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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART III**

**APPOINTMENT AND REGULATION OF UNDERTAKERS**

**CHAPTER I**

**APPOINTMENTS**

*Modification of appointment conditions*

**Commission's power of veto following report: supplementary**

27.—(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (9) of Article 26.

(2) In giving any notice under paragraph (4)(a) or (6) of Article 26, or publishing any notice under paragraph (9) of that Article, the Competition Commission must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4)(a) or (b) is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs (7) and (8), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under Article 26, as they apply for the purposes of any investigations on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and

- (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of paragraph (6), have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction has been given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of paragraph (6), have effect as if for sub-paragraph (ii) there were substituted—
  - “(ii) if earlier, the day on which a notice is published by the Commission under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction is given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (6), have effect in relation to those sections as applied by virtue of that paragraph.
- (10) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.