
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART XII

MISCELLANEOUS AND SUPPLEMENTAL

The Water Appeals Commission

The Water Appeals Commission

292.—(1) There shall continue to be a body known as the Water Appeals Commission for Northern Ireland (in this Order referred to as “the Appeals Commission”).

(2) The Appeals Commission shall consist of—

- (a) a Chief Commissioner; and
- (b) such number of other Commissioners as the Office may determine.

(3) The Commissioners shall be appointed by the Office.

(4) Subject as follows a Commissioner shall hold office in accordance with the terms of his appointment.

(5) A Commissioner shall not—

- (a) engage directly or indirectly; or
- (b) be a partner of any person who so engages,

in a gainful profession, occupation or business if to do so would in any way be incompatible with his functions as a Commissioner.

(6) There shall be paid to a Commissioner or in respect of his service such remuneration and allowances and such pension, allowances or benefits as the Office may determine.

(7) The Office may appoint persons to assist the Appeals Commission in the performance of its functions.

(8) There shall be paid to persons appointed under paragraph (7) such remuneration and allowances and to, or in respect of the service of, those persons such pension, allowances or benefits as the Office may determine.

(9) A determination of the Office under this Article requires the approval of DFP.

(10) In this Article “the Office” means the Office of the First Minister and deputy First Minister.

Procedure of the Appeals Commission

293.—(1) Where, under this Order or any other statutory provision, the Appeals Commission may determine an appeal or other matter or inquire into any matter—

- (a) the jurisdiction of the Appeals Commission may be exercised by any one of the Commissioners nominated by the Chief Commissioner;
 - (b) the Chief Commissioner may, after consultation with the other Commissioners and the Office, appoint an assessor to sit with the Commissioner nominated under sub-paragraph (a) to advise him on any matters arising;
 - (c) notwithstanding sub-paragraphs (a) and (b) any decision on the appeal or other matter and any report on the inquiry shall be made by the Appeals Commission.
- (2) Paragraph (1)(b) does not apply where an appeal or other matter is to be decided solely by reference to written representations.
- (3) The Appeals Commission may pay to any assessor appointed under paragraph (1)(b) such fees and allowances as the Commission, with the approval of the Office, may determine.
- (4) Where an appeal is made to the Appeals Commission under any of the statutory provisions listed in paragraph (5), the Appeals Commission—
- (a) shall publish notice of the appeal in at least two newspapers circulating in the area to which the appeal relates; and
 - (b) may recover the expenses of that publication from the appellant.
- (5) The statutory provisions referred to in paragraph (4) are—
- (a) section 11A(4)(b) of the Fisheries Act (Northern Ireland) 1966 (c. 17) (fish culture licences);
 - (b) in the Water Order—
 - (i) Article 6(7) (water quality objectives);
 - (ii) Article 13(1)(a), (b), (c), (d), (f) and (g) (discharge consents); and
 - (iii) Article 20(3)(h) (abstraction and impounding of water).
- (6) Except in the case of a decision to which paragraph (9) or (10) applies, the Appeals Commission shall report its decision to the relevant Department which (subject to paragraph (7)) shall notify—
- (a) the applicant or appellant; and
 - (b) any other person appearing to that Department to be interested,
- of that decision.
- (7) Where a decision is reported to it under paragraph (6), the relevant Department may, after considering any representations made to it under paragraph (8)—
- (a) vary the decision of the Appeals Commission; or
 - (b) substitute for it a new decision.
- (8) Where the relevant Department intends to act under paragraph (7) it shall, within 28 days from the date on which the decision of the Appeals Commission is reported to it under paragraph (6)—
- (a) notify the appellant or applicant and any other interested person of its intention and of the reasons; and
 - (b) afford to those persons an opportunity of making representations to it.
- (9) This paragraph applies to a decision by the Appeals Commission on an appeal under any of the following statutory provisions—
- (a) Article 13(1) of the Water Order (discharge consents);
 - (b) Article 20(3)(h) of that Order (abstraction and impounding of water);
 - (c) Article 32(5) of that Order (exclusion from register of confidential information).

(10) This paragraph applies to a decision by the Appeals Commission under—

- (a) Article 120 (confirmation of private supply notices);
- (b) Article 172(5) (agreements as to use of sewers, etc);
- (c) the Drainage Order.

(11) The Appeals Commission’s decision, or any variation or substitution under paragraph (7) of that decision, shall be final except on a point of law.

(12) The Office may, after consultation with the Appeals Commission, make rules regulating the procedure to be followed by the Appeals Commission.

(13) Subject to—

- (a) any rules under paragraph (10); and
- (b) any other statutory provision,

the Appeals Commission may regulate its own procedure.

(14) In this Article—

“the Office” means the Office of the First Minister and deputy First Minister;

“the relevant department”, in relation to any decision of the Appeals Commission, means whichever of—

- (a) the Department;
- (b) DOE;
- (c) DARD; or
- (d) DCAL,

has functions under or in relation to the statutory provision conferring jurisdiction on the Commission to make that decision.

Miscellaneous

Directions in the interests of national security

294.—(1) The Secretary of State may, after consultation with a relevant undertaker, give to that undertaker such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security.

(2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security, he may, after consultation with a relevant undertaker, give to that undertaker a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker, notwithstanding any other duty imposed on it (whether or not by or under this Order), to comply with any direction given to it under this Article; and the duty of a relevant undertaker to comply with any such direction shall be enforceable under Article 30 by the Department.

(4) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as to the exercise of its functions under this Order as appear to the Secretary of State to be requisite or expedient in the interests of national security.

(5) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security, he may, after consultation with the Council, give to the Council a direction requiring it in the exercise of its functions under this Order to do, or not to do, a particular thing specified in the direction.

(6) The Council shall comply with any direction given to it under this Article.

(7) The Secretary of State shall lay before both Houses of Parliament a copy of every direction given under this Article unless he is of the opinion that disclosure of the direction is against the interests of national security.

(8) A person shall not disclose, or be required by virtue of any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Secretary of State has notified him that he is of the opinion that disclosure of that thing is against the interests of national security.

(9) Any person who discloses any matter in contravention of paragraph (8) shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Directions for preserving services or mitigating effects of emergency

295.—(1) The Department may, after consultation with a relevant undertaker, give to that undertaker such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings, installations, pipes or apparatus used for, or for purposes connected with, the provision of a water supply or sewerage services; or
- (b) preventing, or reducing, controlling or mitigating the effects of, any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any purpose mentioned in paragraph (1), it may, after consultation with a relevant undertaker, give to that undertaker a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker, notwithstanding any other duty imposed on it (whether or not by or under this Order), to comply with any direction given to it under this Article; and the duty of a relevant undertaker to comply with any such direction shall be enforceable under Article 30 by the Department.

(4) The Department may, after consultation with the Council, give to the Council such directions of a general character as to the exercise of its functions under this Order as appear to the Department to be requisite or expedient for any purpose mentioned in paragraph (1).

(5) If it appears to the Department to be requisite or expedient to do so for any purpose mentioned in paragraph (1), it may, after consultation with the Council, give to the Council a direction requiring it in the exercise of its functions under this Order to do, or not to do, a particular thing specified in the direction.

(6) The Council shall comply with any direction given to it under this Article.

(7) The Department shall lay before the Assembly a copy of every direction given under this Article unless the Secretary of State has notified it that he is of the opinion that disclosure of the direction is against the interests of national security.

(8) A person shall not disclose, or be required by virtue of any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.

(9) Any person who discloses any matter in contravention of paragraph (8) shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(10) In this Article “civil emergency” means any event or situation which, in the opinion of the Department, causes or is likely to cause, in relation to any area—

- (a) such—
 - (i) disruption of water supplies or sewerage services;

- (ii) loss of life, injury or illness; or
 - (iii) serious damage to property;
- as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, (whether by depriving them of any of the essentials of life or otherwise); or
- (b) serious harm to the environment (including the life or health of plants or animals in that area).

Abolition of Northern Ireland Water Council

296.—(1) On the transfer date—

- (a) any person holding office immediately before that date as chairman or other member of the Northern Ireland Water Council shall cease to hold that office; and
- (b) that Council is abolished.

(2) Accordingly—

- (a) Article 58 of the Water Order (constitution of that Council) is repealed;
- (b) the entry relating to that Council in Part VII of Schedule 1 to the Freedom of Information Act 2000 (c. 36) is repealed.

Safety of reservoirs

297.—(1) The Department may make regulations with respect to the construction, inspection, maintenance and repair of reservoirs and dams.

(2) In this Article “reservoir” includes any place where water is artificially retained to form or enlarge a lake or lough, whether or not use is or is intended to be made of the water.

(3) No regulations may be made under this Article unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

Civil liability of water undertaker for escape of water, etc

298.—(1) Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this Article, for the loss or damage.

(2) A water undertaker shall not incur any liability under paragraph (1) if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

(3) A water undertaker shall not incur any liability under paragraph (1) in respect of any loss or damage for which the undertaker would not be liable apart from that paragraph and which is sustained—

- (a) by a relevant undertaker or any statutory undertaker, within the meaning of Article 2(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#);
- (b) by the Department, in connection with its functions under the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#)
- (c) by DARD, in connection with its functions under the Drainage Order or the Lough Neagh Drainage Acts (Northern Ireland) 1955 and 1970;
- (d) by any person on whom a right to compensation is conferred by Article 42 of the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#);

- (e) by a person providing an electronic communications network within the meaning of section 32 of the Communications Act 2003 (c. 21);
- (f) by the Civil Aviation Authority; or
- (g) by a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 (c. 38).

(4) Section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23), the Fatal Accidents (Northern Ireland) Order 1977 (NI 18) and the Limitation (Northern Ireland) Order 1989 (NI 11) shall apply in relation to any loss or damage for which a water undertaker is liable under this Article, but which is not due to the undertaker's fault, as if it were due to its fault.

(5) Nothing in paragraph (1) affects any entitlement which a water undertaker may have to recover contribution under the Civil Liability (Contribution) Act 1978 (c. 47); and for the purposes of that Act, any loss for which a water undertaker is liable under that paragraph shall be treated as if it were damage.

(6) Where the Department is liable under any statutory provision or agreement passed or made before [the transfer date] to make any payment in respect of any loss or damage the undertaker shall not incur liability under paragraph (1) in respect of the same loss or damage.

(7) In this Article "fault" has the same meaning as in section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

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.