
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART XII

MISCELLANEOUS AND SUPPLEMENTAL

Supplemental

Prosecutions

299.—(1) Proceedings in respect of an offence created by or under any of the relevant sewerage provisions shall not, without the written consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than—

- (a) a party aggrieved;
- (b) a sewerage undertaker; or
- (c) a body whose function it is to enforce the provisions in question.

(2) Proceedings in respect of an offence created by or under Chapter II or III of Part IV or Article 226 or 227 shall not, without the written consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than—

- (a) a party aggrieved;
- (b) a water undertaker; or
- (c) a body whose function it is to enforce the provisions in question.

(3) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, proceedings for an offence under this Order which is triable only summarily may be brought at any time within 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings comes to the knowledge of the prosecutor; but no such proceedings shall be brought by virtue of this paragraph more than 2 years after the commission of the offence.

(4) For the purposes of paragraph (3) a certificate signed on behalf of the prosecutor and stating the date on which such evidence came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Regulations

300.—(1) Regulations under this Order—

- (a) shall (except where express provision is otherwise made) be made by the Department; and
- (b) shall be subject (except in the case of regulations under Article 15(1) or (2) or 297) to negative resolution.

- (2) Regulations under this Order may include—
- (a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker to be enforceable under Article 30 by the Department or by the Authority, or by either of those bodies;
 - (b) provision for enforcement of any such duty or requirement by the Authority to be subject to such consent or authorisation as may be prescribed;
 - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to Article 267;
 - (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
 - (e) provision for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
 - (i) as to the mode of proof of any matter;
 - (ii) as to parties and their representation;
 - (iii) for the right to appear before and be heard by the Department, the Authority and other authorities;
 - (iv) as to awarding costs of proceedings for the determination of any such questions, including the amount of the costs and the enforcement of the awards; and
 - (f) supplemental, incidental, consequential and transitional provision.
- (3) Any regulations under this Order which prescribe a period within which things are to be done may provide for extending the period so prescribed.

Directions

- 301.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.
- (2) Any power conferred by this Order to give a direction includes power to vary or revoke the direction.
- (3) Any direction given under this Order shall be in writing.

Power to prescribe forms

302. The Department may by regulations prescribe the form of any notice or other document to be used for any of the purposes of this Order.

Local inquiries

- 303.**—(1) The Department may cause a local inquiry to be held in any case where it is authorised by any provision of this Order to determine any difference, to make any order, to give any consent or to take any other action.
- (2) Any power of the Department to cause a local inquiry to be held under this Order includes power to cause that inquiry to be held by the Appeals Commission.
- (3) The Department may make rules regulating the procedure to be followed in connection with any local inquiry held under this Order other than by the Appeals Commission.

(4) Where—

- (a) an inquiry is to be held under this Order in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Order or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the inquiries be held concurrently or combined as one inquiry.

(5) In paragraph (4) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

(6) Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) applies in relation to a local inquiry held under this Order as it applies in relation to a local inquiry held under an enactment passed or made as mentioned in section 23 of that Act.

Construction of provision conferring powers by reference to undertakers' functions

304.—(1) Paragraphs (2) to (6) apply for the purpose of the construction of any statutory provision which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker.

(2) The functions of every relevant undertaker shall be taken to include joining with or acting on behalf of—

- (a) DOE or DARD;
- (b) one or more other relevant undertakers; or
- (c) any two or more of those bodies,

for the purpose of carrying out any works or acquiring any land which at least one of the bodies with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of that body’s functions under any statutory provision.

(3) The functions of every relevant undertaker shall be taken to include the protection against pollution—

- (a) 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;
- (b) without prejudice to sub-paragraph (a), 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; and
- (c) of any underground strata from which any water undertaker is for the time being authorised to abstract water.

(4) The functions of every relevant undertaker shall be taken to include the furtherance of research into matters in respect of which functions are conferred by or under this Order, the Drainage Order or the Water Order on DOE or DARD or on relevant undertakers.

(5) The functions of every relevant undertaker shall be taken to include the provision of houses and other buildings for the use of persons employed by that undertaker and the provision of recreation grounds for persons so employed.

(6) The functions of every water undertaker shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of that undertaker.

Local statutory provisions

305. Nothing in any local statutory provision passed or made before the transfer date shall be construed as relieving any relevant undertaker from any liability arising by virtue of this Order in respect of any act or omission occurring on or after that date.

Supplementary, incidental, consequential, transitional provision etc.

306.—(1) The Department may by order make—

- (a) such supplementary, incidental or consequential provision, or
- (b) such transitory, transitional or saving provision,

as it considers appropriate for the general purposes, or any particular purpose, of this Order, or in consequence of, or for giving full effect to, any provision made by this Order.

(2) An order under paragraph (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Order).

(3) The power to make an order under paragraph (1) includes power to repeal or revoke a statutory provision which is spent.

(4) Nothing in this Order affects the generality of the power conferred by this Article.

(5) No order shall be made under paragraph (1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

Application to the Crown

307.—(1) Subject to the provisions of this Article, this Order binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Order shall make the Crown criminally liable; but the High Court may, on the application of a relevant undertaker, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under this Order shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown land and any powers of entry exercisable in relation to it specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to that land, those powers shall not be exercised in relation to that land.

(5) Subject to paragraph (4), the powers conferred by Articles 216, 220, 222(2) and 228 shall be exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

“the appropriate authority” in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.

In this Article—

Amendments and repeals

308.—(1) The statutory provisions set out in Schedule 12 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 13 are hereby repealed to the extent specified in the second column of that Schedule.