
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART IV

WATER SUPPLY

CHAPTER II

SUPPLY DUTIES

Adoption of water mains and service pipes

Agreements to adopt water main or service pipe at a future date

86.—(1) Subject to paragraphs (2) and (10), a water undertaker may agree with any person constructing or proposing to construct—

- (a) any water main; or
- (b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of Articles 79 to 85, be required to lay, to be vested in that undertaker.

(2) Paragraph (1) shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

- (a) nothing in this Article shall prevent a water undertaker from agreeing apart from this Article to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
- (b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which paragraph (1) applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this Article.

(4) An application under paragraph (3) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to paragraph (5) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

- (a) a person who has made an application to a water undertaker under paragraph (3) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 87, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under paragraph (3), a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under paragraph (1) relating to a water main may, in particular, include terms—

- (a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—
 - (i) that person; or
 - (ii) the water undertaker,of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;
- (b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;
- (c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—
 - (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and
 - (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;
- (d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;
- (e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.

(8) The terms of an agreement under paragraph (1) relating to a service pipe may, in particular, include terms—

- (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;
- (b) for such requirements of the kind referred to in Article 82(2) as may be applicable to be complied with before connection takes place.

(9) An agreement made under this Article by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

(10) A water undertaker shall not make an agreement under this Article with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

- (a) that other undertaker has consented in writing to the making of the agreement; or
- (b) the Authority, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as the Authority may think fit to impose.

Appeals with respect to adoption

87.—(1) Subject to Article 86(5), a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—

- (a) has refused an application under Article 86;
 - (b) has offered to grant such an application on terms to which that person objects; or
 - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (2) On the hearing of an appeal under this Article, the Authority may—
- (a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.

(3) Where the Authority makes an agreement under paragraph (2)(b) on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.

(4) An agreement entered into on behalf of a water undertaker under paragraph (2)(b) shall be deemed, for the purposes of this Order, to have been entered into under Article 86.

(5) In deciding on an appeal under this Article, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision as to costs or expenses shall be enforceable as if it were a money judgment within the meaning of the [Judgments \(Enforcement\) \(Northern Ireland\) Order 1981\(NI 6\)](#).

Financial conditions of compliance

88.—(1) This Article applies where an agreement is, or is to be, entered into under Article 86 in relation to a water main (“the adopted main”) by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.

(2) Where this Article applies, the water undertaker may, as a condition of the undertaker’s compliance with the agreement, require that person to pay to it the reasonable costs incurred by it in connection with the adopted main as determined in accordance with the undertaker’s charges scheme.

(3) For the purposes of any payment required to be made by virtue of paragraph (2), the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of paragraphs (4) and (5) of Article 77 shall apply to any security so required as they apply to security required under that Article.

(4) Where this Article applies, the water undertaker shall pay to the person referred to in paragraph (1), upon declaring the water main to be vested in the undertaker—

(a) such sum as may be determined in accordance with the charges scheme of the undertaker;
or

(b) if no such provision has been made in the charging scheme, such sum as the undertaker
may with the approval of the Authority determine.

(5) Except in a case to which paragraph (4)(b) applies, any dispute between the water undertaker
and the other person as to the payments required to be made or the security required to be provided
by virtue of this Article may be referred to the Authority for determination under Article 61 by either
party to the dispute.

Prohibition on connection without adoption

89.—(1) Where a person (other than a water undertaker) constructs a water main or service
pipe which is to be used, in whole or in part, for supplying water for domestic or food production
purposes, no water undertaker may permit that water main or service pipe to become connected with
its supply system unless it vests (to the relevant extent) in a water undertaker.

(2) In paragraph (1), “the relevant extent” means the extent specified in the agreement for the
vesting in the undertaker of the water main or service pipe in question.

(3) The prohibition imposed on a water undertaker by paragraph (1) shall be enforceable under
Article 30 by the Authority.

Articles 86 to 89: supplementary

90.—(1) For the purposes of Articles 86 to 89, the definition of “water main” in Article 2(2)
shall be treated as if the words “not being a pipe for the time being vested in a person other than
the undertaker” were omitted.

(2) In Article 86, references to so much of the service pipe as the undertaker could otherwise, by
virtue of Articles 79 to 85, be required to lay shall be construed disregarding Article 80(8).

(3) In this Order, references to vesting or the making of a declaration of vesting with respect to
a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant
vesting agreement.