

SCHEDULES

SCHEDULE 6

Article 32.

PROTECTION OF WATERCOURSES

1. A person shall not—
- (a) place any solid matter in any watercourse or, save as permitted by any other statutory provision, cause, allow or suffer the discharge, flow or fall into any watercourse of any matter, whether solid or liquid, likely to render that watercourse, or any other watercourse, less effective for drainage purposes; or
 - (b) do any act likely to impair the efficiency of any sea defences or sea defence works; or
 - (c) subject to paragraphs 2 to 4, construct or reconstruct a bridge in or over any watercourse, or alter the waterway of any such bridge, except with the consent of the Ministry; or
 - (d) so use any vehicle, machinery or implement as to break down or damage the bank or embankment of any watercourse or sea defences; or
 - (e) subject to paragraphs 3 and 4, erect or place any structure in, over or under any watercourse, or carry out any work of alteration or repair on any structure in, over or under any watercourse, if the work is likely to—
 - (i) affect the flow of water in the watercourse; or
 - (ii) impede any drainage work; or
 - (iii) prevent or impede the passage of fish; or
 - (iv) interfere with, or in any way hinder, the maintenance of the watercourse;except with the consent in writing of the Ministry and, in any case where the Ministry so directs, in accordance with plans, sections and specifications approved by the Ministry; or
 - (f) erect or alter any structure designed to contain or divert the waters of^{F1} any designated watercourse], except^{F2} in accordance with regulations under Article 20 of the Water (Northern Ireland) Order 1999 or] with the approval in writing of, and in accordance with plans, sections and specifications approved by, the Ministry; or
 - (g) suffer any structure which is or has been erected, placed, raised, altered or repaired in contravention of any provision of sub-paragraph (c), (e) or (f), or of section 30(1)(a) or 31(1) of the Drainage Act (Northern Ireland) 1947 or section 10(1) or (2) of the Drainage Act (Northern Ireland) 1964, to remain, unless the Ministry is satisfied that, if an application for the Ministry's consent or approval with respect to the structure had been made under the provision in question, such consent or approval would have been forthcoming, and gives its consent in writing to the structure remaining.

F1 1984 NI 2

F2 1999 NI 6

2. The construction, reconstruction or alteration of a bridge by an authority, within the meaning of Article 15(5), in accordance with plans, sections and specifications approved by the Ministry of Development^{F3} shall, for the purposes of paragraph 1(c), be deemed to have been done with the consent of the Ministry.

F3 Now D/Env., SRO (NI) 1973/504

3. A consent or approval required under paragraph 1 shall not be unreasonably withheld, and—
- (a) any such consent may be given subject to any reasonable condition as to the time at which, and the manner in which, the work is to be carried out; and
 - (b) any such consent or approval shall, if neither given nor refused within three months after the application therefor is made, be deemed to have been given.

4. If any question arises under this Schedule as to whether the consent of the Ministry is unreasonably withheld or whether any condition imposed under paragraph 3(a) is reasonable, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

5. If any person contravenes paragraph 1, then, without prejudice to the following provisions of this Schedule—

- (a) that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^[F4] level 3 on the standard scale] and, in the case of a continuing offence, to an additional fine not exceeding £5 for every day during which the offence continues; and
- (b) the Ministry may remove, alter or pull down any work in relation to which any contravention is or has been committed, and may recover from that person the expenses incurred in doing so.

F4 1984 NI 3

6. If, in contravention of paragraph 1—
- (a) any solid matter is placed; or
 - (b) the discharge, flow or fall of any matter, whether solid or liquid, is caused, allowed or suffered; or
 - (c) any structure is erected, placed, altered, repaired or suffered to remain;

it shall be deemed to be a nuisance and, without prejudice to any other remedy, shall be liable to be dealt with summarily in the manner provided by the following provisions—

- (i) the Ministry may serve on that person a notice requiring him to abate the nuisance within a time to be specified in the notice, and, if he makes default in doing so, the Ministry may cause a complaint relating to the nuisance to be made before a justice of the peace, and the justice shall thereupon issue a summons requiring that person to appear before a court of summary jurisdiction;
- (ii) if the court is satisfied that, with respect to that solid matter, discharge or structure, that person has contravened paragraph 1, the court shall make an order requiring him to abate the nuisance within a time specified in the order, and may by order—
 - (A) impose on him a penalty^[F5] not exceeding £1,000 or such other sum as the Department may specify by order subject to affirmative resolution]; and
 - (B) give directions as to the payment of all costs incurred up to the time of the making of the order;
- (iii) if any person does not obey an order under this paragraph to abate a nuisance, he shall, unless he satisfies the court that he used all due diligence to carry out the order, be liable to a penalty not exceeding 5 for every day during which his default continues, and the Ministry may—

- (A) abate the nuisance; and
- (B) recover from that person the expenses incurred in doing so.

F5 1999 NI 6

7. A person shall not be liable to both a fine under paragraph 5 and a penalty under paragraph 6 in respect of the same contravention.

8.—(1) Without prejudice to paragraphs 5 to 7, the Ministry may, where it is satisfied that the free flow of any water is obstructed or diminished, or the passage of fish is prevented or impeded, by any work done by any person in contravention of paragraph 1(c)—

- (a) alter or remove any such work; and
- (b) recover from that person the expenses incurred in doing so.

(2) Where the banks of any watercourse are damaged from any cause, the Ministry may, without prejudice to any other remedy, repair the banks and may recover the cost thereof from any person responsible for the damage.

9.—(1) The occupier of any land in the vicinity of any watercourse or sea defences shall ensure that the banks or embankments thereof are not broken down or damaged by cattle or other animals grazing or being on that land.

(2) Where, by reason of a contravention of sub-paragraph (1) by any such occupier, any watercourse is, or sea defences are, rendered, or likely to be rendered, less effective for drainage purposes, that occupier shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding^{F6} level 2 on the standard scale].

F6 1984 NI 3

10.—(1) The Ministry may, if it considers that any tree or structure in the vicinity of any watercourse is in danger of collapsing in such a way as to obstruct the free flow of water in, or injure the banks of, the watercourse, serve a notice in writing on the occupier of the land on which the tree or structure is requiring him, at his own expense and within the time specified in the notice—

- (a) in the case of a tree, to remove it; or
- (b) in the case of a structure, either to remove it or to carry out such repairs to it as are necessary to remove the danger of its collapsing.

(2) If the requirements of the notice mentioned in sub-paragraph (1) are not complied with, the Ministry may enter on the land and remove the tree or structure, and the cost of such removal, and compensation for any damage or injury suffered by any person (including the Ministry) by reason of the collapse of the tree or structure, may, without prejudice to any other remedy, be recovered from the occupier respectively by the Ministry and by any person so damaged or injured.

11. The giving of any consent or approval, or the approval of any plan, section or specification, by the Ministry under paragraph 1 shall not affect the liability of any person to comply with the provisions of any statutory provision applicable to any works proposed to be carried out in pursuance of that consent or approval, or in accordance with any such plan, section or specification.

12. Nothing in this Schedule shall—

- (a) operate in derogation of any provision having the force of law by which the consent of any government department is required for the erection of a bridge over any watercourse, or

Changes to legislation: There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, SCHEDULE 6. (See end of Document for details)

by virtue of which any powers are exercisable by any government department in relation to such a bridge; or

- (b) impose any liability on the Ministry in respect of the erection, placing, alteration or repairing of any structure; or
- (c) apply to any works under the control of a harbour authority or conservancy authority, or maintained under any statutory provision;

but, where any work under the control of any authority mentioned in paragraph (c), or of any person exercising powers under any statutory provision, is likely to interfere in any way with the proper functioning or maintenance of, or of the carrying out of any works on, a watercourse, or with the passage of fish, that authority or person shall consult with the Ministry for the purpose of ensuring that, so far as possible, any such interference is avoided.

13. In this Schedule—

“bridge” includes a culvert or other like structure in or over a watercourse;

“structure” (without prejudice to the generality of its meaning) includes any building, embankment, wall, bridge, dam, valve, sluice or pipe.

Changes to legislation:

There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, SCHEDULE 6.