
DRAFT STATUTORY INSTRUMENTS

1999 No.

Water (Northern Ireland) Order 1999

PART II

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

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.