—

- (a) the Authority may determine the terms of the arrangements as it sees fit; and
- (b) the determination of the Authority shall be final.

(3) Following determination under this Article of the terms to be included in any arrangements—

- (a) DHSSPS shall give notice of the determination to the water undertaker in question; and
- (b) the undertaker shall be deemed to have entered into the arrangements under Article 126(1) on the terms determined under this Article with effect from the day after the date of the notice.

(4) References in this Chapter to arrangements entered into under Article 126(1) shall include arrangements deemed to have been entered into under that Article by virtue of paragraph (3)(b).

#### **Fluoridation arrangements: compliance**

**129.**—(1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under Article 126(1).

(2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—

- (a) hexafluorosilicic acid ( $\text{H}_2\text{SiF}_6$ );
- (b) disodium hexafluorosilicate ( $\text{Na}_2\text{SiF}_6$ ).

(3) Subject to paragraph (4), water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under Article 126(1)).

(4) Paragraph (3) applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—

- (a) for the purpose of dealing with any serious deficiency in supply; or

- (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned.
- (5) In paragraph (4) “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (6) Arrangements entered into under Article 126(1) with a water undertaker shall remain in force until DHSSPS terminates them by order.
- (7) An order shall not be made under paragraph (6) unless—
  - (a) DHSSPS has consulted the water undertaker in question; and
  - (b) a draft of the order has been laid before, and approved by resolution of, the Assembly.

#### **Power to vary permitted fluoridation agents**

- 130.** DHSSPS may by order subject to negative resolution amend Article 129(2) by—
- (a) adding a reference to another compound of fluorine; or
  - (b) removing any reference to a compound of fluorine.

#### **Power to vary target concentration of fluoride**

- 131.**—(1) DHSSPS may by order provide that Article 127(1) is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
- (2) An order under paragraph (1) may make different provision for different geographical areas, or for some such areas and not others.
- (3) An order shall not be made under paragraph (1) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

#### **Consultation**

- 132.**—(1) Before taking any step mentioned in paragraph (2), DHSSPS shall—
- (a) consult and ascertain opinion in accordance with regulations made by DHSSPS;
  - (b) comply with the requirements set out in regulations made by DHSSPS.
- (2) The steps are—
- (a) requesting a water undertaker to enter into arrangements under Article 126(1);
  - (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
  - (c) laying before the Assembly an order under Article 129(6) terminating any such arrangements;
  - (d) maintaining any such arrangements in prescribed circumstances.
- (3) Regulations—
- (a) under sub-paragraph (a) of paragraph (1) shall include provision about the process which DHSSPS is to follow for the purposes of that sub-paragraph;
  - (b) under sub-paragraph (b) of that paragraph shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in paragraph (2) may be taken.
- (4) Paragraph (1) shall not apply in relation to a proposal by DHSSPS to take the step mentioned in paragraph (2)(b) if DHSSPS so directs by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

### **Indemnities in respect of fluoridation**

**133.**—(1) DHSSPS may, with the consent of DFP, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to Article 126(1).

(2) DHSSPS may by regulations make provision with respect to—

- (a) the matters in respect of which an indemnity may be given under paragraph (1);
- (b) the form and terms of any such indemnity; and
- (c) such ancillary matters as it sees fit.

### **Review of fluoridation**

**134.**—(1) Where DHSSPS has entered into arrangements under Article 126(1), it shall—

- (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
- (b) in accordance with paragraph (3) publish reports containing an analysis of those effects.

(2) DHSSPS shall make available—

- (a) any information collected by it for the purposes of paragraph (1); or
- (b) summaries of that information.

(3) DHSSPS shall publish a report under paragraph (1)(b)—

- (a) within the period of 4 years beginning with the date on which the arrangements come into force; and
- (b) within each period of 4 years beginning with the date on which the last such report was published.

(4) This Article ceases to apply in relation to any arrangements under Article 126(1) if those arrangements are terminated.

## **CHAPTER V**

### **SUPPLEMENTAL PROVISIONS OF PART IV**

### **Power to give effect to international agreements**

**135.**—(1) Subject to paragraph (3), the Department may by regulations provide that the provisions of Chapters I to III shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(2) DOE may by regulations provide that the provisions to which paragraph (3) applies shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(3) Paragraph (2) applies to—

- (a) Article 107(2);
- (b) Articles 118 to 123; and

- (c) any other provisions of Chapter III so far as they have effect for the purposes of or in relation to those Articles.
- (4) Paragraph (1) shall not authorise any modification of—
  - (a) any provision to which paragraph (2) applies;
  - (b) any of Articles 111, 112 and 116; or
  - (c) any other provisions of Chapters I to III so far as they have effect for the purposes of or in relation to those Articles.

## Interpretation

### 136.—(1) In this Part—

“connection notice” shall be construed in accordance with Article 79(10);

“consumer”, in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

“food production purposes” means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this definition “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;

“necessary works” includes works carried out, in exercise of any power conferred by or under any statutory provision, by a person other than a water undertaker;

“private supply” means, subject to paragraph (2), a supply of water provided otherwise than by a water undertaker (including a supply provided for the purposes of the bottling of water);

“private supply notice” shall be construed in accordance with Article 119(5);

“water fittings” includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

“wholesome” shall be construed subject to the provisions of any regulations made under Article 107.

(2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this paragraph water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.

(3) For the purposes of this Part a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.

(4) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises.