



TURKS AND CAICOS ISLANDS

## CHAPTER 8.03

# WATER AND SEWERAGE ORDINANCE

**Revised Edition**  
showing the law as at 31 August 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

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(L.N. 46/1996)

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**CHAPTER 8.03**

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**CHAPTER 8.03**  
**WATER AND SEWERAGE ORDINANCE**

*(Ordinances 32 of 1994, 7 of 1999 and Legal Notice 3/ 2002)*

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT AND FUNCTIONS OF A WATER AND SEWERAGE BOARD; TO PROVIDE FOR THE LICENSING OF THE ABSTRACTION OF WATER; TO PROVIDE FOR THE APPOINTMENT OF PUBLIC WATER UNDERTAKERS AND PUBLIC SEWERAGE UNDERTAKERS AND FOR THEIR REGULATION; TO MODERNISE THE LAW RELATING TO THE SUPPLY OF WATER AND THE LAW RELATING TO THE PROVISION OF SEWERS AND THE TREATMENT AND DISPOSAL OF SEWAGE; TO MAKE PROVISION IN RESPECT OF WATER POLLUTION; AND FOR CONNECTED PURPOSES.

**Commencement**

*[Sections 1–8, 22–32, 34–59, 61–111  
commenced on 1 November 1996]*

*[Sections 9–21, 33 and 60  
commenced on 1 February 2002]*

PART I

PRELIMINARY

**Short title**

1. This Ordinance may be cited as the Water and Sewerage Ordinance.

**Interpretation**

2. (1) In this Ordinance, unless the context otherwise requires—

“abstraction” means, in relation to water contained in any source of supply within the Islands, the doing of anything whereby any of that water is removed from that source of supply and either—

(a) ceases permanently or temporarily to be comprised in the water resources of that area; or

(b) is transferred to another source of supply in that area;

and “abstract” is to be construed accordingly;

“accessories” means in relation to a water main, sewer or other pipe, any manholes, ventilating shafts, inspection chambers, storage or settling tanks, washout pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main,

sewer or other pipe or of another accessory for it; (*Amended by Ord. 7 of 1999*)

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

“Board” means the Water and Sewerage Board established pursuant to section 3;

“controlled waters” means inland waters and the territorial waters up to a distance of six nautical miles around the Islands;

“customer or potential customer” in relation to a company holding an appointment under Division 1 of Part IV, means—

- (a) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker; or
- (b) any person who might become such a person on making an application for the purpose to the company;

“disposal” in relation to sewage, includes treatment;

“domestic purposes”—

- (a) in connection with water supply, includes the use of water for the ordinary and reasonable purposes of domestic life, and includes the use of water for showers, fixed baths, water closets, urinals, hot water, heating, but shall not include use for a private swimming pool; and
- (b) in connection with sewerage services means—
  - (i) the removal from the buildings and from the land occupied with and are pertinent to the buildings, of the contents of lavatories;
  - (ii) the removal, from the buildings and from such land, of water which has been used for cooking or washing, and which has not been used for the business of a laundry or for the business of preparing food or drink for consumption otherwise than on the premises;

“drain” means (subject to subsection (2)) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

“effluent” means any liquid, with or without any particles of matter in suspension in it;

“functions” includes powers and duties;

“inland waters” means the whole or any part of—

- (a) any river, stream, or other watercourse, whether natural or artificial or tidal or not;

(b) any lake or pond, whether natural or artificial and any reservoir or dock in so far as these do not fall within paragraph (a) of this definition;

(c) so much of a channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition;

“Islands” means the Turks and Caicos Islands;

“land” includes land covered by water where the land is above the low water mark of ordinary spring tides;

“Minister” means the Minister responsible for utilities;

“occupier” means the person who is or is entitled to be in physical occupation of the premises; (*Amended by Ord. 7 of 1999*)

“owner” in relation to any premises, means the person who—

(a) is for the time being receiving the rack-rent of the premises whether on his own account or as agent or trustee for another person;

(b) would receive the rack-rent if the premises were let at a rack-rent,

“public sewer” means a sewer for the time being vested in a sewerage undertaker in its capacity as such under the provisions of this Ordinance;

“relevant undertaker” means a water undertaker or sewerage undertaker;

“service pipe” means (subject to subsection (2)) so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to the boundary of any premises as—

(a) is or is to be subject to water pressure from that main; or

(b) would be so subject but for the closing of some valve,

and includes part of any service pipe; (*Amended by Ord. 7 of 1999*)

“sewer” includes (without prejudice to subsection (2)) all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings;

“sewerage services” means the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purposes of carrying out its functions;

“sewerage undertaker” means a company appointed to be a sewerage undertaker pursuant to section 22;

“source of supply” means, in relation to any area—

(a) any inland waters (other than a lake, pond or a group thereof not discharging to other inland waters);

(b) any underground strata in which water is or at any time may be contained;

“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply;

“trunk main” means a water main which is or is to be used by a water undertaker for the primary purpose of—

- (a) conveying water from a source of supply to a reservoir or from one reservoir to another reservoir; or
- (b) conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area;  
(Amended by Ord. 7 of 1999)

“underground strata” means strata subjacent to the surface of any land;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dikes, sluices, sewers and passages through which water flows, except mains and other pipes belonging to a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises;

“water main” means (subject to subsection (2)) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker for the purpose of making a general supply of water available to customers or potential customers of the undertaker, as distinct from for the purpose of providing a supply to particular customers;

“water undertaker” means a company appointed to be a water undertaker pursuant to section 22.

(2) In this Ordinance—

- (a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and
- (b) references to any sewage disposal works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes,

and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.

(3) Nothing in Part V or VI of this Ordinance by virtue of which a relevant undertaker owes a duty to any particular person to lay any water main, resource main or service pipe or any sewer, disposal main or discharge pipe shall be construed—

- (a) as conferring any power in addition to the powers conferred apart from those Parts; or



(b) as requiring the undertaker to carry out any works which it has no power to carry out.

(4) Reference in this Ordinance to the fixing of charges in relation to any premises by reference to the volume are references to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors.

## PART II

### WATER AND SEWERAGE BOARD

#### *Establishment of the Board*

#### **Establishment of Water and Sewerage Board**

3. (1) For the purposes of this Ordinance, there shall be established a Board to be known as the Water and Sewerage Board.

(2) The Board shall consist of the following *ex-officio* members—

- (a) the Permanent Secretary, Ministry responsible for utilities, who shall be Chairman;
- (b) the Chief Engineer;
- (c) the Chief Environmental Health Officer;
- (d) the Director of Planning;
- (e) the Director of the Environment and Coastal Resources;
- (f) the Government Economist.

(3) The Minister may appoint two further members from the private sector for such period as is specified in the instrument of appointment, and may remove such members.

#### **Meetings of the Board**

4. (1) The Chairman shall preside at all meetings of the Board, and in his absence from a meeting, the members present shall appoint one of their number to preside.

(2) Five members shall form a quorum at any meeting of the Board.

(3) At a meeting of the Board all questions shall be decided by a majority of votes of the members present and voting, and, in the event of an equality of votes, the member presiding shall have a casting vote.

(4) The Board may invite any person or any public officer or a representative of any body, who, in the opinion of the Board, has expert knowledge concerning the functions of the Board which is likely to be of

assistance to the Board, to attend meetings of the Board and to take part in its proceedings, but shall have no voting rights.

(5) The Board may, with the approval of the Minister, make rules further regulating its procedure.

### Secretary of the Board

5. (1) The Minister shall appoint a public officer nominated by the Chief Engineer to be Secretary of the Board for such term as may be specified in the instrument of appointment.

(2) The Secretary shall—

- (a) attend all meetings of the Board but shall not vote on any matter or question before the Board;
- (b) prepare minutes of meetings of the Board;
- (c) keep a record of the proceedings and decisions of the Board;
- (d) receive applications for licences;
- (e) ensure compliance with the conditions to which licences are subject;
- (f) ensure that all fees payable for licences and other charges are duly paid;
- (g) keep and maintain all registers required to be kept under this Ordinance; and
- (h) attend to such other duties as the Board or the Chairman may require of him.

### Functions of the Board

6. (1) Subject to the provisions of this Ordinance, the functions of the Board shall be to provide such advice as the Minister may require to enable the Government to lay down a national policy for water and sewerage and to better implement the provisions of this Ordinance.

(2) Without derogating from the generality of subsection (1), the Board shall advise the Minister—

- (a) on the need for conservation, augmentation, distribution and proper use of water;
- (b) on the limits to be imposed on the abstraction of groundwater in any area;
- (c) on the appointment and regulation of water undertakers;
- (d) on the appointment and regulation of sewerage undertakers;
- (e) on the disposal of sewage and effluent; and
- (f) on the treatment and disposal of sewage and other effluents.

*Duties of the Board*

**Register of applications and licences**

7. (1) The Board shall keep in such manner as may be prescribed, a register containing such information as may be so prescribed with respect to applications made under Part III for the grant, revocation, or variation of licences, including information as to the way in which such applications have been dealt with.

(2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

**General duties of Board with respect to undertakers**

8. (1) In the performance of its functions of regulating water and sewerage undertakers, the Board shall exercise and perform its functions in a manner best calculated—

- (a) to secure that the functions of a water undertaker and a sewerage undertaker are properly carried out; and
- (b) to ensure that the interests of every person who is a customer or potential customer of a company which has been or may be appointed under Part IV to be a relevant undertaker are protected as respects the fixing and recovery by the company of water and drainage charges and that no undue preference is shown, and in particular—
  - (i) that there is no undue discrimination in the fixing of those charges;
  - (ii) to ensure that the interests of every such person are also protected as respects the other terms on which any services are provided by that company in the course of carrying out the functions of a relevant undertaker and as respects the quality of those services; and
  - (iii) consider and investigate complaints made to it by any person in relation to an assertion that such a company is contravening or has contravened any condition of the company's appointment under Part IV or any provision of this Ordinance.

## PART III

## ABSTRACTION OF WATER

**Division 1***Restriction on abstraction***Restriction on abstraction**

9. (1) Subject to the following provisions of this Part, and to any Drought Order made under Part X, no person shall—

- (a) abstract water from any source of supply; or
- (b) cause or permit any other person to abstract any water,

except in pursuance of a licence under this Part granted by the Minister, and in accordance with the provisions of that licence.

(2) Where by virtue of subsection (1) the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence granted under this Ordinance, no person shall begin, or cause or permit any other person to begin—

- (a) to construct any well, borehole or other work whereby water may be abstracted from those strata;
- (b) to extend any such well, borehole or other work; or
- (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,

unless the conditions specified in subsection (3) are satisfied.

(3) The conditions mentioned in subsection (2) are—

- (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Part;
- (b) that—
  - (i) the well, borehole or work, as constructed or extended; or
  - (ii) the machinery or apparatus, as installed or modified,fulfills the requirements of that licence as to the means by which water is authorised to be abstracted; and
- (c) that the provisions of the Physical Planning Ordinance are complied with.

(4) A person shall be guilty of an offence if—

- (a) he contravenes subsection (1) or (2); or

(b) he is for the purposes of this section the holder of a licence under this Part and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine of \$5,000.

### **Rights to abstract small quantities**

**10.** (1) The restriction on abstraction shall not apply to the abstraction of water from underground strata, in so far as the water is abstracted by and on behalf of an individual as a supply of water for domestic purposes of his household, unless the abstraction is such that the quantity of water abstracted from the strata by or on behalf of that individual by virtue of this subsection exceeds two hundred and fifty United States gallons, in aggregate, in any period of twenty-four hours. *(Amended by Ord. 7 of 1999)*

(2) For the purposes of this Part, a person who is in a position to abstract water in such circumstances that by virtue of subsection (1) the restriction on abstraction does not apply, shall be taken to have a right to abstract water to the extent specified in that subsection.

(3) In the case of any abstraction of water from underground strata which falls within subsection (1), the restriction imposed by section 9(2) shall not apply—

- (a) to the construction or extension of any well, borehole or other work; or
- (b) to the installation or modification of machinery or other apparatus,

if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.

### **Miscellaneous rights to abstract**

**11.** (1) The restriction on abstraction and the other restrictions imposed by section 9 shall not apply to the doing of anything—

- (a) for fire-fighting purposes; or
- (b) for the purpose of testing apparatus used for those purposes or of training or practice in the use of such apparatus.

(2) The restriction on abstraction and the other restrictions imposed by section 9 shall not apply—

- (a) to any abstraction of water;
- (b) to the construction or extension of any well, borehole or other work; or
- (c) to the installation or modification of machinery or other apparatus,

if the abstraction, construction, extension, installation, or modification is for any of the purposes specified in subsection (3) and takes place with the consent of the Board and in compliance with any conditions imposed by the Board.

- (3) The purposes mentioned in subsection (2) are—
- (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
  - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work.

## Division 2

### *Licences*

#### **Restrictions on persons who may make applications for abstraction licences**

**12.** (1) No application for a licence under this Part shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.

(2) In relation to abstractions from underground strata, a person shall be entitled to make the application if either—

- (a) he is the occupier of land consisting or comprising those underground strata; or
- (b) the following two conditions are satisfied, that is to say—
  - (i) the case is one in which water contained in an excavation into underground strata is to be treated as water contained in those strata by virtue of the level of water in the excavation depending wholly or mainly on entering it from those strata; and
  - (ii) that person satisfies the Board that he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of, or comprising, those underground strata.

#### **Publication of application for licence**

**13.** (1) The Minister shall not entertain an application for a licence under this Part to abstract water, unless the application is accompanied—

- (a) by a copy of a notice in the prescribed form; and
- (b) by the prescribed evidence that the necessary notices of the application have been given.

(2) The necessary notices of an application have been given for the purposes of subsection (1) if the notice mentioned in paragraph (a) has been published—

- (i) in the *Gazette*; and
- (ii) at least once in each of two successive weeks, in one or more newspapers circulating in the Islands.

(3) A notice for the purposes of the preceding provisions of this section, in addition to containing any other matters required to be contained in the notice, shall—

- (a) name a place in the relevant Island where a copy of the application, and of any map, plan or other document submitted with it, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (4); and
- (b) state that any person may make representations in writing to the Minister with respect to the application at any time before the end of that period.

(4) The period specified in a notice for the purposes of subsection (3) shall be a period which—

- (a) begins not earlier than the date on which the notice is first published in the *Gazette*; and
- (b) ends not less than 21 days from the date on which the notice is published in the newspaper.

### General consideration of applications

14. (1) The Minister shall not determine any application for a licence under this Part before the end of the period specified for the purposes of the application in accordance with section 13(4).

(2) Subject to the following provisions of this Part, on any application to the Minister for a licence under this Part, the Minister—

- (a) may grant a licence containing such provision as the Minister considers appropriate; or
- (b) if, having regard to the provisions of this Part, the Minister considers it necessary or expedient to do so, may refuse to grant a licence.

(3) Without prejudice to section 15, the Minister, in dealing with any application for a licence under this Part, shall have regard to—

- (a) any representations in writing relating to the application which are received by the Minister before the end of the period mentioned in subsection (1); and
- (b) the requirements of the applicant, in so far as they appear to the Minister to be reasonable requirements.

### **Obligation to have regard to existing rights and privileges**

15. (1) The Minister shall not, except with the consent of the person entitled to the rights, grant a licence authorising the abstraction of water as to derogate from any rights which, at the time when the application is determined by the Minister, are protected rights for the purposes of this Part.

(2) In dealing with an application for a licence under this Part relating to abstraction from underground strata, the Minister shall have regard to the requirements of existing lawful uses of water abstracted from the strata, whether for agriculture, industry, water supply or other purposes.

(3) For the purposes of this Part a right is a protected right if it is such a right as a person is taken to have by virtue of section 16; and any reference in this Part to the person entitled to such a right shall be construed accordingly.

(4) Any reference in this Part, in relation to the abstraction of water derogating from a right which is a protected right for the purposes of this Part is a reference to abstracting water in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in section 16.

### **Protected rights**

16. For the purposes of this Part, a person who is for the time being the holder of a licence under this Part to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.

### **Form and content of licence**

17. (1) The Minister may make regulations providing for the form of licences under this Part; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of any provision of this Part.

(2) Every licence under this Part to abstract water shall make—

- (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Part; and
- (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.

(3) Every licence under this Part to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.



(4) Every licence under this Part to abstract water shall state whether the licence is to remain in force until revoked or is to expire at a time specified in the licence.

### Holders of licence

18. (1) Every licence under this Part to abstract water shall specify the person to whom the licence is granted.

(2) A licence under this Part is not transferable.

### Modification of licence on application of licensee

19. (1) The holder of a licence under this Part may apply to the Minister to vary the licence.

(2) The provisions of sections 13 to 16 shall apply (with the necessary modifications) to applications for the variation of licences as they apply to applications for, and the grant of, licences under this Part.

### Modification of licence on application of Board

20. (1) Where it appears to the Board that a licence under this Division should be revoked or varied, the Board may make proposals in writing to the Minister for revoking or varying the licence.

(2) Notice of any proposals made under this section shall—

(a) be served on the holder of the licence; and

(b) be published in the *Gazette*, and at least once in each of two successive weeks in one or more newspapers circulating in the Islands.

(3) A notice for the purposes of subsection (2), shall—

(a) name a place in the Islands where a copy of the proposals and of any map, plan or other document prepared in connection with the proposals, will be open to inspection by the public, free of charge, at all reasonable hours during a period being not earlier than the date on which the notice is first published in the *Gazette* and ending not less than twenty-eight days from the date on which the notice is published in a newspaper;

(b) state that at any time before the end of that period—

(i) the holder of the licence may give notice in writing to the Minister objecting to the proposals; and

(ii) any other person may make representations in writing to the Minister with respect to the proposals.

(4) Where any proposals with respect to a licence are referred to the Minister in accordance with subsection (1), the Minister shall consider—

(a) the proposals;

(b) the objection of the holder of the licence; and

- (c) any representations in writing relating to the proposals which were received by the Board before the end of the period mentioned in subsection (3)(a),

and, subject to subsection (5), shall consider (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked in accordance with the proposals, or with the consent of the holder of the licence, in any other way.

(5) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under this section, the Minister may, if he thinks fit afford the holder of the licence and the Board the opportunity of appearing before, and being heard by him, and he shall afford such an opportunity if a request is made by the holder of the licence or the Board to be heard with respect to the proposals.

### **Revocation of licences in other cases**

**21.** (1) If—

- (a) a licence holder is convicted of an offence under section 9(4)(b) and it appears to the Minister that in consequence of such conviction the licence should be revoked; or
- (b) charges payable in respect of a licence under this Part are not paid within twenty-eight days after notice demanding them has been served on the holder of the licence,

the Minister may revoke the licence by the service of a notice of revocation on the holder.

(2) A notice of revocation served under subsection (1) shall—

- (a) state that the licence in question will be revoked within twenty-eight days after the service of the notice;
- (b) set out the effect of revocation; and
- (c) state that no compensation is payable in respect of a revocation under this section.

(3) Revocation of a licence under this section—

- (a) shall take effect at such time, not being a time before the end of the period of twenty-eight days after notice of revocation is served on the holder of the licence, as may be specified in the notice; and
- (b) where the revocation is for non-payment of charges, it shall so take effect only if the charges in question are not paid before that time.

PART IV

APPOINTMENT AND REGULATION OF UNDERTAKERS

**Division 1**

*Appointments*

**Appointment of undertakers**

22. (1) Subject to the provisions of this Ordinance the Minister may appoint a company to be a water undertaker or sewerage undertaker or a water and sewerage undertaker for any defined geographical area of the Islands, and may on the application of a company holding an appointment under this Part, vary the appointment.

(2) Before making or varying an appointment under subsection (1), the Minister shall consult with the Board.

(3) The appointment of a company to be such an undertaker shall be by service on the company of an instrument in writing, containing the appointment, the conditions of the appointment, if any, and describing the area for which it is made.

(4) A company shall not be appointed a water undertaker or a sewerage undertaker or a water and sewerage undertaker unless it is a limited company registered under the Companies Ordinance or any re-enactment or modification thereof.

(5) It shall be the duty of the Minister to ensure—

(a) that any company appointed under this Ordinance to be a water or sewerage undertaker or a water and sewerage undertaker shall have the capability and resources necessary to carry out the functions of a relevant undertaker under the Ordinance; and

(b) that in making an appointment under this Part, he shall give preference to a company that is controlled by Belongers.

(6) It shall be the duty of the Minister to secure that such appointments are made under this Part as will ensure that for prescribed areas of the Islands there is at all times a company holding an appointment under this Part as a water undertaker or a sewerage undertaker.

**Procedure with respect to appointments and variations**

23. An application for an appointment, or variation of the area to which the appointment relates, or variation of a condition of the appointment, shall be made to the Minister in such manner as may be prescribed by regulations made by the Minister.

**Power to impose conditions**

24. (1) An appointment under this Part may include—

- (a) such conditions as appear to the Minister to be requisite, or expedient; and
- (b) conditions requiring the rendering to the Government 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 included in an appointment under this Part may contain provision for the conditions to cease to have effect or to be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

**Termination and variation of appointments by Minister**

25. (1) Subject to subsections (3), (4) and (7), where the Minister is satisfied in relation to a company which holds an appointment under this Part that the grounds specified in subsection (2) are satisfied in relation to that company, the Minister, acting after consultation with the Board, shall have power, by notice served on a company holding an appointment under this Part, to terminate the appointment or to vary the appointment in respect of the area to which it relates or in respect of the conditions of the appointment.

(2) The grounds mentioned in subsection (1) are, in relation to a company, that there has been or is likely to be such a serious contravention by the company of any principal duty under the Ordinance or a principal condition of its appointment as is serious enough to make it inappropriate for the company to continue to hold its appointment, or inappropriate for the company to hold its appointment without variation.

(3) The Minister shall before exercising his power to terminate or vary an appointment under subsection (1), serve on the company a notice in writing stating—

- (a) that he is considering terminating or varying the appointment on the grounds specified in the notice; and
- (b) that the company may, within the period of sixty days from the date of service on the company of the notice, make written representations to the Minister.

(4) The Minister shall consider any representations made by the company in response to a notice served under subsection (3).

(5) The Minister shall in relation to a company publish a notice of the termination or variation of the appointment in the *Gazette* and in such other way as appears to him expedient for notifying consumers in the area served by the company.

(6) A notice made under subsection (1) shall have no effect if an appeal is brought in accordance with section 26.

(7) The appointment of a company to be a water or sewerage undertaker shall not be terminated or otherwise cease to relate to any area or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as an undertaker as to secure either—

- (a) that another company becomes the undertaker for that area or part of an area that includes that area or part; or
- (b) that two or more companies each become the undertakers for one of a number of different areas that together constitute or include that area or part.

### **Appeal against termination and variation of appointments**

26. (1) A company may appeal to the Supreme Court against a notice terminating or varying its appointment made under section 25.

(2) An appeal under subsection (1) shall be instituted by the company within a period of sixty days from the date on which the notice appealed against is served on it.

(3) The Attorney General shall be the respondent to every appeal brought under subsection (1).

(4) On an appeal brought under subsection (1), the Supreme Court may quash or confirm the decision appealed against and make such other order as it thinks just.

### **Vesting in Government of property of undertaker on termination of appointment**

27. (1) On the termination of a company's appointment under section 25 or by effluxion of time or otherwise, the Minister may by Order direct that—

- (a) all property, rights, liabilities and obligations which, immediately before the date specified in the Order in that behalf ("the vesting date")—
  - (i) was property held or used by the company wholly or mainly for the purposes of its business as a water or sewerage undertaker;
  - (ii) were rights, liabilities or obligations acquired or incurred by that company wholly or mainly for the purpose of its business as such an undertaker,

shall vest in the Government; or

- (b) such part of such property, rights, liabilities or obligations as shall be specified in the Order shall vest on the vesting date in the Government,

and thereupon such property, rights, liabilities, obligations or such part thereof, as the case may be, shall vest in the Government.

(2) An Order under subsection (1) shall not be made on the termination of the company's appointment more than three months after the date of the

termination of the appointment; and a copy of such an Order shall be served by the Minister on the company which held the appointment in respect of which the Order is made and shall be published in the *Gazette*.

(3) Where any right, liability or obligation vests in the Government by virtue of an Order under subsection (1), the Government and all persons shall, as from the vesting date, have the same rights, powers and remedies (and in particular the same rights as to the taking and resisting of legal proceedings) for ascertaining, perfecting or enforcing that right, liability or obligation as the Government would have had if it had at all times been a right, liability or obligation of the Government; and any legal proceedings pending on that date by or against the company in respect of whom the Order was made, in so far as they relate to any property, right, or obligation vested by virtue of the Order, may be continued by or against the Government.

(4) Notwithstanding subsection (1)—

- (a) there shall not, by reason of the vesting of property, rights, liabilities or obligations of any company by virtue of an Order made under that subsection, be transferred any right, liability or obligation of that company in respect of securities (including shares, stock, debentures and debenture stock issued by that company);
- (b) where, as respects any Order under that subsection, any agreement provides for the borrowing of money by the company or the raising of money by the issuing of such securities of such company and the money has not been borrowed or raised before the vesting date, no right, liability or obligation under the agreement shall be transferred to the Government; and
- (c) no right, liability or obligation under any agreement for the rendering by any person of services to the company, whether under a contract of service or otherwise, shall be transferred to the Government by virtue of an Order under that subsection except any liability in respect of any wages, salary or fees earned or expenses incurred before the vesting date.

(5) On the termination of a company's appointment as provided in section 25, the company shall not, except with the written authority of the Minister, disconnect, dismantle or remove or attempt to disconnect, dismantle or remove any plant or equipment used or intended to be used by the company in its business as a water or sewerage undertaker at any time within three months next following the termination of the appointment.

(6) A company which contravenes the provisions of subsection (5) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20,000.

### Provisions supplementary to section 27

28. (1) The Minister may, by regulations, make provisions respecting any matters which appear to him to be necessary or expedient for securing the

effective transfer of any property, rights, liabilities or obligations to the Government by virtue of a vesting Order made under section 27(1).

(2) Regulations under subsection (1) may provide—

- (a) for the determination of any question as to whether any property was held by the company wholly or mainly for the purposes of supplying water or providing sewerage services under an appointment held by the company, or as to whether any rights, liabilities or obligations were acquired or incurred by that company wholly or mainly for those purposes;
- (b) for excluding from or including in the property, rights, liabilities, or obligations which vest in the Government by virtue of an Order made under section 27(1), such property, rights, liabilities or obligations held, used, acquired or incurred by any such company partly for the purposes of supplying water or sewerage services and partly for other purposes on such terms as may be determined in accordance with the regulations;
- (c) for the disclaimer of any rights, liabilities or obligations vested in the Government by virtue of an Order made under section 27(1), being rights, liabilities or obligations made under any agreement which, in the opinion of the Minister, was not reasonably necessary for the purposes of the supply of water or the provision of sewerage services or was made with unreasonable lack of prudence;
- (d) for substituting for any agreement entered into by any such person partly for the purposes of supplying water or sewerage services under its appointment and partly for other purposes, separate agreements in the requisite terms, and for apportionments and indemnities consequent on such substitution;
- (e) for the apportionment of, and the making of financial adjustments with respect to, any liabilities incurred by any such company partly for the purposes of supplying water and sewerage services under its appointment and partly for other purposes and for any necessary variation of encumbrances relating to such liabilities.

(3) No part of the cash and investments of any company shall vest in the Government by virtue of an Order under section 27(1).

(4) Any property of any company which vests in the Government by virtue of an Order under section 27(1), being property subject to an encumbrance created for securing the payment of any debt which does not so vest in the Government, shall vest free of the encumbrance.

(5) Regulations under this section shall provide for any question to be determined in accordance with the regulations to be determined by agreement between the Government and the company concerned or, in default of agreement, by arbitration in such manner as shall be prescribed.

(6) The provisions of the Schedule shall have effect as respects the assessment and payment of compensation to any company in consequence of the

vesting in the Government of the assets of any company by virtue of an Order under section 27(1).

## Division 2

### *Enforcement*

#### **Orders for securing compliance**

29. Where in the case of a company holding an appointment under this Part, the Minister, after consultation with the Board, is satisfied—

- (a) that the company is contravening any condition of the company's appointment;
- (b) that the company is contravening any statutory requirement; or
- (c) that the company has contravened any such condition or requirement and is likely to do so again,

he shall by an Enforcement Order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

#### **Exceptions to duty to enforce**

30. The Minister shall not be required to make an Enforcement Order in relation to any company, if he is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature; or
- (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the conditions or requirement in question.

#### **Procedure for Enforcement Orders**

31. (1) Before making an Enforcement Order, the Minister shall give notice in writing to the company—

- (a) stating that he proposes to make the Order and setting out the effect of the Order;
- (b) setting out—
  - (i) the condition or requirement for securing compliance with which the Order is to be made;
  - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and



(iii) the other facts which justify the making or confirmation of the Order; and,  
(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed Order may be made,  
and shall consider any representations or objections which are duly made,

(2) As soon as practicable after making an Enforcement Order the Minister shall—

- (a) serve a copy of the Order on the company to which the Order relates;
- (b) publish such a copy in the *Gazette*.

### **Effect of Enforcement Orders**

32. (1) The obligation to comply with an Enforcement Order shall be a duty owed to any person who may be affected by a contravention of the Order.

(2) Where a duty is owed by virtue of subsection (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against any company in pursuance of subsection (2), it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the Order.

(4) Without prejudice to any right which any person may have by virtue of subsection (1) to bring civil proceedings in respect of any contravention or apprehended contravention of an Enforcement Order, compliance with any such Order shall be enforceable by civil proceedings by the Minister for an injunction or for any other appropriate relief.

## **PART V**

### **WATER SUPPLY**

#### **Division 1**

##### *Restriction on Supplying Water for Gain*

### **Restriction on supplying water**

33.(1) Subject to the following provisions of this section, no person shall supply for gain any water by means of a main or other pipe to any premises except by or under a licence issued by the Minister.

(2) A licence granted under this section may include such conditions as appear to the Minister, after consultation with the Board, to be requisite or expedient.

(3) The Minister acting after consultation with the Board, may make regulations prescribing the manner of making applications for a licence under this section, the requirements for a licence and the fees payable therefor.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$50,000.

(5) In respect of any area for which a company has been appointed a water undertaker under Part IV of the Ordinance, the company shall be exempt from the requirement to hold a licence under this section for that area.

## Division 2

### *General Duties of Water Undertakers*

#### **Duty to maintain water supply system, etc**

**34.** (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—

- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,

as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.

(2) The duty of a water undertaker under this section shall be enforceable under section 29 by the Minister.

(3) The obligations imposed on a water undertaker by the following sections of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section and shall not be in any way qualified by any such provision.

## Division 3

### *Supply Duties*

#### **Duty to comply with water main requisition**

**35.** (1) It shall be the duty of a water undertaker (in accordance with section 38) to provide a water main to be used for providing such supplies of water to

premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—

- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under subsection (2) are entitled to require the provision of the main for that locality;
- (b) the premises in that locality to which those supplies would be provided by means of that main are—
  - (i) premises consisting in buildings or parts of buildings; or
  - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out; and
- (c) the conditions specified in section 36 are satisfied in relation to that requirement.

(2) Each of the following persons shall be entitled to require the provision of a water main for any locality, that is to say—

- (a) the owner of any premises in that locality; and
- (b) the occupier of any premises in that locality.

(3) The duty of a water undertaker under this section to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of those persons who joins in doing so.

(4) Where a duty is owed by virtue of subsection (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### **Financial conditions of compliance**

**36.** (1) The conditions mentioned in section 35(1)(c) are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) have been given by the persons who have required the provision of the main; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3), may be required to secure his undertakings.

(2) The undertakings which a water undertaker may require for the purposes of subsection (1) in respect of any water main are undertakings which—

- (a) bind the person or persons mentioned in that subsection to pay to the undertaker, an amount not exceeding the relevant deficit (if any) for each year on that main; and
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of subsection (1)(b), a person may be required to secure his undertakings in relation to the provision of a water main if it was by virtue of section 35(2)(a) or (b) that he required, or joined in requiring, the provision of the main.

(4) In this section “relevant deficit” has the meaning given by section 37.

### Calculation of “relevant deficit”

37. (1) For the purposes of section 36 the relevant deficit for any year on a water main is the amount (if any) by which the water charges payable for the use during that year of that main are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(2) The annual borrowing costs of a loan of the amount required for the provision of a water main is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that main as were not incurred in the provision of additional capacity had been borrowed, by the water undertaker providing the main, on terms—

- (a) requiring interest to be paid and capital to be repaid in twenty equal annual instalments; and. (*Amended by Ord. 7 of 1999*)
- (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) shall be made either—

- (a) by the undertaker with the approval of the Board; or
- (b) in default of such determination, by the Board.

(4) For the purposes of this section the costs reasonably incurred in providing a water main (“the new main”) shall include—

- (a) the costs reasonably incurred in providing such other water mains and such tanks, service reservoirs and pumping stations as it is necessary to provide in consequence of the provision of the new main; and
- (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier main as falls to be used in consequence of the provision of the new main.

(5) Any reference in this section to the water charges payable for the use during any year of any main provided by a water undertaker is a reference to so much of the aggregate of any charges payable to the water undertaker in respect of services provided in the course of that year as represents charges which—

- (a) have been imposed by the undertaker in relation to premises which are connected with that main; and
- (b) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main.

### Completion date

38. (1) A water undertaker shall not be in breach of a duty imposed by section 35 in relation to any locality unless—

- (a) the period of six months beginning with the relevant day has expired; and
- (b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable service pipes to premises in that locality to connect with the main at the places determined under subsection (3).

(2) The period mentioned in subsection (1)(a) may be extended in any case by agreement between the water undertaker and the person or persons who required the provision of the main.

(3) The places mentioned in subsection (1)(b) shall be—

- (a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or
- (b) in default of agreement, such places as are determined by the Board to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question to connect with the water main.

(4) In this section, “relevant day”, in relation to a requirement to provide a water main for any locality, means the day after whichever is the later of the following, that is to say—

- (a) the day on which the conditions specified in section 35 are satisfied in relation to the requirement; and
- (b) the day on which the places where service pipes to premises in that locality will connect with the main are determined under subsection (3).

### Duty to make connections with main

39. (1) Subject to the following provisions of this section and to section 40, it shall be the duty of a water undertaker to make a connection under this section where the owner or occupier of any premises in the undertaker’s area which—

- (a) consists in the whole or any part of a building; or
- (b) are premises on which any person is proposing to erect any building or part of a building,

serves a notice (a “connection notice”) on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker’s water mains.

(2) Where a connection notice has been served for the purposes of this section, the duty imposed by subsection (1) shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under section 40 have been satisfied.

(3) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

(4) Where a duty is owed by virtue of subsection (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) Where a water undertaker carries out any works which it is its duty under this section to carry out at another person’s expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

### Conditions of connection with water main

**40.** (1) Where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in subsection (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in subsection (1) are—

- (a) a requirement that such security deposit as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of section 39(5) on the person who served the connection notice; (*Amended by Ord. 7 of 1999*)
- (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person’s failure to pay any

charges, that the person serving the connection notice has paid an amount owed by him to the undertaker—

- (i) in respect of a supply of water to the relevant premises; or
  - (ii) in respect of expenses incurred in the making of the disconnection;
- (c) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected by the undertaker; and
- (d) a requirement that a separate service pipe has been provided—
- (i) to each house or building on the relevant premises; or
  - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them.

(3) The Minister, acting after consultation with the Board, may make regulations prescribing the interest to be paid by a water undertaker on any security deposit provided pursuant to subsection (2)(a) and providing for the refund of the security deposit by the water undertaker. (*Inserted by Ord. 7 of 1999*)

### **Time for performance of connection, etc. duties**

41. A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless it has failed to make that connection as soon as reasonably practicable.

### **Domestic supply duty**

42. (1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—

- (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises.

(2) Subject to the following provisions of this section and to section 43, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies and which are situated in the area of the undertaker if a demand for a supply of water for domestic purposes has been made in accordance with subsection (4), to the undertaker in respect of those premises, and there has been no interruption of the domestic supply in relation to those premises since that demand was made.

- (3) This section applies to any premises if—
- (a) they consist in the whole or any part of a building and are connected by means of a service pipe to the water main; and
  - (b) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises.
- (4) For the purposes of this section a demand in respect of any premises is made in accordance with this subsection if it is made—
- (a) by the person who is the occupier of the premises at the time when the demand is made; or
  - (b) by a person who is the owner of the premises at the time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.
- (5) For the purposes of this section—
- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and
  - (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.
- (6) Nothing in this section shall impose any duty on a water undertaker—
- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
  - (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
    - (i) for the supply of water to those premises to be cut off or reduced; or
    - (ii) for the pipe to be disconnected, for the purposes of the carrying out of any necessary works.
- (7) In this section, references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by sections 48 and 49.

### Conditions of compliance with domestic supply duty

**43.** (1) Where a demand for the purposes of section 42(2) has been made to a water undertaker in respect of any premises (the “relevant premises”), the



undertaker may make compliance with the requirement specified in subsection (2) a condition of providing his first supply of water in compliance with that demand.

(2) The requirement mentioned in subsection (1) is a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person's failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—

- (a) in respect of a supply of water to the relevant premises; or
- (b) in respect of expenses incurred in cutting off any such supply.

### **Enforcement of domestic supply duty**

44. (1) A duty imposed on a water undertaker under section 42—

- (a) to provide a supply of water to any premises; or
- (b) to maintain a connection between a water main and a service pipe by which such a supply is provided,

shall be owed to the consumer.

(2) Where a duty is owed by virtue of this section to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### **Supplies for non-domestic use**

45. (1) This section applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—

- (a) the premises are premises which do not consist in the whole or any part of a building; or
- (b) the requested supply is for purposes other than domestic purposes.

(2) Where this section applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under section 46—

- (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; or
- (b) having taken any such steps, to provide that supply.

(3) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—

- (a) require the undertaker, in order to meet all existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of

buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

(b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in paragraph (a).

(4) Nothing in this section shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.

(5) The duty of a water undertaker to supply water under this section at the request of any person, and any terms and conditions determined under section 46 in default of agreement between the undertaker and that person shall have effect as if contained in such an agreement.

(6) Except so far as otherwise provided by the terms and conditions determined under section 46 in relation to any supply, the duties of a water undertaker under this section shall have effect subject to the provisions of sections 47 and 48.

#### **Determinations on request for non-domestic supply**

46. (1) Any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of section 45 shall be determined—

(a) by agreement between that person and the water undertaker; or

(b) in default of agreement, by the Board according to what appears to it to be reasonable.

#### **Duty to provide a supply of water, etc. for fire fighting**

47. (1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire hydrant is fixed.

(2) Every water undertaker shall, at the request of the Chief Fire Officer appointed under the Volunteer Fire Brigade Ordinance, fix fire hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.

(3) It shall be the duty of every water undertaker to keep every fire hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose to replace any such hydrant when necessary.

(4) It shall be the duty of a water undertaker to ensure that the Chief Fire Officer has been supplied by the undertaker with all such keys as the Chief Fire Officer may require for the fire hydrants fixed on the water mains or other pipes of the undertaker.

(5) The expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (4) shall be borne by the Government.

(6) The obligations of a water undertaker under this section shall be enforceable by the Minister under section 29.

(7) In addition, where a water undertaker is in breach of its obligations under this section, the undertaker shall be guilty of an offence and liable on summary conviction to a fine of \$ 5,000.

(8) In any proceedings against a water undertaker for an offence under subsection (7) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Disconnections for the carrying out of necessary work**

**48.** (1) Subject to the following provisions of this section, a water undertaker may—

- (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises;

if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

(2) Except in an emergency, the power of a water undertaker under this section to cut off supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary work.

(3) Where a water undertaker exercises its power under this section to make any disconnection or to cut off a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—

- (a) that those works are carried out with reasonable dispatch; and
- (b) that any supply of water to those premises for domestic purposes is interrupted for more than twenty-four hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(4) Any breach by a water undertaker of the duty owed by virtue of subsection (3) which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

### **Disconnection for non-payment of charges**

**49.** (1) Subject to the following provisions of this section, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises—

- (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
- (b) has failed to do so before the end of the period of fourteen days beginning with the day after he is served with a notice requiring him to do so.

(2) Where—

- (a) a water undertaker has served notice for the purposes of paragraph (b) of subsection (1) on a person; and
- (b) within the period of fourteen days mentioned in that paragraph, that person serves a counter notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that subsection in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3).

(3) For the purposes of subsection (2) charges are enforceable in a manner specified in this subsection against a person if—

- (a) the undertaker is able to enforce a judgment against that person for the payment of the charges;
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

(4) A water undertaker which exercises its power under this section to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.

### **Duties of undertaker as respects constancy and pressure**

**50.** (1) Subject to the following provisions of this section, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes—

- (a) as are used for providing supplies of water for domestic purposes; or
- (b) as have fire hydrants fixed on them, to be laid on constantly and at a pressure of not less than five metres head at the boundary of every building within the undertaker's area.

(2) Nothing in subsection (1) shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period

during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

(3) The Minister, acting after consultation with the Board, may make regulations modifying the application of the preceding provisions of this section in relation to any water undertaker.

(4) The obligations of a water undertaker under this section shall be enforceable under section 29 by the Minister.

### **Interpretation of Part V**

**51.** In this Part—

“consumer” in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

“water fittings” includes pipes (other than water mains) taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water.

### **Division 4**

#### *Quality and Sufficiency of Supplies*

### **Standards of potability**

**52.** (1) The Minister, acting after consultation with the Board, may make regulations providing that water that is supplied to any premises is or is not to be regarded as potable for the purposes of this Part if it satisfies, or, as the case may be, fails to satisfy such standards as may be prescribed in the regulations.

(2) Without prejudice to the generality of subsection (1), regulations under this section may, for the purpose of determining the potability of any water—

- (a) prescribe general requirements as to the purposes for which the water is to be suitable;
- (b) prescribe specific requirements as to the substances that may be present in the water and as to the concentration of substances which are or are required to be present in the water;
- (c) prescribe specific requirements as to other characteristics of the water;
- (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed; and
- (e) enable the Minister to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be

prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition.

### **Duties of water undertakers with respect to water quality**

**53.** (1) It shall be the duty of a water undertaker when supplying water to any premises for domestic or food production purposes to supply only water which is potable at the time of supply.

(2) For the purposes of this section and section 54, water supplied by a water undertaker to any premises shall not be regarded as potable at the time of supply where it has ceased to be potable only after leaving the undertaker's pipes.

(3) The provision of this section shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Ordinance.

(4) The duties of a water undertaker under this section shall be enforceable by the Minister under section 29.

### **Regulations for preserving water quality**

**54.** (1) The Minister, acting after consultation with the Board, may make regulations requiring a water undertaker to take all such steps as may be prescribed for the purpose of securing compliance with section 53.

(2) Without prejudice to the generality of the power conferred by subsection (1), regulations under that subsection may impose an obligation on a water undertaker—

- (a) to take all such steps as may be prescribed for monitoring and recording whether the water which that undertaker supplies to premises for domestic or food production purposes is potable at the time of supply;
- (b) to take all such steps as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which that undertaker uses or is proposing to use for supplying water to any premises for domestic or food production purposes;
- (c) to ensure that a source which that undertaker is using or proposing to use for supplying water for domestic or food production purposes is not so used until the prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
- (d) to keep records of the localities within which all the premises supplied with water for domestic or food production purposes by that undertaker are normally supplied from the same source or combination of sources;

(e) to comply with prescribed requirements with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.

(3) A water undertaker who contravenes any regulations made under this section shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

### **Offence of supplying water unfit for human consumption**

55. (1) Subject to subsection (2), where a water undertaker supplies water by means of pipes to any premises and that water is unfit for human consumption, the undertaker shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

(2) In any proceedings against any water undertaker for an offence under this subsection it shall be a defence for that undertaker to show that it—

- (a) had no reasonable grounds for suspecting that the water would be used for human consumption;
- (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving its pipes or was not used for human consumption.

### **Waste from water resources**

56. (1) Subject to subsections (2) and (3), a person shall be guilty of an offence under this section if—

- (a) he causes or allows any underground water to run to waste from any well, borehole or other work; or
- (b) he abstracts from any well, borehole or other work water in excess of the amounts permitted or authorised by or under this Ordinance.

(2) A person shall not be guilty of an offence by virtue of subsection (1)(a) in respect of anything done for the purpose of—

- (a) testing the extent or quality of the supply; or
- (b) cleaning, sterilizing, examining or repairing the well, borehole or other work in question.

(3) Where underground water interferes or threatens to interfere with the carrying out of the operation of any underground works (whether waterworks or not) it shall not be an offence under this section, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.

(4) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine of \$ 1,000.

**Contamination of water resources**

57. (1) Subject to subsections (2) and (3), a person shall be guilty of an offence under this section if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—

(a) for human consumption or domestic purposes; or

(b) for manufacturing food or drink for human consumption,

is polluted or likely to be polluted.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine of \$10,000.

(3) In this section, “waterworks” includes—

(a) any spring, well, borehole, service reservoir or tank; and

(b) any main or other pipe or conduit of a water undertaker.

**Offences of contaminating, wasting and misusing water, etc**

58. (1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—

(a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main pipe;

(b) that water that has been supplied by the undertaker to those premises is or is likely to be contaminated before it is used; or

(c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable on summary conviction to a fine of \$3,000.

(2) A person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable on summary conviction to a fine of \$3,000.

(3) Where a person has committed an offence under subsection (2), the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(4) For the purposes of this section the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.



**Regulations for preventing contamination, waste, etc. and with respect to water fittings**

**59.** (1) The Minister acting after consultation with the Board may make Regulations providing for the following purposes, that is to say—

- (a) for securing—
  - (i) that water in a main or other pipe of a water undertaker is not contaminated; and
  - (ii) that its quality and suitability for particular purposes is not prejudiced,  
by the return of any substance from any premises to that main pipe;
- (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
- (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker to any premises; and
- (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.

(2) Without prejudice to the generality of subsection (1), Regulations under this section may impose duties with respect to the enforcement of the Regulations on water undertakers.

**PART VI**

**SEWERAGE SERVICES**

**Division 1**

*Restriction on Providing Sewerage Services for Gain*

**Restriction on providing sewerage services**

**60.**(1) Subject to the following provisions of this section, no person shall provide for gain sewerage services to any premises except by or under a licence issued by the Minister.

(2) A licence granted under this section may include such conditions as appear to the Minister, after consultation with the Board, to be requisite or expedient.

(3) The Minister acting after consultation with the Board, may make regulations prescribing the manner of making application for a licence under this section, the requirements for a licence and the fees payable therefor.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$50,000.

(5) In respect of any area for which a company has been appointed a sewerage undertaker under Part IV of this Ordinance, the company is exempt from the requirement to hold a licence for that area under this section.

## Division 2

### *General Functions of Sewerage Undertakers*

#### **General duty to provide sewerage system**

61. (1) It shall be the duty of every sewerage undertaker—

- (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers as to ensure that that area is and continues to be effectually drained; and
- (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere), as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) to have regard—

- (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
- (b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) shall be enforceable under section 29 by the Minister.

(4) The obligations imposed on a sewerage undertaker by the following provisions of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section and shall not in any way be qualified by any such provision.

### **Division 3**

#### *Provision of Sewerage Services*

#### **Duty to comply with sewer requisition**

**62.** (1) It shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—

- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by one or more of the persons who under subsection (2) are entitled to require the provisions of a sewer for that locality;
- (b) the premises in that locality the drainage of which would be by means of that sewer are—
  - (i) premises on which there are buildings; or
  - (ii) premises on which there will be buildings when the proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in section 63 are satisfied in relation to that requirement.

(2) Each of the following persons shall be entitled to require the provision of a public sewer for any locality, that is to say—

- (a) the owner of any premises in that locality; and
- (b) the occupier of any premises in that locality.

(3) The duty of a sewerage undertaker under this section to provide a public sewer shall be owed to the person who requires the provision of the sewer or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of subsection (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a sewerage undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised due diligence to avoid the breach.

(5) In this section the reference to domestic purposes, in relation to the drainage of premises in a particular locality to which a requirement under this section relates, is a reference—

- (a) where there are buildings on premises in that locality, to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and
- (b) where any person is proposing to erect buildings on premises in the locality, to such domestic sewerage purposes as are specified

in relation to the buildings and to times after the erection of the buildings.

### Financial conditions of compliance

**63.** (1) The conditions specified in section 62(1)(c) are satisfied in relation to a requirement for the provision of a public sewer by a sewerage undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) have been given by the person or persons who have required the provision of the sewer; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) may be required to secure his undertakings.

(2) The undertaking which a sewerage undertaker may require for the purposes of subsection (1) in respect of any public sewer are undertakings which—

- (a) bind the person or persons mentioned in that subsection to pay to the undertaker, an amount not exceeding the relevant deficit (if any) for each year on that sewer; and
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

### Calculation of “relevant deficit”

**64.** (1) For the purposes of section 63 the relevant deficit for any year on a public sewer is the amount (if any) by which the drainage charges payable for the use during that year of that sewer are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.

(2) Borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer as were not incurred in the provision of additional capacity had been borrowed, by the sewerage undertaker providing the sewer, on terms—

- (a) requiring interest to be paid and capital to be repaid in twenty equal annual instalments; and (*Amended by Ord. 7 of 1999*)
- (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) shall be made either—

- (a) by the undertaker with the approval of the Board; or
- (b) in default of such a determination, by the Board.

(4) For the purposes of this section the costs reasonably incurred in providing a public sewer (“the new sewer”) shall include—

- (a) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and
- (b) such proportion (if any) as is reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer.

(5) Any reference in this section to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker is a reference to so much of the aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which—

- (a) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and
- (b) are reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purpose from those premises.

### Completion date

65. (1) A sewerage undertaker shall not be in breach of a duty imposed by section 62 in relation to any locality unless—

- (a) the period of six months beginning with the relevant day has expired; and
- (b) the sewerage undertaker has not, before the end of that period, so laid the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in that locality to communicate with the public sewer at the places determined under subsection (3).

(2) The period mentioned in subsection (1)(a) may be extended by agreement between the undertaker and the person or persons who required the provision of the public sewer.

(3) The places mentioned in subsection (1)(b) shall be—

- (a) such places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer; or

- (b) in default of agreement, such places as are determined by the Board to be the places at which it is reasonable, in all the circumstances, for drains or private sewers to be used for the drainage of premises in that locality to communicate with the public sewer.

(4) In this section, “relevant day”, in relation to a requirement to provide a public sewer for any locality, means the day after whichever is the later of the following, that is to say—

- (a) the day on which the conditions specified in section 63 are satisfied in relation to the requirement; and
- (b) the day on which the places where drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer are determined under subsection (3).

### **Right to communicate with public sewers**

66. (1) Subject to the provisions of this section—

- (a) the owner or occupier of any premises in the area of a sewerage undertaker; or
- (b) the owner of any private sewer draining premises in the area of any such undertaker,

shall be entitled to have his drains or sewer communicate with the public sewers of that undertaker and thereby to discharge foul water from those premises or that private sewer.

(2) Subject to the provisions of this Part, nothing in subsection (1) shall entitle any person to discharge directly or indirectly into any public sewer—

- (a) any liquid from a factory, other than domestic sewage, or any liquid from a manufacturing process; or
- (b) any liquid or other matter the discharge of which into public sewers is prohibited by or under any Ordinance.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3), the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer is such that the making of the communication would be prejudicial to the undertaker’s sewerage system.

(5) For the purpose of examining the mode of construction or condition of a drain or sewer to which a notice under subsection (3) relates, a sewerage undertaker may, if necessary, require it to be laid open for inspection.

### **Right of sewerage undertaker to undertake the making of communications with public sewer**

67. (1) Where a person gives to a sewerage undertaker notice under section 64 of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may within fourteen days after the receipt of the notice give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given by the sewerage undertaker to any person under subsection (1), that person proceeds to make the communication, he shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

(3) Where a sewerage undertaker has given a notice under subsection (1)—

- (a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but
- (b) it shall not be obligatory on the undertaker to make the communication until either—
  - (i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or
  - (ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

### **Unlawful communication**

68. (1) Any person who causes a drain or sewer to communicate with a public sewer—

- (a) in contravention of any of the provisions of section 66; or
- (b) before the end of the period mentioned in section 66(4),

shall be guilty of an offence and liable, on summary conviction, to a fine of \$5,000.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this section, such an undertaker may—

- (a) close any communication made in contravention of any of the provisions of section 66; and
- (b) recover from the offender any expenses reasonably incurred by the undertaker in so doing.

(3) Any sum which a sewerage undertaker is entitled to recover under subsection (2)(b) may be recovered as a simple contract debt in any court of competent jurisdiction.

**Restrictions on use of public sewers**

69. (1) Subject to the provisions of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer—

- (a) any matter likely to injure the sewer or drain, to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents; or
- (b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than 110 degrees Fahrenheit, as by virtue of subsection (2) is a prohibited substance; or
- (c) any petroleum spirit or carbide of calcium.

(2) For the purposes of subsection (1)(b), chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that subsection is a prohibited substance if (either alone or in combination with the contents of a sewer or drain in question) it is or, in the case of the liquid, is when so heated—

- (a) dangerous;
- (b) the cause of nuisance; or
- (c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 and to a further fine of \$50 for each day on which the offence continues.

(4) In this section the expression “petroleum spirit” means any such—

- (a) crude petroleum;
- (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or
- (c) product of petroleum or mixture containing petroleum,

as, when tested, gives off an inflammable vapour at a temperature of less than 73 degrees Fahrenheit.

**Requirement that proposed drain or sewer be constructed so as to form part of a general system**

70. (1) Where—

- (a) a person proposes to construct a drain or sewer; and
- (b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner which that person proposes, or could otherwise be required by the undertaker, to construct it.



(2) If any person on whom requirements are imposed under this section by a sewerage undertaker is aggrieved by the requirements, he may within twenty-eight days appeal to the Board.

(3) On an appeal under subsection (2) with respect to any requirements, the Board may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this section to comply with those requirements.

(5) The duty of any person by virtue of subsection (4) to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this section shall—

- (a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and
- (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

### **Power to alter drainage system of premises in the area**

71. (1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—

- (a) is not adapted to the general sewerage system of the area; or
- (b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by subsection (1) shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

- (a) is equally effective for the drainage of the premises; and
- (b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this section shall give notice of its proposal to the owner of the premises in question.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may appeal to the Board.

(5) In this section—

“cesspool” includes a settlement tank or other tank for the reception or disposal of foul matter from a building;

“trade effluent” has the same meaning as in section 77.

### **Interpretation of Division 3**

72. (1) In this Division—

“domestic sewerage purposes”, in relation to any premises, means any one or more of the following purposes, that is to say—

- (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories; and
- (b) the removal, from such buildings and from such land, of water which has been used for washing or cooking,

but does not, by virtue of paragraph (b) of this definition, include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Division to the construction of a sewer or of any sewage disposal works include references to the extension of any existing sewer or works.

(3) Nothing in this Division shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to effect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.

## **Division 4**

### *Trade Effluent*

#### **Consent required for discharge of trade effluent**

73. (1) Subject to the following provisions of this Division, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker’s public sewers if he does so with the undertaker’s consent.

(2) Nothing in this Division shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say—

- (a) the restriction imposed by section 66(2); and
- (b) section 69 so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Division.

(4) Accordingly, subsections (3) to (5) of section 66, and section 68 shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Division as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by section 66(1).

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorization as is necessary for the purposes of this Division, the occupier of the premises shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

### **Application for consent**

74. (1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of the undertaker shall be by notice served on the undertaker by the owner or occupier of the premises.

(2) An application under this section with respect to a proposed discharge of any such effluent shall state—

- (a) the nature or composition of the trade effluent;
- (b) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and
- (c) the highest rate at which it is proposed to discharge the trade effluent.

### **Conditions of consent**

75. (1) The power of a sewerage undertaker, on an application under section 74, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—

- (a) the sewer or sewers into which the trade effluent may be discharged;
- (b) the nature or composition of the trade effluent which may be discharged;
- (c) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
- (d) the highest rate at which trade effluent may be discharged either generally or into a particular sewer.

(2) If, in the case of any trade premises, a condition imposed under this section is contravened, the occupier of the premises shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

### Appeals to Board with respect to decisions on applications

76. (1) Any person aggrieved by—

- (a) the refusal of the sewerage undertaker to give a consent for which application has been duly made to the undertaker under section 74;
- (b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or
- (c) any condition attached by a sewerage undertaker to such a consent,

may appeal to the Board.

(2) On an appeal under this section in respect of a refusal or failure to give a consent, the Board may give the necessary consent, either unconditionally or subject to such conditions as it thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under section 75.

(3) On an appeal under this section in respect of a condition attached to a consent, the Board may take into review all the conditions attached to the consent, whether appealed against or not, and may—

- (a) substitute for them any other set of conditions; or
- (b) annul any of the conditions.

### Interpretation

77. (1) In this Division—

“trade effluent”—

- (a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and
- (b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

“trade premises” means, subject to subsection (2), any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Division, any land or premises used or intended for use (in whole or in part and whether or not for profit)—

- (a) for agricultural or horticultural purposes or for the purposes of fish farming; or
- (b) for scientific research or experiment,

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of “trade effluent” in subsection (1) shall include references to agriculture, horticulture, fish farming and scientific research or experiment.

## **PART VII**

### **FINANCIAL PROVISIONS**

#### **Division 1**

##### *Charges*

#### **Powers of undertaker to charge**

**78.** (1) Subject to the following provisions of this Division, the powers of every relevant undertaker shall include power—

- (a) to fix charges for any services provided in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and
- (b) to demand and recover charges fixed under this section from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.

(2) The powers conferred by subsection (1) shall be exercisable—

- (a) by or in accordance with a charges scheme under section 79; or
- (b) by or in accordance with agreements with the persons to be charged.

(3) Except in so far as this Division otherwise provides, a relevant undertaker may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of charges as would ensure that an undertaker derives a sufficient income—

- (a) to cover operating expenses (including any taxes) and to make adequate provision for maintenance, depreciation and the payment of interest on borrowings;
- (b) to meet periodic repayments on any indebtedness to the extent that such repayments exceed the provision for depreciation;

(c) to obtain a reasonable margin of profit.

### Charges scheme

79. (1) Subject to the provisions of this section, a relevant undertaker may make a scheme (“a charges scheme”) which does any one or more of the following, that is to say—

- (a) fixes the charges to be paid for any services provided by an undertaker in the course of carrying out its functions; and
- (b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—
  - (i) a notice containing an application for a consent is served on the undertaker under section 74; and
  - (ii) such a consent as is necessary for the purposes of Division 4 (trade effluent) of Part VI is given by the undertaker; or
  - (iii) a discharge is made in pursuance of such a consent; and
- (c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.

(2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of subsection (1)(b) shall be the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period on which, in accordance with the scheme, the charge relates.

(3) A charges scheme may—

- (a) make different provisions for different cases, including different provision in relation to different circumstances or localities;
- (b) contain supplemental, consequential and transitional provision for the purposes of the scheme; and
- (c) make alternative provisions for payments to be by or in accordance with agreements with the persons to be charged,

and such a scheme may revoke or amend a previous charges scheme:

Provided that no such scheme shall revoke or amend a previous charges scheme which has been in force for less than twelve months.

(4) A charges scheme made under this section shall not come into force until it is approved by the Minister in the exercise of his powers under section 80.

### Applications for approval of charges schemes

80. (1) A relevant undertaker may apply to the Minister in the prescribed manner for approval of a charges scheme made under section 79.

(2) The Minister shall determine an application made under subsection (1) not later than three months from the date of its receipt.

(3) In dealing with such an application for approval of a charges scheme the Minister shall—

- (a) consult with the Board;
- (b) have regard to the provisions of section 78(3).

(4) An undertaker applying for an approval under subsection (1) shall furnish the Minister with such information, accounts and documents as the Minister considers necessary to enable him to determine the application for approval of the scheme.

(5) Where the Minister fails to determine an application for approval of a charges scheme within the period specified in subsection (2), such scheme shall, after the expiry of such period, have effect as if it had been approved by the Minister.

### **Tribunal to inquire into reasonableness of refusal of approval**

**81.** (1) Where the Minister, in the exercise of his powers under section 80, refuses to approve a charges scheme, he shall notify the undertaker of his decision in writing and of his reasons for refusal.

(2) The undertaker may, within a period of sixty days from the date of receipt of notification of the refusal, request the Minister to refer the charges scheme to a tribunal to inquire into the reasonableness of the refusal to approve the scheme.

(3) Where a request is made for a referral under subsection (2), the Minister shall, as soon as reasonably practicable, appoint a person nominated by the President of the United Kingdom Institution of Water and Environmental Management, to be the sole member of the tribunal.

(4) As soon as reasonably practicable after the conclusion of the hearing, the tribunal shall prepare a report of its findings, and shall submit a copy to the Minister and a copy to the undertaker.

(5) The Minister may by Order prescribe the rules of procedure of the tribunal.

### **Resubmission of charges scheme to Minister for approval**

**82.** (1) The undertaker may within thirty days from the date of receipt of a copy of the report submitted by the tribunal under section 81(4), reapply to the Minister for approval of the scheme, with or without modification.

(2) In considering an application for approval made under subsection (1), the Minister shall have regard to the report of the tribunal, and shall determine the application within a period not exceeding thirty days.

(3) Where the Minister fails to determine an application within the period specified in subsection (2), such scheme shall, after the expiry of such period, have effect as if it had been approved by the Minister.

**Power of Minister to seek a review of a charges scheme**

**83.** (1) The Minister may in respect of any charges scheme which has been in force for a period of not less than twelve months, serve notice on the undertaker specifying his proposals for a review of the scheme.

(2) The undertaker shall within a period of sixty days from the date of receipt of the notice referred to in subsection (1), serve notice on the Minister specifying its agreement or disagreement with the proposals.

(3) Where the undertaker agrees with the proposals for a review, it shall submit to the Minister a revised scheme adopting the Minister's proposals, for his approval.

(4) Where the undertaker fails within the period specified in subsection (2) to serve notice on the Minister, or serves notice on the Minister specifying its disagreement with his proposals, the Minister may refer the matter to a tribunal to inquire into the reasonableness of his proposals.

(5) Sections 81(3), (4) and (5) shall apply to a referral by the Minister under subsection (4) of this section as they apply to a referral made at the request of an undertaker under section 81(2).

(6) Where the tribunal determines that the Minister's proposals are reasonable, the undertaker shall, within a period not exceeding thirty days from the date of receipt of the report submitted by the tribunal under section 81(4), submit to the Minister a revised scheme adopting the Minister's proposals, for his approval.

**Liability of occupiers, etc. for charges**

**84.** (1) Subject to the following provisions of this section and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—

- (a) supplies of water provided by a water undertaker shall be treated for the purposes of this Division as services provided to the occupiers for the time being of any premises supplied; and
- (b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Division as provided to the occupiers for the time being of any premises which—
  - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water; or
  - (ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

(2) Subject to subsection (3), charges which, under the preceding provisions of this Division, are fixed in relation to any premises by reference to volume may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises.



(3) A person shall not be made liable by virtue of subsection (2) for any charges fixed in relation to any premises, except where—

- (a) he fails to inform the undertaker of the ending of his occupation of the premises at least ten working days before he ceases to occupy them; and (*Amended by Ord. 7 of 1999*)
- (b) the charges are in respect of a period ending no later than with the first relevant day.

(4) For the purposes of subsection (3), “the first relevant day”, in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say—

- (a) where the person informs the undertaker of the ending of his occupation of the premises less than ten working days before, or at any time after he ceases to occupy them, the twenty-eighth day after he so informs the undertaker; (*Amended by Ord. 7 of 1999*)
- (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
- (c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.

### **Restriction on charging for metering works**

**85.** Where any meter to be used in determining the amount of any charges is installed by or at the request of any relevant undertaker, then notwithstanding any agreement to the contrary between the undertaker and any other person, the undertaker shall bear—

- (a) the expenses of installing and connecting the meter;
- (b) any expenses incurred in maintaining, repairing, disconnecting or removing the meter in accordance with any requirements of the undertaker; and
- (c) any expenses incurred in carrying out any works for purposes connected with the installation and connection of the meter or with the maintenance, repair, disconnection or removal of the meter in accordance with any such requirements.

**PART VIII**

## UNDERTAKERS' POWERS AND WORKS

**Division 1***Undertakers' Powers in Relation to Land***Power to lay pipes in roads**

**86.** (1) Every relevant undertaker shall, for the purposes of carrying out its functions, have power—

- (a) to lay a relevant pipe in, under or over any road and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in or under or over any road; and
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b), including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a road;
  - (ii) tunnelling or boring under a road;
  - (iii) breaking up or opening a sewer, drain or tunnel;
  - (iv) moving or removing earth and other materials.

(2) In this section references to a relevant pipe shall be construed—

- (a) in relation to a water undertaker, as references to a water main (including a trunk main), resource main, discharge pipe or service pipe; and
- (b) in relation to a sewerage undertaker, as references to any sewer or disposal main.

**Power to lay pipes in other land**

**87.** (1) Subject to the following provisions of this section and to Division 3 of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a road and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b).

(2) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(3) Subject to subsection (4), in relation to any exercise of the powers conferred by this section for the purposes of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (2) shall be one month.

(4) Subsection (3) shall not apply in the case of any notice given with respect to the exercise of any power in an emergency for the purpose of—

- (a) laying or altering a service pipe; or
- (b) complying with a duty imposed by section 35 or 62.

(5) In this section, “relevant pipe” has the same meaning as in section 86.

### **Power to deal with foul water and pollution**

**88.** (1) Subject to the provisions of Division 3 of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a road all such works as are required for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a), including for those purposes the following kinds of works, that is to say—
  - (i) breaking or opening a road;
  - (ii) tunnelling or boring under a road;
  - (iii) breaking up or opening a sewer, drain or tunnel;
  - (iv) moving or removing earth and other materials,

and the provisions of section 86 shall, so far as practicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(2) Subject to the provisions of Division 3 of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a road all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to the purposes of any works falling within paragraph (a),

and the provisions of section 86 shall, so far as practicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1).

**Entry for works purposes**

**89.** (1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in subsection (2).

(2) The purposes mentioned in subsection (1) are—

(a) the carrying out of any survey or tests for the purposes of determining—

(i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or

(ii) how any such power should be exercised; or

(b) the exercise of any such power.

(3) The power, by virtue of subsection (1), of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and

(b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—

(i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a); and

(ii) has authorised that person to take away and analyse.

(4) In this section “relevant works power” means any power conferred by any of the provisions of sections 86, 87 and 88.

**Entry for sewerage purposes**

**90.** Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

(a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;

(b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;

(c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker; and

(d) generally for the purpose of carrying out the undertaker’s functions under the relevant sewerage provisions.

### **Protection of electric plant and lines and telecommunications equipment**

91. A relevant undertaker shall not in the exercise of the powers conferred under this Division, lay down any pipes or do any other work in connection with its functions whereby any electrical fittings, lines or plant installed by a public supplier of electricity, or telecommunication apparatus installed for the purposes of a public telecommunications system is or may be seriously affected.

### **Works to be executed with minimum disturbance and damage**

92. (1) In the exercise of any powers conferred by this Division in relation to the execution of works, a relevant undertaker shall cause as little disturbance and inconvenience and shall do as little damage as may be; and shall make full compensation to any person for any damage sustained by that person by reason or in consequence of the exercise of such powers.

(2) Any question arising as to compensation under subsection (1) shall in default of agreement between the parties be referred to the Board for its decision.

### **Interpretation**

93. In this Division, “road” means any road or other place to which the public have access, any bridge over which a road passes and all drains at the side of a road.

## **Division 2**

### *Protection of Undertaker’s Works, Apparatus, Etc.*

### **Offences of interference with works**

94. (1) Subject to subsection (2), if any person without the consent of the water undertaker—

- (a) intentionally or recklessly interferes with any resource main, water main or other pipe vested in any water undertaker or with any structure, installation or apparatus belonging to any water undertaker; or
- (b) by any act or omission negligently interferes with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 or to imprisonment for twelve months or to both.

(2) A person shall not be guilty of an offence under subsection (1)—

- (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or
- (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to premises by a water undertaker if—

- (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
  - (ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (3) Any person who, without the consent of the water undertaker—
- (a) attaches any pipe or apparatus—
    - (i) to any resource main, water main or other pipe vested in a water undertaker; or
    - (ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;
  - (b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
  - (c) subject to subsection (4), uses any pipe or apparatus which has been attached or altered in contravention of this section,

shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

(4) In proceedings against any person for an offence by virtue of paragraph (c) of subsection (3) it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.

(5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to a water undertaker, he shall be guilty of an offence and liable, on summary conviction, to a fine of \$1,000 or to imprisonment for three months or to both.

(6) An offence under subsection (1) or (3) shall constitute a breach of a duty owed to the water undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(7) The amount recoverable by virtue of subsection (6) from a person who has committed an offence under subsection (3) shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(8) In this section “consumer” and “water fitting” have the same meanings as in Part V; and in subsection (1) the references to apparatus belonging to a water undertaker do not include references to any meter which belongs to such an undertaker and is used by it for the purpose of determining the amount of any charges which have been fixed by reference to volume.

### Offence of tampering with meter

95. (1) If any person—

- (a) so interferes with a meter used by any relevant undertaker in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing the volume of water supplied to, or of effluent discharged from, those premises; or
- (b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

he shall be guilty of an offence and liable on summary conviction to a fine of \$3,000 or to imprisonment for six months or to both.

(2) A court before which any person is convicted of an offence against subsection (1) may, in addition to any fine that it may impose, order such person to pay the relevant undertaker reasonable compensation for any loss or damage that the undertaker may have suffered as a result of the commission of the offence.

### Division 3

#### *Supplemental Provisions with Respect to Undertaker's Powers*

### Vesting of works in undertaker

96. (1) Subject to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—

- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
- (b) every sewage disposal works constructed by a sewerage undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

(2) In this section—

“relevant pipe”—

- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
- (b) in relation to a sewerage undertaker, means any sewer or disposal main.

### **Duty to move pipes, etc. in certain cases**

97. (1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of the pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

(2) Subject to subsections (3) and (4), where a notice is served on a relevant undertaker under subsection (1), it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that the requirement is unreasonable.

(3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any road.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5).

(5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1), the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5), the undertaker shall pay interest at such rate as may be determined by the undertaker with the approval of the Board on every sum so deposited for every three months during which it remains in the hands of the undertaker.

(7) The duty of a relevant undertaker under this section shall be enforceable under section 29 by the Minister.

(8) In this section, “improvement” in relation to land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises.

## **PART IX**

### **INFORMATION PROVISIONS**

#### *Reports*

#### **Report by Board**

98. (1) The Board shall as soon as practicable after 31 December each year, make to the Minister a report on its activities during that year.



(2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the Board's functions.

(3) The Minister shall cause a copy of every report made under subsection (1) to be laid before the House of Assembly.

### Reports by undertakers

**99.** (1) Every water and sewerage undertaker shall as soon as practicable after 31 December each year, make to the Minister a report on its activities during that year.

(2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the undertaker's functions.

(3) The Minister shall cause a copy of every report made under subsection (1) to be laid before the House of Assembly.

### *Registers, Maps, Etc.*

### The Board's register

**100.** (1) The Board shall, at such premises and in such form as it may determine, maintain a register for the purposes of Part IV of the Ordinance.

(2) The Board shall cause to be entered in the register the provisions of—

(a) every appointment under Division 1 of Part IV of this Ordinance, every termination or transfer of any such appointment, every variation of the area for which any company holds any such appointment and every modification of the conditions of any such appointment; and

(b) every direction, consent or determination given or made under any such an appointment by the Board.

### Maps of waterworks

**101.** (1) It shall be the duty of every water undertaker to keep records of the location of—

(a) every resource main, water main or discharge pipe which is for the time being vested in the undertaker; and

(b) any other underground works, other than a service pipe, which are for the time being vested in that undertaker.

(2) It shall be the duty of every water undertaker to secure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(3) Any information which is required under this section to be made available by a water undertaker for inspection by the public shall be so made available in the form of a map.

(4) The duties of a water undertaker under this section shall be enforceable by the Minister under section 29.

### Sewer maps

**102.** (1) It shall be the duty of every sewerage undertaker to keep records of the location and other relevant particulars of every public sewer or disposal main which is vested in the undertaker.

(2) For the purposes of this section, the relevant particulars of a sewer or disposal main are (in addition to its location) particulars of whether it is a sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used.

(3) It shall be the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(4) Any information which is required under this section to be made available by a sewerage undertaker for inspection by the public shall be so made available in the form of a map.

(5) The duties of a sewerage undertaker under this section shall be enforceable by the Minister under section 29.

## PART X

### DROUGHT

#### Power to make Ordinary Drought Orders

**103.** (1) Notwithstanding the provisions of this or any other Ordinance, if the Minister is satisfied that a serious deficiency of supplies of water in any area exists or is threatened, then subject to any advice given to him by the Board the Minister may by Order published in the *Gazette* make such provision authorised by this section as appears to him to be expedient with a view to meeting the deficiency.

(2) Subject to the provisions of this Ordinance the power to make an Order under this section shall not be exercisable except where the application is made to the Minister—

(a) by the Board;

(b) by a water undertaker holding an appointment under this Ordinance in respect of the area in question.

(3) An Order made under this section, other than an Emergency Drought Order made under section 104, may contain any of the following provisions, that is to say—

- (a) provision authorising the Board to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the Order if the Board is satisfied that the taking of water from that source seriously affects the supplies available to a water undertaker;
- (b) provision authorising the Board to impose or modify any restriction or obligation to which any water undertaker or any other person is subject as respects—
  - (i) the taking of water from any source;
  - (ii) the discharge of water;
  - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise);
  - (iv) the filtration or other treatment of water;
- (c) provision authorising the Board to suspend or vary, or attach conditions to, any consent specified in the Order for the discharge of any effluent by any person, including any sewage undertaker or water undertaker.

(4) The following provisions apply where an Order under this section contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—

- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
- (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
  - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within the area of the water undertaker;
  - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply.

(5) An Order made in respect of subsection (3) shall remain in force until revoked or varied by the Minister by Notice published in the *Gazette*.

### **Power to make Emergency Drought Orders**

**104.** (1) Where the Minister is satisfied that a serious deficiency of water in any area exists or is threatened and further that such a deficiency impairs or is likely to impair the economic, or social well being, or the physical or mental health of people in that area, he may by Order published in the *Gazette* make

such provision as appears to him to be expedient with a view to meeting the deficiency.

(2) An Order made under subsection (1) may contain any of the following provisions—

- (a) a provision prohibiting or limiting the use of water either generally or in respect of particular categories of use;
- (b) a provision authorising the water undertaker to supply water in its area or in any place within its area only by means of standpipes or water tanks;
- (c) a provision limiting the quantity or volume of water supplied to any designated class of persons;
- (d) a provision authorising any designated person to enter upon any land to—
  - (i) carry out experimental borings or other works for the purpose of ascertaining the nature of the subsoil, the presence of underground water within the subsoil or the quantity or quality of any such water;
  - (ii) to install and keep monitoring such apparatus as is required for the purpose of obtaining information on any determination as to the availability and suitability of any such underground water;
  - (iii) to take away and analyse such samples of water or of any land or articles as the Board or as the case may be, the water undertaker considers necessary for any of the purposes so mentioned and as authorised by that person to take away and analyse;
- (e) a provision authorising designated persons (including a water undertaker) to construct or otherwise erect temporary structures to collect or to treat or to otherwise convey any waters lying on or under the land.

(3) Any Order made pursuant to subsection (1) shall—

- (a) remain in force for a period of six months from the date of publication in the *Gazette*; and
- (b) may be extended by the Minister for any further period as the Minister deems necessary or expedient but such power of extension shall not be exercised so as to extend that period of six months beyond the end of the period of one year beginning from the day when the Order was first published in the *Gazette*.

(4) In this section, “designated persons” means persons as designated in the Order.

### Drought offences

**105.** (1) If any person—

- (a) takes or uses water in contravention of any limitation imposed by or under any Drought Order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or
- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an Order,

he shall be guilty of an offence under this section.

(2) If any person—

- (a) fails to construct or maintain in good order any gauge or other apparatus for measuring the flow of water which he was required to construct or maintain by any Drought Order; or
- (b) fails to allow some person authorised for the purpose by or under any such Order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,

he shall be guilty of an offence under this section.

(3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine of \$ 5,000 or to imprisonment for six months or to both.

(5) In this section, “Drought Order” means an Ordinary Drought Order made under section 103 and an Emergency Drought Order made under section 104.

## PART XI

### CONTROL OF POLLUTION

### Pollution offences

**106.** (1) Subject to subsection (3) a person contravenes this section if he causes or knowingly permits—

- (a) any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters;
- (b) any matter other than trade effluent or sewage effluent to enter controlled waters by being discharged from a drain or sewer or other means of discharge in contravention of a relevant prohibition;

- (c) any trade effluent or sewage effluent to be discharged—
  - (i) into any controlled waters except in accordance with the provisions of a consent granted by the Board;
  - (ii) any trade effluent or sewage effluent to be discharged, in contravention of any relevant prohibition, from a building or from any fixed plant onto or into any land or into any waters of a lake or pond;
- (d) any matter whatever to enter any inland waters so as to tend (either directly or in combination with any other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading or likely to lead to a substantial aggravation of—
  - (i) pollution due to other causes;
  - (ii) the consequences of such pollution.

(2) The Minister, acting after consultation with the Board, may make regulations prohibiting or otherwise restricting any discharge of poisonous, noxious or polluting matters or any solid waste or the discharge of any prescribed substances or materials (as are prescribed in the regulations) or the omissions of any substances from prescribed processes, from any vessel or aircraft into the territorial waters of the Islands.

(3) A person shall not be guilty of an offence under this section in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with a consent granted by the Board in respect of any such discharge.

## PART XII

### MISCELLANEOUS

#### Offences by bodies corporate

**107.** Where a body corporate is guilty of an offence under this Ordinance and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded with against and punished accordingly.

#### Judicial disqualification

**108.** No judge or magistrate shall be disqualified from acting in relation to any proceedings to which a relevant undertaker is a party by reason only that he is or

may become liable to pay a charge to that undertaker in respect of any service that is not the subject-matter of the proceedings.

### **Jurisdiction of courts**

**109.** (1) Without prejudice to the jurisdiction of the Supreme Court conferred by or under the Supreme Court Ordinance, the Supreme Court shall have jurisdiction to hear and determine actions for breaches of statutory duty brought under this Ordinance where the amount claimed exceeds \$2,000.

(2) The Magistrate Court shall have jurisdiction to hear and determine actions for breaches of statutory duty brought under this Ordinance where the amount claimed does not exceed \$2,000.

### **Rules of Court**

**110.** (1) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to any jurisdiction conferred on the Supreme Court by this Ordinance; and until rules are made under this section, the jurisdiction shall be exercised in accordance with such directions as the Chief Justice may give in any particular case.

(2) The Magistrate may make rules with respect to the practice and procedure of the Magistrate's Court in relation to any jurisdiction conferred on the Magistrate by this Ordinance; and until rules are made under this section, the jurisdiction shall be exercised in accordance with such directions as the Magistrate may give in any particular case.

### **Regulations**

**111.** The provisions of any Regulations made by the Minister under this Ordinance may include—

- (a) provision for anything that may be prescribed by the regulations to be determined under the Regulations;
- (b) different provision for different cases, including different provisions in relation to different persons, circumstances and localities; and
- (c) such supplemental, consequential and transitional provisions as the Minister considers appropriate.

**SCHEDULE***(Section 28(6))*

## PART I

COMPENSATION PAYABLE IN CONSEQUENCE OF  
THE VESTING IN THE GOVERNMENT OF ANY LAND  
BELONGING TO A WATER OR SEWERAGE UNDERTAKER

Where any land or any interest in any land, being land within the meaning of the Land Acquisition Ordinance vests in the Government by virtue of an Order under section 27(1), compensation shall be payable, in default of agreement, in accordance with the provisions of the Land Acquisition Ordinance (other than sections 3 to 6, section 17, Part VI and sections 43 to 46) subject to the following modifications—

- (a) any reference in those provisions to the Land Acquisition Ordinance shall include a reference to that Ordinance as modified by this Part;
- (b) for section 7 there shall be substituted the following section—

“7. The Permanent Secretary, Finance shall, on the making of an Order under section 27(1) of the Water and Sewerage Ordinance in respect of any land, cause the land to be surveyed and, if no satisfactory plan of the land is available, a plan of the land to be made.”;
- (c) in section 8, subsections (2) and (3) shall be omitted;
- (d) in subsection (1) of section 9, the words “Where an Order has been made under section 27(1) of the Water and Sewerage Ordinance in respect of any land, then, in default of agreement as to the payment of compensation” shall be substituted for the words “Where no agreement by private treaty for the purchase of any land in respect whereof a declaration under section 5 has been made is arrived at”;
- (e) in paragraph (b) of subsection (1) of section 14, subparagraphs (iv) and (vi) shall be omitted;
- (f) in section 15, subsection (1) shall be omitted and the words “in such case” in subsection (2) shall be omitted;
- (g) for section 16 there shall be substituted the following section—

“16. On the making of an Order under section 27(1) of the Water and Sewerage Ordinance in respect of any land, the Registrar of Lands shall cause the land to be registered as Crown Land in the Land Register and cause such other steps to be taken as the Registrar may deem necessary by way of cancellation or alteration of any entry in the Land Register or otherwise in consequence of such registration.”;
- (h) in paragraph (c) of subsection (1) of section 19, the words “section 15” shall be substituted for the words “sections 4 and 15 or either of such sections”;



- (i) in section 30, the words “the relevant Order under section 27(1) of the Water and Sewerage Ordinance was made” shall be substituted for the words “he took possession of land”.

## PART II

### COMPENSATION PAYABLE IN CONSEQUENCE OF THE VESTING IN THE GOVERNMENT OF ANY ASSETS OTHER THAN LAND BELONGING TO A WATER OR SEWERAGE UNDERTAKER

1. Subject to paragraph 2, where any property or rights of any person, other than land or an interest in land within the meaning of Part I of this Schedule, vests in the Government by virtue of an Order under section 27(1), compensation shall be payable, in default of agreement, to that person, in such sum as shall be calculated by the Permanent Secretary, Finance to be the sum attributable to such property or rights which might have been expected to be realised if—

- (a) the whole of the undertaking carried on by that person for the supply of water or sewerage services under an appointment had been sold as a going concern on the date on which the vesting took effect, in the open market, by a willing seller;
- (b) the effect of the sale had been to transfer to the buyer the property (including any land or any interest in any land) rights, liabilities and obligations which vest by virtue of the Order in the Government, except any property, rights, liabilities or obligations which so vest on terms agreed or determined in accordance with regulations under section 28; and
- (c) this Ordinance had not been passed.

2. In calculating any compensation payable under paragraph 1, the Permanent Secretary, Finance shall deduct from the sum calculated by him in accordance with that paragraph any sum due and payable to the Government under the appointment held by the company to whom the compensation is payable and on the termination of which the relevant Order under section 27(1) was made.

3. A person shall not be entitled to compensation under this Part unless he has served on the Permanent Secretary, Finance notice in writing claiming the compensation within three months of the date on which entitlement to payment of the compensation accrued or such longer period as the Magistrate’s Court may allow.

4. Compensation under this Part shall carry interest as from the date on which entitlement to payment of the compensation accrued at the rate of ten *per centum per annum* or such higher rate of interest as may be prescribed.

5. The Permanent Secretary, Finance shall, by notice in writing served on any person claiming compensation in accordance with paragraph 4, inform the claimant—

- (a) of the Permanent Secretary, Finance decision as to the entitlement of the claimant to such compensation;

- (b) of the amount of the compensation, if any, which has been calculated by the Permanent Secretary, Finance, giving details of how that amount has been calculated and of any deductions made under paragraph 2; and
- (c) that the claimant has a right of appeal under paragraph 6 against any decision taken by the Permanent Secretary, Finance,

and where the Permanent Secretary, Finance has decided that the claimant is not entitled to any compensation or that the compensation shall be apportioned between the claimant and any other person, the notice shall set out the reasons for any such decision having been taken.

6. (1) Any person who is aggrieved by a decision of the Permanent Secretary, Finance in respect of any claim for compensation made in accordance with this Part, may within twenty-one days of the date on which the decision was taken or such longer period as the Magistrate's Court may allow, by notice in writing served on the Permanent Secretary, Finance, require the Permanent Secretary, Finance to refer the matter to the Magistrate's Court for determination; and such notice shall give particulars of the grounds on which that person has required the reference to be made.

(2) Where a notice has been served on the Permanent Secretary, Finance by any person—

- (a) the Permanent Secretary, Finance shall refer the matter to which the notice relates to the Magistrate's Court for determination within twenty-one days of the date of service of the notice; and
- (b) the Magistrate's Court shall, on the matter being so referred to it, cause a notice to be served on the Permanent Secretary, Finance and on that person, and on any other person who appears to the Court to be interested, informing them of the date, time and place at which the Court will proceed to hear and determine the reference.

7. The Minister may by Regulations provide for the protection of any encumbrance in cases where the debt secured by the encumbrance does not vest in the Government or is apportioned as between the Government and any person, and the debt or, as the case may be, the part of the debt not apportioned to the Government, was, immediately before the relevant vesting date, secured on property which vests in the Government.

