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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**

*Competition*

**Functions of the Authority with respect to competition**

**29.**—(1) The functions to which paragraph (2) apply shall be concurrent functions of the Authority and the OFT.

(2) This paragraph applies to the functions of the OFT under Part 4 of the Enterprise Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.

(3) The Authority shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (c. 41) (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of that treaty,

in relation to commercial activities connected with the supply of water or securing the supply of water or the provision or securing the provision of sewerage services.

(4) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (1) and (2), references in Part 4 of the Enterprise Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).

(5) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the OFT are to be read as including a reference to the Authority (except in sections 31D(1) to (6), 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).

(6) Before the OFT or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (1), it shall consult the other.

(7) Neither the OFT nor the Authority shall exercise in relation to any matter any functions which are exercisable concurrently by virtue of paragraph (1) if functions which are so exercisable have been exercised in relation to that matter by the other.

(8) It shall be the duty of the Authority, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference made to the Commission by the Authority by virtue of paragraph (2), to give to the Commission—

- (a) any information which is in the Authority's possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to it for that purpose under this paragraph.

(9) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) Part 4 of the Enterprise Act; or
- (b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51),

by or in relation to the Authority on the ground that it should have been done by or in relation to the OFT.

(10) Section 117 of the Enterprise Act (offence of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of paragraph (1) as if the reference in section 117(1)(a) and (2) to the OFT included a reference to the Authority.