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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART X**

**REORGANISATION OF THE INDUSTRY**

*Finances of the successor company*

**Statutory reserves**

**275.**—(1) If the Department so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction shall be carried by the successor company to a reserve (“the statutory reserve”).

(2) The statutory reserve may only be applied by the successor company—

- (a) in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares; or
- (b) if the Department so directs, as if it were profits available for distribution within the meaning of Article 271(1) of the Companies (Northern Ireland) Order 1986.

(3) Notwithstanding paragraph (2), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of Article 272(3)(d) of the Companies Order; but for the purpose of determining under that Article whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve (excluding any amount which by virtue of paragraph (2)(b) is authorised to be, but has not yet been, applied as if it were profits available for distribution) shall be treated for the purposes of Article 272(3)(c) of that Order as if it were unrealised profits of the company.

**Accounts, etc. of successor company**

**276.**—(1) The Department shall, as soon as practicable, lay before the Assembly a copy of the documents mentioned in paragraph (2) which are laid before a general meeting of the successor company at a time when the company is wholly owned by the Crown.

(2) The documents referred to in paragraph (1) are—

- (a) the profit and loss account;
- (b) the group accounts;
- (c) the balance sheet;
- (d) the auditors' report;
- (e) the directors' report;

and expressions used in this paragraph have the same meaning as in the Companies Order.

(3) For the purposes of any statutory accounts of the successor company, the vesting in the successor company under Article 270 of assets and liabilities of the Department shall be taken to have been effected immediately after the end of the last complete financial year of the Department to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which the Department was entitled or subject immediately before the end of the year as are specified in the transfer scheme.

(4) The value of any asset and the amount of any liability which is taken under paragraph (3) to have been vested in the successor company shall be taken to have been—

- (a) the value or amount determined by or under the transfer scheme, or
- (b) (if no such provision is included in the transfer scheme) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the Department in respect of its last complete financial year to end on or before the transfer date.

(5) In this Article “statutory accounts” means any accounts (including group accounts) prepared for the purpose of any provision of the Companies Order.

#### **Restrictions on borrowing, charging, etc.**

**277.**—(1) If articles of association of the successor company confer on the Department powers exercisable with the consent of DFP for, or in connection with, restricting the sums of money which may be borrowed or raised by the successor company during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law or any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of the successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) The successor company may not, at any time before it ceases to be wholly owned by the Crown, charge any of its assets without the approval of the Department and DFP.

#### **Departmental lending, guarantees, etc.**

**278.**—(1) The Department may give financial assistance to the successor company in such form and upon such terms and conditions as the Department may determine.

(2) Without prejudice to the generality of paragraph (1), the Department may in exercise of its powers under that paragraph—

- (a) make loans or grants to the successor company;
- (b) write off the principal and interest of any loans so made or enter into an arrangement for the conversion into share capital of the principal and interest of loans so made;
- (c) guarantee obligations (arising out of loans or otherwise) incurred by the successor company.

(3) The Department may, upon such terms and conditions as it may determine, give to any person entering into a contract—

- (a) with the successor company; or
- (b) which in the opinion of the Department is directly or indirectly related to a contract entered or to be entered into by another person with the successor company,

any form of guarantee to meet any contingency arising out of or in connection with the contract.

(4) Immediately after any guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(5) If any sums are issued in fulfillment of a guarantee given under this Article the successor company shall make to the Department, at such times and in such manner as the Department may direct—

- (a) payments of such amounts as the Department may direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may direct.

(6) In this Article “guarantee” includes any form of indemnity or assurance.

(7) This Article applies to any subsidiary or subsidiary undertaking of the successor company as it applies to the successor company

#### **Exercise of certain functions of the Department under this Part**

**279.** The Department shall not, except with the consent of DFP, exercise any power under any of the following provisions of this Part, namely—

- (a) Article 269(1);
- (b) Article 270(1);
- (c) Article 271(1) to (4);
- (d) Article 272;
- (e) Article 274;
- (f) Article 275(1);
- (g) Article 278(1) to (3) and (7);
- (h) paragraph 3 of Schedule 11.