

2007 No. 194 (C. 11)

WATER AND SEWERAGE

**The Water and Sewerage Services (2006 Order)
(Commencement No. 1 and Transitional Provisions) Order
(Northern Ireland) 2007**

Made - - - -

22nd March 2007

The Department for Regional Development, in exercise of the powers conferred on it by Article 1(2) and (5) of the Water and Sewerage Services (Northern Ireland) Order 2006(a) makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Water and Sewerage Services (2006 Order) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2007.

(2) In this Order—

“the 1973 Order” means the Water and Sewerage Services (Northern Ireland) Order 1973(b);

“the 1999 Order” means the Water (Northern Ireland) Order 1999(c); and

“the 2006 Order” means the Water and Sewerage Services (Northern Ireland) Order 2006.

Appointed days

2.—(1) Subject to Article 3, and except in so far as they are already in operation in accordance with Article 1(3) of the 2006 Order, the provisions of the 2006 Order specified in Part I of Schedule 1 shall have effect on the date this Order is made to the extent so specified.

(2) Subject to Article 3, and except in so far as they are already in operation in accordance with Article 1(3) of the 2006 Order, the provisions of the 2006 Order specified in Part II of Schedule 1 shall come into operation on the 1st April 2007 to the extent so specified.

Transitional, transitory and saving provisions

3. The transitional, transitory and saving provisions in Schedule 2 shall have effect.

Sealed with the Official Seal of the Department for Regional Development on 22nd March 2007

(a) S.I. 2006/3336 (N.I. 21)
(b) S.I. 1973/70 (N.I. 2)
(c) S.I. 1999/662 (N.I. 6)



John Mills
A senior officer of the
Department for Regional Development

SCHEDULE 1

Article 2

PART I

PROVISIONS COMING INTO OPERATION ON THE DATE OF THIS ORDER

| <i>Provision and extent</i> | <i>Subject matter</i> |
|---|---|
| <p>In Part III: Article 13 except 13(1)(b) and (6) Article 18 Article 19(1) and (2)</p> | Appointment and regulation of undertakers |
| <p>In Part XI: In Article 288, paragraph (1) in so far as it relates to:</p> <ul style="list-style-type: none"> (a) Article 9(1) and 9(2) of the 1999 Order; (b) Article 9(3) of the 1999 Order in so far as it gives effect to Schedule 1 of that Order, except paragraphs 1(1)(b), 2(1)(b), 2(3)(a) and 3 of that Schedule; and (c) Articles 10 and 13 of the 1999 Order. | Amendments to the Water Order |

PART II

PROVISIONS COMING INTO OPERATION ON THE 1ST APRIL 2007

| <i>Provision and extent</i> | <i>Subject matter</i> |
|---|---|
| <p>Part II except:</p> <ul style="list-style-type: none"> • Article 6(5)(b) in so far as it relates to charges in respect of, and to the extent to, which undue preference or undue discrimination arises by reason of any grant or provision of financial assistance under Article 213(3) or Article 278(1) or the application or use of any such grant or assistance; and • Article 6(5)(c) | Regulatory Authorities and their general duties |
| <p>In Part III Chapter I:</p> <ul style="list-style-type: none"> • Article 13 in so far as not already in operation; | Appointments |

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| <ul style="list-style-type: none"> • Article 14; • Article 19 in so far as not already in operation; and • Articles 20 to 29 | |
| Part III Chapter II and Schedule 1 in so far as it relates to it except Article 44(1)(c) | Enforcement and Insolvency |
| Part III Chapter III | Consumer Protection: The General Consumer Council |
| Part III Chapter IV | Miscellaneous and Supplementary |
| Part IV Chapter I except Articles 70 to 73 | General Duties of Water Undertakers |
| Part IV Chapter II and Schedules 2 and 3 except: <ul style="list-style-type: none"> • Articles 74, 75, 86, 87, 88, and 90(2); and • Article 90(1) except in so far as relating to Article 89. | Supply duties |
| Part IV Chapter III and Schedule 4 in so far as it relates to it | Quality and Sufficiency of Supply |
| Part IV Chapter V | Supplemental provisions of Part IV |
| Part V Chapter I and Schedules 5 and 6 | Drought |
| Part V Chapter II | Promotion of the efficient use of water |
| Part VI Chapter I | General Functions of the Sewerage Undertakers |
| Part VI Chapter II except Articles 157, 159(7)(b), 160(1), (2) and (4) and 167 | Provision of Sewerage Services |
| Part VI Chapter III | Trade Effluent |
| Part VII Chapter I in so far as not already in operation except Articles 200(6) and 201(4) | Financial Provisions |
| Part VII Chapter II | Financial assistance for Undertakers |
| Part VIII and Schedule 4, except paragraph 5, and Schedules 7, 8, 9 and 10 | Undertakers' Powers and Works |
| Part IX except: <ul style="list-style-type: none"> • Article 255(1) in so far as it relates to: <ol style="list-style-type: none"> (i) any consent which, by virtue of Part III of Schedule 2 to this Order (Trade Effluent), is deemed to be given or has effect under Chapter III of Part VI of the 2006 Order; | Information |

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| <p>(ii) any agreement which by virtue of Part III of Schedule 2 to this Order (Trade Effluent), has effect as if entered into by the sewerage undertaker under Article 187 of the 2006 Order, or</p> <p>(iii) any consent or agreement which is given, or entered into, on or after the transfer date pursuant to a notice served, or application made, before the transfer date which, by virtue of Part III of Schedule 2 to this Order (Trade Effluent), is deemed to be given or have effect under Chapter III of Part VI of the 2006 Order; and</p> <ul style="list-style-type: none"> • Article 263 | |
| <p>In Part XI:</p> <p>Article 280 except, in the application of it or the new Article 7 of the 1999 Order substituted by it, in so far as it relates to a discharge from a public sewer or public sewage treatment works operated by a sewerage undertaker under an operating agreement (as the terms “public sewer”, “public sewage treatment works”, “sewerage undertaker” and “operating agreement” are respectively defined in Articles 2 and 9(6) of the 1999 Order as in force immediately before 1 April 2007);</p> <p>Articles 281 to 287;</p> <p>Article 288 in so far as not already in operation;</p> <p>Article 289;</p> <p>Article 290 except, in the application of paragraph (4) or the provision substituted by it in so far as it relates to a discharge from a public sewer or public sewage treatment works operated by a sewerage undertaker under an operating agreement (as those terms are respectively defined in the 1999 Order as in force immediately before 1 April 2007); and</p> <p>Article 291 except, in the application of any provision of or substituted by it, in so far as it relates to a discharge from a public sewer or public sewage treatment works operated by a sewerage undertaker under an operating</p> | <p>Amendments to the Water Order</p> |

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| <p>agreement (as those terms are respectively defined in the 1999 Order as in force immediately before 1 April 2007).</p> | |
| <p>Part XII: Articles 292 to 307;</p> <p>Article 308(1) and Schedule 12 except, in the application of any provision of or substituted by paragraph 32, in so far as it relates to a discharge from a public sewer or public sewage treatment works operated by a sewerage undertaker under an operating agreement (as those terms are respectively defined in the 1999 Order as in force immediately before 1 April 2007); and</p> <p>Article 308(2) and Schedule 13 except, in the entry in respect of the 1999 Order, the repeal of Article 9 in so far as it relates to a discharge from a public sewer or public sewage treatment works operated by a sewerage undertaker under an operating agreement (as those terms are respectively defined in the 1999 Order as in force immediately before 1 April 2007).</p> | <p>Miscellaneous and Supplemental</p> |

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART I

APPLICATIONS FOR WATER OR SEWERAGE SERVICES

Water supply

1.—(1) Any application made to the Department under Article 17(1)(a) of the 1973 Order which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date-

- (a) where it relates to the supply of water for domestic purposes to premises that consist in the whole or any part of a building-
 - (i) as if it were a demand made to the water undertaker for the purposes of Article 91(2) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application were a condition imposed by the water undertaker under Article 92 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with any duty under Article 91 of the 2006 Order is subject, but without prejudice to the right of the water undertaker to impose such other conditions under Article 92 of that Order as it thinks fit; or
- (b) in any other case, as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date.

(2) References in Article 91(5) of the 2006 Order to the time when the demand is made shall be taken, in relation to an application having effect as a demand by virtue of sub-paragraph (1)(a)(i), as references to the time when the application was made to the Department under Article 17(1)(a) of the 1973 Order.

Connection of a service pipe

2.—(1) Any application made to the Department under Article 17(1)(c) of the 1973 Order for the connection of a service pipe with an existing main vested in the Department which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) where it relates to the connection of a service pipe for the purpose of providing a supply of water for domestic purposes to premises which consist in the whole or any part of a building or are premises on which any person is proposing to erect any building or part of a building—
 - (i) as if it were a notice served on the water undertaker for the purposes of Article 79(1) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application were a condition imposed by the water undertaker under the relevant provision of Article 81 or 82 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 79 of that Order is subject, but without prejudice to the right of the water undertaker to impose such other conditions as it is required to impose under Article 81 or is permitted or thinks fit to impose under Article 82 of that Order;

(b) in any other case, as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date.

(2) Without prejudice to the generality of sub-paragraph (1), in relation to an application having effect as a connection notice by virtue of sub-paragraph (1)(a)(i)—

(a) Article 82(4) of the 2006 Order shall not apply;

(b) except where paragraph 3(1)(c)(iii) applies, the reference in Article 85(6)(a) of the 2006 Order to the day on which the notice was served on the undertaker shall be taken as a reference to the transfer date;

(c) Article 85(2) of the 2006 Order shall not apply; and

(d) Article 85(1)(b) of the 2006 Order shall not apply.

(3) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 82(2)(a) of the 2006 Order, those sums shall, in so far as they are transferred to the water undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 83(1) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

Water main requisitions

3.—(1) Any application made to the Department under Article 17(1)(d) of the 1973 Order for an existing main vested in the Department to be extended or augmented, and for the connection of a service pipe with that extended or augmented main, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

(a) in so far as it relates to the provision of a main to be used for providing such supplies of water as are sufficient for domestic purposes to premises in a particular locality consisting in buildings or parts of buildings or premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out—

(i) as if it were a notice served on the water undertaker for the purposes of Article 76(1)(a) of the 2006 Order on the transfer date; and

(ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application which relate to the payment of, or the provision of any security for, the costs of or charges for providing the main were a condition imposed by the water undertaker under Article 77 of the 2006 Order, in so far as it is one which may be imposed by a water undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 76 of that Order is subject, but without prejudice to the right of the water undertaker to impose such other conditions under Article 77 of that Order as it thinks fit;

(b) in so far as it relates to the provision of a main otherwise than as mentioned in sub-paragraph (a), as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order on the transfer date to the extent that such request gives rise to a duty to take steps in order to enable the undertaker to provide a supply of water; and

(c) in so far as it relates to the connection of the service pipe, for the purpose of providing a supply of water for domestic purposes, to premises which consist in the whole or any part of a building or are premises on which any person is proposing to erect any building or part of a building, as if—

(i) it were a notice served on the water undertaker for the purposes of Article 79(1) of the 2006 Order on the day on which the main provided in accordance with sub-paragraph 1(a) is brought into operation; and

(ii) paragraph 2(1)(a) and 2(a), applied in relation to it as it applies in relation to an application made under Article 17(1)(c) of the 1973 Order; and

(iii) without prejudice to the generality of head (i), in the application of Article 85(6) of the 2006 Order in relation to it the reference in sub-paragraph (a) of that paragraph to

the day on which the notice was served on the undertaker were a reference to the day on which the main provided in accordance with sub-paragraph 1(a) is brought into operation;

- (d) in so far as it relates to the connection of the service pipe in any other case as if it were a request made to the water undertaker for the purposes of Article 94 of the 2006 Order to the extent that such request gives rise to a duty to take steps in order to enable the undertaker to provide a supply of water.

(2) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 77 of the 2006 Order, those sums shall, in so far as they are transferred to the water undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 77(4)(b) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

(3) In relation to an application having effect as mentioned in sub-paragraph (1)(a)—

- (a) the reference in Article 78(1)(a) of the 2006 Order to the period of 3 months beginning with the relevant day having expired shall be taken as a reference to that period having expired and the period of 3 months beginning with the transfer date having expired; and
- (b) any place determined by the Department and notified to the applicant before the transfer date as the place at which any service pipe will connect with the main shall be treated for the purposes of that Article as a place determined by agreement between the water undertaker and the person or persons who applied for the provision of the main.

Connection of a drain or private sewer and discharge of domestic sewage or surface water

4.—(1) Any application made to the Department under Article 17(1)(b) of the 1973 Order to discharge domestic sewage or surface water (in each case, as defined in the 1973 Order) into a sewer vested in the Department, and any application under Article 17(1)(c) of the 1973 Order for the connection of a drain or private sewer with an existing sewer vested in the Department, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) as if it were a notice served on the sewerage undertaker for the purposes of paragraph (4) of Article 163 of the 2006 Order (in the case of an application under the said Article 17(1)(b), in so far as it relates to the entitlement under the said Article 163 to discharge, and in the case of an application under the said Article 17(1)(c), in so far as it relates to the entitlement under the said Article 163 to communicate) on the transfer date; and
- (b) in the case of an application under Article 17(1)(c) of the 1973 Order, as if any term or condition imposed by the Department under Article 17(3) of that Order in respect of the application were a requirement or condition imposed by the sewerage undertaker under Article 163(7) or (where the Department had, before the transfer date, notified the applicant of its intention to make the connection itself) under Article 164(3) of the 2006 Order, in so far as it is one which may be imposed by a sewerage undertaker under the relevant Article, or otherwise were a condition to the satisfaction of which any entitlement under Article 163(1) of that Order is subject, but without prejudice to the right of the sewerage undertaker to impose such other requirements or conditions under Article 163 of that Order as it thinks fit; and
- (c) in the case of an application under Article 17(1)(c) of the 1973 Order, where the Department had, before the transfer date, notified the applicant of its intention to make the connection itself, as if the sewerage undertaker had given notice under Article 164(1) of the 2006 Order in respect of the notice within 21 days of receipt of the notice.

(2) Without prejudice to the generality of sub-paragraph (1), in relation to an application having effect as a notice served on the sewerage undertaker for the purposes of Article 163(4) of the 2006 Order by virtue of sub-paragraph (1)—

- (a) the reference in Article 163(5) of the 2006 Order to the period of 21 days after the sewerage undertaker receives the notice shall be taken as a reference to the period of 21 days after the transfer date;
- (b) the reference in Article 164(1)(a) of the 2006 Order to the period of 21 days after receipt of the notice shall be taken as a reference to the period of 21 days after the transfer date.

Sewer requisitions

5.—(1) Any application made to the Department under Article 17(1)(d) of the 1973 Order for an existing sewer vested in the Department to be extended or augmented, and for the connection of a drain or private sewer with that extended or augmented sewer, which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date—

- (a) in so far as it relates to the provision of a public sewer to be used for the drainage for domestic purposes of premises in a particular locality on which there are buildings or on which there will be buildings when proposals made by any person for the erection of any buildings are carried out—
 - (i) as if it were a notice served on the sewerage undertaker for the purposes of Article 154(1)(a) and, as the case may be, (2)(a) of the 2006 Order on the transfer date; and
 - (ii) as if any term or condition imposed by the Department under Article 17(3) of the 1973 Order in respect of the application which relates to the payment of, or the provision of any security for, the costs of or charges for providing the sewer or, as the case may be, lateral drain were a condition imposed by the sewerage undertaker under Article 155 of the 2006 Order, in so far as it is one which may be imposed by a sewerage undertaker under that Article, or otherwise were a condition to the satisfaction of which compliance with the duty under Article 154 of that Order is subject, but without prejudice to the right of the sewerage undertaker to impose such other conditions under Article 155 of that Order as it thinks fit;
- (b) in so far as it relates to the provision of a sewer otherwise than as mentioned in sub-paragraph (a), as if it were a request to the sewerage undertaker made on the transfer date to enter into an agreement under Article 221(1) of the 2006 Order; and
- (c) in so far as it relates to the connection of a drain or private sewer with the sewer mentioned in sub-paragraph (a) or (b) as if—
 - (i) it were a notice served on the sewerage undertaker for the purposes of Article 163(4) of the 2006 Order on the day on which the sewer provided, or, if later, the lateral drain provided, in accordance with sub-paragraphs (1)(a) or (b) pursuant to the application is brought into operation; and
 - (ii) subject to head (i), paragraph 4 above applied in relation to it as it applies to an application made under Article 17(1)(c) of the 1973 Order.

(2) Where any sums have been deposited with the Department by way of security pursuant to a term or condition imposed by the Department under Article 17(3) of the 1973 Order and that term or condition has effect by virtue of sub-paragraph (1)(a)(ii) as if it were a condition imposed under Article 155 of the 2006 Order, those sums shall, in so far as they are transferred to the sewerage undertaker in accordance with a scheme made under Article 270(1) of the 2006 Order, be treated for the purposes of Article 155(4)(b) of the 2006 Order as having been deposited with the undertaker on, and being in the hands of the undertaker since, the transfer date.

(3) In relation to an application having effect as mentioned in sub-paragraph (1)(a)—

- (a) the reference in Article 156(1)(a) of the 2006 Order to the period of 6 months beginning with the relevant day having expired shall be taken as a reference to that period having expired and the period of 6 months beginning with the transfer date having expired; and
- (b) any place determined by the Department and notified to the applicant before the transfer date as the place at which any drain or private sewer will connect with the public sewer shall be treated for the purposes of that Article as such a place determined by agreement between the sewerage undertaker and the person or persons who applied for the provision of the public sewer.

Agreements for the provision or adoption of works

6. — Without prejudice to the transfer of rights and liabilities under the agreement in accordance with a scheme made under Article 270 of the 2006 Order any agreement made under Article 17(4) of the 1973 Order, or under Article 19 of the 1973 Order as originally enacted, which is in force immediately before the transfer date and which relates to the provision of a sewer, and any works connected with such sewer, by a person other than the Department and to the adoption by the Department of such sewer and works shall have effect on and after the transfer date as if it were an agreement made under Article 161(1) of the 2006 Order provided that—

- (a) Article 161(5) of the 2006 Order shall not apply to such agreement; and
- (b) the reference in Article 206(3) of the 2006 Order to any agreement under Article 161 shall be construed accordingly.

Appeals

7.—(1) Where an appeal made to the Appeals Commission in accordance with Article 17(5) of the 1973 Order has not been determined before the transfer date, it may be determined by the Appeals Commission on or after that date notwithstanding the repeal of that Article.

(2) Where a person has a right to appeal to the Appeals Commission under Article 17(5) of the 1973 Order within the period of 28 days from the date on which he has received notice of the decision of the Department and—

- (a) that right has not been exercised; and
- (b) that period has not expired,

before the transfer date, the right may be exercised within the said period and, if so exercised, the appeal may be determined by the Appeals Commission notwithstanding the repeal of that Article.

(3) Notwithstanding its repeal by the 2006 Order, the provisions of Article 8 of the 1973 Order shall continue to have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph but subject to the transfer effected in accordance with a scheme made under Article 270 of the 2006 Order.

(4) In the application of Article 8 of the 1973 Order to an appeal in accordance with this paragraph, references to the Department shall be taken as references to the Authority.

(5) Notwithstanding its repeal by the 2006 Order, Article 4 of the 1973 Order shall continue to have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph, but subject to the transfer effected in accordance with a scheme made under Article 270 of the 2006 Order.

(6) Where a person has a right to appeal to the Appeals Commission in relation to a decision of the Department in accordance with this paragraph, no reference may be made by that person under Article 77(6), 79(8), 81(4), 82(6), 88(5) or 92(4) of the 2006 Order in relation to any condition imposed by, or other matter relating to, that decision.

Interpretation

8.—(1) In paragraphs 1 to 5 references to any application under Article 17 of the 1973 Order which is outstanding immediately before the transfer date are references to an application—

- (a) which has not before the transfer date been—
 - (i) withdrawn by the applicant;
 - (ii) refused by the Department in circumstances where the period for appeal under that Article has expired, and no right of appeal under that Article was exercised, before that date; or
 - (iii) refused by the Department in circumstances where the right of appeal under that Article was exercised and the refusal of the Department was upheld, before that date, and

- (b) in respect of which all steps to be taken by the Department in order to enable it to provide the service, connection, extension or augmentation applied for have not been taken before the transfer date.

(2) In paragraphs 1 to 5 references to any condition imposed by an undertaker under an Article of the 2006 Order include references to any requirement compliance with which is a condition of the undertaker's duty and references to any requirement compliance with which satisfies such a condition.

PART II

CONTINUITY OF SERVICES

Non-domestic supplies

9. Where immediately before the transfer date the Department is providing a supply of water pursuant to its duty under Article 3(1) of the 1973 Order to any premises which do not consist in the whole or any part of a building or for purposes other than domestic purposes, the water undertaker shall, on and after that date, have a duty, subject to paragraph 10, to provide that supply under Article 94 of the 2006 Order as if—

- (a) a request had been made for the provision of it by the person who is liable, immediately before the transfer date, to pay charges in respect of the supply, or if there is no such person, the person who was then the occupier of the premises;
- (b) the supply were not a new supply; and
- (c) any terms and conditions subject to which the supply was provided by the Department were terms and conditions determined by agreement between the water undertaker and that person and contained in such an agreement,

provided that the undertaker shall be entitled, by notice given to that person within the period of six months beginning with the transfer date, to propose any other terms or conditions (whether in addition to or in substitution for terms or conditions already applying), and Article 95 of the 2006 Order shall apply in relation to such other terms or conditions as if they fell to be determined for the purposes of a request made by that person to the undertaker for the purposes of Article 94 of that Order.

Domestic supplies and sewerage services

10. Nothing in this Order shall give rise to any contractual obligation on the part of the water undertaker to provide a supply of water for domestic purposes, or on the part of the sewerage undertaker to provide for the discharge of foul water or surface water for domestic sewerage purposes.

Charges

11. The power of a water or a sewerage undertaker to fix, demand and recover charges under Article 200 of the 2006 Order shall apply to services provided, or other things done, by the undertaker in the course of carrying out its functions under the 2006 Order whether or not those services, or other things done, are a continuation of services provided by the Department before the transfer date (with or without charge and irrespective of the level of charge) under or pursuant to the 1973 Order.

Adoption of works, sewers, pipes or drains

12. Any entitlement which a person has under Article 12(5) of the 1973 Order immediately before the transfer date shall continue on and after that date, but subject to the provisions of the 2006 Order.

PART III
TRADE EFFLUENT

Existing discharges

13.—(1) No discharge of trade effluent from any trade premises into a sewer or waste water treatment works of the sewerage undertaker shall on or after the transfer date be authorised by virtue of Article 29 of the 1973 Order.

(2) Subject to the following provisions of this paragraph

(a) where any discharge of trade effluent from any trade premises into a sewer was authorised by Article 29 of the 1973 Order immediately before the transfer date, a consent shall be deemed to be given under Chapter III of Part VI of the 2006 Order by the sewerage undertaker on the transfer date (referred to in this Part as a “deemed consent”) for the discharge from those premises into that sewer to continue on and after the transfer date, and—

(b) a deemed consent—

(i) shall, subject to paragraph 19, be subject to the same conditions as to charges or otherwise as the discharge to which it relates was subject immediately before the transfer date;

(ii) shall be deemed to include the consent of DOE in relation to any part of the discharge that comprises special category effluent; and

(iii) shall have effect as if it had been granted under that Chapter to the occupier on the transfer date of those premises.

(3) Except where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (whether or not that direction has taken effect)

(a) the sewerage undertaker may at any time after the transfer date give a direction under Article 182 of the 2006 Order varying the conditions attached to the consent, including any attached by virtue of sub-paragraph (2), as if Article 182(2) did not apply; and

(b) Articles 182(6)(a), 183 and 184 of the 2006 Order shall not apply in relation to any such direction.

(4) A deemed consent—

(a) shall not be transferable, and Article 177 of the 2006 Order shall accordingly not apply in relation to it; and

(b) shall cease to have effect on the expiry of the period of six months commencing on the transfer date, except as provided in sub-paragraph (5).

(5) Where, before the expiry of the period referred to in sub-paragraph (4), the occupier of trade premises has made an application to the sewerage undertaker under Article 176 of the 2006 Order for a consent to discharge trade effluent, being a discharge to which a deemed consent relates, the deemed consent shall cease to have effect-

(a) if the consent is given (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise), on the date on which it is given (whether or not it is subject to conditions that may be the subject of an appeal under Article 180(1)(c) of the 2006 Order);

(b) if the consent is refused (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise)—

(i) except where (ii) applies, on the expiry of the period of 28 days beginning with the date on which the undertaker refused it; or

(ii) where the occupier appeals to the Authority under Article 180(1)(a) of the 2006 Order within such 28 day period, on the date on which the Authority determines the appeal;

(c) if the occupier appeals to the Authority under Article 180(1)(b) of the 2006 Order in respect of the failure to give the consent, on the date on which the Authority determines the appeal.

(6) Any dispute between the sewerage undertaker and a person making a discharge as to whether the discharge is one which was authorised by Article 29 of the 1973 Order immediately before the transfer date shall be determined by the county court whose decision in the matter shall be final, except on a point of law.

(7) Where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (in this paragraph referred to as a “reviewed discharge”)—

(a) the reference in Article 182(2) of the 2006 Order to the date of the consent shall be taken as a reference to the date on which that direction (or, if there is more than one such direction, the most recent of them) took effect; and

(b) the reference in Article 185(2) of the 2006 Order to a review shall be taken not to include any review conducted before the transfer date by the Department (or any predecessors).

(8) Where any appeal has been made to the Appeals Commission in accordance with Article 31(5) of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date in accordance with sub-paragraph (9).

(9) Any appeal to the Authority under sub-paragraph (8) shall be determined by the Authority under Article 180 of the 2006 Order as if—

(a) the appeal were made under sub-paragraph (c) of paragraph (1) of that Article against any condition attached by the sewerage undertaker on an application for a consent; and

(b) in the application of Article 181 of the 2006 Order to that appeal—

(i) paragraph (1) of that Article were omitted; and

(ii) sub-paragraph (a) of paragraph (2) of that Article were taken to include a case in which the sewerage undertaker in question would have been required to make a reference under Article 178 of the 2006 Order had the discharge in question been the subject of a notice under Article 176 of that Order.

(10) References in this paragraph to a direction under Article 31 of the 1973 Order include references to a reviewed direction under that Article.

New discharges

14.—(1) Any consent which is effective under Article 22 of the 1973 Order immediately before the transfer date in respect of any trade premises shall have effect on and after that date as if given by the sewerage undertaker to the occupier of the trade premises under Chapter III of Part VI of the 2006 Order and shall, subject to paragraph 19, be subject to the same conditions as to charges or otherwise as those to which it was subject immediately before the transfer date.

(2) In the application of Article 182 of the 2006 Order to any consent which has effect in accordance with sub-paragraph (1) (referred to in this paragraph as a “new consent”)—

(a) the reference in paragraph (2) of that Article to the date of the consent shall be taken as a reference to the date on which the consent was granted under Article 22 of the 1973 Order; and

(b) the reference in that paragraph to a previous direction given under Article 182 of the 2006 Order shall be taken to include a review under Article 27 of the 1973 Order.

(3) Where any appeal has been made to the Appeals Commission in accordance with Article 27(4) of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date in accordance with sub-paragraph (4).

(4) Any appeal to the Authority under sub-paragraph (3) shall be determined by the Authority under Article 180 of the 2006 Order as if—

(a) the appeal were made under sub-paragraph (c) of paragraph (1) that Article against any condition attached by the sewerage undertaker to a consent on an application for a consent; and

- (b) in the application of Article 181 of the 2006 Order to that appeal—
 - (i) paragraph (1) of that Article were omitted; and
 - (ii) sub-paragraph (a) of paragraph (2) of that Article were taken to include a case in which the sewerage undertaker in question would have been required to make a reference under Article 178 of the 2006 Order had the discharge in question been the subject of a notice under Article 176 of that Order.

(5) In relation to a new consent, the reference in Article 185(2) of the 2006 Order to a review shall be taken not to include any review conducted before the transfer date by the Department (or any predecessors).

Applications for consent to a new discharge

15.—(1) Any application made to the Department in accordance with Article 23 of the 1973 Order by an occupier of trade premises which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date as if it were a notice served on the sewerage undertaker for the purposes of Article 176 of the 2006 Order.

- (2) Where an application has effect as a notice by virtue of sub-paragraph (1)—
 - (a) the applicant shall within 28 days of the transfer date supplement the application by the provision to the sewerage undertaker of the information mentioned in Article 176(2)(b) and (c) of the 2006 Order; and
 - (b) the periods mentioned in Article 178(2) and Article 180(1)(b) of the 2006 Order shall not begin to run for the purposes of those provisions in their application to such notice until the day after that on which the applicant provides the information so required.

(3) Where any appeal has been made to the Appeals Commission in accordance with Article 26 of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date under Article 180 of the 2006 Order as if the appeal were an appeal under sub-paragraph (a) or (c) of paragraph (1) of that Article (as the case may be); and Article 181 of the 2006 Order (except paragraph (1)) shall apply accordingly.

(4) Where a person has a right to appeal to the Appeals Commission under Article 26 of the 1973 Order within the period of 28 days from the date on which he received an intimation of the decision and before the transfer date—

- (a) that right has not been exercised; and
- (b) that period has not expired,

that person may within the said period appeal to the Authority under Article 180 of the 2006 Order as if the appeal were an appeal under sub-paragraph (a) or (c) of paragraph (1) of that Article (as the case may be); and Article 181 of the 2006 Order (except paragraph (1)) shall apply accordingly.

(5) In this paragraph the reference to any application made in accordance with Article 23 of the 1973 Order which is outstanding immediately before the transfer date is a reference to an application for consent under Article 22 made in accordance with Article 23 of that Order which has not been—

- (a) withdrawn by the applicant before the transfer date, or
- (b) refused, or granted subject to conditions, by the Department more than 28 days before that date.

Agreements as respects trade premises

16.—(1) Subject to sub-paragraph (2), any agreement made or having effect under Article 32 of the 1973 Order which is in force immediately before the transfer date (not being an agreement which the parties have failed to renew as mentioned in paragraph (6) of that Article) shall continue in force on and after that date notwithstanding the repeal of that Article, but without prejudice and subject to the transfer of rights and liabilities under the agreement in accordance with a scheme made under Article 270 of the 2006 Order.

- (2) In the case of any agreement to which sub-paragraph (1) applies—

- (a) it shall have effect on and after the transfer date as if entered into by the sewerage undertaker under Article 187 of the 2006 Order (whether it relates to the reception, treatment or disposal of trade effluent);
- (b) the reference in Article 189(2) (a) of the 2006 Order to an agreement entered into before the transfer date shall be taken to include a reference to it; and
- (c) nothing in Article 188(1) of the 2006 Order shall require the sewerage undertaker to make a reference to DOE under that Article in relation to it.

(3) Where a discharge is lawfully made by an owner or occupier of trade premises under Article 32(7) of the 1973 Order immediately before the transfer date subject to a direction under Article 32(6) of that Order, the terms of such a direction shall have effect (whether or not that direction has taken effect in accordance with its terms, and whether or not the period for appeal against the direction under Article 27(4) of the 1973 Order, as applied with any necessary modifications by virtue of Article 32(6) of that Order has expired before the transfer date) on and after the transfer date as if they were the terms of an agreement entered into on the transfer date between the owner or occupier (as the case may be) and the sewerage undertaker under Article 187 of the 2006 Order (whether the terms of the agreement to which Article 32(6) of that Order applies relate to the reception, treatment or disposal of trade effluent).

(4) An agreement which has effect as mentioned in sub-paragraph (3) following a direction under Article 32(6) of the 1973 Order or under sub-paragraph (5) following an appeal under that sub-paragraph, shall expire—

- (a) at the end of the period of six months beginning on the transfer date; or
- (b) on such earlier date as may be specified in the direction.

(5) Where in relation to any direction under Article 32(6) of the 1973 Order any appeal has been made to the Appeals Commission in accordance with Article 27(4) of the 1973 Order (as applied with any necessary modifications by virtue of Article 32(6)) before the transfer date, and has not been determined before that date, it shall be determined by the Authority on or after that date under Article 180 of the 2006 Order as if—

- (a) the appeal were an appeal under sub-paragraph (c) of paragraph (1) of that Article against any condition attached by the sewerage undertaker to a consent on an application for a consent;
- (b) the reference in Article 180(6) of the 2006 Order to conditions given or imposed by the sewerage undertaker were a reference to conditions agreed by the sewerage undertaker and the occupier or owner (as the case may be) in an agreement under Article 187 of the 2006 Order; and
- (c) in the application of Article 181 of the 2006 Order to that appeal—
 - (i) paragraph (1) of that Article were omitted; and
 - (ii) sub-paragraph (a) of paragraph (2) of that Article were taken to include a case in which the sewerage undertaker in question would have had a duty to make a reference under Article 178 of the 2006 Order had the discharge in question been the subject of a notice under Article 176 of that Order.

(6) If, on an appeal under sub-paragraph (5), it appears to the Authority that the case is one in which the sewerage undertaker in question would have been required to make a reference under Article 188 of the 2006 Order before entering into such an agreement, the Authority shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in sub-paragraph (7) are satisfied.

(7) The conditions mentioned in paragraph (6) are satisfied if the Authority—

- (a) has itself referred the questions mentioned in Article 188(1) of the 2006 Order to DOE; and
- (b) has been sent a copy of the notice of DOE's determination on the reference.

(8) Every reference under sub-paragraph (7)(a) shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference are made.

(9) It shall be the duty of the Authority, on making a reference under sub-paragraph (7)(a), to serve a copy of the reference—

- (a) on the occupier of the trade premises in question; and
- (b) on the sewerage undertaker in question.

(10) Save as provided in sub-paragraph (3), nothing in this Order or Article 32(7) of the 1973 Order or a scheme made under Article 270 of the 2006 Order shall permit the continuation on or after the transfer date of a discharge in any case where the parties to an agreement made or having effect under Article 32 of the 1973 Order failed to renew the agreement.

Information on appeal and interpretation

17.—(1) On an appeal to which this Part applies in respect of any discharge, the Authority may require the appellant to provide such further information concerning the discharge as an applicant for consent to the discharge would be required to furnish in an application under Article 176 of the 2006 Order.

(2) References in the 2006 Order to a consent under or given under, or an agreement under, Chapter III of Part VI, or to a discharge of trade effluent which is lawfully made by virtue of Chapter III of Part VI, shall be taken to include references to a consent which by virtue of this Part of this Order has effect as if it were given under that Chapter, or as a deemed consent or is a discharge of trade effluent which is lawfully made, as the case may be.

(3) The reference in sub-paragraph (a)(i) of Article 185(2) of the 2006 Order to a consent or variation given or made before the transfer date shall be taken to include a reference to a deemed consent and a new consent (as defined in sub-paragraph (2) of paragraph 13 and sub-paragraph (2) of paragraph 14 respectively).

PART IV

CHARGES FOR SERVICES

Amounts due to the Department

18.—(1) The repeal of the 1973 Order shall not affect the liability of any person for any amount which is due to the Department under the 1973 Order or regulations made under the 1973 Order immediately before the transfer date or which would, but for the repeal, have become so due to the Department on or after that date in respect of any period, or anything done, prior to that date; and each such amounts shall be payable on or after that date to the person to whom the right to receive it is transferred in accordance with a scheme made under Article 270 of the 2006 Order.

(2) Without prejudice to the generality of sub-paragraph (1) and notwithstanding the repeal of Article 54 of the 1973 Order or revocation of regulation 7(3) of the Water Charges Regulations (Northern Ireland) 1973 by the 2006 Order, the person to whom the right to receive the amount referred to in sub-paragraph (1) is transferred in accordance with a scheme made under Article 270 of the 2006 Order may recover any such amounts summarily as a civil debt.

Trade effluent charges

19. References (however expressed) in any deemed consent (as defined in Part III of Schedule 2 to this Order (Trade Effluent)), to any charges or method of charging for trade effluent discharges determined from time to time by the Department in relation to any period shall have effect on and after the transfer date, as if they were references to the charges or method of charging for trade effluent discharges specified in a charges scheme made under Article 201 of the 2006 Order and for the time being in force.

Liability of owners and occupiers

20. Where, in the case of any premises—

- (a) the person who is liable, immediately before the transfer date, to pay charges in respect of a supply of water or the provision of sewerage services to those premises is the owner of those premises, and not the occupier; and
- (b) that person is so liable otherwise than by virtue of an agreement,

then, on and after that date, the person who is the owner from time to time of those premises (“the current owner”) shall continue to be or, as the case may be, shall become and remain, so liable, until the person who is in fact the occupier of the premises immediately before that date ceases to be, and another person becomes, the occupier of those premises, and accordingly the current owner shall until then be treated for the purpose of Article 203 of the 2006 Order as if he were the occupier of those premises.

Notice of requirements to connect or disconnect a meter

21.—(1) Where before the transfer date the Department was proposing to carry out, or was carrying out, any works in respect of any premises pursuant to a notice served on the Department under regulation 5(2) of the Water Charges Regulations (Northern Ireland) 1973, notwithstanding the revocation of that regulation by the 2006 Order, that regulation shall apply to such works on or after that date, but subject to the transfer in accordance with a scheme made under Article 270 of the 2006 Order.

(2) Where sub-paragraph (1) applies in respect of any premises, Article 223 of the 2006 Order shall apply to the person to whom the rights and liabilities in relation to regulation 5(2) of the Water Charges Regulation (Northern Ireland) 1973 are transferred in accordance with a scheme made under Article 270 of the 2006 Order, as if paragraph (2) of that Article was satisfied in relation to those premises; and Article 233 of the 2006 Order shall apply accordingly.

(3) The requirements as to notice of entry in Schedule 4 to the 2006 Order shall be deemed to be satisfied in respect of any entry to premises effected under Article 223 or 233 of the 2006 Order for the purposes of sub-paragraph (1) by the person to whom the rights and liabilities in relation to regulation 5(2) of the Water Charges Regulations (Northern Ireland) 1973 are transferred in accordance with a scheme made under Article 270 of the 2006 Order.

Disconnection for non-payment

22.—(1) Where—

- (a) before the transfer date premises are disconnected by the Department from a main of the Department under Article 53(5) of the 1973 Order or regulation 7(1) of the Water Charges Regulations (Northern Ireland) 1973 and remain so disconnected immediately before the transfer date; and
- (b) a demand is made to the water undertaker under Article 91(2) of the 2006 Order (or takes effect as if made under Article 91(2) of that Order in accordance with paragraph 1), by any person in respect of those premises,

Article 92(2)(a) of the 2006 Order shall apply in relation to that demand as if the reference to any amount owed by him to the undertaker included a reference to any amount owed by him to the Department, and the reference to expenses reasonably incurred in cutting off any supply included any expenses incurred by the Department in cutting off the supply under Article 53(5) of the 1973 Order or regulation 7 of those regulations.

(2) Any notice served by the Department on any person of its intention to disconnect premises from a main of the Department under regulation 7(1) of the Water Charges Regulations (Northern Ireland) 1973 which is extant immediately before the transfer date in respect of any premises shall, except in the case of any premises specified in Schedule 2 to the 2006 Order, have effect on and after that date as if it were a notice served by the water undertaker for the purposes of Article 100(1)(b) of the 2006 Order on that person.

(3) References in Article 100(1)(b) of the 2006 Order to the day after a person is served with notice shall be taken, in relation to a notice having effect as a notice under that Article by virtue of sub-paragraph (2), as references to the day after a person is served with notice by the Department under regulation 7(1) of the Water Charges Regulations (Northern Ireland) 1973.

(4) In relation to a notice having effect as mentioned in sub-paragraph (2), where, within the period of 7 days after a person is served with the notice, that person notifies the Department (before the transfer date) or the water undertaker (on or after the transfer date) that he disputes his liability to pay the charges in question, Article 100(3) of the 2006 Order shall apply.

PART V

WORKS AND LAND

Notice of intention to execute works

23.—(1) Without prejudice to paragraph 6(1)(a) of Schedule 4 to the 2006 Order, where before the transfer date the Department was proposing to carry out, or was carrying out, any works and the water undertaker or sewerage undertaker proposes to carry out or continue those works on or after that date—

- (a) any notice of intention to carry out the works which had been served on any person before that date shall have effect on and after that date as if it had been served for the purpose of carrying out those works by the water undertaker or the sewerage undertaker, as the case may be, in accordance with any power in that behalf conferred on that undertaker by the 2006 Order; and
- (b) the period of the notice (inclusive of any part counted as such by virtue of sub-paragraph (2)) shall, if of 28 days or more, be regarded as reasonable for the purposes of Article 220(4) and (5) of the 2006 Order.

(2) Without prejudice to the generality of sub-paragraph (1), so much of the time period of any notice served by the Department as mentioned in sub-paragraph (1) as has expired before the transfer date shall be taken into account, and counted as if it were part of the period of notice so treated as served, for the purpose of paragraphs 1 and 6 of Schedule 4 to the 2006 Order, and any other provision of the 2006 Order.

(3) Without prejudice to the generality of sub-paragraph (1), any notice served by the Department under Article 15 of the 1973 Order which is effective immediately before the transfer date in relation to any repairs or other work which will cause a material interference with the supply of water shall have effect on and after that date as a notice given by the water undertaker for the purposes of Article 99 of the 2006 Order and so much of the period of any such notice served by the Department as has expired before the transfer date shall be taken into account, and counted as if it were part of the period of notice so treated as given, for the purposes of the requirement to give reasonable notice mentioned in that Article.

Rights of entry

24.—(1) Without prejudice to sub-paragraph (2), where before the transfer date the Department was proposing to carry out, or was carrying out, any works in respect of which no notice is required to be given under the 1973 Order and the water undertaker or the sewerage undertaker proposes to carry out or continue those works, no notice shall be required for the purpose of paragraph 6 of Schedule 4 to, or any other provision of, the 2006 Order in respect of any entry on the premises effected by the water or sewerage undertaker concerned on the transfer date, or, where paragraph 6(2)(b) of that Schedule applies, within the period of 6 days following the transfer date.

(2) Without prejudice to paragraph 23, where immediately before the transfer date any right under Article 50 of the 1973 Order to enter land or premises for any purpose mentioned in that Article was being exercised by an authorised officer of the Department or of DOE that person shall, in the case of a person designated by the Department, be deemed to be a person designated in writing by the water undertaker, or the sewerage undertaker, as the case may be, for any corresponding purpose mentioned in Articles 229 to 233 of the 2006 Order, or, in the case of a person designated by the Department or DOE, by either or both of the Department or DOE for any corresponding purpose mentioned in Article 124 of the 2006 Order, and the requirements as to

notice in paragraphs 1 and 6 of Schedule 4 to the 2006 Order (or in any other provision of the 2006 Order) shall be deemed to have been satisfied in relation to entry by that person.

(3) Without prejudice to the generality of sub-paragraph (1), any notice served by the Department under Article 50(2) of the 1973 Order which is effective immediately before the transfer date in relation to any of the purposes mentioned in Article 50(1) of that Order shall have effect on and after that date as if it had been given for that purpose by the water undertaker, or the sewerage undertaker, as the case may be, in accordance with any power conferred on that undertaker by the 2006 Order and so much of the period of any such notice served by the Department as has expired before the transfer date shall be taken into account, and counted as if it were part of the period of notice so treated as given, for the purposes of the relevant provision of the 2006 Order.

(4) A warrant issued under Article 50(5) of the 1973 Order to any person before the transfer date in respect of entry to any land or other premises shall have effect on and after that date—

- (a) as a warrant issued under Part I of Schedule 4 to the 2006 Order, authorising that person to enter those premises; or
- (b) as a warrant issued under Part II of that Schedule to the relevant authority (as defined in that Part), authorising it to designate that person as authorised to enter those premises,

according to which Part would have been appropriate if the warrant had been applied for in accordance with that Schedule, and the provisions of that Part of that Schedule shall apply accordingly in relation to a person so authorised provided that, in any case to which Part II of that Schedule so applies, he is designated by the relevant authority on or after the transfer date as being so authorised.

Complaints

25. Article 243 of the 2006 Order shall apply in relation to any such works carried out by the Department within the period of 3 months before the transfer date as could have been carried out by the water undertaker or sewerage undertaker (as the case may be) after that date under Article 220 or 222(2) of the 2006 Order as if such works had been carried out by the water undertaker or the sewerage undertaker (as the case may be) under that Article.

Power to require occupier to permit works to be executed by owner

26. Any complaint made under Article 16 of the 1973 Order which is outstanding on the transfer date shall have effect on and after that date as if it were an application made under Article 240(2) of the 2006 Order.

Compulsory acquisition of land

27.—(1) Any land which has been compulsorily acquired under Article 10 of the 1973 Order before the transfer date shall be treated for the purposes of Article 216 of, and Schedule 7 to, the 2006 Order as compulsorily acquired under that Article and that Schedule—

- (a) by the water undertaker, in relation to land acquired for any purpose in connection with the performance of the Department's functions under Article 3(1)(a) of the 1973 Order; or
- (b) by the sewerage undertaker, in relation to land acquired for any purpose in connection with the performance of the Department's functions under Article 3(1)(b) or (c) of the 1973 Order.

(2) Any vesting order made by the Department under Article 10(2) of the 1973 Order before the transfer date in relation to any land shall have effect on and after that date as if it were a vesting order made under Article 216 of, and Schedule 7 to, the 2006 Order by the Department vesting that land—

- (a) in the water undertaker, in the case of a vesting order made for any purpose in connection with the performance of the Department's functions under Article 3(1)(a) of the 1973 Order; or
- (b) in the sewerage undertaker, in the case of a vesting order made for any purpose in connection with the performance of the Department's functions under Article 3(1)(b) or (c) of the 1973 Order,

and paragraphs 5 to 20 of Schedule 6 to the Local Government Act (Northern Ireland) 1972 (c.9) shall, by virtue of paragraph 5 of Schedule 7 to the 2006 Order, apply to such a vesting order accordingly.

(3) Any notice served or published or other thing done before the transfer date for the purposes of Article 10(2) or (3) of the 1973 Order in relation to the making of a vesting order shall have effect on and after that date as if served, published or done for the purposes of Article 216 of, and Schedule 7 to, the 2006 Order; and Schedule 6 to the Local Government Act (Northern Ireland) 1972 (c.9), as it applies by virtue of paragraph 5 of the said Schedule 7, shall apply accordingly.

PART VI

WATER (NORTHERN IRELAND) ORDER 1999

Pollution of water: offences

28. Until the date on which the first regulations made under Article 7B(5) of the 1999 Order (as substituted by Article 280 of the 2006 Order) come into operation, Article 7 of the 1999 Order (as so substituted) shall apply as if the discharges referred to in it did not include any discharge from a sewer or works vested in a sewerage undertaker into a waste water treatment works operated by a person other than the sewerage undertaker under, or pursuant to, an agreement with the sewerage undertaker, in circumstances where –

- (a) the operator was bound to receive the discharge there either unconditionally or subject to conditions which were observed; or
- (b) the operator was bound to receive the discharge there subject to conditions which were contravened in circumstances where—
 - (i) the contravention was attributable to a discharge which a person other than the undertaker made into the sewer or works so vested;
 - (ii) the undertaker either was not bound to receive the discharge into the sewer or works so vested or was bound to receive it there subject to conditions which were not observed; and
 - (iii) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works so vested;

and in this paragraph references to works vested in a sewerage undertaker shall be taken to include references to a tanker operated by, or on behalf of, such an undertaker.

Discharge consents

29.—(1) Subject to sub-paragraph (2), a consent given under Article 9(3) of, and Schedule 1 to, the 1999 Order (as in force before the transfer date) which is effective immediately before the transfer date shall have effect on and after that date as if given under Article 7A(3)(a) of that Order (as amended by the 2006 Order).

(2) Sub-paragraph (1) shall not apply to any consent that relates to a discharge in relation to which, and for so long as, Articles 280 and 291 of the 2006 Order do not apply by virtue of Part II of Schedule 1 to this Order, until such time as those Articles do apply in relation to it.

30. The amendments made by Article 290(6) and (7) of the 2006 Order shall not apply in relation to any transfer of a discharge consent under paragraph 8 of Schedule 1 to the 1999 Order which takes effect before the transfer date.

PART VII MISCELLANEOUS

Prosecutions and other proceedings

31.—(1) Without prejudice to—

- (a) the generality of section 28(2) or 29(2) of the Interpretation Act (Northern Ireland) 1954; or
- (b) the provisions of a scheme made under Article 270 of the 2006 Order,

proceedings in respect of an offence created by or under any provision of the 1973 Order that may be taken by the Department before the transfer date may be taken on and after the transfer date by the successor company.

(2) Notwithstanding any repeal by the 2006 Order, Article 56A of the 1973 Order shall apply in relation to any proceedings referred to in sub-paragraph (1).

(3) For the purposes of sub-paragraph (2), in any case where the prosecutor is the successor company and where evidence which is sufficient in the opinion of the Department to warrant the proceedings came to the knowledge of the Department before the transfer date—

- (a) the date on which that evidence came to the knowledge of the Department shall be deemed to be the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor; and
- (b) the Department shall, at the request of the successor company, issue a certificate for the purposes of Article 56A of the 1973 Order, as applied by sub-paragraph (2).

Saving for criminal liability of the Department

32. Nothing in this Order or in a scheme made under Article 270 of the 2006 Order shall have the effect, in relation to any criminal liability (or anything which would, but for Crown immunity, be criminal liability or liability to criminal prosecution) of the Department in respect of an offence committed (or which would, but for Crown immunity, have been committed) before the transfer date, of transferring that liability to the successor company.

Application of enactments

33. Any provision contained in this Order as to the application of an enactment contained in the 2006 Order is without prejudice to any wider application of that enactment.

Rights to use pipes etc.

34. Without prejudice to section 28 of the Interpretation Act (Northern Ireland) 1954—

- (a) any right of the Department to use, lay, inspect, maintain, adjust, repair or alter; and
- (b) any interest or other right of, belonging to or vested in the Department in respect of,

any sewers, drains, mains, service pipes, other pipes, meters or accessories which subsists immediately before the transfer date shall continue on and after that date notwithstanding the repeal of the 1973 Order by the 2006 Order, but subject to the transfer of such rights or interest in accordance with a scheme made under Article 270 of that Order.

Supply by means of a separate service pipe

35.—(1) Subject to sub-paragraph (2), any notice served on the owner of premises under regulation 5(1) of the 1973 Regulations which is outstanding immediately before the transfer date shall, where the owner is on the transfer date the consumer (as defined in Article 136 of the 2006 Order) in respect of those premises, have effect on and after that date as if—

- (a) it were a notice served on the said consumer under Article 104(4) of the 2006 Order;
- (b) in the application of Article 104 of that Order to that notice—
 - (i) the requirement in Article 104(4) to set out the power of the undertaker under Article 104(5) were satisfied in relation to that notice;

- (ii) the 3 month period referred to in Article 104(4)(a) applied to that notice notwithstanding any other period for the consumer to lay the requisite pipe specified in the notice (and, accordingly, as if the applicable period were 3 months after the actual service of the notice under the said regulation 5(1)); and
- (iii) without prejudice to the generality of the foregoing, paragraph (3) of that Article applied in respect of any dispute as to whether any condition of a kind mentioned in paragraph (2) of that Article has been complied with.

(2) Any notice served on the owner of premises under regulation 5(1) of the 1973 Regulations which is outstanding immediately before the transfer date shall—

- (i) where the owner is on the transfer date not the consumer (as defined in Article 136 of the 2006 Order) in respect of those premises, or
- (ii) the premises do not consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied,

cease to have effect on that date.

(3) Subject to sub-paragraph (5), where any appeal—

- (a) has been made to the Appeals Commission in accordance with regulation 5(2) of the 1973 Regulations in respect of any notice having effect as a notice under Article 104(4) of the 2006 Order by virtue of sub-paragraph (1)(a); and
- (b) has not been determined before the transfer date,

it shall be determined by the Appeals Commission on or after that date notwithstanding the repeal of that regulation, and sub-paragraph (1) shall apply accordingly to any notice upheld (with or without modifications) on an appeal made by virtue of this sub-paragraph.

(4) Where, in relation to any notice having effect by virtue of sub-paragraph (1) as a notice served under Article 104(4) of the 2006 Order, a person has a right to appeal to the Appeals Commission in accordance with regulations 5(2) of the 1973 Regulations within the period of 28 days from the date on which he received notice from the Department, and before the transfer date—

- (a) that right has not been exercised; and
- (b) that period has not expired,

the right may be exercised within the said period and, if so exercised, the appeal may be determined by the Appeals Commission notwithstanding the revocation of that regulation by the 2006 Order.

(5) Notwithstanding any repeal by the 2006 Order, the provisions of Article 8 of the 1973 Order shall have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph, but subject to the transfer in accordance with a scheme made under Article 270 of the 2006 Order.

(6) In the application of Article 8 of the 1973 Order to an appeal in accordance with this paragraph, references to the Department shall be taken as references to the Authority.

(7) Article 6 of the 2006 Order shall apply to the exercise by the Authority of its power under sub-paragraph (5) as if it were a function mentioned in paragraph (1)(b) of that Article.

Production of plans and furnishing of information

36. Any request made by the Department under Article 47(1) of the 1973 Order which is outstanding immediately before the transfer date shall have effect on and after that date as if it were a request made by the sewerage undertaker under Article 262 of the 2006 Order, provided that the request is one which could be made by a sewerage undertaker under that Article.

Civil liability for escapes of water

37. Notwithstanding any repeal by the 2006 Order, Article 57A of the 1973 Order shall continue to apply to an escape of water before the transfer date which causes loss or damage on or after the

transfer date but subject to the transfer in accordance with a scheme made under Article 270 of the 2006 Order.

Protection for telegraph and telephone lines

38. Notwithstanding its repeal by the 2006 Order, Article 58 of the 1973 Order shall continue to have effect on and after the transfer date in respect of any works executed by the Department under the 1973 Order before that date, but subject to the transfer in accordance with a scheme made under Article 270 of the 2006 Order.

Private water supplies

39.—(1) Any notice served by DOE under Article 3E(1) of the 1973 Order which is effective immediately before the transfer date (whether or not modified under Article 3E(7)) shall have effect on and after that date—

- (a) as if it were a notice served by DOE under Article 119(1) of the 2006 Order; and
- (b) where Article 3E(2)(a) and (b) of the 1973 Order is satisfied in relation to such notice, as if Article 119(2) of the 2006 Order were satisfied in relation to it.

(2) Where any appeal has been made to the Appeals Commission in accordance with Article 3E(2) or (7) of the 1973 Order in respect of any notice and has not been determined before the transfer date, it shall be determined by the Appeals Commission on or after that date as if—

- (a) in the case of an appeal in accordance with Article 3E(2) of that Order, the notice had been submitted to the Appeals Commission by DOE for confirmation under Article 120 of the 2006 Order, and paragraphs 120(3) and (4) of that Article shall apply accordingly, and
- (b) in the case of an appeal in accordance with Article 3E(7) of the 1973 Order, an appeal had been made by the person on whom the notice is served under Article 121(7) of that Order.

(3) Where a person has a right to appeal to the Appeals Commission under Article 3E(2) or (7) of the 1973 Order in respect of any notice within the period of 28 days from the date of service of the notice by DOE and before the transfer date—

- (a) that right has not been exercised; and
- (b) that period has not expired,

the right may be exercised by serving notice of the appeal on DOE, or otherwise submitting a written representation or objection to DOE, within the said period and, if so exercised, the appeal shall be determined by the Appeals Commission as if the notice had been submitted to the Appeals Commission by DOE for confirmation under Article 120 of the 2006 Order, and paragraphs (3) and (4) of that Article shall apply accordingly.

(4) Any notice served by DOE under Article 3F(1) of the 1973 Order which is effective immediately before the transfer date shall have effect on and after that date as if it were a notice served by DOE under paragraph (1) of Article 123 of the 2006 Order, and paragraph (2) of that Article shall apply accordingly.

Proper maintenance of water and sewerage services

40.—(1) Any notice served by the Department under regulation 2(1) of the 1973 Regulations on the owner of premises which is effective immediately before the transfer date shall, if the owner is, at the transfer date, the consumer (as defined in Article 136 of the 2006 Order) have effect on and after that date in so far as the requirements specified in the notice are requirements which can be specified by the water undertaker in a notice served under paragraph (2)(b) of Article 115 of the 2006 Order—

- (a) as if it were a notice served by the water undertaker under that paragraph;
- (b) as if paragraph (6) of that Article were satisfied in relation to that notice; and
- (c) in any case where the time specified in that notice to remedy the defect or inadequacy is less than 7 days from the date of service of the notice, as if the notice specified such a period of 7 days,

and paragraphs (9) and (10) of that Article shall apply accordingly.

(2) Except where Article 115(10) of the 2006 Order applies by virtue of sub-paragraph (1), if before the transfer date the Department was proposing to carry out, or was carrying out, any works pursuant to a notice served by the Department under regulation 2(3) of the 1973 Regulations in relation to any premises and 7 days has lapsed since the service of such notice, notwithstanding any revocation by the 2006 Order, that regulation shall continue to apply, but subject to the transfer made in accordance with a scheme made under Article 270 of the 2006 Order.

(3) Where any appeal has been made to the Appeals Commission in accordance with regulation 2(2) of the 1973 Regulations in relation to any notice having effect by virtue of sub-paragraph (1) as a notice served under Article 115(2)(b) of the 2006 Order, and that appeal has not been determined before the transfer date, it shall be determined by the Appeals Commission on or after that date notwithstanding the revocation of that regulation.

(4) Notwithstanding any repeal made by the 2006 Order, the provisions of Article 8 of the 1973 Order shall have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph, but subject to the transfer effected by a scheme made under Article 270 of the 2006 Order.

(5) In the application of Article 8 of the 1973 Order to an appeal in accordance with this paragraph, references to the Department shall be taken as references to the Authority.

(6) Article 6 of the 2006 Order shall apply to the exercise by the Authority of its power under sub-paragraph (4) as if it were a function mentioned in paragraph (1)(b) of that Article.

(7) Except as provided in this paragraph, any notice served by the Department under regulation 2(1) of the 1973 Regulations which is effective immediately before the transfer date shall cease to have effect on that date.

(8) Paragraph (1) of Article 231 of the 2006 Order shall apply in relation to the power conferred by virtue of sub-paragraph (2) on a water undertaker as if it were such a power as is mentioned in sub-paragraph (a)(i) of that paragraph, and Article 232(1) of that Order shall apply in relation to the power conferred by virtue of sub-paragraph (2) on a sewerage undertaker as if it were a function under the relevant sewerage provisions, except that no notice shall be required for the purpose of paragraph 6 of Schedule 4 to, or any other provision of, that Order, in its application to the right of entry hereby conferred, in respect of any entry on the premises effected by the water undertaker or the sewerage undertaker pursuant to that right within the period of 6 days following the transfer date.

Adequacy of water and sewerage services to occupied premises

41. On the transfer date notices served under regulation 3 of the 1973 Regulations shall cease to have effect.

Modification of drainage facilities

42.—(1) Without prejudice to the generality of Part V of Schedule 2 to this Order (Works and Land), where before the transfer date the Department was carrying out any works under regulation 4 of the 1973 Regulations, the works shall be carried out by the sewerage undertaker on or after that date under Article 170 of the 2006 Order, and the requirement as to notice in paragraph (3) of that Article (or in any other provision of the 2006 Order) in relation to any such works shall be deemed to have been satisfied in relation to them.

(2) Where any dispute has been referred to the Appeals Commission in accordance with paragraph (3) of regulation 4 of the 1973 Regulations in relation to paragraph (2) of that regulation, and that dispute has not been determined before the transfer date, it shall be determined by the Appeals Commission on or after that date notwithstanding the revocation of that regulation.

(3) Notwithstanding any repeal made by the 2006 Order, the provisions of Article 8 of the 1973 Order shall have effect for the purpose of an appeal determined by the Appeals Commission in accordance with this paragraph, but subject to the transfer effected by a scheme made under Article 270 of the 2006 Order.

(4) In the application of Article 8 of the 1973 Order to an appeal in accordance with this paragraph, references to the Department shall be taken as references to the Authority.

Liability of certain owners and occupiers in relation to fittings

43.—(1) Without prejudice to section 28 of the Interpretation Act (Northern Ireland) 1954, the repeal by the 2006 Order of paragraph (1) of Article 19 of the 1973 Order shall not affect the liability of any person to maintain fittings supplied and installed by the Department before the transfer date in accordance with that paragraph, but subject to the transfer made in accordance with a scheme made under Article 270 of the 2006 Order.

(2) Without prejudice to the generality of section 29(3) of the Interpretation Act (Northern Ireland) 1954, the Water Regulations (Northern Ireland) 1991 shall continue to have effect on and after the transfer, notwithstanding the repeal of Articles 40 and 57(2) and (3) of the 1973 Order by the 2006 Order, but subject to the transfer effected by a scheme made under Article 270 of the 2006 Order.

Saving for agreements

44. Without prejudice to the generality of section 28(2) or 29(3) of the Interpretation Act (Northern Ireland) 1954, notwithstanding any repeal by the 2006 Order, but subject to:

- (a) the other provisions of the 2006 Order; and
- (b) the foregoing provisions of this Order,

any agreement made under Article 10(1), 12(1), 13(4), 17(4), 32, 35(1), 37 or 54 of the 1973 Order to which the Department is a party, and which is effective immediately before the transfer date, shall continue to have effect on and after that date, but subject to the transfer effected in accordance with a scheme made under Article 270 of the 2006 Order.

PART VIII

INTERPRETATION

45. In this Schedule—

- (a) “the 1973 Regulations” means the Water and Sewerage Services Regulations (Northern Ireland) 1973 SI No. 344;
- (b) “the sewerage undertaker” means the successor company in its capacity as a sewerage undertaker;
- (c) “the successor company” has the meaning given by Article 269(1) of the 2006 Order; and
- (d) “the water undertaker” means the successor company in its capacity as a water undertaker.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order:

- (a) brings into operation the provisions of the Water and Sewerage Services (Northern Ireland) Order 2006 specified in Part I of Schedule 1;
- (b) brings into operation on 1 April 2007 the provisions of the Water and Sewerage Services (Northern Ireland) Order 2006 specified in Part II of Schedule 1; and
- (c) gives effect to the transitional, transitory and saving provisions in relation to the Water and Sewerage Services (Northern Ireland) Order 2006 that are specified in Schedule 2 as outlined below:

Paragraphs 1-5 outline how applications for various water or sewerage services (under Article 17 of the Water and Sewerage Services (Northern Ireland) Order 1973) that are outstanding immediately before the transfer date (1 April 2007) are to be processed. Paragraph 6 of Schedule 2 provides that any agreements for the provision or adoption of sewers, drains or wastewater treatment works made under the Water and Sewerage Services (Northern Ireland) Order 1973 that are in force immediately before the transfer date shall have effect on and after the transfer date as if they were made under the corresponding articles of the Water and Sewerage Services (Northern Ireland) Order 2006. Paragraph 7 outlines how any appeals or rights to appeal in respect of application for water or sewerage services under the Water and Sewerage Services (Northern Ireland) Order 1973 that are outstanding immediately before the transfer date are to be processed. Paragraph 8 provides interpretation of terms in paragraphs 1-5 of Schedule 2.

Paragraphs 9-12 outline provisions in relation to continuity of services with regard to non-domestic supplies (paragraph 9); domestic supplies and sewerage services (paragraph 10); and charging (paragraph 11). Paragraph 12 provides that any person lawfully entitled to use works before the transfer date shall continue to be so entitled on and after that date.

Paragraphs 13-15 outline provisions relating to trade effluent discharges including those authorised before 1973 (paragraph 13); those consented between 1973 and the Transfer Date (paragraph 14); and applications for consents that are in process at the Transfer Date (paragraph 15). Paragraph 16 outlines similar provisions with regard to trade effluent discharge agreements. Paragraph 17 provides information on appeal and interpretation of the transitional provisions related to trade effluent discharges.

Paragraphs 18-22 outline provisions relating to charges for services including amounts due to the Department (paragraph 18); trade effluent charges (paragraph 19); liability of owners / occupiers for charges (paragraph 20); notice of requirements to connect or disconnect a meter (paragraph 21); and disconnection for non-payment (paragraph 22).

Paragraphs 23-27 outline provisions relating to undertakers' works and their powers in connection with land including giving notice of intention to execute works (paragraph 23); rights of entry (paragraph 24); complaints with respect to exercise of works powers on private land etc (paragraph 25); complaints by owners regarding obstruction of works by occupiers (paragraph 26); and compulsory acquisition of land (paragraph 27).

Paragraph 28 outlines a provision regarding the liability for pollution offences under the Water (Northern Ireland) Order 1999 in respect of discharges from waste water treatment works operated by a PPP contractor, pending the making of relevant regulations under Article 7B(5) of the Water (Northern Ireland) Order 1999. Paragraph 29 outlines transitional provision regarding discharge consents issued under the Water (Northern Ireland) Order 1999 in the light of amendments made to that Order by the Water and Sewerage Services (Northern Ireland) Order 2006. Paragraph 30 provides that amendments of the Water (Northern Ireland) Order 1999 in respect of the transfer of discharge consents shall not apply retrospectively.

Paragraphs 31-43 outline provisions relating to a range of miscellaneous issues including Prosecutions and other proceedings (paragraph 31); Saving for criminal liability of the Department (paragraph 32); Application of enactments (paragraph 33); Rights to use pipes etc. (paragraph 34); Supply by means of a separate service pipe (paragraph 35); Production of plans and furnishing of information (paragraph 36); Civil liability for escapes of water (paragraph 37); Protection for telegraph and telephone lines (paragraph 38); Private water supplies (paragraph 39); Proper maintenance of water and sewerage services (paragraph 40); Adequacy of water and sewerage services to occupied premises (paragraph 41); Modification of drainage facilities (paragraph 42); and Liability of certain owners and occupiers in relation to fittings (paragraph 43).

Paragraph 44 preserves agreements under various Articles of the Water and Sewerage Services (Northern Ireland) Order 1973 prior to transfer under the transfer scheme made in accordance with Article 270 of the Water and Sewerage Services (Northern Ireland) Order 2006.

Paragraph 45 provides interpretation of some terms used in Schedule 2.