

## **WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006**

**S.I. 2006/3336 (N.I. 21)**

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### **EXPLANATORY MEMORANDUM**

#### **INTRODUCTION**

1. The Water and Sewerage Services (Northern Ireland) Order 2006 (“the Order”) was made on 14 December 2006.
2. This Explanatory Memorandum has been prepared by the Department for Regional Development (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

#### **BACKGROUND AND POLICY OBJECTIVES**

3. The proposed reform of the water industry in Northern Ireland will involve transferring responsibility for delivery of water and sewerage services on 1 April 2007 from the Department to a government owned company ("GoCo"). This will be appointed as (initially the sole) water undertaker and sewerage undertaker for the whole of Northern Ireland and will be run on a commercial basis subject to utility regulation. It is the Government’s intention to introduce domestic charging for water and sewerage services (many commercial customers already pay charges and this will be extended) from April 2007.
4. The Order will place extensive general and specific duties on the GoCo as a water and sewerage undertaker and provide detailed statutory powers to enable water and sewerage undertakers to carry out their duties, with suitable safeguards for customers. It will establish a regulatory regime through which the Department and the new economic and customer service regulator will act as the principal regulators of undertakers. This regime will include a system of regulatory controls in relation to supply obligations, drinking water quality standards, trade effluent and sewage disposal, charges and customer levels of service. The Order sets out a framework for making charges and provides for appropriate mechanisms to deal with customer complaints. It also includes provisions on private water supplies, for which the Department of the Environment (DOE) will continue to have regulatory responsibility, and makes amendments to the provisions of the Water (Northern Ireland) Order 1999 to update and expand DOE’s functions relating to environmental regulation.

#### **CONSULTATION, EQUALITY AND REGULATORY IMPACTS**

5. The Government has consulted extensively on the future of water and sewerage services. The issue was first raised by the Northern Ireland Executive in its “Review

of Rating Policy” consultation published in May 2002. That paper asked how water and sewerage costs might be distributed among domestic customers if the Executive and the Assembly agreed to introduce these. Subsequently the Secretary of State gave a commitment that water and sewerage services should become self-financing. A consultation paper entitled “The Reform of Water and Sewerage Services in Northern Ireland” (March 2003) outlined the need for enhanced and sustained investment in Northern Ireland’s water and sewerage infrastructure and invited views on options as to how this could be achieved, including the issue relating to domestic charging. The results of consultation were published in October 2003. Detailed proposals for reform were announced in summer 2004 and a draft Integrated Impact Assessment was published in November 2004. Government’s response to this public consultation and its revised policy is set out in a Consultation Report, published in December 2005, along with the final Integrated Impact Assessment and Regulatory Impact Assessment, including the Equality Impact Assessment. All of the above consultation papers can be viewed at [www.waterreformni.gov.uk](http://www.waterreformni.gov.uk). A consultation paper on arrangements for making new connections to the water and sewerage networks was published at the same time as the draft legislation (June 2006).

## **GOVERNMENT RESPONSE TO CONSULTATION**

6. Following careful consideration of the response to the various consultations, the Government decided to proceed with the reform of water and sewerage services to make them self financing, thus generating the revenue needed to sustain investment in Northern Ireland’s water and sewerage infrastructure and free up resources for other public services. The main elements of the reform package are:
  - all households will pay a direct charge for water and sewerage services received, consisting of a standing charge and a variable element based on the discrete capital value of each property; the new household charges will be phased in from April 2007 with one third payable in the first year, two-thirds in the second year and the full amount in 2009-10. There will be special protections for those on low incomes. All new properties and new connections to the water mains will pay a metered charge while pensioner households will be the first group to be offered the choice of a meter.
  - all non-domestic customers should pay water and sewerage charges, with the current domestic allowance for metered customers being phased out over a three-year period;
  - Northern Ireland’s water and sewerage services will be provided by a Government-owned Company (GoCo) which will operate under companies legislation;
  - the role of the Northern Ireland Authority for Energy Regulation (NIAER) will be expanded to include the economic and consumer regulation of water and sewerage services; and
  - the Consumer Council will become the statutory consumer representative for water and sewerage services in Northern Ireland.

## **OVERVIEW OF THE ORDER**

7. The Order is divided into 12 Parts, containing 309 Articles and 13 Schedules.

*This Explanatory Memorandum refers to the Water and Sewerage Services  
(Northern Ireland) Order 2006 (N.I.21)*

8. In summary, Part I is introductory and Parts II and III set out the overall structure of how the water and sewerage services industry is to be governed and establishes the remit of the regulatory bodies. Parts IV to VI set out the duties and functions of the new “undertaker” to deliver water and sewerage services. Part VII deals with charges. Part VIII deals with the undertaker’s powers – mainly concerning the carrying out of works. Part IX deals generally with the provision of information and the restrictions on its use. Part X concerns the establishment of the GoCo, which will be appointed as the water and sewerage undertaker. Part XI amends existing environmental legislation governing water to take account of the proposed delivery of water and sewerage services by a company incorporated under Companies Legislation rather than by a Government Agency.
9. The following terms are used throughout this section of the explanatory memorandum:
10. The “Authority” means the Northern Ireland Authority for Utility Regulation – broadly it is the regulator of economic and service delivery matters. In its current role as the Northern Ireland Authority for Energy Regulation, it oversees the electricity and gas utilities.
11. The “Consumer Council” is the General Consumer Council for Northern Ireland which already represents the interests of consumers generally; its remit is extended to perform a number of specific functions in relation to water and sewerage services.
12. The “Department” means the Department for Regional Development (DRD), which exercises a general oversight role. The Department of the Environment (DOE) also has a significant role as an environmental regulator and overseer of private water matters.
13. The “Appeals Commission” means the Water Appeals Commission for Northern Ireland.
14. The “undertaker” means the Government - owned company (often referred to as GoCo) which will be appointed to deliver water and sewerage services currently provided by Water Service, an Agency within the Department. Although the legislation distinguishes between water services and sewerage services and refers to water undertakers and sewerage undertakers, only one company (the GoCo) will be appointed, for the present, to carry out all of these functions.
15. The Order is based on the legislation governing the delivery of water and sewerage services in England and Wales – the Water Industry Act 1991 though it does not follow it in every respect. Existing Northern Ireland legislation - the Water and Sewerage Services (Northern Ireland) Order 1973 – under which the Department currently provides water and sewerage services, will be repealed and replaced by the Order.

**PART I – INTRODUCTORY**

16. Part I provides for the title of the Order, when it’s various elements will come into operation and for the definition of various terms used throughout the Order. The coming into operation of this Order is dealt with in the final section of this memorandum.

## **PART II - REGULATORY AUTHORITIES AND THEIR GENERAL DUTIES**

17. This Part imposes duties on the new regulatory bodies and sets out their general duties.
18. The powers of the body established under the Energy (NI) Order 2003 to regulate the energy industry in Northern Ireland, the Northern Ireland Authority for Energy Regulation (NIAER), are extended to the water industry by Article 3. This body will become known as the Northern Ireland Authority for Utility Regulation (NIAUR) and for the purpose of this memorandum is referred to as the Authority. Articles 4 and 5 require the Authority to publish a forward work programme and make an annual report.
19. Articles 6 to 12 set out the general duties of the Authority and the Department. In exercising their functions the Authority and the Department are primarily required to protect consumer interests (wherever appropriate by facilitating effective competition); ensure that the undertaker operates properly in all areas of Northern Ireland; and is able to finance such activity.

In doing so the regulatory bodies must have regard to the interests of the disabled, pensioners, low-income groups, and rural dwellers, and, if appropriate, the interests of gas, electricity and telecommunications customers (Article 6). The regulatory bodies must carry out their primary duties so as to contribute to the achievement of sustainable development, encourage the undertaker to maximise economy and efficiency, ensure no undue discrimination in the setting of charges across the customer base, act in the consumer's interests on land sale matters and ensure probity in the company's dealings.

20. Article 7 enables the Department to issue guidance to the Authority on social and environmental matters after consultation and with Assembly approval. Article 8 obliges the undertaker, the Authority and Northern Ireland Departments, when developing proposals in relation to water and sewerage functions, to promote conservation and public access. Article 9 requires DOE to notify an undertaker of any area which it considers to be of special environmental interest and liable to be affected by the undertaker's activities. Once notified, the undertaker must consult DOE before carrying out any works except in an emergency. Article 10 enables the Department to approve, by order, codes of practice prepared for the purpose of providing the undertaker with guidance in relation to the environmental or recreational matters dealt with by Articles 8 and 9.
21. Article 11 requires regulatory bodies, including DOE, to make arrangements with each other to promote co-operation and ensure a consistent approach on the regulatory matters set out in this Order and, in the case of DOE, in connection with water resources and water pollution as they relate to the undertaker. Co-operation arrangements will be set out in memoranda of understanding between parties. Relevant Departments are required, in exercising any of their powers under any statutory provision, to have particular regard to the statutory water supply duties imposed on the undertaker by this Order (Article 12).

## **PART III - APPOINTMENT AND REGULATION OF UNDERTAKERS**

*This Explanatory Memorandum refers to the Water and Sewerage Services  
(Northern Ireland) Order 2006 (N.I.21)*

22. This Part sets out the arrangements for appointing water and sewerage undertakers, deals with general issues of enforcement and insolvency and extends the remit of the General Consumer Council for Northern Ireland.

## **Chapter I – Appointments**

23. This chapter sets out arrangements for the appointment of water and sewerage undertakers including their modification. Article 13 enables the Department or, with the Department’s consent, the Authority to appoint water and sewerage undertakers. The terms of appointment will be set out in a licence.
- The arrangements set out in this chapter apply equally to any replacement or additional appointments. It is the Government’s intention to appoint a single Government owned company (“GoCo”) as water and sewerage undertaker with effect from the commencement of this Order.
24. Article 14 empowers the Department or the Authority to vary or terminate appointments in specified circumstances. The powers must be exercised so as to ensure that there is always an undertaker to provide water and sewerage services to all parts of Northern Ireland.
25. Articles 15 to 17, together with Schedule 1 to the Order, set out the procedures to be followed in making new appointments or variations of existing ones and the making of transitional arrangements that may arise in the transfer of duties between undertakers.
26. Articles 18 and 19 confer power on the Department or the Authority to impose conditions on the undertaker in an appointment or subsequently. They set out the circumstances in which conditions may be made and procedural matters, including references to the Competition Commission.
27. Article 20 provides for the modification of the conditions of a company’s appointment by the Authority with the undertaker’s agreement and after following the procedures set out in Article 20.
28. Article 21 to 27 provides for modifications of an appointment upon reference by the Authority to the Competition Commission where a condition of a company’s appointment may operate against the public interest. The Competition Commission is obliged to investigate and report on the matter in accordance with the procedures set out in these Articles. Article 28 provides for modifications in other circumstances. Article 29 extends certain functions of the Office of Fair Trading concerning competition to enable them to be concurrently exercised by the Authority in relation to water and sewerage.

## **Chapter II – Enforcement and Insolvency**

29. Chapter II sets out the circumstances in which an enforcement order can be served and when financial penalties may be imposed on an undertaker.

### **Articles 30-34 Enforcement Orders**

30. Articles 30-34 set out the circumstances in which an enforcement authority is required to make an enforcement order to ensure an undertaker’s compliance with any condition of its terms of appointment or any of its statutory obligations. The enforcement authority can be the Department, the Authority or either depending on the particular provision under which enforcement may take place. An enforcement order requires an undertaker to do or not do anything set out in the order (Article 30). Where there is a contravention of any condition of an undertaker’s terms of

appointment or any of its statutory obligations a final enforcement order must be made. However the Authority and the Department can make provisional orders in some cases and accept undertakings from the undertaker that remedial measures are being taken. The procedures which must be followed when making or revoking an enforcement order (Article 31) are set out (Article 32) as well as how the undertaker can appeal to the High Court against an order (Article 33). Article 34 deals with the undertaker's liability under an enforcement order.

### **Articles 35-39 Financial Penalties**

31. Articles 35-40 deal with the financial penalties which may be imposed on the undertaker where the enforcement authority has determined that there has been a contravention in any condition of its appointment, a failure to attain any performance standard or a contravention of its statutory duty. A penalty may not exceed 10% of the undertaker's turnover (turnover to be determined by order made by the Department). The steps to be followed by the enforcement authority when imposing penalties are listed in Article 35. Article 36 requires each enforcement authority to publish a statement of policy on penalties and Article 37 sets out time limits on when penalties can be imposed. An undertaker can appeal to the High Court against any penalty imposed upon it (Article 39).

### **Articles 41-44 Special Administration Orders**

32. Articles 41-44 state that the insolvency of an undertaker is to be dealt with through special administration orders made by the High Court. During the period of a special administration order all company affairs are managed by a person appointed by the High Court.

### **Chapter III – General Consumer Council**

33. Chapter III extends the role of the General Consumer Council for Northern Ireland to confer upon it functions connected with the interests of consumers in relation to water and sewerage services. The Consumer Council, which is established under the General Consumer Council (NI) Order 1984, has similar statutory functions under legislation governing other utilities.
34. In carrying out its functions the Consumer Council has to have regard to the interests of certain groups and to the achievement of sustainable development (Article 45). It is also under a duty to make arrangements with the Authority and the Department to ensure co-operation between them (Article 47) and to publish an annual forward work plan (Article 46).
35. Articles 48 to 52 place duties and confer powers upon the Consumer Council in relation to consumer information. Article 48 obliges the Council to obtain information about consumer matters, including the views of consumers; Article 49 allows the Council to make proposals about consumer matters and Articles 50 and 51 enable it to provide information to consumers and publish advice and information. Article 52 empowers the Consumer Council to direct the Authority and the undertaker to provide it with information and Article 58 obliges the Authority to consult the Consumer Council on the exercise of any of its functions. The Consumer Council, itself, may be required to supply information if directed to do so by the Authority or the Department (Article 53). Article 54 enables the Department to make regulations dealing with issues concerning the provision of information and Article 57 places

general restrictions on the disclosure of information by the Consumer Council where that information relates to a particular individual or business or to anything that might be subject to criminal proceedings.

36. Article 55 sets out the Consumer Council's role in relation to consumer complaints about an undertaker in carrying out its functions. Where a complaint is referred to the Consumer Council by, or on behalf of, the complainant, it is under a duty to investigate the complaint unless it is frivolous, might be better dealt with by other procedures under the legislation, cannot be resolved by the undertaker, or the undertaker has not been given a chance to resolve the complaint. The Consumer Council can pursue a complaint on behalf of a complainant and report to the Department or the Authority. Article 59 places the Consumer Council under a duty to publish statistical information about complaints concerning the undertaker regardless of which body the complaint has been made to.

#### **Chapter IV – Miscellaneous**

37. Chapter IV deals with a number of general matters concerning the regulation of undertakers.
38. Article 60 places the Authority under a duty to review the performance of the undertaker and allows the Department to give general direction to the Authority in relation to the prioritisation of these duties. Article 61 specifies that, in dealing with any dispute under the Order, the Authority may determine the procedure to be followed including any matters relating to costs and expenses; the Authority is obliged to give reasons for its decisions where it determines a dispute. Article 62 requires an undertaker to make an annual statement to the Authority about any performance bonus awarded to directors of the company appointed as the undertaker. Article 63 requires undertakers to establish a complaints procedure following consultation with the Consumer Council, which it must publicise. The Authority can direct the undertaker to review and modify its complaints procedure.

#### **PART IV – WATER SUPPLY**

39. This Part sets out the undertaker's water supply duties and matters concerning performance standards in relation to water supply. Similar measures apply to the provision of sewerage services (see Part VI below). It also deals with plans which the undertaker must make, matters concerning water quality, private water supplies and fluoridation.

#### **Chapter 1 – General Duties of Water Undertakers**

40. Article 65 sets out the general duty of the undertaker to develop and maintain an efficient and economical system of water supply. The undertaker's obligation to meet its water supply duty is enforceable by the Department, or the Authority, if the Department delegates responsibility to it. In order to facilitate the determination of what constitutes a breach of the undertaker's duty or to establish overall performance standards in connection with water supplies the Department may make regulations setting out these matters (Article 66). However, the Department cannot make regulations unless the Authority has first applied to it to do so and set out the substance of what should be contained in the regulations after consulting the undertaker and carrying out customer research (Article 69). The regulations, amongst other things, can require the undertaker to pay compensation to customers if it fails to



meet the prescribed standards. Article 67 obliges the Authority to collect information about performance standards and to publish them annually. The undertaker is required to provide information on performance standards to the Authority (it commits an offence if it fails to do so) and to its customers (Article 68). Regulations, whilst additional to enforcement, do not in any way qualify the powers to enforce.

41. Articles 70 to 73 require the undertaker to produce water resource management and drought plans setting out how the undertaker proposes to manage water resources and cope with any drought. The Articles set out the procedures to be followed by the undertaker, when producing these plans.

## **Chapter II - Water Supply Duties**

42. Chapter II sets out the duties of the undertaker to supply water to its customers.
43. Articles 74 and 75 set out the arrangements for the undertaker to follow when providing bulk supplies of water to another undertaker.
44. Articles 76 to 106 establish the circumstances governing the supply of water to the undertaker's customers including the making of new connections to the water supply system. Article 76 places a duty on the undertaker to provide a water main (i.e. the main conduit for supplying water to an area such as a street) sufficient for domestic purposes when requested to do so. Articles 86 to 90 also allow the undertaker to make agreements with people, who have decided to provide their own water mains and services pipes, to adopt the mains or pipes so that they become owned and maintained by the undertaker. Articles 79 and 80 place an accompanying duty on the undertaker to connect premises to the water supply system, including carrying out any ancillary work (Article 80) such as laying services pipes (i.e. pipes connecting the household plumbing to the water main), when requested to do so<sup>1</sup>. Where the undertaker agrees to adopt mains or pipes, the agreement can include terms for connection of those mains or pipes to the water supply system but, whether the undertaker adopts or provides the mains and pipes itself, only the undertaker can make a connection to the water supply system (Article 89). Finally, Articles 91 to 93 and 105 set out the duty of the undertaker to supply its customers with a supply of water for domestic purposes, to maintain the connection with the water mains and to maintain standards of constancy and pressure. The term, "sufficient for domestic purposes" is set out in Article 2(4) – (6) as meaning drinking, washing, cooking, central heating and sanitary purposes. It can include water used for the purposes of a profession but not a laundry or other business (Article 2(4) to (6)). The duty to maintain pressure means that water must be able to reach the top-most storey of every building although there are height related exceptions. The undertaker can require the installation of a cistern (Article 106) in certain circumstances and the Department can relax the pressure requirements in accordance with the procedures set out in Schedule 3.
45. Article 94 applies to supplies of water for non-domestic purposes. As with other supplies, the undertaker is obliged to provide the supply but may decline to do so if, taken along with the undertaker's existing and probable future supply obligations, it

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<sup>1</sup> There is no significant change to the general rule governing responsibility for water pipes. The water main and the service pipe up to the edge of the private property are the responsibility of the undertaker. The internal plumbing and service pipe within the private property are the responsibility of the owner.

- would involve unreasonable expenditure by the undertaker or put at risk its ability to meet existing or probable supply commitments. The terms of the supply are to be agreed between the person making the request and the undertaker (Article 95).
46. While the undertaker is required to provide mains, connections and supplies of water, its customers are required to meet certain obligations, including financial ones. The provision of a water main, the making of a connection to supply water or any work necessary as a result of an adoption (Article 88) will be at the expense of the person making the request (as is currently the case). Articles 77, 82(2)(a) and 88 additionally enable the undertaker to require financial securities from those requesting water mains, connection work or work arising from an agreement to adopt (see the DRD consultation document on “Charges for connections to the water and sewerage networks” published June 2006 for more detail). The Government has also announced that charges will be introduced for the supply of water. The details of the relevant charges will be set out in the undertaker’s charges scheme (see paragraphs on finance and charges below under Part VII).
47. Articles 81 and 82 (and, in respect of adoption, Article 86) enable the undertaker to impose conditions, in addition to the financial ones mentioned above before it connects or adopts any new pipes to its system. These conditions include the provision of appropriate information to the undertaker, that certain standards of plumbing and fittings have been met, that appropriate means of maintaining water pressure have been installed (Article 106) and any requirements as to separate service pipes have been met (Article 104). Article 81 requires the undertaker to insist that a water meter be installed in all newly connected premises.
48. The provisions described above provide the undertaker with financial security and enable it to ensure that consistent standards are met in the development of the public water supply system. Other provisions offer protections for consumers. Articles 77(4), 78, 83 and 85 set out time limits for the completion of work by the undertaker and for it to pay quarterly interest on any securities deposited with it if work is not completed within three months of a prescribed date. If the undertaker breaches its duty to supply the main or connection within the prescribed time it will be liable in certain circumstances to the person making the request for any loss or damage they suffer (Article 76(4) and 79(6)). A similar provision applies (Article 93) if the undertaker fails in its domestic supply duty. It is an offence, in certain circumstances, for the undertaker to fail in its duty to supply water at constancy and pressure (Article 105(10)) or to limit supplies of water to its customers (Article 103). Disputes between an undertaker and customer about such matters as interest payments, reasonableness of securities demanded, the situation of connection points, extension of time limits, agreements (or refusal to make agreements) on adoption (Article 87) or the terms of any agreement for supply of water for non-domestic purposes (Article 95) may be referred to the Authority for resolution.
49. An undertaker is not in breach of its duty to supply water if it is allowed to disconnect supplies in the circumstances set out in Articles 99 to 102 and Schedule 2. The undertaker may cut off or reduce supplies for the purpose of carrying out necessary works as long as it gives reasonable notice to customers who are affected (unless in the case of emergencies or negligible effect). If the disconnection lasts more than 24 hours the undertaker must make an emergency supply of water available and, after 48

hours, must inform the district council. The undertaker may also disconnect non-domestic water supplies for non-payment of charges after following the appropriate procedures (set out in Article 100). However, Schedule 2 to the Order lists premises that may not be disconnected for this reason. This includes domestic premises, residential homes for the elderly, hospitals and other medical facilities, schools, educational establishments and other child care facilities and prisons and emergency service premises. Disconnection can also be made at the request of the customer (Article 101). Under Article 115 the undertaker can, in an emergency, disconnect premises in order to avoid misuse, waste or contamination of the water supply and decline to reconnect until remedial work is performed. It is an offence for the undertaker to disconnect other than in accordance with the circumstances set out in the legislation.

50. Articles 96 to 98 set out specific water supply duties for public purposes – principally concerning making water available for fire fighting.

### **Chapter III Quality and Sufficiency of Supply**

51. Chapter III sets out requirements for the maintenance of water quality and offences for failures in respect of water quality. It also deals with private water supplies.
52. Article 107 enables the Department in respect of public supplies and DOE, in respect of private water supplies, to make regulations outlining how wholesomeness is to be determined. The regulations may specify what substances and concentrations are allowed and for what purpose the water may be used. It also enables the Department in respect of public supplies and DOE, in relation to private water supplies, to authorise relaxations and departures from the prescribed requirements. Article 108 places a duty on the undertaker to provide only water that is wholesome (while it is in the undertaker's pipes) when supplying water for domestic or food production purposes (the term means the manufacturing, processing, preserving or marketing of food or drink – Article 136). Article 109 allows the Department to make regulations to require the undertaker to take measures to preserve water quality including monitoring, analysis and recording of quality, the use of certain processes or products, standards, procedures and penalties. Article 110 makes it an offence for the undertaker to supply water that is unfit for human consumption.
53. Article 111 makes it an offence to waste water from a water source (a well, borehole or open water). Failure to comply with a court order to prevent waste may result in DOE being authorised to carry out remedial work and recover expenses from the convicted person. Article 112 makes it an offence, whether by act or neglect, to pollute any water used for human consumption, domestic purposes or the manufacturing of food or drink.
54. Article 113 makes it an offence, whether by act or neglect, for the owners or occupiers of premises to waste, misuse or contaminate water by failing to maintain water fittings.
55. Article 114 allows the Department to make regulations to ensure avoidance of waste, contamination and misuse of water, for the specification of the types of water fittings that may be used, required or prohibited, and for the enforcement of the regulations.
56. Article 115 enables the undertaker to serve a notice on any person requiring them to take specified steps to avoid misuse, waste or contamination of the water supply and,

in an emergency, to disconnect the supply of water to the premises. Where the undertaker disconnects it must inform the consumer (it is an offence for the undertaker to fail to do so) of the steps to be taken before the supply is reinstated. Where disconnection does not occur but the consumer fails to carry out any required steps the undertaker has power to carry out those steps itself and recover any expenses.

57. Article 116 gives an undertaker power to issue temporary hosepipe bans after notifying the public. It is an offence to contravene the ban.
58. Article 117 places a duty upon the Department to require the undertaker, in situations where a wholesome supply of piped water cannot be delivered and where there is a danger to life or health, to provide water by other means (bottled water for example). Before doing so the Department must be satisfied that there is a danger to health or life and that supplies can be delivered at a reasonable cost. In such cases the Department is liable for any charges incurred but has power to recoup them from the owner or occupier of the premises affected.

#### **Articles 118–123 Private supplies**

59. These Articles set out DOE's general functions regarding private supplies, and replace the existing provisions on private water supplies contained in the Water and Sewerage Services (Northern Ireland) Order 1973. They allow it to take all steps necessary to keep itself informed of the wholesomeness and sufficiency of private supplies, including maintenance of a register. Where a private supply is, has been or is likely to become unwholesome or insufficient, DOE may serve notice on the relevant person. The contents of the notice are specified as are the steps a person may be required to take. Any notice may not take effect until the specified period has elapsed. Where an objection is received the notice cannot take effect until the objection is withdrawn or the notice confirmed by the Appeals Commission. The role of the Appeals Commission is outlined, and a person has 28 days in which to appeal from the date a notice is served, with exceptions to this rule specified. The steps DOE can take should a person fail to comply with a notice within the specified period are described, as is the fact that any requirement of a notice is a statutory charge.
60. Article 122 provides DOE with powers to do works where it is designated to take steps in relation to private water supplies. In those circumstances, certain provisions of Part VIII apply as if they applied to DOE.
61. Article 123 provides DOE with a power to obtain information on private water supplies. Failure to comply with a notice served by DOE is an offence.

#### **Articles 124–125 Enforcement**

62. Article 124 confers rights of entry on persons designated by DOE in relation to its responsibilities for private water supplies. These powers also extend to the Department in respect of assessing potential contamination of water sources and waterworks that could impact on the public supply. General requirements and procedures in relation to rights of entry under this Chapter are set out in Schedule 4.
63. Article 125 provides the Department and DOE separately with a power to appoint inspectors to act on their behalf. The inspectors' responsibilities relate to the Departments' functions concerning the quality and sufficiency of public and private

water supplies respectively. The Department and DOE, acting jointly, also have a power to appoint a Chief Inspector of Drinking Water.

#### **Chapter IV Fluoridation**

64. This Chapter repeals the Water (Fluoridation) (Northern Ireland) Order 1987 (the 1987 Order) and places the GoCo under an obligation to comply with a request for an application by the Department of Health (DHSSPS) to fluoridate public water supplies.
65. The obligation to fluoridate is dependent on DHSSPS (with the consent of the Department of Finance and Personnel) providing an indemnity in respect of the fluoridation arrangements, reasonable capital and operating costs.
66. This Chapter provides that the GoCo cannot be placed under an obligation to fluoridate unless DHSSPS has consulted and ascertained public opinion, and has secured approval by resolution of the Assembly.

#### **Chapter V - Supplemental**

67. Article 135 gives the Department and DOE (in respect of private water) power to make regulations modifying the effect of the water supply and quality provisions of this part of the Order to meet any UK obligations arising from the European Community or international agreements. Article 136 defines certain terms used in this part of the Order.

### **PART V - USE OF WATER**

68. This Part sets out the circumstances when a drought order may be brought into force and the measures involved. It also stipulates that water undertakers have a responsibility to promote the efficient use of water by their customers.

#### **Chapter I – Drought Orders**

69. Chapter I makes provision for the Department to impose drought orders when there is a serious deficiency of supplies of water in any area but requires that consultation should take place with other relevant departments including DOE. Article 137 empowers the Department, where it is satisfied that a serious deficiency of water exists or is threatened in any area, to make a “drought order”. It can only make such an order after an application by DOE or a water undertaker after consultation with DOE (in relation to a serious deficiency of supplies of water) or by DOE or other relevant Departments after consultation with DOE (in relation to a deficiency in the flow or level of inland waters that poses a serious threat to flora or fauna). Schedule 5 outlines the procedure on application for a drought order.
70. Article 138 specifies the duration of a drought order and outlines the provisions that a drought order may contain, including authorising persons to take water from specified sources; authorising undertakers to prohibit or limit the use of water; authorising undertakers to discharge water to specified places; authorising DOE to prohibit or limit the taking of water from specified sources; modifying restrictions/obligations relating to the taking, discharge, supply and treatment of water; and authorising DOE to suspend or vary, or attach conditions to, any consent specified in the order.

71. Where the drought order restricts the use of water, Article 139 provides that the undertaker must publicise the restriction which can apply to consumers generally or a class of consumers. Article 140 provides that drought orders with respect to abstraction and discharges can take precedence over certain existing obligations and rights. It also places DOE under a duty to exercise its powers under such drought orders in a way that supplies of water available to the water undertaker are not seriously affected. Article 141 provides that drought orders can authorise undertakers to conduct works required to comply with the drought order.
72. Schedule 6 specifies the cases where compensation is payable as the result of a drought order and outlines the procedures for making claims for such compensation. Article 142 provides that drought orders do not affect the right of DOE or undertakers to recover charges. It also provides for the Department to recover expenses (related to the drought order) from the water undertaker that applied for the drought order. Article 143 creates offences regarding certain acts that contravene drought orders; it also outlines the penalties for these offences and provides for a due diligence defence.

## **Chapter II – Promotion of the Efficient use of Water**

73. Chapter II places a responsibility on every water undertaker to promote the efficient use of water by its customers. The Authority has power to require the undertaker to take action, meet standards, publicise matters and provide information to its customers in promoting efficiency.

## **PART VI - SEWERAGE SERVICES**

74. This Part sets out the duties of sewerage undertakers.

### **Chapter I – General Functions of Sewerage Undertakers**

75. Chapter I sets out the undertaker's main duty and matters concerning performance standards in relation to the provision of sewerage services. The provisions are similar to those covering the supply of water (see Part IV above).
76. Article 149 sets out the general duty of the undertaker to provide, improve, maintain, cleanse and extend public sewers so as to provide effective drainage and to deal with the contents of sewerage effectively. In carrying out its duty the undertaker must have regard to the need to accept the discharge of trade effluent into its sewers and provide for its disposal (see Chapter III below). The undertaker's obligation to meet its sewerage supply duties is enforceable by the Department or the Authority if the Department delegates responsibility to it. In order to facilitate the determination of what constitutes a breach of the undertaker's duty or to establish overall performance standards the Department may make regulations setting out these matters (Article 150). However, the Department cannot make regulations unless the Authority has first applied to it to do so and set out the substance of what should be contained in the regulations after consulting the undertaker and carrying out customer research (Article 152). The regulations, amongst other things, can require the undertaker to pay compensation to customers if it fails to meet the prescribed standards. Article 151 obliges the Authority to collect information about performance standards and to publish them annually. The undertaker is required to provide information on performance standards to the Authority (it commits an offence if it fails to do so) and to its customers (Article 153). Regulations, whilst additional to enforcement, do not in any way qualify the powers to enforce.

## **Chapter II – Provision of Sewerage Services**

77. Chapter II sets out the duties of the undertaker to supply sewerage services to its customers. The provisions are similar to those covering the supply of water.
78. Articles 154 to 174 establish the circumstances governing the supply of sewerage services to the undertaker's customers including the making of new connections to the sewerage system. Article 154 places a duty on the undertaker to provide a sewer and lateral drain (the pipe connecting the main sewer to the premises) for drainage for domestic purposes when requested to do so. "Domestic purposes" in relation to sewerage means discharge of the contents of lavatories, water which has been used for domestic washing and cooking and surface water from, for example, gutters (Article 174). As with water supply, the undertaker may also make agreements with people who have decided to build their own sewers, drains or treatment works to adopt them so that they become owned and maintained by the undertaker. Unlike water supply, the undertaker can forcibly adopt sewers and drains (a water main connected to the supply system has to vest in the undertaker anyway – Article 89) under Article 159. It can also be requested to adopt sewers, drains or waste water treatment works built after 1973 by the owners of those facilities. The undertaker also has a duty in certain circumstances to provide a sewer where the drainage of any premises is having an adverse environmental effect (Article 157). Exercise of this provision is subject to guidance issued by the Department with individual disputes subject to determination by the Authority. Article 163 gives owners or occupiers the right to have their premises (or any privately owned sewer) connected to the public sewerage system for the purpose of discharging foul or surface water (but not trade effluent – see chapter III below). Articles 164 and 165 provide for the making of connections to the sewerage system; this can be carried out by the undertaker or by the person wishing to make the connection as long as it is supervised by the undertaker (only the undertaker can make a water supply connection). In either case, it is an offence for someone to make a connection to the public sewers other than in accordance with the legislation (Articles 164(2) and 166). It is also an offence, under Article 168, for anyone to dispose of substances or objects into the public sewerage system that might damage it or impair the treatment of its contents.
79. As with water supplies, customers are required to meet costs of work and pay charges for sewerage services in accordance with the undertaker's charges scheme. Articles 155 allows the undertaker to require financial securities from those requesting sewers and Article 161(6) provides for similar arrangements in respect of adoption agreements. The undertaker can require the provision of appropriate information before agreeing to adoption and that certain standards in the building of the sewer are met. Articles 169 to 173 give the undertaker a number of other powers. Article 169 requires that sewers which a person proposes to connect to the public sewerage system are built to a specification in excess of that required for the particular sewer because of benefits to the wider system (the undertaker has to provide the extra expenditure needed). Articles 170 and 173 allow the undertaker to alter existing drainage systems or close public sewers so long as it meets costs and provides an alternative means of drainage or sewerage disposal. Article 171 provides for the inspection of defective drains by the undertaker. Article 172 allows the undertaker to make agreements with the Department to use road drains as sewers and vice versa.

80. Article 156 sets out time limits for the completion of work in the provision of drains or sewers by the undertaker and for it to pay interest on any securities deposited with it if work is not completed within six months from a prescribed date. If the undertaker breaches its duty to supply drains or sewers within the prescribed time it is liable to the person making the request for any loss or damage they suffer (Article 154). Disputes between an undertaker and customer about such matters as interest payments, reasonableness of securities demanded, the refusal to adopt sewers or the compulsory adoption of them, the refusal to permit a connection to the public sewer or the terms upon which a connection may be made can be referred to the Authority for resolution.

### **Chapter III – Trade Effluent**

81. This Chapter sets out the duties and responsibilities of the undertaker, the Department, the DOE and the customer in respect of dealing with trade effluent. Such clearly defined duties and responsibilities are required in order to satisfy the increasing demands set down by new environmental legislation. Trade effluent is defined at Article 199 as liquid produced in the course of any trade or industry (including medical, scientific and agricultural). It does not include domestic sewage. Article 198 gives the Department power, by order, to prescribe that a substance is or is not to be treated as trade effluent for the purposes of the legislation.
82. Any occupier of trade premises wishing to discharge trade effluent, into the undertaker's sewers must apply for consent so to do (Articles 175 and 176). It is an offence to discharge trade effluent without first obtaining proper consent. The undertaker may not agree to consent to the discharge or may agree unconditionally or subject to such conditions as the undertaker sets. Conditions may be varied with the agreement of the consent holder or, after 2 years, at the behest of the undertaker. If the undertaker varies the consent within 2 years it will, in certain circumstances, be liable to pay compensation to the consent holder. Guidance on any such conditions and the process for varying them is set out in Articles 179, 182 and 183. The transfer of trade effluent discharge consents, by the holder to a successor proposing to carry on the same discharge, is facilitated by Article 177.
83. Any owner or occupier of trade premises wishing to discharge trade effluent other than directly into the undertaker's sewers e.g. disposal by tanker, may apply to enter into an agreement with the undertaker so to do.
84. Articles 180, 181 and 184 provide for appeals to the Authority in respect of trade effluent discharge consents and the relevant conditions attached.
85. Articles 178 and 188 require the sewerage undertaker to refer applications and proposed agreements for the discharge of special category effluent to DOE, and no consent may be given to its discharge until DOE has made a determination; failure to make references to DOE constitutes an offence. Article 181 sets out the appeals process. Articles 185 and 189 provide the process by, and the timeframes within which, DOE may review consents and agreements relating to special category effluent. Article 190 sets out DOE's powers, and the procedure to be applied, in relation to its receiving representations or objections, and making determinations, on references and reviews. Article 192 sets out the circumstances in which DOE may or may not be liable to pay compensation as a result of a notice served by DOE under



Article 190. Article 194 provides DOE with a power to require information for the purpose of its functions in relation to special category effluent; failure to comply with a notice served by DOE constitutes an offence. Article 197 defines special category effluent.

86. Charges for services provided under this Chapter of the Order will be set out in the undertaker's charges scheme (see Part VII below).
87. This Chapter of the Order sets out the formal processes for administration of applications, transfers, variations, reviews and appeals in relation to trade effluent and special category effluent discharge consents.

## **PART VII - FINANCIAL PROVISIONS**

88. Part VII deals with financial matters including the levying of charges for water and sewerage services by the undertaker. Amongst other things it gives effect to Government policy announced during consultation on water reform including:
  - All customers to pay a direct charge for water and sewerage services received;
  - Charges will be calculated on a full cost recovery basis; and
  - Special measures will be taken to mitigate the impact of charges on low-income groups.
89. Much of the detail of these measures will be set out in the undertaker's scheme of charges (which will hence be influenced by Government policy) and regulations made by the Department.
90. Article 200 enables undertakers to make charges for water and sewerage services provided by them. This includes, for example, charges for the provision of water and sewers to domestic households and commercial premises, the receipt of trade effluent into the sewerage system to be treated, drainage charges, and charges for connecting new premises to the water and sewerage system or the installation of meters.
91. Where the undertaker proposes to make charges it must (generally) set these out in an annual "charges scheme" (Article 201) which is approved by the Authority (as neither the Authority nor the undertaker will exist prior to April 2007, the first charges scheme will be made by the Department). The undertaker can also fix charges for its services by agreement with the person receiving the service but this does not apply to domestic water supply or domestic sewerage services. These charges must be set out in the charges scheme.
92. Those who do not receive either water and/or sewerage services – because they have a private water supply and/or a septic tank – will not be charged for the relevant service.
93. The detail of how charges are to be calculated is to be determined by the undertaker (Article 200(7)), subject to the Authority's approval of the charges scheme and any regulations made by the Department (as noted above, the Department will make the first scheme on the undertaker's behalf). Although the detail is not set out in the primary legislation, the Government has announced that domestic charges for water and sewerage will both consist of a standing charge and a variable element based on the discrete capital value of each property. The capital value of a property is the amount it would reasonably have sold for on the open market on a specified date,

currently 1 January 2005, (see Schedule 2 to the Rates (Capital Values Etc.) (Northern Ireland) Order 2006); domestic rates will be based on individual capital values from April 2007. Water and sewerage charges for commercial premises will be based on metered usage or net annual values (the rateable value assessment which is based on an estimate of the rentable value of a property, currently at 2001 value levels – see Schedule 12 to the Rates (Northern Ireland) Order 1977). The details will be set out in the charges scheme to be implemented from 1 April 2007.

94. Article 202 enables the Department to make regulations setting out matters with which any charges scheme must comply. In particular, it gives the Department power to specify groups for whom special provisions may be made. To implement the Government's announcements on providing assistance to lower income groups, the Department will introduce regulations setting out the basis for an affordability tariff. As announced in the Integrated Impact Assessment on Water Reform (December 2005), all those who are in receipt of housing benefit and rate rebate (and rate relief when introduced) will be eligible for support with their water and sewerage bills in the form of an affordability tariff. This will be based on the single person pension credit guarantee (an annual figure set by Parliament to be the minimum weekly income for a single pensioner household – currently £114) in combination with a scale based on property value. In addition, all 16/17 year-old householders, relevant children leaving care (as defined by the Children's Leaving Care Act (NI) 2002), and those in full-time education and training who are entitled to full rate relief will also be eligible for the affordability tariff. As Article 202 does not allow the Department to limit the amount of revenue the undertaker can derive from charges (the aim being to make water and sewerage services self-financing) any regulatory intervention which has such an effect has to be paid for either through higher charges in other areas, borrowing, government funding or some other means. The Government has undertaken to make grants to meet the costs of the affordability tariff.
95. Article 203 clarifies that occupiers are liable for paying for water and sewerage charges, unless an agreement is made between the undertaker and some other person instead i.e. the owner. The remainder of the Article makes an occupier liable for charges after they have left particular premises if they fail to tell the undertaker that they have moved within the stipulated timescales.
96. Articles 204 and 205 provide the undertaker's domestic customers with the right to choose to have their water and sewerage charges fixed "by reference to volume" – that is to have their water consumption metered. The Articles set out the procedures for someone to require the undertaker to charge by reference to volume – basically giving a person a year to decide whether they wish to continue to be charged by reference to volume or to return to unmetered charges. If there is a change of occupation of a house, the undertaker may continue to charge by reference to volume and a new occupier would not have a right to revert to unmetered charges (Article 205).
97. However, the Government has announced that it would be impractical to introduce widespread metering immediately, though its aim is to progress towards this. Accordingly, the right to elect to be metered under Article 204 is subject to regulations which set out the classes of consumer to whom the right to be metered under this provision will apply. The Government proposes to make regulations for

April 2007 which prescribe pensioners for the purpose of Article 204. Accordingly, only pensioners will have the right to choose to be metered from April 2007. The policy of focusing initial access to metering on pensioners is to provide priority assistance to those who may have houses with higher capital values but low water consumption.

98. It should be noted that, under Article 81 any properties newly connecting to the water and sewerage system will be required to have a meter installed and be required to be charged by reference to volume. This policy supports compliance with European directives – particularly the Water Framework Directive - which require the UK to promote the efficient use of water.
99. Articles 206 to 208 set out a number of restrictions on the undertaker’s ability to charge for various things. The undertaker cannot levy initial charges simply by virtue of becoming responsible for supplying water or sewerage services (Article 206) though it can, of course, make charges for making new connections to the water and sewerage system. Like other charges, the detail of connection charges will be set out in the undertaker’s charges scheme. The government’s overall policy on connection charges – which will inform the charges scheme – is set out in its consultation document “Charges for Connections to the Water and Sewerage Networks (June 2006).
100. The undertaker cannot charge for water used for emergency purposes for fire fighting (Article 207) or for work in connection with the installation of meters where the meter is installed at the behest of the undertaker. But this does not cover new domestic connections where there is an obligation (Article 81) to have a meter installed or non-domestic meters.
101. Articles 209-211 give the Department and the Authority powers to make regulations or orders setting out detailed matters on a number of miscellaneous charging matters, meter installation (Article 209), billing disputes (Articles 211), and the fixing of maximum charges by the Authority for services provided by a third party with an undertaker’s help (Article 210). This last matter concerns circumstances in which, say, a harbour authority is responsible for supplying water to those within its area of responsibility but uses the undertaker’s system to provide the supply.
102. Article 213 enables the Department, with the approval of the Department of Finance and Personnel, to make grants to the undertaker for the purpose of meeting any costs or losses arising from the undertaker’s compliance with regulations made by the Department under Article 202. As explained above, the Department will make regulations under Article 202 to provide assistance to low income groups in the form of an affordability tariff. This will result in a considerable loss of revenue for the undertaker as those assisted will not be required to pay their full charges. To make up this loss, the Government has agreed to provide the undertaker with a grant equal to the amount of revenue lost because of the cost of the affordability tariff.
103. To assist the introduction of water and sewerage charges, the Government has announced that charges will be phased in over a three year period. In the first year (2007/08), customers will be required to pay one third of their total bill, in the second year (2008/09), they will pay two thirds and in the third year (2009/10), the Government has said that average domestic charges will not exceed those in England

and Wales. As with the affordability tariff, this will result in considerable lost revenue for the undertaker so Article 213(3) obliges the Department to make a grant to the undertaker to cover the cost of the phased introduction of charges.

104. By the 2009/10 billing year, it is intended that the undertaker will be self-financing and, subject to the Authority's approval of its annual charges scheme, it will determine the level of charges in accordance with the terms of the licence under which it was appointed. As the overall level of charges will be determined by the cost of delivering the service, the Government has announced the initiation of a major efficiency programme in Water Service to reduce the costs. This will be continued under the auspices of the Authority which will set overall efficiency targets for the undertaker and review prices on a quinquennial basis. The undertaker will not be able to increase costs over and above the limits set by the Authority unless the Authority makes a special determination. The arrangements are comparable to those governing other regulated utilities.

## **PART VIII - UNDERTAKERS POWERS AND WORKS**

105. This Part explains the undertaker's powers to carry out works and enter premises in the fulfilment of its duties and responsibilities under this Order.

### **Chapter 1 – Undertaker's powers (Articles 215 – 234)**

106. This Chapter provides the undertaker with powers in relation to abstraction and impounding water, land, pipe-laying, discharging water, compulsory works orders and entry to land.

#### *Abstraction and impounding of water*

107. Article 215 provides a water undertaker with abstraction and impounding powers for the purposes of carrying out its functions. Those powers are subject to regulations under Article 20 of the Water (NI) Order 1999 which provide for a licensing regime for water abstraction and impoundment.

#### *Land*

108. Where it has not been possible, through agreement, for the undertaker to acquire land or an easement or right over land that has been determined as essential to the fulfilment of its duties, it may apply to the Department for an order (vesting order) compulsorily acquiring it. The Department has power (Article 216) to make such a vesting order. Schedule 7 sets out the restrictions on this power including the need to attain a resolution of the Assembly in respect of certain pieces of land where objections to the acquisition have been made by the landowner.
109. Where the undertaker wishes to carry out engineering or building works or to discharge water into any inland water or underground strata but cannot do so through agreement with the landowner it may apply to the Department for a compulsory works order under Article 228 to carry out such engineering/ building works or to discharge water. The procedures and restrictions applying to such orders are set out in Schedule 9 which also makes provision for dealing with objections and compensation.
110. The Department's consent is required prior to the disposal by the undertaker of any protected land (as defined in Article 2).

### *Power to Carry out Works*

111. Article 218 enables the undertaker to make bye-laws for the protection and preservation of waterways and lands belonging to the company. The Department is required to confirm these bye-laws, ensure that they are published and that objections heard are under the procedure set out in Schedule 8.
112. This Chapter also sets out the undertaker's powers in respect of laying pipes in streets (Article 219) and private land (Article 220); carrying out works for stopcocks (Article 224), meters (Article 223) and sewerage purposes (Article 221) and for dealing with foul water or pollution (Article 222). Powers in regard to private land are dealt with by the undertaker serving notice on the landowner (Articles 220, 222 & 223 (in certain circumstances only)) or by agreement between the undertaker and landowner (Articles 221 & 225).
113. Consent is required from relevant Departments for the undertaker to discharge water from pipes greater than 300mm into any available watercourse (Article 226), other than in emergency situations, for the purposes of its functions under the Order. Article 226 creates offences in this regard and sets out penalties for failure to take suitable measures to prevent damage.

### *Powers of Entry*

114. Any person designated in writing by the undertaker may enter any premises for the purposes of carrying out water or sewerage works in the fulfilment of its functions under the Order as set out in Articles 229 to 233. Under these Articles the undertaker may carry out survey work in the search for water, investigate whether it is appropriate or practicable to carry out its relevant works and determine how its powers should be exercised.
115. Included in relevant works are; investigating contamination of water sources; the abstraction or impoundment of water for public supply; inspection examination or testing of meters; compliance with the water quality and fittings regulations to be made under article 114; taking and testing of sample of water, effluent, trade effluent or land and investigating compliance with hose pipe bans.
116. Provision is made in article 235 for the prosecution of people found to be entering any premises unlawfully i.e. without the specific written consent of the undertaker in respect of its functions under the Order.
117. Article 234 provides the Department with the power to make regulations in respect of sampling under articles 229 to 232.

### **Chapter II – Protection of Undertaker's Works, apparatus etc. (Articles 236 – 240)**

118. This Chapter sets out offences and penalties in regard to intentional or reckless interference with the works, apparatus (including meters) or infrastructure of the undertaker.
119. Such offences include connection to the undertaker's water or sewerage pipes without its consent or building over pipes without permission (Article 236). Interfering with or carrying out works which affect the operation of meters installed for the purpose of fixing charges (Article 237) is also an offence.
120. These Articles also set out the penalties (in the form of fines) for any such actions.

121. A person who intentionally obstructs any person authorised by the undertaker to carry out works in pursuit of its functions under the Order will also be guilty of an offence and will be liable to fines under Article 240.

**Chapter III – Supplementary Provisions with respect to Undertaker’s Powers (Article 241-252)**

122. Articles 241 sets out that pipes laid and wastewater treatment works constructed by the undertaker will vest in the undertaker unless otherwise agreed between the undertaker and the person with an interest in the pipe or wastewater treatment works. Water mains / service pipes and sewers / lateral drains / wastewater treatment works which are the subject of a declaration made under Chapter II of part IV of the Order also vest in the undertaker.
123. The undertaker’s works powers set out in the Order do not confer upon it power to carry out any works which directly or indirectly interfere with the works or property of another undertaking (airports, for example) protected by Schedule 10 to the Order without the consent of those undertakings. Schedule 10, paragraph 1(4) lists those undertakings protected in this manner. Certain undertakers, as set out in Article 246, may after giving suitable notice and on substituting an equivalent, alter the position of the undertaker’s sewers, drains, culverts or other pipes.
124. Equivalent provisions providing protection for the water and sewerage undertaker’s apparatus are set out in the legislation covering other undertakers.
125. Any complaints arising in the course of the undertaker fulfilling its functions under Article 220 or 222(2) (exercise of works powers on private land) are to be investigated by the Authority or the Consumer Council, as set out in Article 243. The undertaker is required to provide information and pay fines as the Authority requires.
126. The undertaker, as soon as possible after its appointment, is required to provide a code of practice on the exercise of its powers to carry out work on private land. Article 244 empowers the Department to approve the code of practice initially and subsequently to modify or withdraw approval.
127. The undertaker is obliged to carry out its works in a manner which will cause as little damage, detriment and inconvenience as possible and is required to make good or pay compensation for damage caused by it in pursuance of its functions under this Part. Guidelines for assessing compensation and rights of appeal are set out in Article 242.
128. In certain circumstances the undertaker may be obliged to alter or remove its pipes or apparatus within particular land where a notice has been served on it by any person having an estate in that land or in adjacent land. The undertaker may recover from the person serving the notice, any expenses incurred in the fulfilment of its obligation (Article 247).
129. The undertaker is entitled to remove and sell any materials taken from any premises when carrying out works or otherwise in pursuit of its functions under the Order which are not claimed by the owner before the end of 3 days after their removal. The undertaker must pay the proceeds of such sales to the owner after discounting the expenses incurred in the process. The undertaker is also entitled to all sewage discharged into its sewers and may process, sell or otherwise dispose of such sewage.

## **PART IX – INFORMATION**

130. This Part deals generally with the provision or restriction of information under the Order.
131. Articles 253 to 258 place duties on the Authority (Article 253) and the undertaker (Articles 255-258) to provide certain information to be made available for public inspection. This includes details of the undertaker's appointment and any other specified documents (Article 253), trade effluent and works discharge registers (Articles 255 and 256), waterworks and sewer maps (Articles 257-258).
132. Articles 259-263 provide for general matters relating to the power to publish or obtain information or the duty to provide it. Article 259 makes it clear that the Department or the Authority may publish information and advice about an undertaker's functions, subject to the need for confidentiality in respect of individuals or businesses. The Department may also carry out research. DOE may also arrange for the publication of information, and undertake research and investigations, in relation to its private water supply functions. Article 260 allows the Department to require the undertaker to provide it with any information it reasonably requests. Article 261 enables the Department or the Authority to issue a notice requiring anyone to provide it with information for the purposes of enforcing an undertaker's duties. Article 262 requires the owner or occupier of land on which are situated any pipes for discharging trade effluent to make maps or plans available to the undertaker when requested to do so. It is an offence to fail to provide the information. Article 263 provides for the sharing of metering information between undertakers.
133. Article 264 provides for information sharing between the undertaker and the Department of Finance and Personnel (DFP) and the Housing Executive for the purpose of establishing the entitlement of individuals to the affordability tariff. Under Article 202 the Department can make regulations to assist those on low incomes with their water and sewerage charges (the "affordability tariff"). Eligibility for the tariff will be based on whether someone is in receipt of a passport benefit. The passport benefits will be housing benefit, rate rebate or other rates relief schemes to be introduced by the Rates (Amendment) (NI) Order 2006. These schemes are administered by DFP and the Housing Executive who hold information on who is entitled to those benefits. Article 264 allows an authorised representative of the undertaker to request the details of those in receipt of the passport benefits and, thereby, give automatic entitlement to the affordability tariff. The Article enables the Department, by Order, to amend the list of bodies with whom information sharing may take place should new or altered criteria for access to the affordability tariff be introduced in the future. Article 266 creates an offence of unauthorised disclosure of information obtained about an individual under the information sharing arrangements.
134. Article 265 provides a general restriction on the disclosure of information about particular businesses obtained under the Order or existing water and sewerage legislation. The Article goes on to set out a number of exceptions to the restriction, on disclosure for the purposes of appeals, health and safety, companies and competition law, criminal proceedings and so on. The Article also provides a specific restriction on the disclosure of information obtained regarding trade effluent. Article 265 makes it an offence to disclose information in contravention of the restrictions it sets out.

135. Article 267 makes it an offence to provide false information under any provision of the Order.

## **PART X - REORGANISATION OF THE INDUSTRY**

136. This Part sets out the arrangements for the establishment of the Government owned company and makes provision for the transfer of the property rights and liabilities relating to Water Service to the successor company. The successor company will be a company incorporated under the Companies (Northern Ireland) Order 1986 and will be limited by shares.
137. Article 269 sets out the provisions for the establishment of the company under the Companies Order and makes clear that the company will be wholly owned by the Crown. Article 270 deals with the provisions for the making of the Transfer Scheme to enable the company to carry out its functions as water and sewerage undertaker. It makes provision for the vesting of the assets and liabilities to take place on the same day as the company takes responsibility for the delivery of water and sewerage services. The full details of the provisions pertaining to the Transfer Scheme are set out in Schedule 11 and are described below.
138. Articles 271 to 274 deal with the ownership of the successor company. Article 271 makes provision for the Department to direct the company to issue securities to the Department, this may include securities of all types including shares, debentures and bonds. It also ensures that the Crown will not be treated as a shadow director of the company. Article 272 enables the Department to acquire securities or rights to securities in the company. Article 273 makes provision so that the Department shall not dispose of securities or rights issued which would result in a change of control in the company without the approval of a resolution of the Assembly. For all other disposals DFP approval will be required. Article 274 enables the Department to appoint nominees to hold securities in the company; this provides a convenient means for the Department to hold securities.
139. Articles 275 to 279 deal with the finances of the successor company and its subsidiaries. Article 275 makes provision to enable the company to establish a statutory reserve. Article 276 sets out the arrangements for the laying of the company accounts by the Department before the Assembly. It also makes provision for the treatment in the accounts of the assets and liabilities to be transferred from the Department to the company and states that the vesting in the successor company will be effected immediately after the end of the last complete financial year. It also makes provision for dealing with the value of assets and the amount of liabilities either in the transfer scheme or in the statement of accounts prepared by the Department. Article 277 makes provision to ensure that the rights to borrow of the successor company, subject to the approval of DFP, set out in the company's articles of association are exercised in the public interest. The Article also ensures that the company does not charge any of its assets without the approval of the Department and DFP, whilst wholly owned by the Crown. Article 278 makes provision for the Department to provide financial assistance to the company or its subsidiaries, this may include making grants or loans to the company, the write-off of the principal and interest of any loans or the conversion into share capital of the principal and interest of such loans. It also permits the Department to provide any form of guarantee to any



person to meet any contingency arising out of or in connection with a contract with the company. It places a requirement on the Department to lay a statement before the Assembly immediately after any guarantee is given, and after any sum is issued to fulfil a guarantee. The Article also deals with the funding arrangements and repayment of sums and interest in respect of the fulfilment of guarantees. Article 279 identifies all of the provisions within this Part which the Department must exercise only with the consent of DFP.

#### **Schedule 11 - Transfer Scheme**

140. This Schedule sets out the specification for the Transfer Scheme. Paragraph 2 deals with the method whereby the Department will identify the assets and liabilities to be transferred to the successor company. It also permits the Department to except assets and liabilities from transfer and to divide assets and liabilities between the Department and the company, as appropriate. Paragraph 3 makes provision for modification of the transfer scheme after the transfer date whilst the company remains wholly owned by the Crown, whilst paragraph 4 enables the Department to provide proof of title for the successor company by issue of a certificate.
141. Paragraph 5 sets out the provisions for dealing with the transfer of staff to the successor company. This will mean that the contract of employment is not terminated by the transfer to the successor company and has the effect that from the transfer date it is as if the contract had been made between the employee and the successor company, although employees will no longer be eligible for the Civil Service Pension Scheme they will be offered membership of a scheme which although not identical will be “broadly comparable”. The provisions dealing with the effect of the transfer scheme on third parties are dealt with in paragraph 6 providing that third parties should not be entitled to terminate, modify, acquire or claim any asset as a result of the transfer scheme. Paragraph 7 deals with the arrangements pertaining to any third party compensation liabilities which may arise as a result of the transfer of assets to the successor company. Paragraph 8 sets out the arrangements for the transfer of any external property, rights and liabilities which may be outside the scope of the law of Northern Ireland and makes provision for the Department to hold such property for the benefit of or to discharge that liability on behalf of the company until the transfer is effective under the relevant external law.

#### **PART XI - AMENDMENTS TO THE WATER ORDER**

142. This Part sets out a number of modifications to the environmental regulatory functions exercised by DOE under the Water (Northern Ireland) Order 1999 (the 1999 Order). These amendments bring the 1999 Order partly into line with similar legislation in Great Britain and provide an updated environmental regulatory regime for water and sewerage services in Northern Ireland and include repeal of the current Article 9 of the 1999 Order, the substitution of the current Article 7 and the insertion of new Articles numbered 7A and 7B.
143. Article 280 reorganises the principal water pollution offences contained in Articles 7 and 9 of the 1999 Order into a new and substituted Article 7. This revised Article restates the water pollution offences currently provided under Articles 7 (1) (a) and 7 (1) b of the 1999 Order relating to the discharge or deposit into water of poisonous, noxious or polluting matter. In addition, the revised Article 7 absorbs the offence of

- discharging trade or sewage effluent currently provided under Article 9(1) of the 1999 Order, extending the ambit of this provision to include discharges of trade or sewage effluent from land, through a pipe, into the sea outside the seaward limits of any waterway.
144. Article 280 also lists the exceptions to the principal water pollution offences. A new Article 7A(1) extends the ambit of the defence in relation to the discharge of trade or sewage effluent from a vessel although this is limited to the associated pollution offences now provided at Articles 7(2) and 7(6). Article 7A(2) provides a defence to the principal pollution offences where the discharge or deposit of any effluent or other matter is made in an emergency, and all reasonable steps are taken to minimize its extent and polluting effects. Article 7A(3) provides a defence where a person discharges or deposits any effluent or other matter under and in accordance with an extended list of consents, licences and the like, or under other prescribed statutory provisions. Article 7A(4) extends the ambit of Schedule 1 to the 1999 Order to include the transfer of discharge consents. Article 7A(5) contains the penalties available for contravening the conditions of a discharge consent. Article 7A(8) updates the wording, previously contained in Article 10(3) of the 1999 Order, so that it is clear that drains are constructed and laid by the Department.
145. Article 280 inserts an Article 7B, which provides for discharges into and from public sewers. This is required to accommodate the specific legal responsibilities to receive discharges that will be placed upon the sewerage undertaker elsewhere in the proposed Water and Sewerage Services (NI) Order 2006. Specifically, Article 7B(1) provides that a person shall not be guilty of a pollution offence under the revised Article 7 in respect of discharges made into the sewers or waste water treatment works vested in a sewerage undertaker if the undertaker is bound to receive the discharge unconditionally or subject to conditions that were observed. Article 7B(2) provides an exception to the pollution of offence under the revised Article 7 of the 1999 Order where a sewerage undertaker breaches the terms of a discharge consent as a consequence of illegal discharge to sewer by a third party which the undertaker was practically unable to prevent. This, therefore, addresses situations where discharges by others into public sewers are either unconsented, and therefore not subject to agreements, or made in breach of consent or agreement conditions. Article 7(B)(3) and (4) provide for the possibility of replacement appointees as to part of a sewerage undertaker's licensed area, and allocate liability for any resulting pollution as between the respective undertakers.
146. It is also recognised that a substantial proportion of waste water treatment will be provided by means of Public Private Partnership (PPP) arrangements. These arrangements raise considerable complications for the apportionment of liability in respect of the water pollution offence set out in the (revised) Article 7 of the 99 Order, and the operation of the defences provided for in (new) Article 7B. Article 7 assumes a vertically integrated sewage treatment process, under which the undertaker is responsible for the whole process and can reasonably expect to be liable for the resulting discharge of treated effluent. The defences and exceptions provided for in (new) Article 7B operate on this basis. However, in the case of PPP arrangements, the undertaker will still be responsible for issuing trade effluent consents, but will essentially be acting as a mere conduit for discharges into a treatment works for which a different person, the PPP contractor, will hold the discharge consent as operator.

The PPP scenario therefore raises issues regarding the appropriate allocation of liability for final discharges into the water environment between the customer, the undertaker and the PPP Contractor which would require considerable and detailed amendment of the provisions at (new) Article 7 B. As such detailed provisions would be difficult to follow and, given that transparency on this issue is essential, not least for the benefit of the environmental regulator (DOE) tasked with implementing the water pollution provisions, the apportionment of liability in such PPP scenarios is to be addressed by means of subordinate legislation. Article 280 accordingly provides the Department with power to develop regulations to determine liability in respect of the water pollution offences under the Water (NI) Order 1999 between persons in respect of any discharge from or into any public sewer or any wastewater treatment works.

### **Supplementary Transitional Provisions**

147. One of water reform's policy objectives is to introduce the water and sewerage undertaker in Northern Ireland to the normal, environmental regulatory regime, provided by the 1999 Order, as quickly as possible. The practical effect of these enforcement provisions will be considerably increased in respect of any offences committed by the limited liability company, which will become the first licensed water and sewerage undertaker in Northern Ireland upon the Transfer Date (1 April 2007). This GoCo, and in certain circumstances, any director, manager and officer will be liable to prosecution. However, it is not considered reasonable that GoCo should assume the full risks of prosecution immediately in respect of pollution offences arising as a result of the poor condition of the inherited infrastructure. Thus, a limited and time-bound due diligence defence against prosecution will be provided to the GoCo and its directors, managers and officers in respect of water pollution offences attributable solely to the dilapidation of the waste water infrastructure inherited on 1 April 2007. It will expire on 31 December 2008 when an extensive waste water treatment building programme is due to be completed. As a transitional issue this will be dealt with under regulations made by Department under Article 306 of the Order.

### **Other Provisions**

148. Article 281 extends the provisions of the current Article 10(1) of the 1999 Order so that additionally a discharge or deposit made in accordance with a discharge consent shall not constitute an offence under or a contravention of section 41 of the Foyle Fisheries Act (NI) 1952 or regulations under Articles 14 or 36 of the 1999 Order.
149. Article 282 extends the ambit of Article 11(1) (a) of the 1999 Order to include a power to make a scheme that specifies or determines the charges required to be paid in respect of the transfer of a discharge consent to another person.
150. Article 283 extends the references to flora and fauna in Articles 16(1) (b) (iii) and 17(2)(b)(iii) of the 1999 Order (anti-pollution works) so as to incorporate any flora or fauna that are dependent on the aquatic environment of the waters.
151. Article 284 places duties on DOE, water undertakers and third parties in relation to the provision of specified information. It is an offence by a third party to refuse or fail to permit DOE to inspect its records. The duties of a water undertaker under this

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Article are enforceable under Article 30 of the Water and Sewerage Services (NI) Order 2006.

152. Article 285 places restrictions on DOE in relation to the disclosure of information, subject to specified exceptions, without the consent of the individual, or person carrying on the business in question.
153. Article 286 limits the extent to which civil liability applies, given that Part II of the 1999 Order is intended to set out a comprehensive system for pollution control.
154. Article 287 extends criminal liability to prosecution to a third party where the commission of a water pollution offence is due to the act or default of that third party, irrespective of whether proceedings are taken against a first-named person.
155. Article 288 binds the Crown in relation to the provisions of Part II of the 1999 Order, and any regulations or orders made under that same Part. The Crown is exempt from criminal liability, but DOE may apply to the High Court to have any act or omission that constitutes a contravention of Part II declared unlawful. The Secretary of State can certify, in the interests of national security, that any powers of entry to Crown land should not be exercisable in relation to the land specified.
156. Article 289 extends the matters that the Department of Agriculture and Rural Development (DARD) should take into account in exercising its functions under the 1999 Order to the duties imposed on water and sewerage undertakers under the proposed Order.
157. Article 290 inserts a new paragraph in Schedule 1 to the 1999 Order. It places a duty on DOE to give notice to persons who may be prescribed or directed to be consulted in relation to discharge consent applications. DOE has a power to exempt any class of application or exclude any class of information from this requirement. Any representations must be received by DOE within a specified time, and must be considered before a determination is made.
158. Article 290 also amends the transfer of consent provisions contained in paragraph (8) of Schedule 1 to the 1999 Order. The intended transferor and transferee must give joint notice to DOE of the proposed transfer; the notice should specify the date on which the transfer is to take effect; and DOE should amend the consent, and serve notice on the transferor and transferee that the amendment has been made, within a specified time.
159. Article 291 makes minor amendments to a number of definitions currently contained in the 1999 Order, so that they are consistent with those in the Order. It also amends paragraph (1) of Schedule 6 to the 1999 Order, so that where DOE and DARD acting jointly propose to adopt a water management programme, those Departments should, before publication of a notice to that effect, consult all water undertakers.

**PART XII – MISCELLANEOUS AND SUPPLEMENTAL**

160. This Part deals with a number of miscellaneous and general matters.
161. Articles 292 and 293 restate provisions which set out the constitution and procedures of the Water Appeals Commission (formerly contained in the Water and Sewerage Services (NI) Order 1973 – which is repealed). The Appeals Commission is a small, independent body which deals with appeals on a variety of water, sewerage, drainage

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- and fisheries matters. The majority of the Appeals Commission's functions in relation to water and sewerage services have been taken over by the Authority but the Appeals Commission retains its roles under other legislation.
162. Articles 294 and 295 enable the Secretary of State, for the purposes of national security, and the Department, for the purposes of civil emergencies, to give directions to an undertaker and the Consumer Council following consultation with them. Both bodies are required to comply with any directions.
163. Article 296 abolishes the Northern Ireland Water Council. The advisory functions of the Council will be superseded by the new regulatory regime.
164. Article 297 enables the Department to make regulations concerning the safety of reservoirs.
165. Article 298 sets out the undertaker's general civil liability for loss or damage caused by the escape of water from the undertaker's pipes. Unless the person suffering the loss caused the damage, the undertaker is liable – even if the escape of water was not its fault – though it can recover contributions from others who may have liability. There are exceptions in respect of liability owed to other utilities and Departments.
166. Article 299 states that only the undertaker, an enforcement authority (the Department or the Authority) and an aggrieved person may take proceedings for various offences in the Order without the consent of the Director of Public Prosecutions for Northern Ireland. The Article also places time limits on the prosecution of summary offences under the Order.
167. Articles 300-308 make other general provisions about the Order. These deal with regulations, directions, and forms under the Order and other technical matters. Article 303 gives the Department a general power to hold inquiries and Article 307 sets out how the Order's provisions apply to the Crown – in general they do.

## **SCHEDULES**

168. The Schedules to the Order are listed below. Their contents are described, where appropriate, in the main part of the Order to which they relate.
- Schedule 1: Transitional provision on termination of appointments
- Schedule 2: Premises not to be disconnected for non-payment of charges
- Schedule 3: Procedure for orders relating to pressure and constancy
- Schedule 4: Rights of entry
- Schedule 5: Proceedings on application for a drought order
- Schedule 6: Compensation in respect of drought orders
- Schedule 7: Compulsory acquisition of land
- Schedule 8: Procedure relating to byelaws under Article 218
- Schedule 9: Orders conferring compulsory works powers
- Schedule 10: Protective provisions in respect of certain undertakings
- Schedule 11: The transfer scheme

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Schedule 12: Amendments

Schedule 13: Repeals

**COMMENCEMENT**

169. Article 1 of the Order deals with when its provisions will come into operation. The majority of provisions contained in the Order will come into operation on 1 April 2007. Certain technical elements, the power of the Department to make the initial scheme of charges for water and sewerage services, any power of the Department to make subordinate legislation and the provisions relating to establishment of the GoCo will come into operation on 1 January 2007.



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