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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART IV**

**WATER SUPPLY**

**CHAPTER II**

**SUPPLY DUTIES**

*Major supplies*

**Bulk supplies**

**74.**—(1) Where, on the application of any qualifying person—

- (a) it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application (“the supplier”) should give a supply of water in bulk to the applicant, and
- (b) the Authority is satisfied that the giving and taking of such a supply cannot be secured by agreement,

the Authority may by order require the supplier to give and the applicant to take such a supply for such period and on such terms and conditions as may be provided in the order.

(2) In this Article “qualifying person” means—

- (a) a water undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) Where the application is made by a person who is a qualifying person by virtue of paragraph (2)(b), an order made under this Article in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.

(4) Subject to paragraph (3), an order under this Article shall have effect as an agreement between the supplier and the applicant.

(5) The Authority shall not make an order under this Article unless it has first consulted the Department.

(6) In exercising its functions under this Article, the Authority shall have regard to the desirability of—

- (a) facilitating effective competition within the water supply industry;

- (b) the supplier's recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

### **Variation and termination of bulk supply agreements**

**75.—**(1) This Article applies where, on the application of any party to a bulk supply agreement—

- (a) it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it; and
- (b) the Authority is satisfied that that cannot be achieved by agreement between the parties to the agreement.

(2) The Authority may by order—

- (a) vary the agreement by—
  - (i) varying the period for which the supply of water is to be given; or
  - (ii) varying any of the terms or conditions on which that supply is to be given; or
- (b) terminate the agreement.

(3) Before making any order under this Article the Authority shall consult the Department.

(4) Where an order is made under this Article the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.

(5) An order under this Article may require the payment of compensation by any party to the agreement to any other party.

(6) The obligations of a water undertaker under paragraph (5) shall be enforceable under Article 30 by the Authority.

(7) In exercising its functions under this Article, the Authority shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—

- (a) facilitating effective competition within the water supply industry;
- (b) the supplier's recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

“bulk supply agreement” means an agreement between one or more water undertakers for the supply of water in bulk and includes—

- (a) an order under Article 74 which is deemed to be an agreement by virtue of paragraph (4) of that Article; and
- (b) any agreement which has been varied by order under this Article; and

“supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.

In this Article—

### **Duty to comply with water main requisition**

**76.—**(1) It shall be the duty of a water undertaker (in accordance with Article 78) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—

- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under paragraph (2) are entitled to require the provision of the main for that locality;
- (b) the premises in that locality to which those supplies would be provided by means of that main are—
  - (i) premises consisting in buildings or parts of buildings; or
  - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out; and
- (c) the conditions specified in Article 77 are satisfied in relation to that requirement.

(2) Each of the following persons shall be entitled to require the provision of a water main for any locality—

- (a) the owner of any premises in that locality;
- (b) the occupier of any premises in that locality.

(3) The duty of a water undertaker under this Article to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of paragraph (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### **Financial conditions of compliance**

**77.—**(1) The conditions mentioned in Article 76(1)(c) are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with paragraph (2) have been given by the person or persons who have required the provision of the main; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under paragraph (3), may be required to secure his undertakings.

(2) The undertakings which a water undertaker may require for the purposes of paragraph (1) in respect of any water main are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that main, as determined in accordance with the undertaker's charges scheme;
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of paragraph (1)(b) a person may be required to secure his undertakings in relation to the provision of a water main if—

- (a) it was by virtue of Article 76(2)(a) or (b) that he required, or joined in requiring, the provision of the main; and

(b) he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of the Authority; or

(b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every 3 months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by the Authority for the purposes of paragraph (4)

(a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and

(b) may be revoked at any time.

(6) Any dispute between a water undertaker and any other person as to—

(a) the undertakings or security required by the undertaker for the purposes of this Article; or

(b) the amount required to be paid in pursuance of any such undertaking,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

#### **Determination of completion date and routes for requisitioned main**

**78.**—(1) A water undertaker shall not be in breach of a duty imposed by Article 76 in relation to any locality unless—

(a) the period of 3 months beginning with the relevant day has expired; and

(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—

(i) service pipes to premises in that locality; or

(ii) a water main which is the subject of an agreement under Article 86 (“the self-laid main”),

to connect with the main at the place or places determined under paragraph (3).

(2) The period mentioned in paragraph (1)(a) may be extended in any case—

(a) by agreement between the water undertaker and the person or persons who required the provision of the main; or

(b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under paragraph (4).

(3) The places mentioned in paragraph (1)(b) shall be—

(a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or

(b) in default of agreement, such places as are determined by the Authority, on a reference under paragraph (4), to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question, or (as the case may be) the self-laid main, to connect with the water main.

(4) A reference for the purposes of paragraph (2) or (3) may be made to the Authority for determination under Article 61 by either party to the dispute.

(5) In this Article “relevant day”, in relation to a requirement to provide a water main, means the day after whichever is the later of the following—

- (a) the day on which the conditions specified in Article 77 are satisfied in relation to the requirement; and
- (b) the day on which the place or places where (as the case may be)—
  - (i) service pipes to premises in the locality in question; or
  - (ii) the self-laid main,will connect with the main are determined under paragraph (3).

### *Domestic connections*

#### **Duty to make connections with main**

**79.**—(1) Subject to the following provisions of this Article and to Articles 80 and 82, it shall be the duty of a water undertaker (in accordance with Article 85) to make a connection under this Article where the owner or occupier of any premises which—

- (a) consist in the whole or any part of a building; or
  - (b) are premises on which any person is proposing to erect any building or part of a building,
- serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

(2) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

- (a) paragraph (1) is subject to Article 89(1); and
- (b) any such service pipe which is to vest in the undertaker by virtue of an agreement under Article 86 shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.

(3) Where a notice has been served for the purposes of this Article, the duty imposed by paragraph (1) shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under Articles 82 to 84 have been satisfied;

and, subject to Article 85, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(4) A notice for the purposes of this Article—

- (a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and
- (b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of Article 80(4), shall set out the matters that have given rise to the imposition of that requirement;

but, subject to Article 85(5) and without prejudice to the effect (if any) of any other contravention of this paragraph, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(5) The duty imposed on a water undertaker by this Article shall be owed to the person who served the notice by virtue of which the duty arises.

(6) Where a duty is owed by virtue of paragraph (5) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(7) Where a water undertaker carries out any works which it is its duty under this Article to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

(8) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(9) Nothing in this Article or in Articles 80 to 85 shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(10) In the following provisions of this Chapter a notice served for the purposes of this Article is referred to as a connection notice.

#### **Duty to carry out ancillary works for the purpose of making domestic connection**

**80.**—(1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this Article applies as need to be carried out before the connection can be made.

(2) This Article applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.

(3) In a case where—

- (a) the water main with which the service pipe is to be connected is situated in a street;
- (b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
- (c) the service pipe to those premises will—
  - (i) enter the premises otherwise than through an outer wall of a building abutting on the street; and
  - (ii) have a stopcock fitted to it by the undertaker in the premises,

this Article applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.

(4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by DOE under Article 119, this Article applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by DOE—

- (a) to have unreasonably refused his consent to the laying of the service pipe; or
- (b) to have sought to make the giving of his consent subject to unreasonable conditions.

(5) Where a water main is alongside a street and within 18 metres of the middle of that street, paragraphs (2) to (4) shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.

(6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

(7) Paragraphs (5) to (8) of Article 79 shall have effect—

- (a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this Article; and
- (b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this Article at another person's expense,

as they have effect by virtue of that notice in relation to the duty which arises under that Article or, as the case may be, to works which the undertaker carries out under that Article at another person's expense.

(8) Subject to paragraph (9), a water undertaker may comply with any duty under this Article to lay a service pipe by laying a water main instead; but nothing in Article 79 or this Article shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.

(9) Where a water undertaker exercises its power under paragraph (8) to lay a water main instead of a service pipe—

- (a) sub-paragraph (a) of Article 85(1) shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that sub-paragraph for the laying of the service pipe; but
- (b) the expenses recoverable by virtue of Article 79(7) and paragraph (7) shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.

### **Conditions of connection concerning metering**

**81.**—(1) Where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker shall make compliance with the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—
  - (i) by the undertaker; or
  - (ii) in accordance with specifications approved by the undertaker;

(b) a requirement that—

- (i) subject to Article 89(1), so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and
- (ii) the plumbing of the premises,

comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in sub-paragraph (a) to be installed and connected as so mentioned.

(3) Specifications approved by any water undertaker for the purposes of paragraph (2)(a) or (b) may be approved—

- (a) in relation to particular premises; or
- (b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.

(4) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under this Article may be referred by either party for determination by the Authority under Article 61.

### **Conditions of connection with water main**

**82.**—(1) Subject to paragraph (3) and Articles 83 and 84, where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of Article 79(7) or 80(7) (b) on the person who served the connection notice;
- (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person’s failure to pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—
  - (i) in respect of a supply of water to the relevant premises; or
  - (ii) in respect of expenses reasonably incurred in the making of the disconnection;
- (c) a requirement that a separate service pipe has been provided—
  - (i) to each house or building on the relevant premises; or
  - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;
- (d) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under Article 106 has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;
- (e) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,
 of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this sub-paragraph; and
- (f) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) No condition shall be imposed by a water undertaker under paragraph (2)(c) unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.

(4) A condition shall not be imposed by a water undertaker under this Article or Article 81 on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of 14 days beginning with the day after the service of the connection notice.

(5) Any dispute as to whether any requirement of a kind mentioned in paragraph (2)(a), (b), (c) or (d) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.



- (6) Any dispute between a water undertaker and any other person as to whether—
- (a) any security required by a condition imposed under paragraph (2)(a) was reasonably required,
  - (b) the expenses referred to in paragraph (2)(b)(ii) were incurred reasonably, or
  - (c) in a particular case, paragraph (3) prevents a water undertaker from imposing a condition under paragraph (2)(c),

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(7) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Interest on sums deposited in pursuance of the deposit condition**

**83.**—(1) Where for the purposes of paragraph (2)(a) of Article 82 any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every 3 months during which it remains in the hands of the undertaker.

(2) An approval or determination by the Authority for the purposes of this Article—

- (a) may be given or made in relation to a particular case or description of cases or generally; and
- (b) may be revoked at any time.

### **Restrictions on imposition of condition requiring separate service pipes**

**84.**—(1) This Article applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.

(2) Where this Article applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this Article, may be imposed by virtue of Article 82(2)(c) unless the undertaker would have been entitled under Article 104 to require the provision of a separate service pipe if the reconnection had already been made.

### **Time for performance of connection etc. duties**

**85.**—(1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—

- (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
- (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of 14 days beginning with the relevant day.

(2) In any case in which a water undertaker is subject to any such duty as is mentioned in paragraph (1)(a), it shall be presumed, unless the contrary is shown in relation to that case, that the period of 21 days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

- (a) to lay so much of any service pipe; and

- (b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

- (3) Where—

- (a) a connection notice is served in respect of any premises; and
- (b) at the time when the notice is served, the customer's part of the service pipe to those premises has not been laid,

the duties of the undertaker under Articles 79 and 80 shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in paragraphs (3) to (5) of Article 80.

(4) In paragraph (3) the reference to the customer's part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of Article 80.

- (5) Where—

- (a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under Article 79(4)(a) to supplement that notice 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 to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this Article "the relevant day", in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

- (a) the day on which the notice was served on the undertaker;
- (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
- (c) the day on which all such conditions are satisfied as the undertaker has, under Articles 81 to 84, made conditions of its compliance with that duty.

### *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.

### *Domestic supplies*

#### **The domestic supply duty**

**91.**—(1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—

- (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises.

(2) Subject to the following provisions of this Article and to Article 92, a water undertaker shall owe a domestic supply duty in relation to any premises to which this Article applies if—

- (a) a demand for a supply of water for domestic purposes has been made, in accordance with paragraph (5), to the undertaker in respect of those premises; or
- (b) those premises are premises to which this Article applies by reason of a supply of water provided before the transfer date,

and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the transfer date.

(3) This Article applies to any premises if—

- (a) they consist in the whole or any part of a building and are connected by means of a service pipe to one of the undertaker's water mains; and
- (b) the requirements of paragraph (4) are satisfied in relation to those premises.

(4) The requirements of this paragraph are satisfied in relation to any premises if—

- (a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;
- (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before the transfer date;
- (c) the condition specified in sub-paragraph (b) would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before the transfer date; or
- (d) the condition specified in any of the preceding sub-paragraphs—
  - (i) has been satisfied in relation to the premises at any time on or after the transfer date; and
  - (ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).

(5) For the purposes of this Article a demand in respect of any premises is made in accordance with this paragraph if it is made—

- (a) by the person who is the occupier of the premises at the time when the demand is made; or
- (b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.

(6) For the purposes of this Article—

- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of

any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and

- (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.

(7) Nothing in this Article shall impose any duty on a water undertaker—

- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
  - (i) for the supply of water to those premises to be cut off or reduced; or
  - (ii) for the pipe to be disconnected,

for the purposes of the carrying out of any necessary works.

(8) In this Article references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of Articles 99 to 101 and 115.

### **Conditions of compliance with domestic supply duty**

**92.**—(1) Where a demand for the purposes of Article 91(2) has been made to a water undertaker in respect of any premises (“the relevant premises”), the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of providing his first supply of water in compliance with that demand.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person’s failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—
  - (i) in respect of a supply of water to the relevant premises; or
  - (ii) in respect of expenses reasonably incurred in cutting off any such supply;
- (b) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under Article 106 has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;
- (c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph; and
- (d) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in paragraph (2)(a) or (b) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) Any dispute between a water undertaker and any other person as to whether the expenses referred to in paragraph (2)(a)(ii) were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Enforcement of domestic supply duty**

**93.—**(1) A duty imposed on a water undertaker under Article 91—

- (a) to provide a supply of water to any premises; or
- (b) to maintain a connection between a water main and a service pipe by which such a supply is provided,

shall be owed to the consumer.

(2) Where a duty is owed by virtue of this Article to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### *Other supplies*

### **Supplies for non-domestic purposes**

**94.—**(1) This Article applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—

- (a) the premises are premises which do not consist in the whole or any part of a building; or
- (b) the requested supply is for purposes other than domestic purposes.

(2) Where this Article applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under Article 95—

- (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
- (b) having taken any such steps, to provide that supply.

(3) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in sub-paragraph (a).

(4) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—

- (a) the supply of water to those premises; or
- (b) the use of water in those premises,



of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph.

(5) Where—

- (a) a request has been made by any person to a water undertaker for the purposes of paragraph (2); and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

(6) Nothing in this Article shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.

(7) The duty of a water undertaker to supply water under this Article at the request of any person, and any terms and conditions determined under Article 95 in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.

(8) Except so far as otherwise provided by the terms and conditions determined under Article 95 in relation to any supply, the duties of a water undertaker under this Article shall have effect subject to the provisions of Articles 99 to 102 and 115.

### **Determinations on requests for non-domestic supplies**

**95.**—(1) Subject to paragraph (3), any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of Article 94 shall be determined—

- (a) by agreement between that person and the water undertaker; or
- (b) in default of agreement, by the Authority according to what appears to it to be reasonable.

(2) Subject to paragraph (3), the Authority shall also determine any dispute arising between any person and a water undertaker by virtue of paragraph (3) or (4) of Article 94.

(3) The Authority may, instead of itself making a determination under paragraph (1) or (2), refer any matter submitted to it for determination under that paragraph to the arbitration of such person as it may appoint.

(4) For the purposes of any determination under this Article by the Authority or any person appointed by the Authority, it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of Article 94.

(5) The charges in respect of a supply provided in compliance with any request made for the purposes of Article 94—

- (a) shall not be determined by the Authority or a person appointed by the Authority, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under Article 201 in respect of supplies of the applicable description; and
- (b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—
  - (i) recovering the expenses of complying with its obligations under Article 94; and
  - (ii) securing a reasonable return on its capital.

(6) To the extent that paragraph (5)(a) excludes any charges from a determination under this Article, those charges shall be fixed from time to time by a charges scheme under Article 201, but not otherwise.

(7) The determination of any matter under this Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Duty to provide a supply of water etc. for fire-fighting**

**96.**—(1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.

(2) Every water undertaker shall, at the request of the Northern Ireland Fire and Rescue Service Board (“the Board”), fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.

(3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.

(4) It shall be the duty of a water undertaker to ensure that the Board has been supplied by the undertaker with all such keys as the Board may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.

(5) Where a fire-hydrant is removed (other than at the request of the Board) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Subject to Article 97(3), the expenses incurred by a water undertaker in complying with its obligations under paragraphs (2) to (4) shall be borne by the Board.

(7) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

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

(9) In addition, where a water undertaker is in breach of its obligations under this Article, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(10) In any proceedings against any water undertaker for an offence under paragraph (9) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Specially requested fire hydrants**

**97.**—(1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.

(2) For the purposes of paragraph (1) a water main or other pipe is suitable, in relation to a factory or place of business, if—

- (a) it is situated in a road which is in or near to that factory or place of business; and
- (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

(3) Paragraph (6) of Article 96 shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under paragraphs (3) and (4) of that Article.

(4) Any expenses incurred by a water undertaker—

- (a) in complying with its obligations under paragraph (1); or
- (b) in complying, in relation to a specially requested fire-hydrant, with its obligations under Article 96(3) or (4),

shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.

(5) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Paragraphs (7) to (10) of Article 96 shall apply in relation to the obligations of a water undertaker under this Article as they apply to the obligations of a water undertaker under that Article.

(7) In this Article—

“factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20); and

“specially requested fire-hydrant” means a fire-hydrant which—

- (a) is fixed on a water main or other pipe of a water undertaker; and
- (b) was fixed on that main or pipe in pursuance of a request made by the owner or occupier of a factory or place of business.

### **Supplies for other public purposes**

**98.**—(1) A water undertaker shall, at the request of a sewerage undertaker, the Department or a district council, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains or for cleansing and watering roads.

(2) A supply of water provided by a water undertaker under this Article shall be provided upon such terms and conditions as may be reasonable.

(3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this Article if and only if it has a fire-hydrant fixed on it.

(4) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

(5) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Authority.

### *Disconnections*

### **Disconnections for the carrying out of necessary works**

**99.**—(1) Subject to the following provisions of this Article, a water undertaker may—

- (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises,

if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

(2) The power of a water undertaker under this Article to cut off a supply of water shall include power to reduce a supply of water.

(3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this Article to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.

(4) Where a water undertaker exercises its power under this Article to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—

- (a) that those works are carried out with reasonable dispatch; and
- (b) that any supply of water to those premises for domestic purposes is interrupted for more than 24 hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(5) Any breach by a water undertaker of the duty owed by virtue of paragraph (4) which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

### **Disconnections for non-payment of charges**

**100.**—(1) Subject to the following provisions of this Article, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises—

- (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
- (b) has failed to do so before the end of the period of 7 days beginning with the day after he is served with notice requiring him to do so.

(2) The power conferred by paragraph (1) is not exercisable in relation to any premises specified in Schedule 2.

(3) Where—

- (a) a water undertaker has served a notice for the purposes of sub-paragraph (b) of paragraph (1) on a person; and
- (b) within the period of 7 days mentioned in that sub-paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that paragraph in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in paragraph (4).

(4) For the purposes of paragraph (3) charges are enforceable in a manner specified in this paragraph against a person if—

- (a) the undertaker is able to enforce a judgment against that person for the payment of the charges; or
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

(5) A water undertaker which exercises its power under this Article to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.

(6) Where—

- (a) a water undertaker has power under this Article to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
- (b) a supply of water is provided to those premises and to other premises wholly or partly by the same service pipe,

the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.

### **Disconnections at request of customer**

**101.**—(1) Subject to the following provisions of this Article, a water undertaker may—

- (a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises,

if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.

(2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this Article.

### **General duties of undertakers with respect to disconnections**

**102.**—(1) Where a water undertaker—

- (a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and
- (b) does so without restoring the supply to that house before the end of the period of 24 hours beginning with the time when it is cut off,

the undertaker shall, no later than 48 hours after that time, serve notice that it has cut off that supply on the district council in whose district the house is situated.

(2) A water undertaker which fails, without reasonable excuse, to serve a notice on a district council as required by paragraph (1) shall be guilty of an offence under this Article.

(3) A water undertaker shall be guilty of an offence under this Article if—

- (a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under Articles 99 to 101, Article 115 or any other statutory provision; or
- (b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.

(4) A water undertaker which is guilty of an offence under this Article shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### *Use of limiting devices*

### **Prohibition of use of limiting devices**

**103.**—(1) A water undertaker shall be guilty of an offence under this Article if it uses a limiting device in relation to any premises specified in Schedule 2, with the intention of enforcing payment

of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this Article “a limiting device”, in relation to any premises, means any device or apparatus which—

- (a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and
- (b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this Article by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Means of supply*

#### **Supply by means of separate service pipes**

**104.**—(1) Subject to the following provisions of this Article, a water undertaker may require the provision of a separate service pipe to any premises which—

- (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
- (b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until—

- (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
- (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
- (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
- (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
- (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in sub-paragraph (d) is likely to take place.

(3) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in paragraph (2) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) If, in the case of any such premises as are described in paragraph (1), the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under paragraph (5)—

- (a) that consumer shall, within 3 months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of sub-paragraph (b);

- (b) Articles 79 to 85 shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
  - (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
    - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of Article 91 that such a supply is provided by means of the separate service pipe; and
    - (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice; and
  - (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.
- (5) If a person upon whom a notice has been served for the purposes of paragraph (4) fails to comply with the notice, the water undertaker may—
- (a) itself carry out the works which that person was required to carry out; and
  - (b) recover the expenses reasonably incurred by the undertaker in doing so from that person.
- (6) Without prejudice—
- (a) to the power of a water undertaker by virtue of sub-paragraph (b) of paragraph (4) to impose conditions under Article 82; or
  - (b) to the power conferred by virtue of sub-paragraph (d) of that paragraph,
- any works carried out by a water undertaker by virtue of the provisions of the said sub-paragraph (b) or of paragraph (5) shall be necessary works for the purposes of this Chapter.

### **Duties of undertakers as respects constancy and pressure**

**105.**—(1) Subject to the following provisions of this Article, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—

- (a) are used for providing supplies of water for domestic purposes; or
- (b) have fire-hydrants fixed on them,

to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.

(2) Nothing in paragraph (1) shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.

(3) For the purposes of this Article a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.

(4) Nothing in paragraph (1) shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

(5) The Department may by order modify the application of the preceding provisions of this Article in relation to any water undertaker.

(6) The Department shall not make an order under paragraph (5) except—

- (a) in accordance with Schedule 3; and

- (b) on an application made in accordance with that Schedule by the Authority or by the water undertaker in relation to which the order is made.
- (7) Subject to paragraph (6), an order under paragraph (5) shall be subject to negative resolution.
- (8) An order under paragraph (5) may—
  - (a) require the payment of compensation by a water undertaker to persons affected by the order; and
  - (b) contain such supplemental, consequential and transitional provision as the Department considers appropriate.
- (9) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Authority.
- (10) In addition, where a water undertaker is in breach of a duty under this Article, the undertaker shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (11) In any proceedings against any water undertaker for an offence under paragraph (10) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Requirements by undertaker for maintaining pressure**

**106.**—(1) A water undertaker may require that any premises consisting in—

- (a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Order, be constantly laid on under pressure; or
- (b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,

shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.

(2) A water undertaker may, in the case of such a house as is mentioned in sub-paragraph (b) of paragraph (1), require that a cistern the provision of which is required under that paragraph shall be capable of holding sufficient water to provide an adequate supply to the house for a period of 24 hours.

(3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—

- (a) to provide a cistern in accordance with a requirement under this Article; or
- (b) to put any such cistern and its float-operated valve into good repair,

the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.

(4) The period specified for the purposes of paragraph (3) in a notice under this Article shall be a period of not less than 28 days beginning with the day after the service of the notice.

(5) Where a water undertaker provides a cistern or carries out any repairs under paragraph (3), it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.

(6) In this Article “relevant house” means any house other than a house in relation to which the following two conditions are satisfied, that is to say—



- (a) the erection of the house was commenced before the transfer date; and
- (b) no such requirement as is mentioned in paragraph (1) or (2) could have been imposed by the Department in relation to the house under any statutory provision having effect immediately before that date.