
STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services
(Northern Ireland) Order 2006

PART III

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Conditions of appointment

Power to impose conditions

18.—(1) An appointment under this Chapter may include—

- (a) such conditions as appear to the Department or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on it by Part II;
- (b) conditions for the purposes of Article 14(4)(d); and
- (c) conditions requiring the rendering to the Department or, as the case may be, the Authority of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of paragraph (1)(a) in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the carrying out of the functions under any statutory provision of water undertakers or sewerage undertakers.

(3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(4) Any provision included by virtue of paragraph (3) in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.

(5) For the purposes of this Order where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this Article shall have effect, irrespective of their subject-matter, as conditions of both appointments.

(6) Where an instrument of appointment has been served under paragraph (3) of Article 13 on any company, the coming into force of the appointment for the purposes specified in paragraph (2) of that Article shall not be affected by any contravention of the requirements of this Order with respect to the provision contained by way of conditions of appointment in that instrument.

(7) If the Department considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in paragraph (6), it may by order direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.

(8) Any sums received by the Department or the Authority in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

Determinations under conditions of appointment

19.—(1) Without prejudice to the generality of sub-paragraph (a) of Article 18(1), conditions included in an appointment by virtue of that sub-paragraph may—

- (a) require the appointed company to comply with any direction given by the Authority as to such matters as are specified in the appointment or are of a description so specified; and
- (b) require the appointed company, except in so far as the Authority consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

- (a) the Department or the Authority; or
- (b) on a reference by the Authority, the Competition Commission,

of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Authority, as are specified in the appointment or are of a description so specified.

(3) Where any question or other matter falls to be determined by the Competition Commission in pursuance of a provision contained in an appointment under this Chapter—

- (a) it shall be the duty of the Authority, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
- (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of sub-paragraph (a) in accordance with the principles which apply, by virtue of Part II, in relation to determinations under this Chapter by the Authority.

(4) For the purposes of paragraph (3), where—

- (a) the question or matter referred to the Competition Commission concerns the review of a price control imposed on the company holding the appointment; and
- (b) the Commission is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the Commission shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.

(5) Paragraphs (4) and (5) of Article 21, and Articles 26 and 27 apply to references to the Competition Commission under this Article as they apply to references under Article 21.

(6) A report of the Competition Commission on a reference under this Article—

- (a) shall be made to the Authority; and
- (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of its reasons for those conclusions as, in the opinion of the Commission, is expedient for facilitating a proper understanding of those questions or other matters and of its conclusions,

and paragraphs (10) and (11) of Article 24 apply to such a report as they apply to a report on a reference under Article 21.