
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART IV

WATER SUPPLY

CHAPTER I

GENERAL DUTIES OF WATER UNDERTAKERS

General water supply duties

General duty to maintain water supply system, etc.

65.—(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—

- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,

as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.

(2) The duty of a water undertaker under this Article shall be enforceable under Article 30—

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

(3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this Article or Article 66 and shall not be in any way qualified by any such provision.

Standards of performance in connection with water supply

66.—(1) For the purpose—

- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by Article 65; or
- (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,

the Department may, in accordance with Article 69, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Order as breaches of that duty.

(2) The Department may, in accordance with Article 69, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in its opinion, ought to be achieved in individual cases.

(3) Regulations under paragraph (2) may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.

(4) Without prejudice to the generality of the power conferred by paragraph (2), regulations under that paragraph may—

- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
- (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Authority;
- (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
- (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.

(5) Where the Authority determines any dispute in accordance with regulations under this Article it shall, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.

Information with respect to levels of performance

67.—(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation paid by water undertakers under regulations under Article 66(2); and
- (b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.

(2) At such times as the Authority may direct, each water undertaker shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under Article 66(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
- (b) as respects each standard established by regulations under Article 66(1)(b), such information with respect to the level of performance achieved by the undertaker as may be prescribed.

(3) A water undertaker who without reasonable excuse fails to do anything required of him by paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it under this Article as it may appear to the Authority expedient to give to customers or potential customers of water undertakers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

Information to be given to customers about overall performance

68.—(1) Each water undertaker shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers of—

- (a) the standards of overall performance established under Article 66(1)(b) which are applicable to that undertaker; and
- (b) that undertaker's level of performance as respects each of those standards.

(2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.

(3) The duty of a water undertaker to comply with this Article shall be enforceable by the Authority under Article 30.

Procedure for making regulations under Article 66

69.—(1) The Department shall not make any regulations under Article 66 unless—

- (a) the Authority has made to the Department a written application complying with paragraph (3);
- (b) the Department is satisfied that a copy of the application has been served by the Authority on—
 - (i) every water undertaker specified in the application; and
 - (ii) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations;
- (c) such period as the Department considers appropriate has been allowed for the making—
 - (i) by the Authority; and
 - (ii) by any affected water undertaker or person or body on whom a copy of the application has been served under sub-paragraph (b)(ii),of representations or objections with respect to the Authority's proposals and any modifications proposed by the Department; and
- (d) the Department has considered the summary mentioned in paragraph (3)(c), the Authority's reasons for its proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.

(2) Before making an application to the Department under this Article the Authority shall arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.

(3) An application made by the Authority to the Department complies with this paragraph if it—

- (a) sets out draft provisions proposed by the Authority for inclusion in regulations under Article 66;
- (b) specifies the water undertaker or undertakers in relation to which it is proposed those provisions should apply;

- (c) is accompanied by a written summary of the results of the research carried out in accordance with paragraph (2); and
 - (d) summarises the Authority's reasons for its proposals.
- (4) The Department shall not make any regulations under Article 66 except where—
- (a) the only provisions of the regulations are the provisions proposed by the Authority in its application or those provisions with such modifications as the Department considers appropriate; and
 - (b) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
 - (i) to the Authority; and
 - (ii) to any water undertaker appearing to the Department to be likely to be affected by the modifications.

Water resource management and drought plans

Water resources management plans: preparation and review

70.—(1) It shall be the duty of each water undertaker to prepare and maintain a water resources management plan.

(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.

- (3) A water resources management plan shall address in particular—
- (a) the water undertaker's estimate of the quantities of water required to meet those obligations;
 - (b) the measures which the water undertaker intends to take or continue for the purpose set out in paragraph (2);
 - (c) the likely sequence and timing for implementing those measures; and
 - (d) such other matters as the Department may specify in directions.

(4) The procedure for preparing a water resources management plan (including a revised plan) is set out in Article 71.

(5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall—

- (a) review its plan; and
 - (b) send a statement of the conclusions of its review to the Department.
- (6) The water undertaker shall prepare a revised plan in each of the following cases—
- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
 - (b) if directed to do so by the Department, after consultation with DOE;
 - (c) in any event, not later than the end of the period of 5 years beginning with the date when the plan (or revised plan) was last published,

and shall follow the procedure in Article 71 (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

- (7) The Department may give directions specifying—
- (a) the form which a water resources management plan must take;

- (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
 - (a) the Authority;
 - (b) the Council;
 - (c) the Department; and
 - (d) DOE.
- (9) In this Article, in relation to a water resources management plan, “published” means published in accordance with Article 71(8)(a).

Water resources management plans: publication and representations

71.—(1) A water undertaker shall—

- (a) send a draft water resources management plan to the Department;
 - (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
 - (c) give the Department the name of each such other person and his address for service of a notice under paragraph (2)(a).
- (2) If the water undertaker states that it so appears in relation to any such information, the Department shall—
- (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless paragraph (10) applies, is required to be published under this Article; and
 - (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
 - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
 - (ii) of making representations to the Department for the purpose of justifying any such objection,and shall determine, taking any objections and representations under sub-paragraph (b) into account, whether the information is or is not commercially confidential.
- (3) A water undertaker shall—
- (a) (subject to paragraph (10)) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
 - (b) publish with it a statement—
 - (i) whether any information has been excluded from the published draft plan by virtue of paragraph (10) and, if it has, the general nature of that information; and
 - (ii) that any person may make representations in writing about the plan to the Department before the end of a period specified in the statement; and
 - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Department shall—

- (a) send to the water undertaker a copy of any representations it receives following publication of the draft plan under paragraph (3); and
- (b) give the water undertaker a reasonable period of time within which to comment on the representations;

but the Department may exclude from any representation sent under sub-paragraph (a) any information contained therein which the Department determines to be commercially confidential (as regards any person other than the water undertaker).

(5) The Department may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.

(6) Regulations under paragraph (5) may provide for the Department to cause a local inquiry to be held in connection with the draft water resources management plan.

(7) The Department may direct a water undertaker that its water resources management plan must differ from the draft sent to it under paragraph (1) in ways specified in the direction, and (subject to paragraph (9)) it shall be the duty of the water undertaker to comply with the direction.

(8) The water undertaker shall—

- (a) (subject to paragraph (10)) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
- (b) publish with it a statement whether any information has been excluded from the published plan by virtue of paragraph (10) and, if it has, the general nature of that information.

(9) If the water undertaker considers that publishing a water resources management plan complying with a direction under paragraph (7) would mean including in the published plan any information (other than any information in relation to which the Department has already made a determination under paragraph (2)) which might be commercially confidential (as regards itself or another person)—

- (a) the water undertaker shall send the Department a notice saying so, and giving the Department the name of any such other person and his address for service of a notice under paragraph (2)(a) as applied by sub-paragraph (b); and
- (b) paragraph (2) shall apply in relation to that information as it applies in relation to the information referred to there;

and the Department may either confirm its direction under paragraph (7) (which is to be treated as a new direction under paragraph (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

(10) The published version of a draft water resources management plan published under paragraph (3)(a), and a water resources management plan published under paragraph (8)(a), shall exclude any information which—

- (a) the Department has determined under paragraph (2) (or that paragraph as applied by paragraph (9)) is commercially confidential; or
- (b) the Secretary of State directs the water undertaker to exclude on the ground that it appears to the Secretary of State that its publication would be contrary to the interests of national security.

(11) Any steps to be taken by a water undertaker under this Article shall be completed by such time or within such period as the Department may direct.

Water resources management plans: supplementary

72.—(1) Directions given under Article 70 or 71 may be—

(a) general directions applying to all water undertakers; or
(b) directions applying only to one or more water undertakers specified in the directions,
and shall be given by an instrument in writing.

(2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(3) The duties of a water undertaker under Articles 70 and 71 and under this Article shall be enforceable by the Department under Article 30.

Drought plans: preparation and review

73.—(1) It shall be the duty of each water undertaker to prepare and maintain a drought plan.

(2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders under Article 137.

(3) The duties referred to in paragraph (2) include in particular those imposed under or by virtue of—

(a) Article 65

(b) Articles 107 to 109.

(4) A drought plan shall address, in particular, the following matters—

(a) what measures the water undertaker might need to take to restrain the demand for water within its area;

(b) what measures the water undertaker might need to take to obtain extra water from other sources;

(c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;

(d) such other matters as the Department may specify in directions.

(5) Article 71 (water resources management plans: publication and representations), including any power in that Article to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.

(6) Each water undertaker shall review (or further review) its drought plan and prepare a revised plan in each of the following cases—

(a) if there is a material change of circumstances;

(b) if directed to do so by the Department after consultation with DOE;

(c) in any event, not later than the end of the period of 3 years beginning with the date when the plan (or revised plan) was last published in accordance with Article 71(8)(a) as applied by paragraph (5),

and shall follow the procedure in Article 71 as applied by paragraph (5) (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—

(a) the Authority;

(b) the Council;

(c) the Department; and

(d) DOE.

(8) The Department may give directions specifying the form which a drought plan must take.

(9) Directions given under this Article (including directions given under Article 71 as applied by paragraph (5)) may be—

(a) general directions applying to all water undertakers; or

(b) directions applying only to one or more water undertakers specified in the directions,
and shall be given by an instrument in writing.

(10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(11) The duty of a water undertaker under this Article shall be enforceable by the Department under Article 30.