
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER III

CONSUMER PROTECTION: THE GENERAL CONSUMER COUNCIL

The General Consumer Council: preliminary

45.—(1) This Chapter confers functions on the General Consumer Council for Northern Ireland (“the Council”) in relation to consumer matters.

(2) In this Chapter—

“consumer matter” means any matter connected with the interests of consumers;

“the interests of consumers” means the interests of consumers in relation to—

- (a) the supply of water to premises by water undertakers; and
- (b) the provision of sewerage services by sewerage undertakers.

(3) In considering the interests of consumers the Council shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Council shall carry out its functions under this Chapter in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(5) The Council shall establish a group in connection with the exercise of its functions under this Chapter.

(6) Accordingly, in paragraph 10(1) of Schedule 1 to the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#) (“the 1984 Order”) after head (bb) there shall be inserted—

“(bbb) a group in connection with the exercise of its functions under Chapter III of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.”.

(7) Nothing in paragraph (5) or (6) or Article 9(1) or (2) of the Energy Order (establishment of group in relation to energy) affects the power conferred by paragraph 10(8) of Schedule 1 to the 1984 Order (power by order to reduce number of groups); and accordingly an order under paragraph 10(8) of that Schedule may repeal paragraphs (5) and (6) and Article 9(1) and (2) of the Energy Order.

(8) Nothing in Article 4 of the 1984 Order authorises or requires the Council to carry out any function in relation to a consumer matter otherwise than in accordance with this Chapter.

(9) The Council shall send to the Department a copy of every annual report prepared by it under paragraph 12 of Schedule 1 to the 1984 Order.

Forward work programme of the Council

46.—(1) The Council shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its functions under this Chapter (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its functions under this Chapter.

(4) The forward work programme prepared under this Article may, if the Council so decides, be combined in a single programme with the forward work programme of the Council prepared under Article 10 of the Energy Order.

(5) Before publishing the forward work programme for any year (other than one which is combined as mentioned in paragraph (4)), the Council shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) The notice under paragraph (5) shall be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(7) The Council shall send a copy of any notice given by it under paragraph (5) to the Authority and the Department.

Co-operation between the Council and other authorities

47.—(1) This Article imposes duties on—

- (a) the Authority and the Council;
- (b) the Council and the Department;

but those duties extend only to their respective functions under this Order.

(2) It shall be the duty of the bodies mentioned in each sub-paragraph of paragraph (1) to make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) the consistent treatment of matters which affect both of them.

(3) As soon as practicable after agreement is reached on any arrangements required by this Article, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this Article shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this Article, the parties shall revise their memorandum.

(6) Parties to arrangements required by this Article shall send a copy of their memorandum, and any revised memorandum, to each other body mentioned in paragraph (1) who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Department shall lay a copy of every memorandum or revised memorandum under this Article before the Assembly.

Acquisition and review of information

48.—(1) The Council shall obtain and keep under review—

- (a) information about consumer matters; and
- (b) information about the views of consumers on such matters.

(2) Where the Authority is required by any provision of this Order to publish a notice or any other document, it shall send a copy of the document to the Council.

Provision of advice and information to public authorities and other persons

49. Subject to Article 57, the Council may—

- (a) make proposals, or provide advice and information, about consumer matters; and
- (b) represent the views of consumers on such matters,

to public authorities, companies holding an appointment under Chapter I and other persons whose activities may affect the interests of consumers.

Provision of information to consumers

50.—(1) The Council may provide information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.

(2) That power may be exercised by—

- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
- (b) furnishing information to any consumer (whether in response to a request or otherwise).

Power to publish information and advice about consumer matters

51. Subject to Article 57, if it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

Provision of information to the Council

52.—(1) The Council may direct—

- (a) the Authority; or
- (b) a company holding an appointment under Chapter I,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions under this Chapter.

(2) A body to which a direction under this Article is given shall comply with it as soon as reasonably practicable.

(3) Before giving a direction under this Article and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to which the direction is given.

(4) If the Authority fails to comply with the direction under this Article it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

(5) Subject to Article 57, the Council may publish a notice given to it under paragraph (4).

Provision of information by the Council

53.—(1) The Authority or the Department may direct the Council to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as the Authority or the Department may require for the purpose of exercising its functions under this Order.

(2) The Council shall comply with a direction under this Article as soon as reasonably practicable.

(3) Where the Council fails to comply with a direction under this Article it shall give to the body which gave the direction notice of its reason for the failure, and that body may publish that notice in such manner as it considers appropriate.

(4) A body publishing a notice under this Article shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

Articles 52 and 53: supplementary

54.—(1) The Department may make regulations prescribing—

- (a) descriptions of information which a body to which a direction is given under Article 52 or 53 may refuse to supply; or
- (b) circumstances in which such a body may refuse to comply with a direction given under either of those Articles.

(2) The Council may, if no person is prescribed for the purpose under paragraph (3), refer a failure by a company holding an appointment under Chapter I to comply with a direction under Article 52 to the Authority.

(3) The Department may make regulations for the purpose of enabling a failure to comply with a direction under Article 52 or 53 to be referred by the body which gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under paragraph (2) or regulations under paragraph (3)) shall—

- (a) consider any representations made by either party;
- (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
- (c) give notice of his determination and any order under sub-paragraph (b), with reasons, to both parties.

(5) The duty of a company holding an appointment under Chapter I to comply with an order under this Article shall be enforceable by the Authority under Article 30.

(6) Subject to Article 57, a notice under paragraph (4) may be published by either party to the reference.

Consumer complaints

55.—(1) This Article applies to a complaint which any person (“the complainant”) has against a relevant undertaker in relation to any matter connected with the functions of that undertaker.

(2) Where a complaint to which this Article applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to paragraph (8)) investigate the complaint for the purpose of determining whether it is appropriate to take any action under paragraph (9).

(3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under Article 243, the Council shall refer the complaint to the Authority.

(4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under Article 30 or 35 is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.

(5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence under this Order, the Council shall refer the matter to the Department.

(6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Order, the Council shall, if the complainant consents, refer the matter to the Authority.

(7) A referral under paragraph (6) shall have effect for the purposes of Article 61 as if it were a referral by the complainant of a dispute for determination by the Authority.

(8) The Council is not required to investigate any matter if it appears to the Council that—

- (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker;
- (b) the relevant undertaker has not been given a reasonable opportunity to deal with the complaint; or
- (c) in a case mentioned in paragraph (3), (4), (5) or (6), it is inappropriate to do so.

(9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this Article, the Council shall make representations on behalf of the complainant to the relevant undertaker about anything to which the complaint relates.

(10) After investigating a complaint the Council may make a report to the Authority or the Department.

(11) A report under paragraph (10) may include information about—

- (a) any representations made by the Council under paragraph (9); and
- (b) the response of the relevant undertaker to the complaint or any such representations.

(12) No report under paragraph (10) or information about a complaint referred to the Council under this Article, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority or the Department in the exercise of any power under this Order without the consent of the complainant.

(13) Where a representation made to the Authority or the Department about any matter (other than a representation appearing to it be frivolous or vexatious) appears to that body—

- (a) to be about a matter which is or amounts to a complaint to which this Article applies; and
- (b) to have been made by or on behalf of the complainant,

that body shall refer the matter to the Council.

Power of the Council to investigate other matters

56.—(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

(2) Where the Council has investigated a matter under this Article it may make a report on that matter to the Authority, the Department, the OFT or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

(3) Subject to Article 57, the Council may—

- (a) send a report on any matter investigated under this Article to any person who appears to the Council to have an interest in that matter; and
- (b) publish any such report in such manner as the Council thinks appropriate.

Restrictions on disclosure of information by the Council

57.—(1) This Article applies to the functions of the Council—

- (a) in preparing so much of its annual report under paragraph 12 of Schedule 1 to the 1984 Order as relates to its functions under this Chapter;
- (b) in exercising its functions under Article 49 or 50;
- (c) in publishing anything under Article 51;
- (d) in publishing a notice under Article 52(5) or 54(6); and
- (e) in sending or publishing a report under Article 56(3).

(2) Subject to paragraph (7), information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of a function to which this Article relates unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

- (a) the individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of paragraph (3)(c) above, the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3) (c) to the information or as to the desirability or otherwise of its disclosure;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to paragraph (7), the Council shall not in the exercise of any function to which this Article applies disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in paragraph (5), the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Department or the Director of Public Prosecutions for Northern Ireland.

(7) Where this Article applies by virtue of paragraph (1)(b), paragraphs (2) to (5) do not apply to a disclosure of information which is made to the Authority, the Department, the Competition Commission or any other public authority.

(8) The disclosure by the Council of information in the exercise of a function to which this Article applies does not contravene Article 265 (restriction on disclosure of information).

(9) In this Article “disclosure” includes publication.

Duty to consult the Council

58.—(1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

- (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
- (b) the Authority considers that it would be clearly inappropriate to consult the Council.

(2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

Provision of statistical information about complaints

59.—(1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to—

- (a) complaints made by consumers about any matter relating to the activities of relevant undertakers; and
- (b) the handling of such complaints.

(2) In paragraph (1) “complaints” includes complaints made directly to relevant undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council or the Department.