

WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 3336

EXPLANATORY MEMORANDUM

OVERVIEW OF THE ORDER

Part X - Reorganisation of the Industry

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

The Article also ensures that the company does not charge any of its assets without the approval of the Department and DFP, whilst wholly owned by the Crown. Article 278 makes provision for the Department to provide financial assistance to the company or its subsidiaries, this may include making grants or loans to the company, the write-off of the principal and interest of any loans or the conversion into share capital of the principal and interest of such loans. It also permits the Department to provide any form of guarantee to any person to meet any contingency arising out of or in connection with a contract with the company. It places a requirement on the Department to lay a statement before the Assembly immediately after any guarantee is given, and after any sum is issued to fulfil a guarantee. The Article also deals with the funding arrangements and repayment of sums and interest in respect of the fulfilment of guarantees. Article 279 identifies all of the provisions within this Part which the Department must exercise only with the consent of DFP.

Schedule 11 - Transfer Scheme

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