

## STATUTORY INSTRUMENTS

# 2006 No. 3336

## The Water and Sewerage Services (Northern Ireland) Order 2006

### PART V

#### USE OF WATER

##### CHAPTER I

##### DROUGHT

##### *Drought orders*

#### Power to make drought orders

**137.**—(1) If the Department is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area; or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then, subject to the following provisions of this Chapter, it may by order (in this Chapter referred to as a “drought order”) make such provision authorised by this Chapter as appears to the Department to be expedient with a view to meeting the deficiency.

(2) Subject to Article 139(2), the power to make a drought order in relation to any area shall not be exercisable unless an application is made to the Department—

- (a) in the case of a drought order under paragraph (1)(a), by a water undertaker which supplies water to premises in that area, after consultation with [<sup>F1</sup>DAERA] ;
- (b) in the case of a drought order under paragraph (1)(b), [<sup>F2</sup>by DAERA.]

(3) Schedule 5 shall have effect with respect to the procedure on an application for a drought order.

#### Textual Amendments

- F1** Word in art. 137(2)(a) substituted (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 6 para. 77(a)** (with art. 9(2))
- F2** Words in art. 137(2)(b) substituted (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 6 para. 77(b)** (with art. 9(2))

#### Commencement Information

- II** Art. 137 wholly in operation at 1.4.2007; art. 137 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the

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exercise of any such power, see art. 1(3)(e); art. 137 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

### Provisions and duration of drought order

**138.**—(1) A drought order may contain any of the following provisions—

- (a) provision authorising any person (including a water undertaker) to take water from any source specified in the order subject to any conditions or restrictions so specified;
- (b) provision authorising a water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Department to water undertakers generally as a purpose which may be specified by virtue of this sub-paragraph in any drought order;
- (c) provision authorising a water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
- (d) provision authorising DOE to prohibit or limit the taking by any person of water from a source specified in the order if DOE is satisfied that the taking of water from that source seriously affects the supplies available to a water undertaker;
- (e) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which a water undertaker or a sewerage undertaker or any other person is subject as respects—
  - (i) the taking of water from any source;
  - (ii) the discharge of water;
  - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
  - (iv) the filtration or other treatment of water;
- (f) provision authorising DOE to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including any relevant undertaker.

(2) The period for which—

- (a) an authorisation given by or under a drought order;
- (b) a prohibition or limitation imposed by or under a drought order; or
- (c) a suspension or modification effected by or under a drought order,

has effect shall expire before the end of the period of 3 months beginning with the day on which the order comes into operation, unless that period of 3 months is extended, in relation to that order, by virtue of the exercise by the Department of its power (subject to paragraph (3)) to amend the order.

(3) The power of the Department to amend a drought order shall not be exercised so as to extend the period of 3 months mentioned in paragraph (2) beyond the end of the period of 9 months beginning with the day on which that order came into operation.

(4) Without prejudice to the following provisions of this Chapter, a drought order may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Department considers appropriate.

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### Commencement Information

- I2** [Art. 138](#) wholly in operation at 1.4.2007; [art. 138](#) in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see [art. 1\(3\)\(e\)](#); [art. 138](#) in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, [art. 2\(2\)](#), Sch. 1 Pt. II (subject to [art. 3](#), [Sch. 2](#))

### Provisions of drought order restricting use of water

**139.**—(1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water—

- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
- (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
  - (i) cause notice of the prohibition or limitation to be published in at least two newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
  - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
- (c) the prohibition or limitation shall not come into operation until the end of the period of 72 hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.

(2) Where any purpose set out in a direction given for the purposes of Article 138(1)(b) will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in a drought order, the Department shall (without an application having been made to it) exercise its power to vary or revoke drought orders, in so far as any orders in operation will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.

(3) The revocation or variation of a direction given for the purposes of Article 138(1)(b) by a further direction shall not affect either—

- (a) the validity of anything done in pursuance of a drought order before the giving of the further direction; or
- (b) any obligation or liability accrued or incurred before the giving of the further direction.

### Commencement Information

- I3** [Art. 139](#) wholly in operation at 1.4.2007; [art. 139](#) in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see [art. 1\(3\)\(e\)](#); [art. 139](#) in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, [art. 2\(2\)](#), Sch. 1 Pt. II (subject to [art. 3](#), [Sch. 2](#))

### Provisions of drought order with respect to abstraction and discharges

**140.**—(1) Any drought order which—

- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or

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(b) suspends or modifies—

(i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or

(ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority is subject as respects the discharge of water from the inland navigation.

(2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of a statutory provision, an agreement or the ownership of land.

(3) Where a drought order made on the application of a water undertaker confers power on DOE—

(a) to prohibit or limit the taking of water from any source; or

(b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,

DOE shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

(4) Where—

(a) any drought order confers power on DOE to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and

(b) DOE exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

(5) In this Article—

“compensation water” means water which a water undertaker or any other person is under an obligation to discharge—

(a) in accordance with the provisions of a licence under Article 20 of the 1999 Order into any watercourse or underground strata; or

(b) under any local statutory provision, into any river, stream or other running water or into a canal; and

“inland navigation” includes any canal or navigable river.

#### Commencement Information

**I4** [Art. 140](#) wholly in operation at 1.4.2007; [art. 140](#) in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see [art. 1\(3\)\(e\)](#); [art. 140](#) in operation at 1.4.2007 insofar as not already in operation by [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

## Works under drought orders

**141.**—(1) A drought order may authorise a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.

(2) A drought order authorising a water undertaker to carry out any works—

- (a) may authorise that undertaker for that purpose to enter any land specified in the order and to occupy and use the land to such extent and in such manner as may be necessary for the carrying out and maintenance of the works; and
- (b) may apply in relation to the carrying out of the works such of the provisions of Part VIII as appear to the Department to be appropriate, subject to such modifications as may be specified in the order.

(3) The Department shall include in any drought order authorising a water undertaker to enter any land provisions requiring that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than 24 hours' notice of any intended entry.

(4) Subject to paragraph (3), a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision contained in Part II of Schedule 4.

(5) Any works to be carried out under the authority of a drought order shall be included in the definition of emergency works in Article 6 of the Street Works (Northern Ireland) Order 1995 (NI 19).

### Commencement Information

- 15** [Art. 141](#) wholly in operation at 1.4.2007; [art. 141](#) in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see [art. 1\(3\)\(e\)](#); [art. 141](#) in operation at 1.4.2007 insofar as not already in operation by [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

## Compensation and charges where drought order made

**142.**—(1) Schedule 6 shall have effect with respect to the payment of compensation where a drought order has been made.

(2) Except as provided by Schedule 6, neither DOE nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.

(3) Nothing in any drought order shall affect the right of DOE, a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by DOE or that undertaker if there had been no such interruption or diminution.

(4) Where a water undertaker makes an application for a drought order, the Department may recover from the water undertaker any expenses (whether of a revenue or capital nature)—

- (a) in connection with any local inquiry held in respect of the application;
- (b) in the exercise of the Department's functions so far as their exercise is attributable to the application and (if the order is made) to the order,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under any other statutory provision.

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**Commencement Information**

**I6** Art. 142 wholly in operation at 1.4.2007; art. 142 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); art. 142 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**Offences against drought order**

**143.—(1)** If any person—

- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or
- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under a drought order,

he shall be guilty of an offence.

**(2)** If any person—

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

he shall be guilty of an offence.

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

**(4)** A person who is guilty of an offence under this Article shall be liable—

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

**Commencement Information**

**I7** Art. 143 wholly in operation at 1.4.2007; art. 143 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); art. 143 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

*Interpretation*

**Interpretation of this Chapter**

**144.** In this Chapter—

- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and

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- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any statutory provision (including this Order) or any agreement.

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**Commencement Information**

**I8** [Art. 144](#) wholly in operation at 1.4.2007, see [art. 1\(2\)](#) and [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 293(10A) inserted by [2015 c. 8 \(N.I.\) Sch. 3 para. 2\(b\)](#)