
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Water and Sewerage Services
(Northern Ireland) Order 2006

PART VI

SEWERAGE SERVICES

CHAPTER II

PROVISION OF SEWERAGE SERVICES

Adoption of sewers and waste water treatment works

Adoption of sewers and waste water treatment works

159.—(1) Subject to the following provisions of this Article and to Articles 160, 162 and 206(3), a sewerage undertaker may at any time declare that—

- (a) any sewer which is situated within its area or which serves the whole or any part of that area; or
- (b) any lateral drain which communicates or is to communicate with a public sewer which—
 - (i) is so situated or serves the whole or any part of that area; and
 - (ii) is vested in that undertaker; or
- (c) any waste water treatment works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer, lateral drain or waste water treatment works with respect to which a sewerage undertaker might make a declaration under this Article may make an application to that undertaker requesting it to make a declaration under this Article with respect to the sewer, lateral drain or works.

(3) A declaration or application under this Article may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this Article—

- (a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question; and
- (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under Article 162 or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this Article, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
 - (b) whether the sewer or lateral drain is constructed under a road or under land reserved by a planning scheme for a street;
 - (c) the number of buildings which the sewer or lateral drain is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
 - (d) the method of construction and state of repair of the sewer, lateral drain or works; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.
- (6) Any person who immediately before the making of a declaration under this Article was entitled to use the sewer or lateral drain in question shall be entitled to use it, or any sewer or lateral drain substituted for it, to the same extent as if the declaration had not been made.
- (7) No declaration may be made under this Article in respect of—
- (a) any sewer or works the construction of which was completed before 1st October 1973;
 - (b) any lateral drain the construction of which was completed before the transfer date.

Adoption under Article 159: supplementary

160.—(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under Article 159 with respect to—

- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker;
- (b) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or
- (c) any waste water treatment works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under paragraph (1) to another undertaker, no declaration under Article 159 shall be made by the former undertaker until either—

- (a) the other undertaker has consented to the declaration; or
- (b) the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

(3) Where—

- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any waste water treatment works are vested, in a relevant body; and
- (b) in the case of a sewer, part of a sewer, lateral drain or works vested in a railway undertaking or harbour authority, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to that operator or authority and held or used by that operator or authority for the purposes of its undertaking,

a sewerage undertaker shall not make a declaration under Article 159 with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.

(4) Where a sewerage undertaker makes a declaration under Article 159 with respect to—

- (a) a sewer or lateral drain which is situated within the area of another sewerage undertaker; or
- (b) any waste water treatment works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this Article “relevant body” means any sewerage undertaker, district council, railway undertaking or harbour authority.

Agreements to adopt sewer, drain or waste water treatment works at future date

161.—(1) Subject to paragraph (7) and Article 206(3), a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
 - (i) any sewer;
 - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
 - (iii) any waste water treatment works; or
- (b) any person at whose expense the undertaker is, by virtue of an agreement under Article 221, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or waste water treatment works is or are 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 sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

(2) A person mentioned in sub-paragraph (a) or (b) of paragraph (1) may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this Article.

(3) An application under paragraph (2) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to paragraph (4) 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.

(4) Where—

- (a) a person who has made an application to a sewerage undertaker under paragraph (2) 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 162, 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.

(5) Any agreement made under this Article by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer, lateral drain or works to which it relates.

(6) Without limiting the terms which may be included in an agreement under this Article

- (a) such terms may include terms as to the provision of such security as the undertaker may reasonably require for the discharge of any obligations imposed on the other party to the agreement; and
- (b) such terms relating to a drain may include in particular —
 - (i) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
 - (ii) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
 - (iii) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
 - (iv) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.
- (7) A sewerage undertaker shall not make an agreement under this Article with respect to—
 - (a) a sewer, drain or waste water treatment works situated within the area of another sewerage undertaker; or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated; or
 - (ii) is vested in another sewerage undertaker,
 until one of the conditions mentioned in paragraph (8) is satisfied.
- (8) The conditions are—
 - (a) that the other undertaker has consented to the making of the agreement; or
 - (b) that the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

Appeals with respect to adoption

162.—(1) An owner of any sewer, lateral drain or waste water treatment works may appeal to the Authority if—

- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under Article 159; or
 - (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.
- (2) Subject to Article 161(4), a person constructing or proposing to construct a drain or sewer or any waste water treatment works may appeal to the Authority where a sewerage undertaker—
- (a) has refused an application under Article 161;
 - (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.
- (3) The time for the making of an appeal under paragraph (1) by the owner of any sewer, lateral drain or waste water treatment works shall be—
- (a) in the case of an appeal by virtue of sub-paragraph (a) of that paragraph, any time within two months after notice of the proposal is served on that owner; and

- (b) in the case of an appeal by virtue of sub-paragraph (b) of that paragraph, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this Article, the Authority may—
 - (a) in the case of an appeal under paragraph (1), allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
 - (b) in the case of an appeal under paragraph (2)—
 - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;and any declaration made under sub-paragraph (a) shall have the same effect as if it had been made by the undertaker in question.
- (5) Where the Authority makes a declaration under paragraph (4)(a), it may, if it thinks fit—
 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the Authority makes an agreement under paragraph (4)(b) on behalf of a sewerage 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 the Authority considers appropriate for ensuring that the terms of the agreement are reasonable.
- (7) The Authority, in deciding on an appeal under this Article whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in Article 159(5); and for the purposes of this paragraph, in its application in relation to an appeal under paragraph (2), sub-paragraphs (a) to (e) of Article 159(5) shall have effect with the necessary modifications.