
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Making of appointments

Appointment of relevant undertakers

13.—(1) Subject to the following provisions of this Chapter, a company may be appointed—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority,

to be the water undertaker or sewerage undertaker for any area.

(2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—

- (a) of requiring the company to perform any duty imposed by or under any statutory provision on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
- (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any statutory provision on an undertaker of that description;
- (c) of requiring statutory provisions authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any statutory provision to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.

(3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.

(4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.

(5) A company shall not be appointed to be a water undertaker or a sewerage undertaker unless it is a limited company.

(6) As soon as practicable after making an appointment under this Chapter, the Department shall send a copy of the appointment to the Authority.

Continuity of appointments, replacement appointments, etc.

14.—(1) It shall be the duty of the Department to secure that such appointments are made under this Chapter as will ensure that for every area of Northern Ireland there is at all times both—

- (a) a company holding an appointment under this Chapter as water undertaker; and
- (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.

(2) Subject to the following provisions of this Article—

- (a) the Department; and
- (b) with the consent of or in accordance with a general authorisation given by the Department, the Authority,

shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.

(3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—

- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

(4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—

- (a) that company consents to the appointment or variation;
- (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that company;
- (c) the appointment or variation relates only to parts of that area and the conditions mentioned in paragraph (5) are satisfied in relation to each of the premises in those parts which are served by that company; or
- (d) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.

(5) The conditions are that—

- (a) the premises are, or are likely to be, supplied with not less than 100 megalitres of water in any period of 12 months; and
- (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.

(6) The Department may, after consulting the Authority, make regulations amending paragraph (5)(a) by substituting, for the quantity of water for the time being specified there, such smaller quantity as the Department considers appropriate.

Procedure with respect to appointments and variations

15.—(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.

(2) Within 14 days after making an application under this Article, the applicant shall—

- (a) serve notice of the application on the existing appointee and DOE; and
- (b) publish a copy of the notice in such manner as may be prescribed.

(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall give notice—

- (a) stating that it proposes to make the appointment or variation;
- (b) stating the reasons why it proposes to make the appointment or variation; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Department or, as the case may be, the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
- (b) by serving a copy of the notice on the existing appointee and DOE.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall—

- (a) serve a copy of the appointment or variation on the existing appointee; and
- (b) serve notice of the making of the appointment or variation on DOE.

(6) As soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Department shall send a copy of the variation to the Authority.

(7) In this Article “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

(8) The Department may by regulations impose such additional procedural requirements as it considers appropriate for any case where the conditions mentioned in Article 14(5) are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.

Duties affecting making of appointments and variations

16.—(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall consider any representations or objections which have been duly made in pursuance of the notice under Article 15(3) and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Department shall consult the Authority.

(3) In determining whether to make an appointment or variation by virtue of Article 14(4)(b) or (c) in relation to any part of an area, the Department or, as the case may be, the Authority shall have

regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.

(4) It shall be the duty of the Department or, as the case may be, of the Authority—

- (a) in making an appointment or variation replacing a company as a relevant undertaker; and
- (b) where it makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or sewerage charges,

to ensure, so far as may be consistent with its duties under Part II, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this Article—

“existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

“new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

“water or sewerage charges” means—

- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
- (b) amounts of any other description which such an undertaker is authorised by or under any statutory provision to require any person to pay.

Transitional provision with respect to replacement appointments

17.—(1) Schedule 1 shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

(2) Paragraphs (3) and (4) apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

(3) Such provisions of this Order as the Department may prescribe shall apply (with any prescribed modifications) in relation to the new undertaker as if the appointment or variation had come into force.

(4) Such of the conditions imposed on the new undertaker under Article 18 as the Authority may specify in a notice given by it to the undertaker shall have effect, in relation to the operation of any provision prescribed under paragraph (3) before the appointment or variation comes into force, as if the appointment or variation had come into force.