

SCHEDULES

SCHEDULE 5

Article 13(5).

WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS

1. Without prejudice to Schedule 6 to the Drainage (Northern Ireland) Order 1973, a person who holds a licence under Article 10(1)(a) shall not abstract or divert from any waterway and use such water as may be necessary for the purposes of operating a generating station wholly or mainly driven by water unless he has obtained from the Department of the Environment an authorisation to do so.

2. On the application of such a licence holder the Department of the Environment may authorise him to abstract and divert and use the water as mentioned in paragraph 1; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.

3. Where the abstraction, diversion and use will, in the opinion of the Department of the Environment—

- (a) substantially reduce the flow of water in any waterway, that Department shall in the authorisation specify the extent to which and the circumstances in which water may be taken;
- (b) substantially reduce the level of water in any waterway, that Department shall in the authorisation either—
 - (i) specify the extent to which and the circumstances in which water may be taken; or
 - (ii) specify the quantity of compensation water to be provided by the person;
- (c) impound any waterway, that Department shall in the authorisation specify the quantity of compensation water to be provided by the person.

4. In this Schedule, “compensation water” means a flow of water, on such conditions and by such means as the Department of the Environment may specify in the authorisation, for the benefit of riparian owners and other owners of land or fishings affected by the exercise of the powers conferred by the authorisation.

5. In deciding whether to give the authorisation or in specifying the quantity of any compensation water to be provided under the authorisation, the Department of the Environment shall have regard to all the circumstances of the particular case, including—

- (a) the interest of public health;
- (b) the character of the waterway, and the flow, or as the case may be the level, of water in it;
- (c) the extent to which the waterway is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation; and
- (d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow or level of water in the waterway,

and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or fishings.

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

6. Any question of disputed compensation under paragraph 2 shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

7. An applicant for authorisation under paragraph 2 shall supply to the Department of the Environment such particulars as that Department may require and shall publish once at least in each of 2 successive weeks in one or more newspapers circulating in the area of the proposed abstraction a notice—

- (a) stating the effect of the proposed authorisation;
- (b) indicating the Irish Grid references of the proposed points of abstraction and discharge;
- (c) specifying a place, in or near the said area, where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
- (d) stating that within the said period any person may by notice to the Department of the Environment object to the application.

8. Not later than the date on which the said notice is first published, the applicant shall serve a copy of the notice upon—

- (a) the Department of Agriculture;
- (b) the Foyle Fisheries Commission where the abstraction is to be made in the Londonderry Area within the meaning of section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952;
- (c) the Fisheries Conservancy Board for Northern Ireland where the abstraction is to be made outside that Area;
- (d) any public undertakers known by the applicant to be authorised by any statutory provision to take or use water from any such waterway.

9. The applicant shall also publish in the Belfast Gazette a notice—

- (a) stating that he is about to apply for authorisation under paragraph 2;
- (b) indicating the Irish Grid reference of the proposed points of abstraction and discharge;
- (c) specifying a place where any relevant map or plan may be inspected; and
- (d) giving the name and date of issue of a newspaper in which the notice explaining the effect of the authorisation applied for will be found.

10. If before the expiration of 28 days from the date of the first publication of the notice under paragraph 7 or of 25 days from the publication of the said notice in the Belfast Gazette an objection is received by the Department of the Environment from any person on whom a notice is required to be served under paragraph 8, or from any other person appearing to that Department to be affected by the application, and the objection is not withdrawn, that Department before giving that authorisation, may cause an inquiry to be held by the Water Appeals Commission for Northern Ireland and where that Department causes such an inquiry to be held, the power under Article 8(4) of the Water and Sewerage Services (Northern Ireland) Order 1973 to substitute a new decision or vary the decision of the Water Appeals Commission may be exercised by that Department.

11. The expenses incurred by the Department of the Environment in connection with an authorisation under paragraph 2 shall be paid by the applicant; and that Department may, in a case where there are 2 or more applicants, apportion such expenses between them.

12. In paragraphs 1 to 8 “waterway” has the same meaning as in the Water Act (Northern Ireland) 1972.