

## SCHEDULES

### SCHEDULE 1

Article 9(3).

#### DISCHARGE CONSENTS

##### *Application for consent*

1.—(1) An application for a discharge consent—

- (a) shall be made to the Department on a form provided for the purpose by the Department; and
- (b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations.

(2) Regulations may provide that any advertising of an application as is required under sub-paragraph (1)(b) may, in any case, be dispensed with if, in that case, it appears to the Department to be appropriate for that advertising to be dispensed with.

(3) The applicant for a discharge consent must provide to the Department, either on, or together with, the form mentioned in sub-paragraph (1)(a) such information as may be prescribed for the purpose, but, subject to paragraph 2(3) and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to an application under this paragraph, a failure to provide information in pursuance of this sub-paragraph shall not invalidate an application.

(4) The Department may give the applicant notice requiring him to provide it with such further information of any description specified in the notice as the Department may require for the purpose of determining the application.

(5) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Department as separate applications for consents for discharges at each of those places.

##### *Consideration and determination of applications*

2.—(1) On an application under paragraph 1 the Department shall be under a duty, if the requirements—

- (a) of that paragraph, and
- (b) of any regulations made under that paragraph,

are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it.

(2) Subject to the following provisions of this Schedule, on an application made in accordance with paragraph 1, the applicant may treat the consent applied for as having been refused if it is not given within the period of 4 months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Department and the applicant.

(3) Where any person, having made an application to the Department for a discharge consent, has failed to comply with—

- (a) his obligation under paragraph 1(1)(b) to advertise the application; or

*Status: This is the original version (as it was originally made).*

(b) his obligation under paragraph 1(3) or (4) to provide information to the Department, the Department may refuse to proceed with the application, or refuse to proceed with it until the application has been advertised or, as the case may be, the information has been provided.

(4) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Department may think fit and a consent may be given under this paragraph subject to different conditions in respect of different periods.

(5) The Department may, by regulations, substitute for any period for the time being specified in sub-paragraph (2), such other period as it thinks fit.

(6) Where an application is made under paragraph 1, the Department shall give notice of its decision on that application to—

- (a) the person making the application;
- (b) the Foyle Fisheries Commission, where the discharge is to be, or is being, made in the Londonderry Area;
- (c) the Fisheries Conservancy Board for Northern Ireland, where the discharge is to be, or is being, made outside that Area.

#### *Public inquiries*

**3.—**(1) For the purpose of considering representations made in respect of an application made under paragraph 1, the Department may direct the Appeals Commission to hold a public local inquiry.

(2) Where the Appeals Commission is directed to hold an inquiry under this paragraph—

- (a) the inquiry shall be held by such member of the Appeals Commission as the Chief Commissioner may appoint in that behalf;
- (b) the Chief Commissioner may, after consultation with the Appeals Commission and the Department, appoint an assessor to sit with the member appointed under head (a) at the inquiry to advise him on any matters arising;
- (c) notwithstanding heads (a) and (b), any report on the inquiry shall be made by the Appeals Commission.

(3) The Appeals Commission may pay to any assessor appointed under sub-paragraph (2)(b) such fees and allowances as the Commission, with the approval of the Department, may approve.

(4) Where any representations made in respect of an application made under paragraph 1 are, in the opinion of the Department, relevant to a public local inquiry to be held by the Planning Appeals Commission under Article 31 of the Planning Order (major planning applications), the Department may direct that those representations shall be considered by that inquiry.

(5) The Department shall give notice of any direction made under sub-paragraph (1) or (4) to—

- (a) the person making the application;
- (b) the Foyle Fisheries Commission where the discharge to which the application relates is to be made in the Londonderry Area;
- (c) the Fisheries Conservancy Board for Northern Ireland, where the discharge to which the application relates is to be made outside that area;

and (without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954) that person and the Foyle Fisheries Commission or, as the case may be, the Board shall be entitled to appear and be heard at the relevant inquiry.

(6) The Department shall give notice of any direction under sub-paragraph (4) to the person who made the application under the Planning Order which is the subject of the public local inquiry to which the notice relates.

(7) Paragraph 2(2) shall not apply to an application made under paragraph 1 where the Department makes a direction under sub-paragraph (1) or (4) of this paragraph.

(8) Where the Department makes a direction under paragraph (1) or (4) in relation to an application, it shall in determining the application consider the report on the public local inquiry held by the Appeals Commission or, as the case may be, the Planning Appeals Commission.

(9) In this paragraph, “the Planning Order” means the Planning (Northern Ireland) Order 1991.

#### *Consents without applications*

4.—(1) If it appears to the Department—

- (a) that a person has discharged effluent or other matter in contravention of Article 9; and
- (b) that a similar contravention by that person is likely,

the Department may, if it thinks fit, serve on him an instrument in writing giving its consent for the purposes of that Article, subject to any conditions specified in the instrument, for discharges of a description so specified.

(2) Where a discharge consent has been given under this paragraph, the Department shall give notice of its decision to give that consent to—

- (a) the Foyle Fisheries Commission, where the discharge is to be, or is being, made in the Londonderry Area;
- (b) the Fisheries Conservation Board for Northern Ireland, where the discharge is to be, or is being, made outside that area.

(3) A discharge consent given under this paragraph shall not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument.

(4) Sub-paragraph (4) of paragraph 2 shall have effect in relation to a consent given under this paragraph as it has effect in relation to a consent given under that paragraph.

(5) Where a discharge consent has been given under this paragraph, the Department shall publish notice of the consent in such manner as may be prescribed and send copies of the instrument containing the consent to such bodies or persons as may be prescribed.

(6) It shall be the duty of the Department to consider any representations with respect to a discharge consent under this paragraph as are made to it in such manner, and within such period, as may be prescribed and have not been withdrawn.

(7) Where notice of a discharge consent is published by the Department under sub-paragraph (5) the Department shall be entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served.

#### *Revocation of consents and alteration and imposition of conditions*

5.—(1) The Department may from time to time review any discharge consent given under paragraph 2 or 4 and the conditions (if any) to which the consent is subject.

(2) Subject to such restrictions on the exercise of the power conferred by this sub-paragraph as are imposed under paragraph 6, where the Department has reviewed a discharge consent under this paragraph, it may by a notice served on the person making a discharge in pursuance of the consent—

- (a) revoke the consent;
- (b) make modifications of the conditions of the consent; or
- (c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

*Status: This is the original version (as it was originally made).*

(3) If on a review under sub-paragraph (1) it appears to the Department that no discharge has been made in pursuance of the discharge consent to which the review relates at any time during the preceding 12 months, the Department may revoke the discharge consent by a notice served on the holder of the consent.

(4) If it appears to the Department appropriate to do so—

- (a) for the purposes of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;
- (b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
- (c) in consequence of any representations made to it or otherwise,

the Department may, subject to such restrictions on the exercise of the power conferred by virtue of paragraph (c) as are imposed under paragraph 6, at any time, in relation to a discharge consent given under paragraph 2 or 4, by a notice served on the person making a discharge in pursuance of the consent, do anything mentioned in sub-paragraph (2)(a) to (c).

(5) Where the Department, in relation to a discharge consent given under paragraph 2 or 4, has served a notice on any person by virtue of sub-paragraph (2) or (4) (except a notice which only revokes a consent), the Department shall give notice stating the effect of the first-mentioned notice on—

- (a) the Foyle Fisheries Commission where the discharge to which the notice relates is made or to be made in the Londonderry Area;
- (b) the Fisheries Conservancy Board for Northern Ireland where the discharge to which the notice relates is made or to be made outside that area.

(6) The Department shall be liable to pay compensation to any person in respect of any loss or damage sustained by that person as a result of action taken by the Department in relation to any discharge consent by virtue of sub-paragraph (4)(b) if—

- (a) in taking that action the Department does anything which, apart from sub-paragraph (4), it would be precluded from doing by a restriction imposed under paragraph 6; and
- (b) the action is not shown to have been taken in consequence of—
  - (i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or
  - (ii) consideration by the Department of material information which was not reasonably available to the Department at the beginning of that period.

(7) For the purposes of sub-paragraph (6) information is material, in relation to a discharge consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter.

*Restriction on variation and revocation of consent and previous variation*

6.—(1) Each instrument signifying the consent of the Department under paragraph 2 or 4 shall specify a period during which no notice by virtue of paragraph 5(2) or (4)(c) shall be served in respect of the consent except, in the case of a notice doing anything mentioned in paragraph 5(2)(b) or (c), with the agreement of the holder of the consent.

(2) Each notice served by the Department by virtue of paragraph 5(2) or (4)(c) (except a notice which only revokes a consent) shall specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice shall not be served except, in the case of a notice doing

anything mentioned in paragraph 5(2)(b) or (c), with the agreement of the holder of the discharge consent.

(3) The period specified under sub-paragraph (1) or (2) in relation to any discharge consent shall not, unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, be less than the period of 4 years beginning—

- (a) in the case of a period specified under sub-paragraph (1), with the day on which the discharge consent takes effect; and
- (b) in the case of a period specified under sub-paragraph (2), with the day on which the notice specifying that period is served.

(4) A restriction imposed under sub-paragraph (1) or (2) shall not prevent the service by the Department of a notice by virtue of paragraph 5(2) or (4)(c) in respect of a discharge consent given under paragraph 4 if—

- (a) the notice is served not more than 3 months after the beginning of the period prescribed under paragraph 4(6) for the making of representations with respect to the consent; and
- (b) the Department considers, in consequence of any representations received by it within that period, that it is appropriate for the notice to be served.

(5) A restriction imposed under sub-paragraph (1) or (2) shall not prevent the service by the Department of a notice by virtue of paragraph 5(2)(b) or (c) or (4)(c) in respect of a discharge consent given under paragraph 4 if the holder has applied for a variation under paragraph 7.

#### *Applications for variation*

7.—(1) The holder of a discharge consent given under paragraph 2 or 4 may apply to the Department, on a form provided for the purpose by the Department, for the variation of the consent.

(2) The provisions of paragraphs 1 to 3 shall apply (with the necessary modifications) to applications under sub-paragraph (1), and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, discharge consents.

#### *Transfer of consents*

8.—(1) A discharge consent given under paragraph 2 or 4 may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.

(2) On the death of the holder of a discharge consent given under paragraph 2 or 4, the consent shall, subject to sub-paragraph (4), be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a discharge consent given under paragraph 2 or 4, the consent shall, subject to sub-paragraph (4), be regarded for the purposes of any of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

(4) Notwithstanding anything in the foregoing provisions of this paragraph, a discharge consent given under paragraph 2 or 4 (and the obligations arising out of, or incidental to, such a consent) shall not be capable of being disclaimed.

(5) A discharge consent given under paragraph 2 or 4 which is transferred to, or which vests in, a person under this paragraph shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under paragraph 2 or 4, subject to the same conditions as were attached to it immediately before that date.

**Status:** This is the original version (as it was originally made).

(6) Where a discharge consent given under paragraph 2 or 4 is transferred under sub-paragraph (1), the person from whom it is transferred shall give notice of that fact to the Department not later than the end of the period of 21 days beginning with the date of the transfer.

(7) Where a discharge consent given under paragraph 2 or 4 vests in any person as mentioned in sub-paragraph (2) or (3), that person shall give notice of that fact to the Department not later than the end of the period of 15 months beginning with the date of the vesting.

(8) If—

- (a) a discharge consent given under paragraph 2 or 4 vests in any person as mentioned in sub-paragraph (2) or (3), but
- (b) that person fails to give the notice required by sub-paragraph (7) within the period there mentioned,

the consent, to the extent that it permits the making of any discharges, shall cease to have effect.

(9) A person who fails to give a notice which he is required by sub-paragraph (6) or (7) to give shall be guilty of an offence and liable—

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