
STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services (Northern Ireland) Order 2006

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Modification of appointment conditions

[^{F1}CMA's] power of veto following report: supplementary

27.—(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (9) of Article 26.

(2) In giving any notice under paragraph (4)(a) or (6) of Article 26, or publishing any notice under paragraph (9) of that Article, the [^{F2}CMA] must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [^{F3}CMA] thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the [^{F3}CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the [^{F3}CMA] thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4)(a) or (b) is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs [^{F4}(6A),] (7) and (8), for the purposes of any investigation by the [^{F5}CMA] for the purposes of the exercise of its functions under Article 26, as they apply for the purposes of any investigations on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);

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- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).
- [^{F6}(6A) Section 109 shall, in its application by virtue of paragraph (6), have effect as if—
- (a) for subsection (A1), there were substituted—
- “(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under Article 26 of the Water and Sewerage Services (Northern Ireland) Order 2006. ”; and
- (b) subsection (8A) were omitted.]
- (7) Section 110 shall, in its application by virtue of paragraph (6), have effect as if—
- (a) subsection (2) were omitted;
- [^{F7}(b) after subsection (3), there were inserted—
- “(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction has been given by the CMA under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part. ”; and]
- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of paragraph (6), have effect as if for subparagraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the [^{F8}CMA] under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction is given by the [^{F8}CMA] under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (6), have effect in relation to those sections as applied by virtue of that paragraph.
- (10) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

Textual Amendments

- F1** Word in [art. 27 heading](#) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 189\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Word in [art. 27\(2\)](#) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 189\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in [art. 27\(3\)\(4\)](#) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 189\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Word in [art. 27\(6\)](#) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 251\(2\)](#) (with art. 3, Sch. 2 para. 2)

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- F5** Word in art. 27(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 189(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Art. 27(6A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 251(3)** (with art. 3, Sch. 2 para. 2)
- F7** Art. 27(7)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 251(4)** (with art. 3, Sch. 2 para. 2)
- F8** Word in art. 27(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 189(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I1** Art. 27 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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Changes and effects yet to be applied to :

- art. 27(6A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 12A(3) (as substituted) by [S.I. 2019/1245 reg. 27](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 293(10A) inserted by [2015 c. 8 \(N.I.\) Sch. 3 para. 2\(b\)](#)