
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART VIII

UNDERTAKERS' POWERS AND WORKS

CHAPTER I

UNDERTAKERS' POWERS

Abstraction and impounding of water

Abstraction and impounding of water

215.—(1) A relevant undertaker shall have power, for the purposes of carrying out its functions as such, to abstract water from, or impound water in, any waterway, or water contained in any underground strata, in the area of that undertaker.

(2) Paragraph (1) is subject to regulations under Article 20 of the Water Order.

(3) In paragraph (1) “waterway” has the same meaning as in the Water Order.

Powers in relation to land

Compulsory acquisition

216. Schedule 7 (which makes provision with respect to the compulsory acquisition of land) shall have effect in relation to a relevant undertaker.

Restriction on disposals of land

217.—(1) A company holding an appointment under Chapter I of Part III shall not dispose of any of its protected land, except with the consent of, or in accordance with a general authorisation given by, the Department.

(2) A consent or authorisation for the purposes of this Article shall be set out in a notice served by the Department on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or, as the case may be, on every such company.

(3) A consent or authorisation for the purposes of this Article may be given on such conditions as the Department considers appropriate.

(4) Without prejudice to the generality of paragraph (3) and subject to paragraph (5), the conditions of a consent or authorisation for the purposes of this Article may include—

(a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question is to be made available, in such manner and on such terms as may be specified

in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;

- (b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part III as relate to the disposal of its protected land;
- (c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park or an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—
 - (i) consult with DOE; and
 - (ii) enter into such agreements under Article 9 of the [Nature Conservation and Amenity Land \(Northern Ireland\) Order 1985 \(NI 1\)](#) or Article 34 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#) (management agreements) or such covenants under paragraph (6) as the Department may determine;
- (d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in sub-paragraph (c), either by DOE or only after consultation with DOE.

(5) A consent or authorisation shall not be given on any such condition as is mentioned in paragraph (4)(a) except where the Department is satisfied that the condition will have effect in relation only to—

- (a) land which was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or
- (b) land situated in a National Park or an area of outstanding natural beauty or special scientific interest.

(6) Where a company holding an appointment under Chapter I of Part III is proposing, in such a case as is mentioned in paragraph (4)(c), to dispose of any of its protected land, it may enter into a covenant with the Department by virtue of which it accepts obligations with respect to—

- (a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or
- (b) the use or management of the land;

and a covenant under this paragraph shall bind all persons deriving title from or under that company and shall be enforceable by the Department accordingly.

(7) Article 8 shall have effect for the purposes of this Article as if every proposal which—

- (a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park or an area of outstanding natural beauty or special scientific interest; and
- (b) is a proposal for which the Department's consent or authorisation is required under this Article,

were a proposal relating to the functions of such an undertaker.

(8) In this Article—

“area of outstanding natural beauty or special scientific interest” means an area which—

- (a) is for the time being designated as an area of outstanding natural beauty under Article 14 of the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#); or
- (b) is an area in relation to which a notification under Article 28 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#) (areas of special scientific interest) for the time being has effect;

“National Park” means an area designated as a National Park under Article 12 of the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#).

Byelaws with respect to undertakers' waterways and land

218.—(1) Every relevant undertaker shall have power to make such byelaws as are mentioned in paragraph (2) with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.

(2) The byelaws referred to in paragraph (1) in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—

- (a) the preservation of order on or in any such waterway or land;
- (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
- (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.

(3) Without prejudice to the generality of any of the sub-paragraphs of paragraph (2), the byelaws mentioned in that paragraph include byelaws—

- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
- (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;
- (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;
- (d) providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by—
 - (i) a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws; and
 - (ii) in the case of a continuing offence, an additional fine not exceeding one twentieth of level 5 on the standard scale for each day during which the offence continues after written notice of the offence is given by the undertaker making the byelaws;
- (e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.

(4) Schedule 8 shall have effect with respect to byelaws under this Article.

(5) Byelaws made under this Article shall cease to have effect at the end of the period of 10 years beginning with the day on which they were made; but the Department may by order make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.

(6) In this Article—

“boat” includes a vessel of any description, and “boating” shall be construed accordingly;

“waterway” means any lough, river, canal, reservoir or other waters which are, or can reasonably be rendered, suitable for sailing, boating, bathing or fishing.

Pipe-laying

Power to lay pipes in a street

219.—(1) Subject to the following provisions of this Article, to Article 223(10) and to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a) or (b), including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials.

(2) Without prejudice to the generality of paragraph (1)(c), every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for—

- (a) controlling or maintaining the flow of water in those pipes; or
- (b) the purposes of fire-fighting.

(3) The power conferred by paragraph (2) shall include power to attach any such notice as is mentioned in that paragraph to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the Department before determining in accordance with this paragraph where to fit a stopcock in a road.

(5) Where a water undertaker exercises its powers under this Article for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.

(6) Subject to Article 222(7), in this Article references to a relevant pipe shall be construed—

- (a) in relation to a water undertaker, as references to a water main (including a trunk main, resource main, discharge pipe or service pipe); and
- (b) in relation to a sewerage undertaker, as references to—
 - (i) any sewer or disposal main; or
 - (ii) in relation to the exercise of a power to lay a pipe under sub-paragraph (a) of paragraph (1) or a power related to that power under sub-paragraph (c) of that paragraph, any lateral drain which the undertaker is to lay by virtue of Article 154 or 158; or
 - (iii) in relation to the exercise of any other power under paragraph (1), any lateral drain which belongs to or is vested for the time being in the undertaker.

(7) Paragraphs (8) and (10) apply where—

- (a) an appointment or variation has been made under Article 14 replacing a company as a relevant undertaker,
- (b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and
- (c) the conditions mentioned in paragraph (5) of that Article were required to be satisfied in relation to each of the premises in those parts served by that company.

(8) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this Article and Article 220 in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in paragraph (7)(c) with a supply of water which exceeds, or is likely to exceed, 100 megalitres in any period of 12 months shall, for the purposes of paragraph (6), be deemed to be a water main.

(9) Where the Department makes regulations under Article 14(6) amending Article 14(5)(a) it shall by regulations make the corresponding amendment in paragraph (8).

(10) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this Article and Article 220 in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of paragraph (6), be deemed to be a sewer.

Power to lay pipes in other land

220.—(1) Subject to the following provisions of this Article, to Article 223(10) and to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a) or (b).

(2) Nothing in paragraph (1) shall authorise a water undertaker to lay a service pipe in, on or over any land except where—

- (a) there is already a service pipe where that pipe is to be laid; or
- (b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of paragraphs (3) to (5) of Article 80.

(3) The power conferred by virtue of sub-paragraph (b) of paragraph (1), and the power conferred in relation to that paragraph by virtue of sub-paragraph (c) of that paragraph shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.

(4) The powers conferred by this Article shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(5) Subject to paragraph (6), in relation to any exercise of the powers conferred by this Article for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of paragraph (4) shall be deemed—

- (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be 3 months; and
- (b) where the power is exercised for the purpose of altering an existing pipe, to be 42 days.

(6) Paragraph (5) shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—

- (a) laying or altering a service pipe; or
- (b) complying with a duty imposed under Article 76 or 154.

(7) Subject to paragraph (2), in this Article “relevant pipe” has the same meaning as in Article 219 (reading references there to paragraph (1) as references to paragraph (1) of this Article).

Other works powers

Power to carry out works and discharge surface water for sewerage purposes

221.—(1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person’s expense—

- (a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or
- (b) any work which the undertaker has required that person to carry out under Part VI;

and for that purpose the undertaker shall have all such rights as that person would have.

(2) Sections 255 and 260 of the [Public Health \(Ireland\) Act 1878 \(c. 52\)](#) and section 7 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962 (which provide for the recovery of expenses incurred by a district council) shall apply in relation to the recovery by a sewerage undertaker of any sums under paragraph (1) as they apply in relation to the recovery of expenses under that Act by a district council.

(3) A sewerage undertaker may for the purposes of any of its functions discharge surface water into any available watercourse or harbour.

(4) Paragraphs 1 and 2 of Schedule 10 apply in relation to the power conferred by paragraph (3) as they apply in relation to a power to carry out works.

Power to deal with foul water and pollution

222.—(1) Subject to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a), including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials;

and the provisions of Article 219 shall, so far as applicable, have effect in relation to the powers conferred by this paragraph as they have effect in relation to the powers conferred by paragraph (1) of that Article.

(2) Subject to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a);

and the provisions of Article 220 shall, so far as applicable, have effect in relation to the powers conferred by this paragraph as they have effect in relation to the powers conferred by paragraph (1) of that Article.

(3) Without prejudice to the powers conferred by paragraphs (1) and (2) but subject to the provisions of Chapter III, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

- (a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or
- (b) of otherwise preventing the pollution—
 - (i) of any waters, whether on the surface or underground, which belong to any water undertaker or from which any water undertaker is authorised to take water;
 - (ii) without prejudice to head (i), of any reservoir which belongs to or is operated by any water undertaker or which any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
 - (iii) of any underground strata from which any water undertaker is for the time being authorised to abstract water.

(4) Where any water undertaker is proposing to carry out any such works as are mentioned in paragraph (3) and the proposed works will affect any watercourse, the undertaker shall consult DOE before carrying out the works.

(5) Without prejudice to Articles 245 to 250, nothing in paragraph (3) shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority is authorised to take or use for the purposes of its undertaking.

(6) Any dispute as to whether any consent for the purposes of paragraph (5) is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) In Article 219 the references to the laying of a relevant pipe shall include references—

- (a) to the laying of any drain or sewer for any of the purposes mentioned in paragraph (3) (a) and (b); and
- (b) to the construction of a watercourse for any of those purposes.

(8) In this Article—

“relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and

“waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

Works in connection with metering

223.—(1) Subject to the following provisions of this Article, to Article 208 and to the provisions of Chapter III, where—

- (a) paragraph (2) applies to a relevant undertaker in respect of any premises; and
- (b) there is either—

- (i) a service pipe which is connected with a water undertaker's water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or
 - (ii) a drain or private sewer which connects those premises with a public sewer,

the undertaker shall have power, in accordance with Article 233 or otherwise, to carry out any works specified in paragraph (4).
- (2) This paragraph applies to a relevant undertaker in respect of any premises if—
 - (a) the undertaker has fixed any charges in relation to any premises by reference to volume, or
 - (b) the undertaker is entitled so to fix any charges because the person who is the consumer in relation to the premises for the purposes of Chapter I of Part VII has exercised his right to give—
 - (i) a measured charges notice under Article 204, or
 - (ii) any consent for the purposes of Article 205(2)(a)(ii),

and has not revoked the measured charges notice or consent under Article 204, or
 - (c) the undertaker has given notice of its intention of so fixing any charges—
 - (i) within the period specified in the notice, or
 - (ii) in a case where it is not for the time being entitled so to fix the charges, if and when it becomes entitled to do so.
- (3) The power under paragraph (1) to carry out works specified in paragraph (4) shall include power to carry out any such works in a street; and the power conferred by virtue of paragraph (1)(c) of Article 219 and paragraph (6) of that Article shall apply in relation to the power conferred by this paragraph as they apply in relation to the powers conferred by that Article.
- (4) The works mentioned in paragraphs (1) and (2) are, in relation to any premises—
 - (a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;
 - (b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for that house;
 - (c) works for the purpose of maintaining, repairing, disconnecting or removing—
 - (i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or
 - (ii) any pipes or apparatus installed in the course of any works specified in this Article;
 - (d) works consisting of the installation and connection of any meter for research purposes or for the purpose of maintaining, repairing disconnecting or removing any such meter;
 - (e) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in sub-paragraph (a), (b), (c) or (d) including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (5) A notice given for the purposes of paragraph (2)(c) may relate to particular premises or to any description of premises and shall be given—
 - (a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and
 - (b) by serving a copy of the notice on the Department.

(6) Subject to paragraph (7), any works carried out by a water undertaker by virtue of the provisions of this Article shall be necessary works for the purposes of Chapter II of Part IV.

(7) Nothing in this Article affects the operation of paragraph (4)(b) of Article 104 in a case where a water undertaker has, under Article 104, required the provision of a separate service pipe to any premises.

(8) Part II of Schedule 4 shall apply to the powers conferred by this Article.

(9) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this Article to carry out any works on any premises shall be referred to the arbitration of a single arbitrator appointed—

- (a) by agreement between the undertaker and that person; or
- (b) in default of agreement, by the Authority.

(10) Without prejudice to paragraph (3), nothing in Article 219, 220 or 222 shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

Power to fit stopcocks

224.—(1) Subject to paragraph (2) and without prejudice to Article 220, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker, whether that pipe belongs to the undertaker or to any other person.

(2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

Agreements for works with respect to water sources

225.—(1) A water undertaker may enter into agreements under this Article with the owners and occupiers of any land, or with DARD, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—

- (a) for the purpose of draining that land; or
- (b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.

(2) Before entering into an agreement under this Article with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult DOE and, if the watercourse is subject to the jurisdiction of a navigation authority, that authority.

(3) An agreement under this Article with the owner of any land which is expressed to be binding on and enforceable against the owner's successors in title to that land—

- (a) may be registered in the Statutory Charges Register; and
- (b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.

Powers to discharge water

Discharges for works purposes

226.—(1) Subject to the following provisions of this Article and to Article 227, where any water undertaker—

- (a) is exercising or about to exercise any power conferred by Article 219, 220, 222 or 224 (other than the power conferred by Article 222(3)); or
- (b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,

the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

(2) Nothing in this Article shall authorise any discharge which—

- (a) damages or injuriously affects the works or property of any railway undertaking or navigation authority; or
- (b) floods or damages any road.

(3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this Article is as free as may be reasonably practicable from—

- (a) mud and silt;
- (b) solid, polluting, offensive or injurious substances; and
- (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

the undertaker shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) In this Article “relevant pipe” means any water main (including a trunk main), resource main, discharge pipe or service pipe.

Consents for certain discharges under Article 226

227.—(1) Except in an emergency, no discharge through any pipe the diameter of which exceeds 300 millimetres shall be made under Article 226 except with the consent of each relevant department and of any navigation authority which carries out functions in relation to—

- (a) the part of the watercourse where the discharge is made; or
- (b) any part of that watercourse which is less than three miles downstream from the place of the discharge.

(2) Where a water undertaker makes an application for a consent for the purposes of this Article—

- (a) that application shall be accompanied or supplemented by all such information as a relevant department or the navigation authority may reasonably require; and
- (b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—
 - (i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and
 - (ii) has not agreed in writing that he need not be served with such a copy;

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.

(3) Subject to paragraph (4), an application for a consent for the purposes of this Article shall be determined—

- (a) in the case of an application with respect to a particular discharge, before the end of the period of 7 days beginning with the day after the application is made; and
- (b) in any other case, before the end of the period of 3 months beginning with that day;

and, subject to that paragraph, where an application for any consent is required to be determined within the period specified in sub-paragraph (a) and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

- (a) an undertaker which has made an application for a consent for the purposes of this Article has failed to comply with its obligation under paragraph (2)(a) to supplement that application with information required by a relevant department or the navigation authority; and
- (b) that requirement was made by the relevant department or the navigation authority at such a time before the end of the period within which that department or authority is required to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,

that department or authority may delay its determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this Article may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the body giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this Article should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under Article 226 is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this Article, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—

- (a) states that the discharge has been made; and
- (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.

(8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this Article or any condition of a consent given for the purposes of this Article, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) This Article does not apply in relation to a discharge which—

- (a) is being made immediately before the transfer date; and
- (b) is (disregarding this Article) authorised by Article 226.

(10) For the purposes of this Article the relevant departments are DARD, DOE and DCAL.

Compulsory works orders

Compulsory works orders

228.—(1) Where a water undertaker is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—

- (a) to carry out any engineering or building operations; or
- (b) to discharge water into any inland waters or underground strata,

the undertaker may apply to the Department for an order under this Article (“a compulsory works order”).

(2) Subject to the following provisions of this Article, the Department may, on an application under paragraph (1), by order—

- (a) confer such compulsory powers; and
- (b) grant such authority,

as it considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

(3) Schedule 9 shall have effect with respect to applications for compulsory works orders and with respect to such orders.

(4) Subject to the provisions of Schedule 9, a compulsory works order may—

- (a) without prejudice to Article 216, confer power to acquire compulsorily any land, including power to acquire land by the creation of new rights and interests;
- (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this sub-paragraph;
- (c) make any authority granted by the order subject to such conditions as may be specified in the order;
- (d) amend or repeal any local statutory provision;
- (e) contain such supplemental, consequential and transitional provision as the Department considers appropriate.

(5) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by the Water Order in relation to the abstraction or impounding of water.

(6) A compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.

(7) In this Article the reference to the relevant provisions of this Part is a reference to the provisions of this Part except Articles 233 and 235, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

Entry to land, etc. by relevant undertakers

Entry for works purposes

229.—(1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in paragraph (2).

- (2) The purposes mentioned in paragraph (1) are—
- (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or
 - (ii) how any such power should be exercised; or
 - (b) the exercise of any such power.
- (3) The power, by virtue of paragraph (1), of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
 - (b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—
 - (i) considers necessary for the purpose of determining either of the matters mentioned in paragraph (2)(a); and
 - (ii) has authorised that person to take away and analyse.
- (4) Part II of Schedule 4 shall apply to the rights and powers conferred by this Article.
- (5) In this Article “relevant works power” means any power conferred by any of the provisions of Articles 215, 219, 220, 221(3), 222, 224 and 226, other than Article 222(3).

Power to carry out surveys and search for water

230.—(1) Without prejudice to the rights and powers conferred by Article 229, any person designated in writing under this Article by a water undertaker may enter any premises for any of the purposes specified in paragraph (2).

- (2) The purposes mentioned in paragraph (1) are the carrying out of any survey or tests for the purpose of determining—
- (a) whether it would be appropriate for the undertaker to acquire any land for purposes connected with the carrying out of its functions; or
 - (b) whether it would be appropriate for the undertaker to apply for a compulsory works order under Article 228 and what compulsory powers it would be appropriate to apply for under that Article.
- (3) The power by virtue of paragraph (1) of a person designated under this Article to enter any premises for the purpose of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
 - (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in paragraph (2) may be made; and
 - (c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) Part II of Schedule 4 shall apply to the rights and powers conferred by this Article.

Entry etc. for other purposes

231.—(1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—

- (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of Part IV to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under Article 104(5), 106(3) or 115; or
 - (ii) how any such power should be exercised;
- (b) the exercise of any such power;
- (c) the monitoring and recording of—
 - (i) whether water supplied to any premises for domestic or food production purposes is wholesome at the time of supply; or
 - (ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,and the carrying out of any tests for that purpose.

(2) Any person designated for the purpose—

- (a) by any water undertaker within whose area any waterworks are situated; or
- (b) by any water undertaker which takes water from any waterworks,

shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of Article 112 in relation to those waterworks.

(3) Any person designated in writing for the purpose by a water undertaker may—

- (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Order with respect to any water fittings or with respect to the waste or misuse or undue consumption of water is being, or has been, contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under Article 114 should be exercised or performed; or
 - (iii) exercising any such power or performing any such duty; or
- (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that Article.

(4) During any period when a prohibition or restriction under Article 116 is in force, any person designated for the purpose by the water undertaker which imposed the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.

(5) The power by virtue of paragraph (1) of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—

- (a) considers necessary for the purpose of determining any of the matters mentioned in sub-paragraph (a) or (c) of that paragraph; and

(b) has authorised that person to carry out or take away.

(6) Expressions used in this Article and in any provision of Part IV in relation to which this Article has effect shall have the same meaning in this Article as in that provision; and, without prejudice to the generality of this provision, paragraphs (2) and (3) of Article 108 and the definitions of “food production purposes” and “wholesome” in Article 136(1) shall apply for the purposes of any power conferred by virtue of paragraph (1)(c)(i) as they apply for the purposes of that Article.

(7) Part I of Schedule 4 shall apply to the rights of entry conferred by paragraphs (2) and (4); and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this Article.

(8) The provisions of this Article shall be without prejudice to the other rights and powers conferred by this Part.

Entry for sewerage purposes

232.—(1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;
- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;
- (c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;
- (d) generally for the purpose of carrying out the undertaker’s functions under the relevant sewerage provisions.

(2) Part I of Schedule 4 shall apply to the right of entry conferred by paragraph (1).

(3) Any person designated by a sewerage undertaker under paragraph (1) for the purpose of exercising any power under this Article for the purposes of Chapter III of Part VI may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent or any other liquid or substance which is passing (either directly or through a drain or private sewer) from those premises into any of the undertaker’s public sewers.

(4) The power by virtue of paragraph (1) of a person designated under that paragraph to enter any premises shall include power to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such matter as is mentioned in sub-paragraph (a) or (b) of that paragraph may be ascertained.

(5) In this Article “trade effluent” has the same meanings as in Chapter III of Part VI; and, accordingly, Article 198 shall have effect for the purposes of this Article as it has effect for the purposes of that Chapter.

Entry for metering purposes

233.—(1) Where the conditions set out in Article 223(1) are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in paragraph (2).

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

- (a) the carrying out of any survey or tests for the purpose of determining—

- (i) whether the carrying out of any works by virtue of sub-paragraph (a) or (b) of paragraph (4) of Article 223 is practicable;
- (ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those sub-paragraphs for any other works to be carried out; or
- (iii) how any works specified in that paragraph should be carried out;
- (b) the carrying out of any works so specified;
- (c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;
- (d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.

(3) Part II of Schedule 4 shall apply in relation to the rights and powers conferred by the preceding provisions of this Article.

(4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part VI for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this Article) for the purpose of reading that meter or apparatus exercise the power conferred by Article 232 as if that purpose were included in the purposes mentioned in paragraph (1) of that Article.

Regulations as to taking of, and dealing with, samples

234. The Department may by regulations make provision as to the procedure to be followed in connection with the taking of, and dealing with, samples under Articles 229 to 232.

Impersonation of persons entitled to entry

235.—(1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) For the purposes of this Article it shall be immaterial, where a person purports to be entitled to enter any premises, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

Chapter ii

Protection of Undertakers' Works, Apparatus, etc.

Protection of apparatus in general

Offences of interference with works, etc.

236.—(1) Subject to paragraphs (3) and (4), if any person without the consent of the water undertaker—

- (a) intentionally or recklessly interferes with—
 - (i) any resource main, water main or other pipe vested in any water undertaker; or
 - (ii) any structure, installation or apparatus belonging to any water undertaker; or

- (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence.

- (2) Subject to paragraph (3), if any person without the consent of the sewerage undertaker—

- (a) intentionally or recklessly interferes with—

- (i) any sewer, lateral drain or other pipe vested in any sewerage undertaker; or
- (ii) any structure, installation or apparatus belonging to any sewerage undertaker; or

- (b) by any act or omission negligently interferes with any such sewer, lateral drain or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence.

(3) A person shall not be guilty of an offence under paragraph (1) or (2) by reason of anything done in an emergency to prevent loss or damage to persons or property.

(4) A person shall not be guilty of an offence under paragraph (1) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—

- (a) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
- (b) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.

- (5) Any person who, without the consent of the water undertaker—

- (a) attaches any pipe or apparatus—

- (i) to any resource main, water main or other pipe vested in a water undertaker; or
- (ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;

- (b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
- (c) subject to paragraph (7), uses any pipe or apparatus which has been attached or altered in contravention of this Article,

shall be guilty of an offence.

- (6) Any person who, without the consent of the sewerage undertaker—

- (a) attaches any pipe or apparatus to any sewer, lateral drain or other pipe vested in a sewerage undertaker; or
- (b) makes any alteration in a sewer, lateral drain or other pipe vested in the undertaker, or in any apparatus attached to any such sewer lateral drain or other pipe; or
- (c) subject to paragraph (7), uses any pipe or apparatus which has been attached or altered in contravention of this Article,

shall be guilty of an offence.

(7) In proceedings against any person for an offence by virtue of paragraph (5)(c) or (6)(c) it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in the paragraph in question.

(8) Any person who intentionally, recklessly or negligently damages or permits to be damaged any water fitting belonging to a relevant undertaker shall be guilty of an offence.

(9) Any person who, without the consent of a relevant undertaker, causes any building to be erected over or in the vicinity of a pipe vested in that undertaker so as to have an effect on the use or operation of the pipe shall be guilty of an offence.

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

(11) An offence under this Article shall constitute a breach of a duty owed to the relevant undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(12) The amount recoverable by virtue of paragraph (11) from a person who has committed an offence under paragraph (5) shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(13) A relevant undertaker may—

- (a) do all such work as is necessary for repairing any damage done in contravention of paragraph (1), (2) or (9); and
- (b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.

(14) In this Article “consumer” and “water fitting” have the same meanings as in Part IV; and in paragraphs (1) and (2) the references to apparatus include water fittings but do not include references to any meter which is used by a water undertaker or, as the case may be, a sewerage undertaker for the purpose of determining the amount of any charges which have been fixed by that undertaker by reference to volume.

Protection of meters

Offence of tampering with a meter

237.—(1) If any person—

- (a) so interferes with a meter used by any relevant undertaker in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or
- (b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of an offence under this Article in respect of anything done by him with the consent under Article 238 of the relevant undertaker which uses the meter or (if the meter is used by more than one relevant undertaker) each of those undertakers.

Consent for the purposes of Article 237

238.—(1) Where an application is made to any relevant undertaker for a consent for the purposes of Article 237, the undertaker—

- (a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and

- (b) subject to paragraph (2), may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.

(2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in paragraph (1)(b), unless it is reasonable to do so.

(3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in paragraph (1)(b), the undertaker—

- (a) shall carry out those works as soon as reasonably practicable after giving the notice; and
- (b) may recover from that person any expenses reasonably incurred by it in doing so.

(4) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

- (a) as to whether the undertaker or that other person should bear any expenses under paragraph (3); or
- (b) as to the amount of any expenses to be borne by any person under that paragraph,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Authority.

(5) Paragraph (3) shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

Financial obligations with respect to any interference with a meter

239.—(1) A relevant undertaker which carries out any works made necessary by the commission of an offence under Article 237 shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.

(2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—

- (a) to comply with any obligation imposed on it by Article 238; or
- (b) to exercise reasonable care in the performance of the duty imposed by paragraph (3)(a) of that Article,

shall be entitled to recover compensation from the undertaker.

(3) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

- (a) as to whether the undertaker or that other person should bear any expenses under this Article;
- (b) as to whether the undertaker should pay any compensation under this Article; or
- (c) as to the amount of any expenses to be borne by any person under this Article or as to the amount of any such compensation,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Authority.

Obstruction of works, etc.

240.—(1) A person who intentionally obstructs any person acting in the execution of—

- (a) any provision of Chapter II or III of Part IV or Article 225, 228, 230, 231 or 250; or
- (b) any of the relevant sewerage provisions,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) If on an application made by the owner of any premises, it appears to the county court that the occupier of those premises is preventing the owner from carrying out any work which he is required or authorised to carry out under any of the provisions mentioned in paragraph (1)(a) or (b), the court may authorise the owner to enter the premises and execute the work.

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

Vesting of works in undertaker

241.—(1) Subject to paragraph (3) and to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—

- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
- (b) every water treatment works or waste water treatment works constructed by a relevant undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

(2) In addition—

- (a) every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter II of Part IV takes effect shall also vest in that undertaker; and
- (b) every sewer, lateral drain or waste water treatment works with respect to which a declaration of vesting made by a sewerage undertaker under Chapter II of Part VI takes effect shall also vest in that undertaker.

(3) Paragraph (1) shall not apply—

- (a) to a service pipe laid in a street other than the street in which the water main with which it connects is situated;
- (b) to a service pipe laid otherwise than in a street where that pipe is laid—
 - (i) in pursuance of the duty imposed by virtue of Article 80(4); or
 - (ii) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.

(4) If any water fittings let for hire by a water undertaker are suitably marked, they—

- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
- (b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this paragraph affects the valuation for rating of any rateable hereditament.

(5) The preceding provisions of this Article are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of—

- (a) any transfer scheme under Article 270 or Schedule 1;
 - (b) the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.
- (6) In this Article—
- “relevant pipe”—
- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
 - (b) in relation to a sewerage undertaker, means any sewer, lateral drain or disposal main; and
- “water fittings” has the same meaning as in Part IV.

(7) For the purposes of this Article water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this Article if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

Compensation for loss or damage caused by works etc.

242.—(1) In executing any works under this Part a relevant undertaker shall—

- (a) cause as little detriment and inconvenience and do as little damage as possible; and
- (b) make good, or pay compensation for, any loss or damage caused by, or in consequence of, the execution of the works.

(2) Compensation shall not be payable to any person under paragraph (1)(b) in relation to any matter as to which he has been in default.

(3) Any question arising as to—

- (a) the entitlement of any person to compensation under this Article; or
- (b) the amount payable by way of that compensation,

shall, in default of agreement, be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) shall apply with appropriate modifications to such determination.

(4) Compensation under this Article in respect of damage to land shall not be payable to any person from whom any land has been acquired by the undertaker under this Order and to whom any compensation is payable under Article 8(1) to (3) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) by the undertaker in respect of injurious affection of the first-mentioned land.

(5) In assessing compensation under this Article in respect of damage to land regard shall be had to any benefit which the person entitled to the compensation may derive from any works which have been or are to be carried out, or any use of land, by the person causing the damage.

(6) In assessing compensation under this Article in respect of damage to land regard shall also be had to any undertaking given by the person causing the damage—

- (a) to make alterations or additions to any works;
- (b) to construct additional works;
- (c) to vary or abandon any use of land;
- (d) to abandon part of any land acquired or any ancillary rights; or
- (e) to grant other lands or easements.

(7) Where for the purpose of assessing the amount of any compensation payable under this Article the value of any land is required to be determined, that value shall be determined in accordance with rules (2) to (4) of Article 6(1) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#).

Complaints with respect to the exercise of works powers on private land, etc

243.—(1) Subject to paragraph (2), it shall be the duty of the Authority to investigate any complaint made or referred to it with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or under Article 220, 221 (3) or 222(2).

(2) The Authority shall not be required to investigate any such complaint as is mentioned in paragraph (1) if—

- (a) the complaint appears to the Authority to be vexatious or frivolous;
- (b) the Authority is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it;
- (c) the complaint was first made to the Authority or the Council more than 12 months, or such longer period as the Authority may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant; or
- (d) in the case of a complaint referred to the Council under Article 55, it appears to the Authority that the complaint is likely to be resolved under that Article.

(3) Where the Authority, in pursuance of its duty under this Article, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—

- (a) it shall be the duty of that undertaker to provide the Authority with all such information and assistance as it may reasonably require for the purposes of its investigation; and
- (b) it shall be the duty of the Authority, before giving any direction under paragraph (4), to consider any representations made to it by the complainant or by that undertaker with respect to the subject-matter of the complaint.

(4) If on a complaint under paragraph (1) with respect to the exercise of any powers by a relevant undertaker, the Authority is satisfied that that undertaker—

- (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
- (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

the Authority may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

(5) The Authority shall not under paragraph (4) direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other statutory provision except in so far as it appears to the Authority appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.

(6) The duties of a relevant undertaker by virtue of paragraph (3)(a) shall be enforceable under Article 30 by the Authority.

(7) A person to whom any amount is required, in pursuance of a direction under paragraph (4), to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this Article.

(8) The Department may by regulations substitute a different amount for the amount for the time being specified in paragraph (4).

Codes of practice with respect to work on private land

244.—(1) For the purposes of Article 243 it shall be the duty of every company holding an appointment under Chapter I of Part III as a relevant undertaker—

- (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Department for its approval a code of practice with respect to the exercise by the undertaker of any powers conferred by or under Article 220 or 222(2); and
- (b) if required to do so by the Department at any subsequent time, to submit proposed modifications of that code to the Department for its approval.

(2) The Department, if it considers it appropriate to do so for the purpose of promoting what appear to it to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part III as a relevant undertaker, of any powers conferred by or under Article 220 or 222(2), may at any time by order, in relation to that company—

- (a) approve any code of practice with respect to the exercise of those powers which has been submitted to it (whether or not under paragraph (1)) by that company for its approval;
- (b) approve any modifications of such a code which have been so submitted; or
- (c) withdraw its approval for any such code or modification.

(3) A contravention of a code of practice as for the time being approved under this Article in relation to a company shall not—

- (a) affect the powers conferred on that company as a relevant undertaker by this Part;
- (b) of itself entitle any person to be paid any amount under paragraph (4) of Article 243; or
- (c) give rise to any criminal or civil liability;

but the Authority shall take into account whether there has been any such contravention in determining whether to give a direction under that paragraph to that company and in determining the amount to which any such direction relates.

(4) The Department shall not make an order under paragraph (2) unless it has first consulted all such persons as the Department considers it appropriate to consult.

(5) The duties of a relevant undertaker under paragraph (1) shall be enforceable under Article 30 by the Department.

Protection for particular undertakings

245. Schedule 10 shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

Power of certain undertakers to alter public sewers, etc.

246.—(1) DARD, the Civil Aviation Authority or any harbour authority, railway undertaking or airport operator may, after giving reasonable notice to the sewerage undertaker concerned, at its own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—

- (a) are vested in the undertaker; and
- (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
 - (i) any watercourse or other works vested in or under the control of DARD for the purposes of its functions under the Drainage Order;
 - (ii) any property of the Civil Aviation Authority;
 - (iii) any river or works forming part of the undertaking of the harbour authority;

- (iv) the railway of the railway undertaking; or
- (v) the airport in question.

(2) In paragraph (1) “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will in the opinion of the sewerage undertaker concerned—

- (a) be equally effectual; and
- (b) entail no additional expense for the sewerage undertaker.

(3) In this Article “airport operator” means the person who is the airport operator for the purposes of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#) in relation to an airport to which Article 25 of that Order applies.

Duty to move pipes etc. in certain cases

247.—(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an estate in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an estate.

(2) Subject to paragraphs (3) and (4), where a notice is served on a relevant undertaker under paragraph (1), it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this Article shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under paragraph (1) that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under paragraph (5).

(5) Where a relevant undertaker carries out any works under this Article by virtue of a notice having been served by any person under paragraph (1), the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under paragraph (5), 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.

(7) An approval or determination by the Authority for the purposes of paragraph (6) may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this Article shall be enforceable under Article 30 by the Authority.

(9) In this Article—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in Article 219.

Protective provisions in respect of watercourses etc.

248.—(1) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

- (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
- (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Order, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(2) Any dispute as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions shall be referred, at the option of the party complaining, to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

Works in tidal lands etc.

249.—(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State and the Crown Estate Commissioners.

(2) An approval for the purposes of paragraph (1) shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.

(3) In paragraph (1) the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of Articles 219, 220, 222, 224 and 226, except the power conferred by Article 222(3).

Power to sell materials deriving from works

250.—(1) A relevant undertaker may sell any materials which—

- (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect any provision of this Order; and
- (b) are not before the end of 3 days from the date of their removal claimed by the owner and taken away by him.

(2) Where a relevant undertaker sells any materials under this Article, it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses incurred by the undertaker.

(3) This Article—

- (a) does not apply to refuse removed by a relevant undertaker; and
- (b) is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this Article do not apply.

Rights as to sewage

251. A sewerage undertaker—

- (a) shall be entitled to all sewage discharged into its sewers or waste water treatment works;
and
- (b) may process, sell or otherwise dispose of such sewage.

Interpretation

Interpretation of Part VIII

252.—(1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under Article 226.

(2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of Article 219) as the pipe replaced.

(3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.

(4) A relevant undertaker proposing to exercise any of its powers under Article 219 or 220 outside its own area shall, if paragraph (5) applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that paragraph applies, shall not carry out its proposal—

- (a) without the consent of that other undertaker; or
 - (b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Authority.
- (5) This paragraph applies where the proposal is to lay—
- (a) a water main which is not intended to be—
 - (i) a trunk main; or
 - (ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or
 - (b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.

(6) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

- (a) to maintain a pipe or a connection with it; or
 - (b) to alter a pipe only where certain conditions are satisfied,
- as are imposed on the undertaker by or under any statutory provision.

(7) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.