

SCHEDULE 2

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

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

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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.