
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART VIII

UNDERTAKERS' POWERS AND WORKS

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

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

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

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

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

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

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

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

- (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or

(b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,
the Authority may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

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

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

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

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