

# WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 3336

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## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE ORDER

#### Part IV – Water Supply

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

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

40. [Article 65](#) sets out the general duty of the undertaker to develop and maintain an efficient and economical system of water supply. The undertaker's obligation to meet its water supply duty is enforceable by the Department, or the Authority, if the Department delegates responsibility to it. In order to facilitate the determination of what constitutes a breach of the undertaker's duty or to establish overall performance standards in connection with water supplies the Department may make regulations setting out these matters ([Article 66](#)). However, the Department cannot make regulations unless the Authority has first applied to it to do so and set out the substance of what should be contained in the regulations after consulting the undertaker and carrying out customer research ([Article 69](#)). The regulations, amongst other things, can require the undertaker to pay compensation to customers if it fails to meet the prescribed standards. [Article 67](#) obliges the Authority to collect information about performance standards and to publish them annually. The undertaker is required to provide information on performance standards to the Authority (it commits an offence if it fails to do so) and to its customers ([Article 68](#)). Regulations, whilst additional to enforcement, do not in any way qualify the powers to enforce.
41. [Articles 70 to 73](#) require the undertaker to produce water resource management and drought plans setting out how the undertaker proposes to manage water resources and cope with any drought. The Articles set out the procedures to be followed by the undertaker, when producing these plans.

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

42. Chapter II sets out the duties of the undertaker to supply water to its customers.
43. [Articles 74 and 75](#) set out the arrangements for the undertaker to follow when providing bulk supplies of water to another undertaker.
44. [Articles 76 to 106](#) establish the circumstances governing the supply of water to the undertaker's customers including the making of new connections to the water supply

system. Article 76 places a duty on the undertaker to provide a water main (i.e. the main conduit for supplying water to an area such as a street) sufficient for domestic purposes when requested to do so. Articles 86 to 90 also allow the undertaker to make agreements with people, who have decided to provide their own water mains and services pipes, to adopt the mains or pipes so that they become owned and maintained by the undertaker. Articles 79 and 80 place an accompanying duty on the undertaker to connect premises to the water supply system, including carrying out any ancillary work (Article 80) such as laying services pipes (i.e. pipes connecting the household plumbing to the water main), when requested to do so<sup>1</sup>. Where the undertaker agrees to adopt mains or pipes, the agreement can include terms for connection of those mains or pipes to the water supply system but, whether the undertaker adopts or provides the mains and pipes itself, only the undertaker can make a connection to the water supply system (Article 89). Finally, Articles 91 to 93 and 105 set out the duty of the undertaker to supply its customers with a supply of water for domestic purposes, to maintain the connection with the water mains and to maintain standards of constancy and pressure. The term, “sufficient for domestic purposes” is set out in Article 2(4) – (6) as meaning drinking, washing, cooking, central heating and sanitary purposes. It can include water used for the purposes of a profession but not a laundry or other business (Article 2(4) to (6)). The duty to maintain pressure means that water must be able to reach the top-most storey of every building although there are height related exceptions. The undertaker can require the installation of a cistern (Article 106) in certain circumstances and the Department can relax the pressure requirements in accordance with the procedures set out in Schedule 3.

45. [Article 94](#) applies to supplies of water for non-domestic purposes. As with other supplies, the undertaker is obliged to provide the supply but may decline to do so if, taken along with the undertaker’s existing and probable future supply obligations, it would involve unreasonable expenditure by the undertaker or put at risk its ability to meet existing or probable supply commitments. The terms of the supply are to be agreed between the person making the request and the undertaker (Article 95).
46. While the undertaker is required to provide mains, connections and supplies of water, its customers are required to meet certain obligations, including financial ones. The provision of a water main, the making of a connection to supply water or any work necessary as a result of an adoption (Article 88) will be at the expense of the person making the request (as is currently the case). Articles 77, 82(2)(a) and 88 additionally enable the undertaker to require financial securities from those requesting water mains, connection work or work arising from an agreement to adopt (see the DRD consultation document on “Charges for connections to the water and sewerage networks” published June 2006 for more detail). The Government has also announced that charges will be introduced for the supply of water. The details of the relevant charges will be set out in the undertaker’s charges scheme (see paragraphs on finance and charges below under Part VII).
47. [Articles 81](#) and [82](#) (and, in respect of adoption, Article 86) enable the undertaker to impose conditions, in addition to the financial ones mentioned above before it connects or adopts any new pipes to its system. These conditions include the provision of appropriate information to the undertaker, that certain standards of plumbing and fittings have been met, that appropriate means of maintaining water pressure have been installed (Article 106) and any requirements as to separate service pipes have been met (Article 104). Article 81 requires the undertaker to insist that a water meter be installed in all newly connected premises.
48. The provisions described above provide the undertaker with financial security and enable it to ensure that consistent standards are met in the development of the public water supply system. Other provisions offer protections for consumers. Articles 77(4),

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

78, 83 and 85 set out time limits for the completion of work by the undertaker and for it to pay quarterly interest on any securities deposited with it if work is not completed within three months of a prescribed date. If the undertaker breaches its duty to supply the main or connection within the prescribed time it will be liable in certain circumstances to the person making the request for any loss or damage they suffer (Article 76(4) and 79(6)). A similar provision applies (Article 93) if the undertaker fails in its domestic supply duty. It is an offence, in certain circumstances, for the undertaker to fail in its duty to supply water at constancy and pressure (Article 105(10)) or to limit supplies of water to its customers (Article 103). Disputes between an undertaker and customer about such matters as interest payments, reasonableness of securities demanded, the situation of connection points, extension of time limits, agreements (or refusal to make agreements) on adoption (Article 87) or the terms of any agreement for supply of water for non-domestic purposes (Article 95) may be referred to the Authority for resolution.

49. An undertaker is not in breach of its duty to supply water if it is allowed to disconnect supplies in the circumstances set out in Articles 99 to 102 and Schedule 2. The undertaker may cut off or reduce supplies for the purpose of carrying out necessary works as long as it gives reasonable notice to customers who are affected (unless in the case of emergencies or negligible effect). If the disconnection lasts more than 24 hours the undertaker must make an emergency supply of water available and, after 48 hours, must inform the district council. The undertaker may also disconnect non-domestic water supplies for non-payment of charges after following the appropriate procedures (set out in Article 100). However, Schedule 2 to the Order lists premises that may not be disconnected for this reason. This includes domestic premises, residential homes for the elderly, hospitals and other medical facilities, schools, educational establishments and other child care facilities and prisons and emergency service premises. Disconnection can also be made at the request of the customer (Article 101). Under Article 115 the undertaker can, in an emergency, disconnect premises in order to avoid misuse, waste or contamination of the water supply and decline to reconnect until remedial work is performed. It is an offence for the undertaker to disconnect other than in accordance with the circumstances set out in the legislation.
50. [Articles 96 to 98](#) set out specific water supply duties for public purposes – principally concerning making water available for fire fighting.

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

51. Chapter III sets out requirements for the maintenance of water quality and offences for failures in respect of water quality. It also deals with private water supplies.
52. [Article 107](#) enables the Department in respect of public supplies and DOE, in respect of private water supplies, to make regulations outlining how wholesomeness is to be determined. The regulations may specify what substances and concentrations are allowed and for what purpose the water may be used. It also enables the Department in respect of public supplies and DOE, in relation to private water supplies, to authorise relaxations and departures from the prescribed requirements. [Article 108](#) places a duty on the undertaker to provide only water that is wholesome (while it is in the undertaker's pipes) when supplying water for domestic or food production purposes (the term means the manufacturing, processing, preserving or marketing of food or drink – [Article 136](#)). [Article 109](#) allows the Department to make regulations to require the undertaker to take measures to preserve water quality including monitoring, analysis and recording of quality, the use of certain processes or products, standards, procedures and penalties. [Article 110](#) makes it an offence for the undertaker to supply water that is unfit for human consumption.
53. [Article 111](#) makes it an offence to waste water from a water source (a well, borehole or open water). Failure to comply with a court order to prevent waste may result in DOE being authorised to carry out remedial work and recover expenses from the convicted

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- person. Article 112 makes it an offence, whether by act or neglect, to pollute any water used for human consumption, domestic purposes or the manufacturing of food or drink.
54. [Article 113](#) makes it an offence, whether by act or neglect, for the owners or occupiers of premises to waste, misuse or contaminate water by failing to maintain water fittings.
  55. [Article 114](#) allows the Department to make regulations to ensure avoidance of waste, contamination and misuse of water, for the specification of the types of water fittings that may be used, required or prohibited, and for the enforcement of the regulations.
  56. [Articles 115](#) enables the undertaker to serve a notice on any person requiring them to take specified steps to avoid misuse, waste or contamination of the water supply and, in an emergency, to disconnect the supply of water to the premises. Where the undertaker disconnects it must inform the consumer (it is an offence for the undertaker to fail to do so) of the steps to be taken before the supply is reinstated. Where disconnection does not occur but the consumer fails to carry out any required steps the undertaker has power to carry out those steps itself and recover any expenses.
  57. [Article 116](#) gives an undertaker power to issue temporary hosepipe bans after notifying the public. It is an offence to contravene the ban.
  58. [Article 117](#) places a duty upon the Department to require the undertaker, in situations where a wholesome supply of piped water cannot be delivered and where there is a danger to life or health, to provide water by other means (bottled water for example). Before doing so the Department must be satisfied that there is a danger to health or life and that supplies can be delivered at a reasonable cost. In such cases the Department is liable for any charges incurred but has power to recoup them from the owner or occupier of the premises affected.

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

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

***Articles 124–125 Enforcement***

62. [Article 124](#) confers rights of entry on persons designated by DOE in relation to its responsibilities for private water supplies. These powers also extend to the Department in respect of assessing potential contamination of water sources and waterworks that could impact on the public supply. General requirements and procedures in relation to rights of entry under this Chapter are set out in Schedule 4.

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63. [Article 125](#) provides the Department and DOE separately with a power to appoint inspectors to act on their behalf. The inspectors' responsibilities relate to the Departments' functions concerning the quality and sufficiency of public and private water supplies respectively. The Department and DOE, acting jointly, also have a power to appoint a Chief Inspector of Drinking Water.

***Chapter IV Fluoridation***

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

***Chapter V - Supplemental***

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