
STATUTORY INSTRUMENTS

1997 No. 2778

**The Waste and Contaminated Land
(Northern Ireland) Order 1997**

PART III

CONTAMINATED LAND

Interpretation of Part III

49.—(1) In this Part—

“appropriate person” means any person who is an appropriate person, determined in accordance with Article 54, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

“charging notice” means a notice under Article 61(3);

“contaminated land” is any land which appears to a district council in whose district it is situated to be in such a condition, by reason of substances in, on or under the land, that—

- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) pollution of waterways or underground strata is being, or is likely to be, caused;

and, in determining whether any land appears to be such land, a district council shall, subject to paragraph (2), act in accordance with guidance issued by the Department in accordance with Article 69 with respect to the manner in which that determination is to be made;

“enforcing authority” means—

- (a) in relation to a special site, the Department;
- (b) in relation to contaminated land other than a special site, the district council in whose district the land is situated;

“pollution of waterways or underground strata” means the entry into waterways or underground strata of any poisonous, noxious or polluting matter or any solid waste matter;

“remediation” means—

- (a) the doing of anything for the purpose of assessing the condition of—
 - (i) the contaminated land in question;
 - (ii) any waterways or underground strata affected by that land; or
 - (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—
 - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of waterways or underground strata, by reason of which the contaminated land is such land; or

Changes to legislation: *The Waste and Contaminated Land (Northern Ireland) Order 1997, PART III is up to date with all changes known to be in force on or before 10 January 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (ii) of restoring the land, waterways or underground strata to their former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land, waterways or underground strata;

“remediation declaration” means a document prepared and published under Article 56(6);

“remediation notice” means a notice under Article 53(1);

“remediation statement” means a document prepared and published under Article 56(7);

“required to be designated as a special site” shall be construed in accordance with Article 51(8);

“special site” means any contaminated land—

- (a) which has been designated as such a site under Article 51(7) or 52(4); and
- (b) whose designation as such has not been terminated by the Department under Article 62(4);

“waterways” has the same meaning as in^{F1} Article 2(2) of the Water (Northern Ireland) Order 1999];

“underground strata” has the same meaning as in^{F1} Article 2(2) of the Water (Northern Ireland) Order 1999].

(2) For the purposes of this Part, the questions—

- (a) what harm is to be regarded as “significant”,
- (b) whether the possibility of significant harm being caused is “significant”,
- (c) whether pollution of waterways or underground strata is being, or is likely to be caused,

shall be determined in accordance with guidance issued for the purpose by the Department in accordance with Article 69.

(3) Without prejudice to the guidance that may be issued under paragraph (2), guidance under sub-paragraph (a) of that paragraph may make provision for different degrees of importance to be assigned to, or for the disregard of,—

- (a) different descriptions of living organisms or ecological systems;
- (b) different descriptions of places; or
- (c) different descriptions of harm to health or property, or other interference;

and guidance under sub-paragraph (b) of that paragraph may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm.

(4) Waterways or underground strata are “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of paragraph (1), in such a condition, by reason of substances in, on or under the land, that significant harm to, or pollution of, those waterways or underground strata is being, or is likely to be caused.

Annotations:

F1 1999 NI 6

Identification of contaminated land

50.—(1) Every district council shall cause its district to be inspected for the purpose—

- (a) of identifying contaminated land; and
- (b) of enabling the council to decide whether any such land is land which is required to be designated as a special site.

(2) In performing its functions under paragraph (1) a district council shall act in accordance with any guidance issued for the purpose by the Department in accordance with Article 69.

(3) If a district council identifies any contaminated land in its district, it shall give notice of that fact to—

- (a) the Department;
- (b) the owner of the land;
- (c) on who appears to the council to be in occupation of the whole or any part of the land; and
- (d) each person who appears to the council to be an appropriate person;

and any notice given under this paragraph shall state by virtue of which sub-paragraph (a) to (d) it is given.

(4) If, at any time after a district council has given any person a notice under paragraph (3)(d) in respect of any land, it appears to the enforcing authority that another person is an appropriate person, the enforcing authority shall give notice to that other person—

- (a) of the fact that the district council has identified the land in question as contaminated land; and
- (b) that he appears to the enforcing authority to be an appropriate person.

Identification and designation of special sites

51.—(1) If at any time it appears to a district council that any contaminated land in its district might be land which is required to be designated as a special site, the council—

- (a) shall decide whether or not the land is land which is required to be so designated; and
- (b) if the council decides that the land is land which is required to be so designated, shall—
 - (i) give notice of that decision to the Department and to the relevant persons; and
 - (ii) send to the Department a statement of its reasons for reaching the decision.

(2) For the purposes of this Article, “the relevant persons” at any time in the case of any land are the persons who at that time fall within sub-paragraphs (a) to (c), that is to say—

- (a) the owner of the land;
- (b) any person who appears to the district council concerned to be in occupation of the whole or any part of the land; and
- (c) each person who appears to the council to be an appropriate person.

(3) Before making a decision under paragraph (1)(a) in any particular case, a district council shall request the advice of the Department, and in making its decision shall have regard to any advice given by the Department in response to the request.

(4) If at any time the Department considers that any contaminated land is land which is required to be designated as a special site, the Department may give notice of that fact to the district council in whose district the land is situated.

(5) Where notice under paragraph (4) is given to a district council, the council shall decide whether the land in question—

- (a) is land which is required to be designated as a special site, or
- (b) is not land which is required to be so designated,

and shall give notice of that decision to the Department and to the relevant persons and shall send to the Department a statement of its reasons for reaching the decision.

(6) Where a district council makes a decision falling within paragraph (1)(b) or (5)(a), the decision shall, subject to Article 52, take effect from—

- (a) the expiration of the period of 21 days from the day on which the notice required by virtue of paragraph (1)(b)(i) or, as the case may be, (5)(a) is given to the Department;
- (b) if the Department gives notice to the district council in question that it agrees with the decision, the date of the giving of that notice;

whichever first occurs, and where a decision takes effect under this paragraph, the council shall give notice of that fact to the relevant persons.

(7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with paragraph (6), the notice given under paragraph (1)(b)(i) or, as the case may be, (5)(a) shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this paragraph.

(9) Without prejudice to the generality of the power to prescribe any description of land for the purposes of paragraph (8), the Department, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—

- (a) whether land of the description in question appears to the Department to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—
 - (i) serious harm would or might be caused, or
 - (ii) serious pollution of waterways or underground strata would be, or would be likely to be, caused; or
- (b) whether the district council is likely to have expertise in dealing with the kind of significant harm, or pollution of waterways or underground strata, by reason of which land of the description in question is contaminated land.

Referral of special site decisions to the Planning Appeals Commission

52.—(1) In any case where—

- (a) a district council gives notice of a decision to the Department under Article 51(1)(b)(i) or (5)(b), but
- (b) before the expiration of the period of 21 days from the day on which that notice is so given, the Department gives the council notice that it disagrees with the decision, together with a statement of its reasons for disagreeing,

the council shall refer the decision to the Planning Appeals Commission.

(2) Part III of Schedule 2 shall have effect where a decision is referred to the Planning Appeals Commission under paragraph (1).

(3) Where a decision is referred to the Planning Appeals Commission under paragraph (1)—

- (a) the council shall give notice of that referral to the Department and to the relevant persons;
- (b) the Planning Appeals Commission shall confirm or reverse the decision with respect to the whole or any part of the land to which it relates;
- (c) the council shall give notice of the decision of the Planning Appeals Commission on the referral to the Department and to the relevant persons; and
- (d) the decision shall not take effect until the day after that on which the notice required by sub-paragraph (c) has been given to the persons there mentioned and shall then take effect as confirmed or reversed by the Planning Appeals Commission.

(4) Where a decision which takes effect in accordance with paragraph (3)(d) is to the effect that at least some land is land which is required to be designated as a special site, the notice given under

paragraph (3)(c) shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(5) In this Article “the relevant persons” has the same meaning as in Article 51.

Duty of enforcing authority to require remediation of contaminated land, etc.

53.—(1) In any case where—

- (a) any land has been designated as a special site under Article 51(7) or 52(4), or
- (b) a district council has identified any contaminated land (other than a special site) in its district,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.

(3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state the proportion, determined under Article 54(7), of the cost of doing that thing which each of them respectively is liable to bear.

(4) The only things by way of remediation which the enforcing authority may do, or require to be done, under this Part are things which it considers reasonable, having regard to—

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm, or pollution of waterways or underground strata, in question.

(5) In determining for any purpose of this Part—

- (a) what is to be done (whether by an appropriate person, a district council or any other person) by way of remediation in any particular case,
- (b) the standard to which any land is, or waterways or underground strata are, to be remediated pursuant to the notice, or
- (c) what is, or is not, to be regarded as reasonable for the purposes of paragraph (4),

a district council shall have regard to any guidance issued for the purpose by the Department.

(6) Regulations may make provision for or in connection with—

- (a) the form or content of remediation notices; or
- (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

Determination of the appropriate person to bear responsibility for remediation

54.—(1) This Article has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.

(2) Subject to the following provisions of this Article, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.

(3) A person shall only be an appropriate person under paragraph (2) in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.

(4) If no person has, after reasonable inquiry, been found who is under paragraph (2) an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.

(5) If, in consequence of paragraph (3), there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person under paragraph (2), the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

(6) Where two or more persons would, apart from this paragraph, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

(7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority.

(8) For the purposes of paragraphs (6) or (7), where the enforcing authority is a district council, any determination made by the council shall be in accordance with guidance issued for the purposes of those paragraphs which shall be issued in accordance with Article 69.

(9) A person who has caused or knowingly permitted any substance (“substance A”) to be in, on or under any land shall also be taken for the purposes of this Article to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A.

(10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—

- (a) in consequence only of the presence of that substance in any quantity; or
- (b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

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

55.—(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.

(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

(3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—

- (a) to be the owner or occupier of any of the relevant land or waters, 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) Paragraph (3) shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by

reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of waterways or underground strata, being caused.

(5) A person who grants, or joins in granting, any rights under 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 appropriate person 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 under 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 under paragraph (4) of Article 7 in relation to compensation under that Article.

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

- (a) the contaminated land in question;
- (b) any waterways or underground strata affected by that land; or
- (c) any land adjoining or adjacent to that land or those waterways or underground strata.

Restrictions and prohibitions on serving remediation notices

56.—(1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—

- (a) the person on whom the notice is to be served,
- (b) the owner of any land to which the notice relates,
- (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
- (d) any person of such other description as may be prescribed,

concerning what is to be done by way of remediation.

(2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of paragraph (1).

(3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—

- (a) the period—
 - (i) beginning with the identification of the contaminated land in question under Article 50(1); and
 - (ii) ending with the expiration of the period of 3 months from the day on which the notice required by paragraph (3)(d) or, as the case may be, paragraph (4) of Article 50 is given to that person in respect of that land;
- (b) if a decision falling within sub-paragraph (b) of Article 51(1) is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of 3 months beginning with—
 - (i) in a case where the decision is not referred to the Planning Appeals Commission under Article 52, the day on which the notice required by Article 51(6) is given, or
 - (ii) in a case where the decision is referred to the Planning Appeals Commission under Article 52, the day on which the district council gives the notice required by paragraph (3)(c) of that Article;
- (c) if the Department gives a notice under paragraph (4) of Article 51 to a district council in relation to the contaminated land in question, the period beginning with the day on which

that notice is given and ending with the expiration of the period of 3 months beginning with—

- (i) in a case where notice is given under paragraph (6) of that Article, the day on which that notice is given;
- (ii) in a case where the council makes a decision falling within paragraph (5)(b) of that Article and the Department fails to give notice under sub-paragraph (b) of Article 52(1), the day following the expiration of the period of 21 days mentioned in that sub-paragraph; or
- (iii) in a case where the council makes a decision falling within Article 51(5)(b) which is referred under Article 52 to the Planning Appeals Commission, the day on which the council gives the notice required by paragraph (3)(c) of that Article.

(4) Neither paragraph (1) nor paragraph (3) shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of waterways or underground strata, being caused.

(5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—

- (a) the authority is satisfied, in consequence of Article 53(4) and (5), that there is nothing by way of remediation which could be specified in a remediation notice served on that person;
- (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
- (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
- (d) the authority is satisfied that the powers conferred on it by Article 60 to do what is appropriate by way of remediation are exercisable.

(6) Where the enforcing authority is precluded under Article 53(4) or (5) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (a “remediation declaration”) which shall record—

- (a) the reasons why the authority would have specified that thing; and
- (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.

(7) In any case where the enforcing authority is precluded, by virtue of sub-paragraph (b), (c) or (d) of paragraph (5), from serving a remediation notice, the responsible person shall prepare and publish a document (a “remediation statement”) which shall record—

- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
- (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
- (c) the periods within which each of those things is being, or is expected to be, done.

(8) For the purposes of paragraph (7), the “responsible person” is—

- (a) in a case where the condition in sub-paragraph (b) of paragraph (5) is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or

(b) in a case where the condition in sub-paragraph (c) or (d) of that paragraph is satisfied, the enforcing authority.

(9) If a person who is required under paragraph (8)(a) to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from paragraph (5), have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.

(10) Where the enforcing authority has been precluded by virtue only of paragraph (5) from serving a remediation notice on an appropriate person but—

(a) none of the conditions in that paragraph is for the time being satisfied in the particular case, and

(b) the authority is not precluded by any other provision of this Part from serving a remediation notice on the appropriate person,

the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons under paragraph (1), if and to the extent that that person has been consulted under that paragraph concerning the things which will be specified in the notice.

[^{F2}Restrictions on liability relating to the pollution of waterways and underground strata

56A.—(1) This Article applies where any land is contaminated land by virtue of paragraph (b) of the definition of “contaminated land” in Article 49(1) (whether or not the land is also contaminated land by virtue of paragraph (a) of that definition).

(2) Where this Article applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of Article 54(4) or (5) to do anything by way of remediation to that or any other land, or any waterway or underground strata, which he could not have been required to do by such a notice had paragraph (b) of the definition of “contaminated land” in Article 49(1) (and all other references to pollution of waterways and underground strata) been omitted from this Part.

(3) Nothing in paragraph (2) prevents the enforcing authority from doing anything by way of remediation under Article 60 which it could have done apart from that paragraph, but the authority shall not be entitled under Article 61 to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by paragraph (2) from requiring that person to do.]

Annotations:

F2 1999 NI 6

^{F3}Liability in respect of contaminating substances which escape to other land

57.—(1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.

(2) Paragraphs (3) and (4) apply in any case where it appears that any substances are or have been in, on or under any land (in this Article referred to as “land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.

(3) Where this paragraph applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be caused.

(4) Where this paragraph applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be caused, unless he is also the owner or occupier of land B.

(5) In any case where—

- (a) a person (“person A”) has caused or knowingly permitted any substances to be in, on, or under any land,
- (b) another person (“person B”) who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and
- (c) the substances, or any of the substances, mentioned in sub-paragraph (a) appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in paragraph (3), (4) or (5) prevents the enforcing authority from doing anything by way of remediation under Article 60 which it could have done apart from that paragraph, but the authority may not under Article 61 recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by paragraph (3), (4) or (5) from requiring that person to do.

(7) In this Article, “appear” means appear to the enforcing authority.

Annotations:

F3 1999 NI 6

Appeals against remediation notices

58.—(1) A person on whom a remediation notice is served may, within the period of 21 days from the day on which the notice is served, appeal against the notice—

- (a) if it was served by a district council, to a court of summary jurisdiction; or
- (b) if it was served by the Department, to the Planning Appeals Commission;

and in the following provisions of this Article “the appellate authority” means the court of summary jurisdiction or, as the case may be, the Planning Appeals Commission.

(2) Part I of Schedule 2 shall have effect with respect to appeals to the Planning Appeals Commission under paragraph (1).

(3) On receipt of an appeal under paragraph (1) the Planning Appeals Commission shall give notice of the appeal to the Department.

(4) On any appeal under paragraph (1) the appellate authority—

- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but
- (b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(5) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(6) Regulations may—

- (a) make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought;
- (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;
- (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases.

Offences of not complying with a remediation notice

59.—(1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) Where the remediation notice in question is one which was required by Article 53(3) to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.

(3) Except in a case falling within paragraph (4), a person who commits an offence under paragraph (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and if, in the case of a continuing offence under paragraph (1), the offender continues to fail to comply with any of the requirements of the notice he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-tenth of level 5 on the standard scale for each day on which the offence is continued and before the enforcing authority has begun to exercise its powers under Article 60(3)(c).

(4) A person who commits an offence under paragraph (1) in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may, by order, substitute and if, in the case of a continuing offence under paragraph (1) in relation to such contaminated land, the offender continues to fail to comply with any requirements of the notice he shall be guilty of a further offence and shall be liable to an additional fine not exceeding one-tenth of that sum for each day on which the offence is continued and before the enforcing authority has begun to exercise its powers by virtue of Article 60(3)(c).

(5) If the enforcing authority is of the opinion that proceedings for an offence under this Article would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court for the purpose of securing compliance with the remediation notice.

(6) In this Article, “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

(7) An order under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Powers of the enforcing authority to carry out remediation

60.—(1) Where this Article applies, the enforcing authority may, in a case falling within sub-paragraph (a) or (b) of Article 53(1), do what is appropriate by way of remediation to the relevant land or waters.

(2) Paragraph (1) shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by Article 70 from serving a remediation notice requiring that thing to be done.

(3) This Article applies in each of the following cases, that is to say—

- (a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of waterways or underground strata, of which there is imminent danger;
- (b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;
- (c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;
- (d) where the enforcing authority is precluded by^{[F4} Article 56A or 57] from including something by way of remediation in a remediation notice;
- (e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide under paragraph (2) of Article 61 or any guidance issued under that paragraph,—
 - (i) not to seek to recover under paragraph (1) of that Article any of the reasonable cost incurred by it in doing that thing; or
 - (ii) to seek so to recover only a portion of that cost;
- (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.

(4) Subject to Article 53(4) and (5), for the purposes of this Article, the things which it is appropriate for the enforcing authority to do by way of remediation are—

- (a) in a case falling within sub-paragraph (a) of paragraph (3), anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that sub-paragraph;
- (b) in a case falling within sub-paragraph (b) of that paragraph, anything specified in, or determined under, the agreement mentioned in that sub-paragraph;

- (c) in a case falling within sub-paragraph (c) of that paragraph, anything which the person mentioned in that sub-paragraph was required to do under the remediation notice;
 - (d) in a case falling within sub-paragraph (d) of that paragraph, anything by way of remediation which the enforcing authority is precluded by^{F4} Article 56A or 57] from including in a remediation notice;
 - (e) in a case falling within sub-paragraph (e) or (f) of that paragraph, the particular thing mentioned in the sub-paragraph in question.
- (5) In this Article “the relevant land or waters” means—
- (a) the contaminated land in question;
 - (b) any waterways or underground strata affected by that land; or
 - (c) any land adjoining or adjacent to that land or those waterways or underground strata.

Annotations:

F4 1999 NI 6

Recovery of, and security for, the cost of remediation by the enforcing authority

61.—(1) Where, under Article 60(3)(a), (c), (e) or (f), the enforcing authority does any particular thing by way of remediation, it may, subject to^{F5} Article 56A(3) or 57(6)], recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to Article 54(7).

(2) In deciding whether to recover the cost, and, if so, how much of the cost, which it may recover under paragraph (1), the enforcing authority shall have regard—

- (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
 - (b) where the enforcing authority is a district council, to any guidance issued by the Department for the purposes of this paragraph.
- (3) Paragraph (4) shall apply in any case where—
- (a) any cost is recoverable under paragraph (1) from a person—
 - (i) who is the owner of any premises which consist of or include the contaminated land in question; and
 - (ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and
 - (b) the enforcing authority serves a notice under this paragraph (a “charging notice”) on that person.
- (4) Where this paragraph applies—
- (a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and
 - (b) subject to the following provisions of this Article, the cost and accrued interest shall be a charge on the premises mentioned in paragraph (3)(a)(i).
- (5) A charging notice shall—
- (a) specify the amount of the cost which the enforcing authority claims is recoverable;
 - (b) state the effect of paragraph (4) and the rate of interest determined by the authority under that paragraph; and

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(c) state the effect of paragraphs (7) and (8).

(6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(7) Subject to any order under paragraph (9)(b) or (c), the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the estate in the premises—

- (a) as from the end of the period of 21 days from the service of the charging notice, or
- (b) where an appeal is brought under paragraph (8), as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of 21 days beginning with the date of service.

(9) On an appeal under paragraph (8), the court may—

- (a) confirm the notice without modification;
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
- (c) order that the notice is to be of no effect.

(10) Regulations may make provision with respect to—

- (a) the grounds on which appeals under this Article may be made; or
- (b) the procedure on any such appeal.

(11) A charge under this Article may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the enforcing authority and, for the recovery thereof, the enforcing authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed.

(12) Where any cost is a charge on premises under this Article, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(13) In paragraph (12)—

“interest” means interest at the rate determined by the enforcing authority under paragraph (4); and

“the specified period” means such period of 30 years or less from the date of service of the charging notice as is specified in the order.

Annotations:

F5 [1999 NI 6](#)

Special sites

62.—(1) If, in a case where a district council has served a remediation notice, the contaminated land in question becomes a special site, the Department may adopt the remediation notice and, if it does so,—

- (a) it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the district council;
- (b) the remediation notice shall have effect, as from the time at which the Department decides to adopt it, as a remediation notice given by the Department; and

- (c) the validity of the remediation notice shall not be affected by—
 - (i) the contaminated land having become a special site;
 - (ii) the adoption of the remediation notice by the Department; or
 - (iii) anything in sub-paragraph (b).
- (2) Where a district council has, by virtue of Article 60, begun to do any thing, or any series of things, by way of remediation—
 - (a) the council may continue doing that thing, or that series of things, by virtue of that Article, notwithstanding that the contaminated land in question becomes a special site; and
 - (b) Article 61 shall apply in relation to the reasonable cost incurred by the council in doing that thing or those things as if that council were the enforcing authority.
- (3) If and so long as any land is a special site, the Department may from time to time inspect that land for the purpose of keeping its condition under review.
- (4) If it appears to the Department that a special site is no longer land which is required to be designated as such a site, the Department may give notice to the district council in whose district the site is situated, terminating the designation of the land in question as a special site as from such date as may be specified in the notice.

Registers

- 63.**—(1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—
- (a) remediation notices served by that authority;
 - (b) appeals against any such remediation notices;
 - (c) remediation statements or remediation declarations prepared and published under Article 56;
 - (d) appeals against charging notices served by that authority;
 - (e) notices under paragraph (1)(b)(i) or (5)(a) of Article 51 which have effect by virtue of paragraph (7) of that Article as the designation of any land as a special site;
 - (f) notices under paragraph (3)(c) of Article 52 which have effect by virtue of paragraph (4) of that Article as the designation of any land as a special site;
 - (g) notices given by or to the enforcing authority under Article 62(4) terminating the designation of any land as a special site;
 - (h) notices given to that authority by persons—
 - (i) on whom a remediation notice has been served, or
 - (ii) who are or were required by virtue of Article 56(8)(a) to prepare and publish a remediation statement,of what they claim has been done by them by way of remediation;
 - (j) notices given to that authority by owners or occupiers of land—
 - (i) in respect of which a remediation notice has been served, or
 - (ii) in respect of which a remediation statement has been prepared and published,of what they claim has been done on the land in question by way of remediation;
 - (k) convictions for such offences under Article 59 as may be prescribed;
 - (l) such other matters relating to contaminated land as may be prescribed;
- but that duty is subject to Articles 64 and 65.

(2) The form of, and the descriptions of information to be contained in, notices for the purposes of paragraph (1)(h) or (j) may be prescribed.

(3) No entry made in a register under paragraph (1)(h) or (j) constitutes a representation by the body maintaining the register or, in a case where the entry is made under paragraph (6), the authority which sent the copy of the particulars in question under paragraph (4) or (5)—

- (a) that what is stated in the entry to have been done has in fact been done; or
- (b) as to the manner in which it has been done.

(4) Where any particulars are entered on a register maintained under this Article by the Department, the Department shall send a copy of those particulars to the district council in whose district is situated the land to which the particulars relate.

(5) In any case where—

- (a) any land is treated under Article 68(2) as situated in the district of a district council other than the district council in whose district it is in fact situated, and
- (b) any particulars relating to that land are entered on the register maintained under this Article by the district council in whose district the land is so treated as situated,

that council shall send a copy of those particulars to the district council in whose district the land is in fact situated.

(6) Where a district council receives a copy of any particulars sent to it under paragraph (4) or (5), it shall enter those particulars on the register maintained by it under this Article.

(7) Where information of any description is excluded by virtue of Article 65 from any register maintained under this Article, a statement shall be entered in the register indicating the existence of information of that description.

(8) Each enforcing authority shall—

- (a) secure that the registers maintained by it under this Article are available, at all reasonable times, for inspection by the public free of charge; and
- (b) afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraph (a) or (b) are to be available or afforded to the public under the sub-paragraph in question.

(9) Registers under this Article may be kept in any form.

Exclusion from registers of information affecting national security

64.—(1) No information shall be included in a register maintained under Article 63 if and so long as, in the opinion of the Secretary of State, the inclusion in the 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 enforcing authorities directions—

- (a) specifying information, or descriptions of information, to be excluded from their 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 enforcing authority shall notify the Secretary of State of any information which it excludes from the register in pursuance of directions 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 enforcing authority 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.

Exclusion from registers of certain confidential information

65.—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 63, without the consent of that individual or the person for the time being carrying on that business, 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 directions under paragraph (5);

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

(2) Where it appears to an enforcing authority that any information which has been obtained by the authority under any provision of this Part might be commercially confidential, the authority shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register 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 authority for the purpose of justifying any such objection;

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

(3) Where, under paragraph (2), an authority determines that information is not commercially confidential—

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

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

(4) Paragraphs (6) to (8) of Article 36 shall apply in relation to appeals under paragraph (3) as they apply in relation to appeals under paragraph (5) of that Article.

(5) The Department may give to enforcing authorities which are district councils directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under Article 63 notwithstanding that the information may be commercially confidential.

(6) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purpose 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 appeal to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(7) Paragraphs (3) and (4) shall apply in relation to a determination under paragraph (6) as they apply in relation to a determination under paragraph (2).

(8) 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.

(9) For the purposes of paragraph (8), there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

Reports by the Department on the state of contaminated land

66.—(1) The Department shall, from time to time, prepare and publish a report on the state of contaminated land in Northern Ireland.

(2) A district council shall, at the written request of the Department, furnish the Department with such information to which this paragraph applies as the Department may require for the purpose of enabling it to perform its functions under paragraph (1).

(3) The information to which paragraph (2) applies is such information as the district council may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its district, being information which the council has acquired or may acquire in the exercise of its functions under this Part.

Guidance by the Department concerning contaminated land

67.—(1) The Department may issue guidance to any district council with respect to the exercise or the performance of the council's functions under this Part in relation to any particular contaminated land; and in exercising or performing those functions in relation to that land the council shall have regard to any such guidance so issued.

(2) A district council shall, at the written request of the Department, furnish the Department with such information to which this paragraph applies as the Department may require for the purpose of enabling it to issue guidance for the purposes of paragraph (1).

(3) The information to which paragraph (2) applies is such information as the district council may have, or may reasonably be expected to obtain, with respect to any contaminated land in its district, being information which the council has acquired, or may acquire, in the exercise of its functions under this Part.

Supplementary provisions

68.—(1) Where it appears to a district council that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

(b) pollution of waterways or underground strata is being, or is likely to be, caused,

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the council to be such that significant harm is being

caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being or is likely to be caused.

(2) Where it appears to a district council that any land outside, but adjoining or adjacent to, its district is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be, caused within its district—

- (a) the council may, in exercising its functions under this Part, treat that land as if it were land situated within its district; and
- (b) except in this paragraph, any reference—
 - (i) to land within the district of a district council, or
 - (ii) to the district council in whose district any land is situated,shall be construed accordingly;

but this paragraph is without prejudice to the functions of the district council in whose district the land is in fact situated.

- (3) A person acting in a relevant capacity—
 - (a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and
 - (b) shall not thereby be guilty of an offence under or by virtue of Article 59 unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.
- (4) In paragraph (3), “person acting in a relevant capacity” means—
 - (a) a person acting as an insolvency practitioner, within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989 (including that Article as it applies in relation to an insolvent partnership by virtue of any order made under Article 365 of that Order);
 - (b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989 if paragraph (5) of that Article were disregarded;
 - (c) the official receiver acting as a receiver or manager;
 - (d) a person acting as a special manager under Article 151 or 341 of the Insolvency (Northern Ireland) Order 1989;
 - (e) a person acting as a receiver or receiver and manager—
 - (i) under any statutory provision; or
 - (ii) by virtue of his appointment as such by an order of a court or by any other instrument.

Supplementary provisions with respect to guidance by the Department

69.—(1) Any power of the Department to issue guidance under this Part shall only be exercisable after consultation with such bodies or persons as the Department may consider it appropriate to consult in relation to the guidance in question.

(2) A draft of any guidance proposed to be issued under Article 49(1) or (2), 50(2) or 54(6) or (7) shall be laid before the Assembly.

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(3) If within the statutory period beginning with the day on which a copy of the guidance is laid before the Assembly the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.

(4) The Department shall arrange for any guidance issued by it under this Part to be published in such manner as the Department considers appropriate.

Interaction of this Part with other statutory provisions

70.—(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the chief inspector under Article 27 of the Industrial Pollution Control (Northern Ireland) Order 1997 (power of chief inspector to remedy harm) may be exercised in relation to—

- (a) the significant harm (if any), and
- (b) the pollution of waterways and underground strata (if any),

by reason of which the contaminated land in question is such land.

(2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II, except to the extent that any significant harm, or pollution of waterways or underground strata, by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—

- (a) breach of the conditions of the licence; or
- (b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.

(3) If, in a case falling within paragraph (1) or (8) of Article 28, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that the powers of a district council under that Article may be exercised in relation to that waste or the consequences of its deposit.

(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge^{F6} in pursuance of—

- (a) a discharge consent under Article 7A of the Water (Northern Ireland) Order 1999; or
- (b) a consent under Chapter III of Part VI of the Water and Sewerage Services (Northern Ireland) Order 2006 (trade effluent)]

Annotations:

- F6** Words in art. 70(4) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 39(4)** (with arts. 8(8), 121(3), 307); [S.R. 2007/194](#), **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

This Part and radioactivity

71. Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of waterways or underground strata, so far as attributable to any radioactivity possessed by any substance; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Department considers appropriate for the purpose of dealing with harm, or pollution of waterways or underground strata, so far as attributable to any radioactivity possessed by any substances; or

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- (b) make such modifications of the Radioactive Substances Act 1993 or any other statutory provision as the Department considers appropriate.

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. 5A(12A)(13) substituted for art. 5A(13) by [2011 c. 5 \(N.I.\) s. 5\(2\)\(e\)](#)
- art. 5C(2A) inserted by [2011 c. 5 \(N.I.\) s. 5\(4\)](#)
- art. 28 28A-28B substituted for art. 28 28A by [2011 c. 5 \(N.I.\) s. 4](#)
- art. 58(1A) inserted by [2011 c. 5 \(N.I.\) s. 8\(3\)](#)
- art. 70(2A)-(2C) inserted by [2011 c. 5 \(N.I.\) s. 9](#)