
STATUTORY INSTRUMENTS

1999 No. 662

The Water (Northern Ireland) Order 1999

PART II

FUNCTIONS OF THE DEPARTMENT OF THE ENVIRONMENT IN RELATION TO MATTERS AFFECTING WATER

Interpretation

Interpretation of Part II

3.—(1) In this Part—

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description;

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any matter, flow, discharge, emission, deposit or abstraction;

“the Department” means the Department of the Environment;

“deposit” includes store;

“discharge consent” means a consent given for the purposes of Article 9;

“enforcement notice” has the meaning assigned by Article 12;

“Londonderry Area” has the same meaning as in the Foyle Fisheries Act (Northern Ireland) 1952;

“mobile plant” means plant which is designed to move or be moved whether on roads or otherwise;

[^{F1}“Newry Area” has the same meaning as in the Foyle Fisheries Act (Northern Ireland) 1952;]

“premises” includes any land, vehicle, vessel or mobile plant;

“regulations”, except in Article 36, means regulations made by the Department;

“representations” includes objections;

“trade” includes agriculture, horticulture, scientific research or experiment and the carrying on of a hospital or nursing home;

“trade effluent” means any effluent which is discharged from premises used for carrying on any trade or industry, other than storm water or domestic sewage;

“works notice” has the meaning assigned by Article 17.

(2) For the purposes of the definition of “trade effluent” in paragraph (1), any premises (whether on land or not) wholly or mainly used (whether for profit or not) for the purposes of fish farming shall be deemed to be premises used for carrying on a trade.

F1 SI 1999/859

General duty of the Department

Duty of Department to promote conservation and cleanliness of water resources

- 4.—(1) The Department shall—
- (a) promote the conservation of the water resources of Northern Ireland;
 - (b) promote the cleanliness of water in waterways and underground strata.
- (2) The Department shall, in exercising its functions in relation to the conservation of water resources and the cleanliness of water, have regard to—
- (a) the needs of industry and agriculture;
 - (b) the protection of fisheries;
 - (c) the protection of public health;
 - (d) the preservation of amenity and the conservation of flora and fauna; and
 - (e) the conservation of geological or physiographical features of special interest and any feature of archaeological, historical, architectural or traditional interest.

Quality objectives

Classification of quality of waters

- 5.—(1) The Department may, in relation to any description of waters (being a description applying to some or all waters), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.
- (2) The criteria specified in regulations under this Article in relation to any classification shall consist of one or more of the following, that is to say—
- (a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;
 - (b) specific requirements as to the matters which are to be present in or absent from the water and as to the concentrations of matters which are or are required to be present in the water;
 - (c) specific requirements as to other characteristics of those waters;

and for the purposes of any such classification regulations under this Article may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

Water quality objectives

- 6.—(1) For the purpose of maintaining and improving the quality of any waters the Department may establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed in regulations for the purposes of Article 5, by publishing in one or more newspapers circulating in the area to which the description of the waters relates, a notice specifying—
- (a) one or more of the classifications for the time being prescribed under Article 5; and
 - (b) in relation to each specified classification, a date.
- (2) The water quality objectives for any waters to which a notice under this Article relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the

requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.

(3) Where the Department has established water quality objectives under this Article for any waters the Department may review objectives for those waters if 5 years or more have elapsed since the publication of the last notice under paragraph (1) or (6) to be published in respect of those waters and the Department shall not establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

(4) Where the Department proposes to establish or vary the objectives for any waters the Department shall—

- (a) give notice setting out the proposal and specifying the period (not being less than 3 months from the date of publication of the notice) within which representations with respect to the proposal may be made; and
- (b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations, to establish or vary those objectives, the Department may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as the Department considers appropriate.

(5) A notice under paragraph (4) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by it.

(6) If, on a review under this Article or in consequence of any representations made following such a review for the purposes of paragraph (4), the Department decides that the water quality objectives for any waters should remain unchanged, the Department shall publish notice of that decision and serve a copy of that notice on any person who made such representations.

(7) Where a person who has made representations following a review for the purposes of paragraph (4) is not satisfied with the decision of the Department under paragraph (6), he may appeal to the Appeals Commission within 28 days from the date on which notice of the decision is served on him.

Prevention of pollution of water

Pollution, etc., of water

7.—(1) Subject to the following provisions of this Part, a person commits an offence if, whether knowingly or otherwise—

- (a) he discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata; or
- (b) he discharges or deposits any matter so that it enters a waterway or water contained in any underground strata and tends either directly or in combination with similar acts (whether his own or those of another) to impede the proper flow of the water of the waterway or strata in a manner leading or likely to lead to pollution or a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person does not commit an offence under paragraph (1) if he discharges any matter into a public sewer or public sewage treatment works, so that it enters a waterway or water contained in underground strata, if the Department is bound to receive the matter, or it has consented to do so unconditionally, or it has consented to do so subject to conditions and the person observes the conditions.

(3) Where a person is charged with an offence under paragraph (1), it shall be a defence to prove that he exercised all reasonable care to prevent the discharge or deposit of the matter in question.

(4) On a person's conviction of an offence under paragraph (1), the court by or before which he is convicted may on the application of the Department, of which not less than 10 days' notice has been given to the person charged, make an order directing him to take such measures as the court may consider necessary to remedy or nullify any contravention of paragraph (1).

(5) A person who fails to comply with an order under paragraph (4) shall be guilty of an offence.

(6) In paragraph (1) any reference to matter entering a waterway or water contained in any underground strata includes a reference to its entering the waterway or water by being carried into it.

(7) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

VALID FROM 01/01/2007

[F²Exceptions

7A.—(1) A person shall not be guilty of an offence under Article 7(2) or (6) by reason of any discharge of trade or sewage effluent from a vessel.

(2) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of the discharge or deposit of any effluent or other matter if—

- (a) the discharge or deposit is made in an emergency in order to avoid danger to life or health;
- (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the discharge or deposit and of its polluting effects; and
- (c) particulars of the discharge or deposit are furnished to the Department as soon as reasonably practicable after it occurs.

(3) A person shall not be guilty of an offence under Article 7(1) or (2) or (6) in respect of the discharge or deposit of any effluent or other matter if the discharge or deposit is made under and in accordance with, or as a result of any act or omission under and in accordance with—

- (a) a consent given by the Department under this Article;
- (b) a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- (c) a licence granted under Part II of the Food and Environment Protection Act 1985;
- (d) an authorisation granted under the Industrial Pollution Control (Northern Ireland) Order 1997;
- (e) a waste management licence granted under the Waste and Contaminated Land (Northern Ireland) Order 1997;
- (f) a permit granted under regulations under Article 4 of the Environment (Northern Ireland) Order 2002;
- (g) Article 226 of the Water and Sewerage Services (Northern Ireland) Order 2006;
- (h) any statutory order which expressly confers power to discharge effluent into water;
- (i) any prescribed statutory provision.

(4) Schedule 1 shall have effect, subject to Article 13, with respect to the making of applications for consents under paragraph (3)(a) (“discharge consents”) and with respect to the giving, revocation, transfer and modification of such consents.

(5) Nothing in any disposal licence shall be treated for the purposes of paragraph (3) as authorising—

- (a) any discharge as is mentioned in Article 7(2); or
- (b) any act or omission so far as it results in any such discharge.

(6) In paragraph (3)(h) “statutory order” means—

- (a) an order under Article 138(1)(c) or 228 of the Water and Sewerage Services (Northern Ireland) Order 2006;
- (b) an order under Article 23(2);
- (c) any other order or scheme made under a statutory provision.

(7) A person shall not be guilty of an offence under Article 7(1), (2) or (6) if he discharges any effluent or other matter into a drain mentioned in paragraph (8) so that it enters a waterway or water contained in underground strata, if the Department for Regional Development has given its consent to the discharge (either unconditionally or subject to conditions which were observed).

(8) The drains referred to in paragraph (7) are —

- (a) a road drain within the meaning of Article 45 of the Roads (Northern Ireland) Order 1993; or
- (b) a drain constructed and laid by the Department for Regional Development under Article 45(1)(b) of that Order.

F2 [Arts. 7-7B](#) substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, 4.5.2007 for certain purposes, otherwise 25.5.2007) for art. 7 by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2)(3)(e), **280** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2**, Sch.

VALID FROM 01/01/2007

Discharges into and from public sewers, etc.

7B.—(1) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of a discharge made into a sewer or waste water treatment works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(2) A sewerage undertaker shall not be guilty of an offence under Article 7(1), (2) or (6) by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person made into the sewer or works;
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(3) Paragraph (4) applies for the purpose of determining liability where—

- (a) sewage effluent is discharged as mentioned in Article 7(1) or(2) from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”); and
- (b) the effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or waste water treatment works vested in the discharging undertaker by another sewerage undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.
- (4) The sending undertaker shall be deemed to have made the discharge if—
- (a) matter included in the discharge was received by it into a sewer or works vested in it; and
- (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or waste water treatment works.
- (5) The Department for Regional Development may by regulations make further provision for the purpose of determining liability under Article 7(1), (2) or (6) as between two or more persons in respect of any discharge into or from any public sewer or any waste water treatment works.
- (6) In this Article “main connection” has the same meaning as in Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.]

F2 Arts. 7-7B substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, 4.5.2007 for certain purposes, otherwise 25.5.2007) for art. 7 by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2)(3)(e), **280** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2**, Sch.

Prevention and making good of defaults under Article 7(1)

8.—(1) Where it appears to the Department that a contravention of Article 7(1) (whether a new contravention or a repetition or continuation of one already occurred or occurring) is likely to occur—

- (a) by reason of any use or proposed use of a waterway or of any land for the disposal of any matter;
- (b) by reason of any use or proposed use of any land for the storage of any matter; or
- (c) by reason of any use or proposed use of a vessel or vehicle from which poisonous, noxious or polluting matter may enter a waterway or water contained in any underground strata;

the Department may serve a notice on the owner of the land or the person so using or proposing so to use the waterway, land, vessel or vehicle—

- (i) prohibiting the use complained of; or
- (ii) permitting it only subject to conditions designed to remove the grounds of complaint; or
- (iii) requiring it to be stopped within such period as may be specified in the notice.

(2) A notice under paragraph (1) may include provisions requiring the removal from the waterway, land, vessel or vehicle of any matter which, before the service of the notice, has been dealt with in the way complained of by the notice.

(3) A person on whom a notice under paragraph (1) is served may, within 28 days from the date of the service of the notice, appeal to the Appeals Commission.

(4) A notice under paragraph (1)—

- (a) shall, if no appeal is brought under paragraph (3), take effect on the expiration of the period of 28 days mentioned in paragraph (3) and be final and conclusive as to any matters which could have been raised on such an appeal;
 - (b) shall, if an appeal is brought under paragraph (3), take effect—
 - (i) if and so far as the notice is confirmed on appeal, from the date on which the appeal is finally determined;
 - (ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal.
- (5) It is an offence for any person to contravene any prohibition, condition or requirement imposed by a notice served on that person under paragraph (1) which has taken effect in accordance with paragraph (4).
- (6) Where a notice served under paragraph (1) which has taken effect in accordance with paragraph (4) is not complied with, the Department may undertake the removal of any matter referred to in paragraph (2) and dispose of it in such manner as it considers appropriate.
- (7) The Department shall, at the request of any person appearing to it to be interested in any land, and at his expense, furnish him or such other person as may be specified in the request with such particulars as may be so specified of any notices served under paragraph (1), being notices about any use or proposed use of that land or otherwise material to its use.
- (8) Any expenses reasonably incurred by the Department in removing any matter under this Article, or in disposing of any matter so removed, shall be defrayed out of any money obtained by the Department from disposing of it and, in so far as they are not so defrayed, shall be recoverable by the Department from the person in default under the notice.
- (9) A person guilty of an offence under this Article shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum.

Discharge of effluent into waterway or underground stratum

- 9.—(1) No person shall, without the consent of the Department, by any means whatsoever, make any discharge into a waterway or underground stratum—
- (a) of any trade or sewage effluent; or
 - (b) of any poisonous, noxious or polluting matter not falling within sub-paragraph (a).
- (2) This Article shall not apply to any discharge which is made from a vessel.
- (3) Schedule 1 shall have effect, subject to Article 13, with respect to the making of applications for consents for the purposes of this Article (“discharge consents”) and with respect to the giving, revocation and modification of such consents.
- (4) Subject to the following provisions of this Part, a person who contravenes this Article or the conditions of any discharge consent shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.
- (5) A sewerage undertaker shall not be guilty of an offence under this Article by reason only of the fact that a discharge from a public sewer or public sewage treatment works operated by him contravenes conditions of a discharge consent if—

- (a) the contravention is attributable to a discharge which another person made into the sewer or works; and
- (b) the sewerage undertaker—
 - (i) was obliged under the terms of the operating agreement to receive the discharge;
 - (ii) could not reasonably have been expected to prevent the discharge into the sewer or works; and
 - (iii) made all reasonable efforts to dispose of the discharge in accordance with the terms of the operating agreement and of the discharge consent.

(6) In paragraph (5) “operating agreement”, in relation to a sewer or sewage treatment works of a sewerage undertaker, means the agreement under Article 13(4) of the Water and Sewerage Services (Northern Ireland) Order 1973, by virtue of which he operates that sewer or sewage treatment works.

Relationship with other statutory provisions controlling pollution

10.—(1) The discharge or deposit of any effluent or matter made under and in accordance with, or as a result of any act or omission under and in accordance with, a discharge consent shall not constitute an offence under or a contravention of—

- (a) any regulations under section 13 of the Foyle Fisheries Act (Northern Ireland) 1952;
- (b) section 47 of the Fisheries Act (Northern Ireland) 1966 or any byelaws under section 26 of that Act;
- [^{F3}(bb) regulations under Article 4 of the Environment (Northern Ireland) Order 2002;]
- ^{F4}(c) Article 23 of the Industrial Pollution Control (Northern Ireland) Order 1997; or
- (d) Article 7(1).

(2) A person shall not be guilty of an offence under Article 7(1) or 9 in respect of the discharge or deposit of any matter if the discharge or deposit is made under and in accordance with, or as a result of any act or omission under and in accordance with—

- (a) a licence granted under Part II of the Food and Environment Protection Act 1985;
- ^{F4}(b) an authorisation granted under the Industrial Pollution Control (Northern Ireland) Order 1997;
- (c) a waste management licence granted under the Waste and Contaminated Land (Northern Ireland) Order 1997.
- [^{F3}(d) a permit granted under regulations under Article 4 of the Environment (Northern Ireland) Order 2002;]

(3) A person shall not be guilty of an offence under Article 7(1) or 9 if he discharges any matter into a road drain within the meaning of Article 45 of the Roads (Northern Ireland) Order 1993, or a drain constructed and laid by the Department under Article 45(1)(b) of that Order, so that it enters a waterway or water contained in underground strata, if the Department has given its consent to the discharge unconditionally, or has given its consent to the discharge subject to conditions and the person observes the conditions.

F3 2002 NI 7

F4 prosp. rep. by 2002 NI 7

Power to make scheme of charges

11.—(1) Where—

- (a) an application is made to the Department for a discharge consent, or a variation of such a consent;
- (b) the Department gives a discharge consent otherwise than in a case where an application for such a consent was made under paragraph 1 of Schedule 1; or
- (c) a discharge consent is for the time being in force,

the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this Article.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this Article shall be—

- (a) in the case of a charge by virtue of paragraph (1)(a), the person who makes the application;
- (b) in the case of a charge by virtue of paragraph (1)(b), any person who is authorised to do anything by virtue of the consent and on whom the instrument giving the consent is served; and
- (c) in the case of a charge by virtue of paragraph (1)(c), any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) Provision made by a scheme for the purposes of paragraph (1)(c) may impose a single charge in respect of the whole period for which the consent is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) A scheme under this Article may—

- (a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme; and
- (b) contain supplemental, consequential and transitional provision for the purposes of the scheme.

(5) The Department, in framing a scheme under this Article, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by the Department in exercising its functions under this Part in relation to discharge consents.

(6) Where the Department proposes to make a scheme under this Article the Department shall—

- (a) give notice setting out its proposals and specifying the period within which representations with respect to the proposals may be made; and
- (b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations to make a scheme under this Article, the Department may do so either in accordance with the proposals contained in the notice or in accordance with those proposals as modified in such manner as the Department considers appropriate.

(7) A notice under paragraph (6) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by it.

(8) The Department shall take such steps as it considers appropriate for bringing the provisions of any scheme made under this Article which is for the time being in operation to the attention of persons likely to be affected by them.

(9) If it appears to the Department that the holder of a discharge consent has failed to pay a charge payable by virtue of paragraph (1)(c), it may, by notice served on the holder, revoke the consent.

Enforcement notices

12.—(1) If the Department is of the opinion that the holder of a discharge consent is contravening any condition of the consent, or is likely to contravene any such condition, the Department may serve on him a notice (an “enforcement notice”).

(2) An enforcement notice shall—

- (a) state the opinion of the Department;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) Any person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

(4) If the Department is of the opinion that proceedings for an offence under paragraph (3) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Department may take proceedings in the High Court for the purpose of securing compliance with the notice.

Appeals in respect of consents

13.—(1) Where the Department—

- (a) on an application for a discharge consent, has refused a consent for any discharges;
- (b) in giving a discharge consent, has given that consent either unconditionally or subject to conditions;
- (c) has revoked a discharge consent;
- (d) has modified the conditions of a discharge consent or provided that any such consent which was unconditional shall be subject to conditions;
- (e) has, for the purposes of paragraph 6(1) or (2) of Schedule 1, specified a period in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent;
- (f) has refused a person a variation of a discharge consent;
- (g) in allowing a variation of a discharge consent, has made the consent subject to conditions; or
- (h) has served an enforcement notice on any person,

the person, if any, who applied for the consent or variation in question, or any person whose discharges are or would be authorised by the consent, or the person on whom the enforcement notice was served, may appeal to the Appeals Commission against the decision within 28 days from—

- (i) in the case of an enforcement notice, the day on which the enforcement notice was served;
- (ii) in the case of a consent deemed to have been refused under paragraph 2(2) of Schedule 1, the first day on which the applicant may treat the consent applied for as having been refused;
- (iii) in any other case, the day on which notice of the decision was given to that person.

(2) In paragraph (1)(iii) “notice of the decision”, in relation to a discharge consent given without an application for such a consent having been made, includes an instrument in writing served in accordance with paragraph 4(1) of Schedule 1.

(3) Where the Department has given notice of any decision referred to in paragraph (1)(b), (d) or (g) to the Foyle^{F5}, Carlingford and Irish Lights] Commission or the Fisheries Conservancy Board for Northern Ireland, that Commission or that Board may appeal to the Appeals Commission against the decision to which the notice relates within 28 days from the day on which notice of the decision was given to the Commission or the Board, as the case may be.

(4) Paragraphs (1) and (3) of this Article shall not apply to any decision referred to in paragraph (1) (a), (b), (f) or (g) where the Department has made a direction under paragraph 3(1) or (4) of Schedule 1.

(5) Subject to paragraph (6), where an appeal is brought by virtue of paragraph (1)(c) or (d) against a decision—

- (a) to revoke a discharge consent,
- (b) to modify the conditions of any such consent, or
- (c) to provide that any such consent which was unconditional shall be subject to conditions,

the revocation, modification or provision shall not take effect pending the final determination or the withdrawal of the appeal.

(6) Paragraph (5) shall not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of the Department it is necessary for the purpose of preventing or, where that is not practicable, minimising—

- (a) the entry into any waterway or underground stratum of any poisonous, noxious or polluting matter, or
- (b) harm to human health,

that that paragraph should not apply.

(7) Where the decision under appeal is one falling within paragraph (6), if, on the application of the holder or former holder of the consent, the Appeals Commission determines that the Department acted unreasonably in excluding the application of paragraph (5), then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (5) shall apply to the decision from the end of that day; and
- (b) the holder or former holder of the consent shall be entitled to recover compensation from the Department in respect of any loss suffered by him in consequence of the exclusion of the application of that paragraph;

and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by the Lands Tribunal.

(8) Where an appeal is brought under this Article against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

F5 SI 1999/859

Regulations as to prevention of pollution

14.—(1) The Department may by regulations make such provision as appears to it expedient—

- (a) for prohibiting or restricting the washing or cleansing in waterways of things of any class or description, or the putting into waterways of litter or other objectionable matter, whether poisonous, noxious or polluting or not;
 - (b) for prohibiting or restricting the keeping or use on waterways of vessels provided with sanitary appliances from which polluting matter passes or can pass into the waterway;
 - (c) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing or controlling the entry of the matter into any waterway or water contained in any underground strata;
 - (d) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.
- (2) Without prejudice to the generality of the power conferred by paragraph (1), regulations under that paragraph may—
- (a) make provision for the Department—
 - (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or to take any precautions or other steps; and
 - (ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;
 - (b) provide for appeals to the Appeals Commission against notices served by the Department in pursuance of provision made by virtue of sub-paragraph (a); and
 - (c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in Article 9(4).

Pollution emergencies

15.—(1) Where the Department is satisfied that it is necessary in the public interest to do so, it may give to any person a notice prohibiting him from depositing or discharging any matter of a class or description specified in the notice on to any land or into any waterway or underground stratum so specified.

- (2) A notice under paragraph (1)—
- (a) shall have effect notwithstanding that the Department has given its consent for the purposes of Article 9 to the discharge, whether unconditionally or subject to conditions;
 - (b) shall, subject to paragraph (3), continue in force until revoked by the Department or the Department gives its consent for the purposes of Article 9 to the discharge in pursuance of an application in that behalf made by the person to whom the notice is given.
- (3) A person to whom a notice under paragraph (1) is given may, within 28 days from the date of the service of the notice, appeal to the Appeals Commission.
- (4) Where—
- (a) a notice given under paragraph (1) is varied or quashed on appeal; and
 - (b) the person to whom the notice was given has complied with the notice,
- the Department shall pay to that person an amount equal to the loss suffered, or expenditure incurred, by that person in complying with the notice.

(5) Any dispute under paragraph (4) as to the loss suffered or expenditure incurred shall be determined by the Lands Tribunal.

(6) Any person who contravenes any prohibition imposed by a notice served on that person under paragraph (1) shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

Anti-pollution works

Anti-pollution works and operations

16.—(1) Subject to paragraphs (2) and (3), where it appears to the Department that any poisonous, noxious or polluting matter is likely to enter, or to be or have been present in, any waterway or water contained in underground strata (“relevant waters”), the Department may carry out such works and operations as it considers appropriate—

- (a) in a case where the matter appears likely to enter the relevant waters, for the purpose of preventing it from doing so; and
- (b) in a case where the matter appears to be or to have been present in the relevant waters, for the purpose—
 - (i) of removing or disposing of the matter;
 - (ii) of remedying or mitigating any pollution caused by its presence in the waters;
 - (iii) of restoring the waters (including the fauna and flora in them), so far as it is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters; or
 - (iv) of assessing the effect, or likely effect, on the waters of existing or potential levels of pollution of the waters,

and, in either case, the Department shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or permitted, whether knowingly or otherwise, the matter to be present in relevant waters or at a place from which it was likely, in the opinion of the Department, to enter relevant waters.

(2) Without prejudice to the power of the Department to carry out investigations under paragraph (1), the power conferred by that paragraph to carry out works and operations shall only be exercisable in a case where—

- (a) the Department considers it necessary to carry out forthwith any works or operations falling within sub-paragraph (a) or (b) of that paragraph; or
- (b) it appears to the Department, after reasonable inquiry, that no person can be found on whom to serve a works notice under Article 17.

(3) Nothing in paragraph (1) shall entitle the Department to impede or prevent the making of any discharge in pursuance of a discharge consent.

(4) Any expenses or costs reasonably incurred by the Department in pursuance of paragraph (1) shall be defrayed out of any money obtained by the Department from disposing of any matter under paragraph (1)(b) and, in so far as they are not so defrayed, shall be recoverable by the Department from the person in default.

Notices requiring persons to carry out anti-pollution works and operations

17.—(1) Subject to the following provisions of this Article, where it appears to the Department that any poisonous, noxious or polluting matter is likely to enter, or to be or have been present in,

any waterway or water contained in underground strata (“relevant waters”), the Department shall be entitled to serve a works notice on any person who, as the case may be,—

- (a) caused or permitted, whether knowingly or otherwise, the matter in question to be present at the place from which it is likely, in the opinion of the Department, to enter any relevant waters; or
- (b) caused or permitted, whether knowingly or otherwise, the matter in question to be present in any relevant waters.

(2) For the purposes of this Part, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say—

- (a) in a case where the matter in question appears likely to enter any relevant waters, works or operations for the purpose of preventing it from doing so; or
- (b) in a case where it appears that the matter appears to be or have been present in any relevant waters, works or operations for the purpose—
 - (i) of removing or disposing of the matter;
 - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
 - (iii) so far as it is reasonably practicable to do so, of restoring the waters (including the fauna and flora in them) to their state immediately before the matter became present in the waters.

(3) A works notice—

- (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
- (b) is without prejudice to the powers of the Department by virtue of Article 16(2)(a).

(4) Before serving a works notice on any person, the Department shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.

(5) The Department may by regulations make provision for or in connection with—

- (a) the form or content of works notices;
- (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
- (c) steps to be taken for the purposes of any consultation required under paragraph (4) or regulations made by virtue of sub-paragraph (b); or
- (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.

(6) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of paragraph (4) or of regulations made by virtue of paragraph (5)(b).

(7) A person on whom a works notice is served may, within the period of 21 days beginning with the day on which the notice is served, appeal against the notice to the Appeals Commission.

(8) Nothing in paragraph (1) shall entitle the Department to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a discharge consent.

(9) Where the Department—

- (a) carries out any such investigations as are mentioned in Article 16(1), and
- (b) serves a works notice on a person in connection with the matter to which the investigations relate,

it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.

Grant of, and compensation for, rights of entry, etc.

18.—(1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.

(2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.

(3) Before serving a works notice, the Department shall reasonably endeavour to consult every person who appears to it—

- (a) to be the owner or occupier of any relevant land, and
- (b) to be a person who might be required by paragraph (2) to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of paragraph (3).

(5) A person who grants, or joins in granting, any rights pursuant to paragraph (2) shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of paragraph (5), regulations by virtue of that paragraph may make such provision in relation to compensation under this Article as may be made by regulations by virtue of Article 7 of the Waste and Contaminated Land (Northern Ireland) Order 1997 in relation to compensation under that Article.

(7) In this Article “relevant land” means—

- (a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or
- (b) any land or waters adjoining or adjacent to that land or those waters.

Consequences of not complying with a works notice

19.—(1) If a person on whom the Department serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) A person who commits an offence under paragraph (1) shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

(3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the Department may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Department in doing it.

(4) If the Department is of the opinion that proceedings for an offence under paragraph (1) would afford an ineffectual remedy against a person who has failed to comply with the requirements of a

works notice, the Department may take proceedings in the High Court for the purpose of securing compliance with the notice.

Abstraction and impounding

Abstraction and impounding of water

20.—(1) Subject to paragraph (2), the Department may by regulations make such provision as appears to it to be expedient for the purpose of—

- (a) controlling, restricting or prohibiting the abstraction of water from underground strata or waterways;
- (b) controlling, restricting or prohibiting the construction or alteration of any impounding works.

(2) Regulations under paragraph (1) shall not apply to a person who—

- (a) holds a licence under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (licences to supply electricity, etc.); and
- (b) is acting in accordance with an authorisation obtained from the Department under paragraph 2 of Schedule 5 to that Order (abstraction, diversion and use of water for hydro-electric generating stations).

(3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provisions—

- (a) prohibiting the abstraction of water except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;
- (b) prohibiting the construction or alteration of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;
- (c) for the issue, variation, transfer or revocation by the Department of any such licence as is mentioned in sub-paragraph (a) or (b);
- (d) as to the manner in which applications for the issue, revocation or variation of any such licence as is mentioned in sub-paragraph (a) or (b) are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications;
- (e) for the holding of public local inquiries in such circumstances as may be prescribed;
- (f) for the payment, in such circumstances as may be prescribed, of compensation where any such licence as is mentioned in sub-paragraph (a) or (b) is revoked or varied;
- (g) for an appeal to lie to the Appeals Commission against any decision of the Department to issue, vary or revoke any such licence as is mentioned in sub-paragraph (a) or (b);
- (h) making persons guilty of an offence where there is a contravention of the regulations and for the imposition of fines on summary conviction of such an offence.

(4) Regulations made by the Department under paragraph (1) shall contain such provisions as the Department may consider necessary for the protection of rights or interests affected by the regulations.

(5) Where regulations made under this Article include provisions prohibiting the construction or alteration of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence, the Department shall consult the Department of Agriculture before issuing such a licence.

(6) References in this Article to a waterway shall not include references to the sea or to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

(7) Any reference in this Article to the doing of anything in pursuance of such a licence as is mentioned in paragraph (3)(a) or (b) is a reference to its being done—

- (a) by the holder of such a licence; or
- (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by regulations made under this Article.

(8) In this Article and in Article 21, “impounding works” means either of the following, that is to say—

- (a) any dam, weir or other works in any waterway by which water may be impounded;
- (b) any works for diverting the flow of any waterway in connection with the construction or alteration of any dam, weir or other works falling within sub-paragraph (a).

Power to make scheme of charges in connection with water resources

21.—(1) Where regulations made under Article 20 include provisions prohibiting the abstraction of water or, as the case may be, the construction or alteration of impounding works except in pursuance of a licence granted by the Department and—

- (a) an application is made for any licence under those regulations or for the variation or transfer of any such licence;
- (b) a licence under those regulations to abstract water is granted to any person or there is a variation of any such licence or of the conditions of any such licence; or
- (c) a licence under those regulations to abstract water is in force,

the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this Article.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this Article shall be—

- (a) in the case of a charge by virtue of paragraph (1)(a), the person who makes the application;
- (b) in the case of a charge by virtue of paragraph (1)(b) or (c), the person to whom the licence is granted or, as the case may be, the person holding the licence which is varied or is in force.

(3) Provision made by a scheme for the purposes of paragraph (1)(c) may impose a single charge in respect of the whole period for which a licence is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) A scheme under this Article may—

- (a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme; and
- (b) contain supplemental, consequential and transitional provision for the purposes of the scheme.

(5) The Department, in framing a scheme under this Article, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by the Department in exercising its functions under regulations made under Article 20.

(6) Where the Department proposes to make a scheme under this Article the Department shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—

- (a) setting out its proposals and specifying the period within which representations with respect to the proposals may be made; and
- (b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations, to make a scheme under this Article, the Department may do so either in accordance with the proposals contained in the notice or in accordance with those proposals as modified in such manner as the Department considers appropriate.

(7) The Department shall take such steps as it considers appropriate for bringing the provisions of any scheme made under this Article which is for the time being in operation to the attention of persons likely to be affected by them.

Orders as to charges for abstractions of water or discharges

22.—(1) Without prejudice to Article 21, the Department may, for the purpose of defraying any expenses incurred by it under this Part in the execution of works for the purpose of ensuring the better use of water, by order make such provision as appears to it to be expedient with respect to the levying of charges on—

- (a) persons who abstract water from waterways or underground strata;
- (b) persons who discharge any matter into waterways or underground strata;

being in each case persons who receive a measurable benefit by reason of the execution of the works.

- (2) An order under paragraph (1) shall be subject to affirmative resolution.

Works, etc.

Power of Department to carry out engineering or building operations

23.—(1) The Department may—

- (a) carry out such engineering or building operations as it considers necessary or expedient for the purposes of any of its functions under this Part;
- (b) vary the flow of water in a waterway for those purposes; and
- (c) discharge water into any waterway or underground strata or on to land for those purposes.

(2) The Department may, for the purpose of performing any functions under paragraph (1), exercise such compulsory powers relating to the performance of those functions as may be specified in an order made by the Department under this paragraph.

- (3) The Department shall, in exercising its functions under this Article, have regard to—

- (a) the conservation of water resources;
- (b) the prevention of pollution;
- (c) the needs of the community with respect to water and the disposal of effluent;
- (d) the conservation and enhancement of the natural beauty and amenity of waterways and of land associated with waterways;
- (e) the conservation and enhancement of flora and fauna;
- (f) the conservation of any feature of archaeological, historical, architectural or traditional interest.

- (4) Schedule 2 shall have effect with respect to orders under paragraph (2).

Acquisition of land by Department

24.—(1) The Department may, for any purpose in connection with the performance of any of its functions under this Part—

- (a) by agreement acquire or take on lease any land or acquire land compulsorily;
- (b) dispose of any land so acquired or taken on lease.

(2) Where the Department wishes to acquire, otherwise than by agreement, any land for a purpose referred to in paragraph (1), the Department may make an order (in this Article referred to as a “vesting order”) vesting that land in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply subject to the modifications specified in Schedule 3 of this Order for the purpose of the acquisition of land by means of a vesting order under this Article as it applies for the purpose of the acquisition of land by means of a vesting order under that Act.

(4) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (which relates to the taking and disposal of land for the public services) shall affect the disposal of any land acquired or taken on lease by the Department under this Article.

(5) The power to make a vesting order under this Article in respect of land—

- (a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or
- (b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(6) In paragraph (5) “public body” means a body established by or under any statutory provision.

Enforcement

Powers of entry and inspection

25.—(1) Any person duly authorised by the Department may at any reasonable time enter any premises for the purpose of performing, whether in relation to those premises or not, any functions conferred on the Department under this Part.

(2) Any person duly authorised by the Department may at any reasonable time—

- (a) enter any premises for the purpose of determining whether, and if so in what manner, any functions conferred on the Department under this Part are to be performed in relation to those premises, or whether any provision of this Part or of any regulations made under this Part has been complied with; and
- (b) carry out such inspections, surveys, measurements and tests on any premises entered by that person or of any articles found on any such premises, and take away such samples of water or effluent or of any land or articles, as the Department—
 - (i) considers appropriate for the purpose mentioned in sub-paragraph (a); and
 - (ii) has authorised that person to carry out or take away.

(3) The Department may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2).

(4) The powers which by virtue of paragraph (2) are conferred in relation to any premises for the purpose of enabling the Department to determine whether any provision of this Part or of any regulations made under this Part has been complied with, shall include power, in order to obtain the information on which that determination may be made—

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install and keep monitoring and other apparatus there.

(5) The Department may, after consulting the occupier of any land or owner of any vehicle, vessel or mobile plant from which effluent is discharged, fix the points at which samples are to be taken of effluent passing into a waterway or underground strata.

(6) If it is shown to the satisfaction of a justice of the peace on sworn complaint in writing—

- (a) that admission to any premises which any person is entitled to enter under this Article has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry upon the premises for the purpose for which entry is required;

the justice may by warrant under his hand authorise that person to enter the premises, if need be by force.

(7) A warrant granted under paragraph (6) shall continue in force until the purpose for which entry is required has been satisfied.

(8) The power conferred by paragraph (2)(b) shall be exercisable for the purpose of inspecting any documents in the possession of any body relating to the functions of the body, and the person carrying out any such inspection may take copies of, or extracts from, any such documents.

Supplementary provisions as to powers of entry and inspection

26.—(1) A person authorised under Article 25 to enter any premises shall, if so required, produce evidence of his authority before so entering.

(2) A person so authorised may take with him onto the premises in question such other persons, and such equipment, as may be necessary.

(3) Admission to any land used for residential purposes, and admission with heavy equipment to any other land, shall not except in an emergency be demanded under Article 25 unless 7 days' notice of the intended entry has been given to the occupier.

(4) Any person who, in the exercise of his powers under Article 25, enters any premises which are unoccupied or premises of which the occupier is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.

(5) Any person who intentionally obstructs a person acting in the exercise of his powers under Article 25 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If any person assaults a person acting in the exercise of his powers under Article 25 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(7) Where in the exercise of any power conferred by Article 25 any damage is caused to premises or to chattels, any person interested in the premises or chattels shall be entitled to compensation in respect of the damage from the Department; and where in consequence of the exercise of any such power any person is disturbed in his enjoyment of any premises or chattels, he shall be entitled to compensation in respect of the disturbance from the Department.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7) or the amount of it shall be determined by the Lands Tribunal.

(9) If any person who, under Article 25, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein with regard to any manufacturing process or trade secret he shall, unless the disclosure is made in the performance of his duty, be liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

Evidence in connection with certain pollution offences

27.—(1) Information obtained in consequence of the exercise of a right conferred by Article 25, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a right conferred by Article 25, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

(3) In any legal proceedings it shall be presumed, until the contrary is shown, that any sample of effluent taken at a point fixed under Article 25(5) or an inspection chamber or manhole or other place provided in compliance with a condition imposed under this Part in relation to any waterway or underground stratum is a sample of what was passing from premises to that waterway or stratum.

(4) Information provided or obtained pursuant to or by virtue of a condition attached to a discharge consent (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

(5) For the purposes of paragraphs (2) and (4), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the consent otherwise provides.

(6) Where—

(a) by virtue of a condition attached to a discharge consent, an entry is required to be made in any record as to the observance of any condition of the consent, and

(b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed.

Power to obtain information

28.—(1) The Department may give directions requiring any person who is abstracting water from any waterway or underground stratum or is discharging effluent into any waterway or underground stratum to give such information to the Department as to the abstraction or discharge, at such times and in such form, as may be specified in the directions.

(2) A person to whom a direction under paragraph (1) is given may, within 28 days from the date the direction is given to him, appeal to the Appeals Commission.

(3) Any person who fails to comply with any direction given under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Any direction given under paragraph (1) shall be in writing and may be varied or revoked by a subsequent direction.

VALID FROM 01/04/2007

[^{F6}Provision of information**28A.—**(1) It shall be the duty of the Department—

- (a) to provide a water undertaker with all such information to which this Article applies as is in the possession of the Department and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
- (b) to provide reasonable facilities to all persons—
 - (i) for the inspection of the contents of any records kept by the Department and containing information to which this Article applies; and
 - (ii) for the taking of copies of, or of extracts from, any such records.

(2) It shall be the duty of every water undertaker to provide the Department with all such information to which this Article applies as is in the possession of the undertaker and is reasonably requested by the Department for purposes connected with the carrying out of any of its functions.

(3) Where records of the flow, level or volume of water in any waterway are kept by a person other than a water undertaker, the Department shall have the right at all reasonable times—

- (a) to inspect the contents of any of those records; and
- (b) to take copies of, or of extracts from, the contents of any of those records,

and any person who, without reasonable excuse, refuses or fails to permit the Department to exercise its right under this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(4) Information provided to a water undertaker or to the Department under paragraph (1) or (2) shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the Department may reasonably require; and the duties of the Department under paragraph (1) shall extend to information provided to or obtained by the Department under paragraph (2) or (3).

(5) Information or facilities provided under paragraph (1) or (2) to—

- (a) the Department,
- (b) the Department of Agriculture and Rural Development;
- (c) the Department of Culture, Arts and Leisure;
- (d) a water undertaker; or
- (e) Waterways Ireland,

shall be provided free of charge; and facilities provided under paragraph (1) to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the Department may determine.

(6) The duties of a water undertaker under paragraph (2) shall be enforceable under Article 30 of the Water and Sewerage Services (Northern Ireland) Order 2006 by the Northern Ireland Authority for Utility Regulation.

(7) This Article applies to information about—

- (a) the flow, level or volume of any water in any waterway or contained in underground strata;
- (b) rainfall or any fall of snow, hail or sleet; or
- (c) the evaporation of any water.]

F6 Art. 28A inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **284** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Penalties for false information

29. Any person who—

- (a) in giving any information which he is required to give under this Part, knowingly or recklessly makes a statement which is false or misleading in a material particular; or
- (b) for the purpose of obtaining any discharge consent or any variation of such a consent, knowingly or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and liable—

- (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum.

VALID FROM 01/04/2007

[^{F7}Restriction on disclosure of information

29A.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained by virtue of any of the provisions of this Order; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance by the Department, the Department for Regional Development, the Northern Ireland Authority for Utility Regulation, the General Consumer Council, the Competition Commission or the Appeals Commission of any functions under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (c) for the purposes of a register maintained under Article 30.]

F7 Art. 29A inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **285** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

*Registers and other information***Pollution control register**

30.—(1) The Department shall, in accordance with regulations, maintain registers containing prescribed particulars of or relating to—

- (a) any notices of water quality objectives or other notices published or served under Article 6;
- (b) any notices served under Article 8 and any convictions for offences under that Article;
- (c) applications made for discharge consents;
- (d) discharge consents given by the Department and the conditions, if any, to which the consents are subject;
- (e) applications made to the Department for the variation of discharge consents;
- (f) enforcement notices served under Article 12;
- (g) revocations under paragraph 5 of Schedule 1 of discharge consents;
- (h) appeals under Article 13;
- (i) convictions, for offences under Article 9, of persons who have the benefit of discharge consents;
- (j) information obtained or furnished in pursuance of conditions of discharge consents;
- (k) works notices;
- (l) appeals under Article 17(7);
- (m) convictions for offences under Article 19;
- (n) any matter about which particulars are required to be kept in any register^{F8} under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002 or;] under Article 20 of the Industrial Pollution Control (Northern Ireland) Order 1997 (particulars about authorisations for prescribed processes, etc.) by the chief inspector appointed under that Order;
- (o) the following, that is to say—
 - (i) particulars of sampling points fixed under Article 25(5);
 - (ii) samples of water or effluent taken by the Department for the purposes of any of the provisions of this Part;
 - (iii) information produced by analyses of those samples;
 - (iv) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples as is acquired by the Department from any person under arrangements made by the Department for the purposes of any of those provisions; and
 - (v) the steps taken in consequence of any such information as is mentioned in any of heads (ii) to (iv);
- (p) such other matters relating to the quality of water or the pollution of water as may be prescribed.

(2) Where information of any description is excluded from any register by virtue of Article 32, a statement shall be entered in the register indicating the existence of information of that description.

(3) The Department shall—

- (a) ensure that the contents of registers maintained under this Article are available, at all reasonable times, for inspection by the public free of charge; and

(b) afford members of the public reasonable facilities for obtaining from the Department, on payment of reasonable charges, copies of entries in any of the registers.

(4) A register maintained under this Article shall, in favour of a person charged with an offence under this Part, be conclusive evidence as to the terms of any discharge consent, or any condition to which such a consent is subject, as that consent, or that condition, as the case may be, has effect for the time being.

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Exclusion from registers of information affecting national security

31.—(1) No information shall be included in a register maintained under Article 30 if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

- (a) specifying information, or descriptions of information, to be excluded from its registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from a register in pursuance of directions given under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the Department that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

(5) Any direction given under paragraph (2) shall be in writing and may be varied or revoked by a subsequent direction.

Modifications etc. (not altering text)

C1 [Art. 31](#) applied (10.8.2009) by [Groundwater Regulations \(Northern Ireland\) 2009 \(S.R. 2009/254\)](#), [reg. 28\(2\)](#) (with [reg. 5](#))

Exclusion from registers of certain confidential information

32.—(1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register maintained under Article 30, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of a specification under paragraph (10);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department, or, on appeal, by the Appeals Commission.

- (2) Where information is furnished to the Department for the purpose of—
- (a) an application for a discharge consent or for the variation of such a consent,
 - (b) complying with any condition of a discharge consent, or
 - (c) complying with a direction under Article 28,

then, if the person furnishing it applies to the Department to have the information excluded from any register maintained under Article 30, on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) must be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any statutory provision might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register maintained under Article 30, unless excluded under this Article; and
- (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

- (a) the information shall not be entered on the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned; and
- (b) that person may appeal to the Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) If either party to an appeal under paragraph (5) so requests, the appeal shall be or continue in the form of a hearing which must be held in private.

(7) Paragraphs (3) to (6) of Article 8 of the Water and Sewerage Services (Northern Ireland) Order 1973 shall not apply in relation to any appeal under paragraph (5).

(8) The Appeals Commission shall notify the Department and the appellant of its decision on an appeal under paragraph (5).

(9) The decision of the Appeals Commission on an appeal under paragraph (5) shall be final, except on a point of law.

(10) The Department may specify information, or descriptions of information, which the public interest requires to be included in a register maintained under Article 30 notwithstanding that the information may be commercially confidential.

(11) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of

the determination by virtue of which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(12) Paragraphs (5) to (9) shall apply in relation to a determination under paragraph (11), as they apply in relation to a determination under paragraph (2) or (4).

(13) The Department may by regulations substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(14) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

Maps of fresh-water limits of waterways

33.—(1) The Department shall—

- (a) maintain maps showing what appear to the Department to be the fresh-water limits of every waterway; and
- (b) make such maps available, at all reasonable times, for inspection by the public free of charge.

(2) This Article does not apply to any waterway of a description specified in an order made by the Department subject to negative resolution.

Collection of data and information by Department

34.—(1) The Department may—

- (a) collect, or cause to be collected, such data and information;
- (b) carry out, or cause to be carried out, such research,

as it considers to be necessary for the purpose of performing any of its functions under this Part.

(2) The Department may publish, or permit the publication of, any data or information collected, or the results of any research carried out, by or on behalf of the Department under paragraph (1).

(3) The Department shall provide reasonable facilities for the inspection of records of data and information collected by it, or on its behalf, in pursuance of paragraph (1)(a), and for the taking of copies of, and extracts from, those records.

Miscellaneous

Abandoned mines

35.—(1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the Department at least 6 months before the abandonment takes effect.

(2) A notice under paragraph (1) shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.

(3) A person who fails to give the notice required by paragraph (1) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

- (4) A person shall not be guilty of an offence under paragraph (3) if—
- (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
 - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.

(5) Where the operator of a mine is the official receiver acting in a compulsory capacity, he shall not be guilty of an offence under paragraph (3) by reason of any failure to give the notice required by paragraph (1) if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Department notice of the abandonment or proposed abandonment, containing such information as may be prescribed.

(6) Where a person gives notice under paragraph (1), (4)(b) or (5), he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.

- (7) For the purposes of this Article, “abandonment”, in relation to a mine,—
- (a) subject to sub-paragraph (b), includes—
 - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
 - (ii) the cessation of working of any relevant seam, vein or vein-system;
 - (iii) the cessation of use of any shaft or outlet of the mine;
 - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine), the discontinuance of some or all of those other activities in the mine and any substantial change in the operations for the removal of water from the mine; but
 - (b) does not include any disclaimer under Article 152 or 288 of the Insolvency (Northern Ireland) Order 1989 (power of liquidator, or trustee of a bankrupt's estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity.

- (8) In this Article—
- “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
- (a) liquidator of a company;
 - (b) receiver or manager of a bankrupt's estate, pursuant to Article 260 of the Insolvency (Northern Ireland) Order 1989;
 - (c) trustee of a bankrupt's estate;
 - (d) liquidator of an insolvent partnership;
 - (e) trustee of an insolvent partnership;
 - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;

“the initial period” means the period of 6 months beginning with the day on which paragraph (1) comes into operation;

“mine” has the same meaning as in the Mines Act (Northern Ireland) 1969;

“the official receiver” has the same meaning as it has in the Insolvency (Northern Ireland) Order 1989 by virtue of Article 356 of that Order;

“relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

Power to give effect to Community and other international obligations, etc.

36.—(1) Regulations may provide that the provisions of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

- (a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) In this Article—

“regulations”

- (a) in relation to any Community obligation, means regulations made by the Department; and
- (b) in relation to any international agreement, means regulations made by the Secretary of State;

“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(3) Regulations under this Article made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in the like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

VALID FROM 01/04/2007

[^{F9}Civil Liability

36A. Except in so far as this Part expressly otherwise provides and subject to the provisions of section 20(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other statutory provision.]

F9 Art. 36A inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **286** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Prosecutions

37. No proceedings shall be instituted for an offence under this Part except by the Department or by or with the consent of the Attorney General.

Repeal, amendment and adaptation of local enactments

38.—(1) If it appears to the Department that any local or private Act passed before the making of this Order—

Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: *There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999, PART II. (See end of Document for details)*

- (a) is inconsistent with any of the provisions of this Part or of any regulations or order made under this Part, or with anything done in the performance of any functions under this Part; or
- (b) requires to be amended or adapted, having regard to any of those provisions or to anything done in the performance of any of those functions,

it may by order made subject to affirmative resolution repeal, amend or adapt that Act to such extent, or in such manner, as it considers appropriate.

- (2) In this Article “Act” includes an Act of the Parliament of the United Kingdom.

VALID FROM 01/08/2006

Application to the Crown

[^{F10}**38A.**—(1) Subject as follows, Article 20 binds the Crown.

(2) No contravention by the Crown of any provision made by or under Article 20 shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under Article 20 shall apply to persons in the public service of the Crown as it applies to other persons.

(4) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.]

F10 Art. 38A inserted (1.8.2006) by [Water and Sewerage Services \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2006 \(S.I. 2006/1946 \(N.I. 15\)\)](#), arts. 1(2), **5(11)**

Status:

Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999, PART II.