# SCHEDULES

## SCHEDULE 1

Article 9(3).

## DISCHARGE CONSENTS

### *Application for consent*

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

(a) shall be made to the Department on a form provided for the purpose by the Department; and

(b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations.

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

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

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

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

### *[F1 Consultation in connection with applications*

**F1** Sch. 1 para. 1A inserted (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**1A.**—(1) Subject to sub-paragraph (2), the Department shall give notice of any application under paragraph 1, together with a copy of the application, to the persons who are prescribed to be consulted under this paragraph and shall do so within the specified period for notification.

(2) The Department may by regulations exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications from those requirements, in all cases or as respects specified classes only of persons to be consulted.

(3) Any representations made by the persons so consulted within the period allowed shall be considered by the Department in determining the application.

(4) For the purposes of sub-paragraph (1)—

(a) persons are prescribed to be consulted on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Department; and

(b) the "specified period for notification" is the period specified in the regulations.

(5) Any representations made by any other persons within the period allowed shall also be considered by the Department in determining the application.

(6) Subject to sub-paragraph (7), the period allowed for making representations is—

(a) in the case of persons prescribed to be consulted, the period of 6 weeks beginning with the date on which notice of the application was given under sub-paragraph (1), and

(b) in the case of other persons, the period of 6 weeks beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(1)(b).

(7) The Department may, by regulations, substitute for any period for the time being specified in sub-paragraph (6)(a) or (b), such other period as it considers appropriate.**]**

*Consideration and determination of applications*

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

(a) of that paragraph, and

(b) of any regulations made under that paragraph **[**[F2]or paragraph 1A**]** ,

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

(2 [F3] Subject to the following provisions of this Schedule, on an application made in accordance with paragraph 1, the applicant may treat the consent applied for as having been refused if it is not given within the period of 4 months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Department and the applicant.

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

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

(b) his obligation under paragraph 1(3) or (4) to provide information to the Department,

the Department may refuse to proceed with the application, or refuse to proceed with it until the application has been advertised or, as the case may be, the information has been provided.

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

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

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

(a) the person making the application;

**[**[F4](b) the Foyle, Carlingford and Irish Lights Commission, where the discharge is being, or is to be, made in the Londonderry Area or the Newry Area;**]**

(c) the Fisheries Conservancy Board for Northern Ireland, where the discharge is to be, or is being, made outside**[**[F4] those Areas**]**.

**F2** Words in Sch. 1 para. 2(1)(b) added (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
**F3** mod. by SR 2001/284
**F4** SI 1999/859

*Public inquiries*

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

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

(a) the inquiry shall be held by such member of the Appeals Commission as the Chief Commissioner may appoint in that behalf;

(b [F5] the Chief Commissioner may, after consultation with the Appeals Commission and the Department, appoint an assessor to sit with the member appointed under head (a) at the inquiry to advise him on any matters arising;

(c) notwithstanding heads (a) and (b), any report on the inquiry shall be made by the Appeals Commission.

(3 [F5] The Appeals Commission may pay to any assessor appointed under sub-paragraph (2)(b) such fees and allowances as the Commission, with the approval of the Department, may approve.

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

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

(a) the person making the application;

**[**[F6](b) the Foyle, Carlingford and Irish Lights Commission, where the discharge to which the application relates is to be made in the Londonderry Area or the Newry Area;**]**

(c) the Fisheries Conservancy Board for Northern Ireland, where the discharge to which the application relates is to be made outside**[**[F6] those Areas**]**;

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

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

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

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

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

**F5** functions transf. by SR 2001/229
**F6** SI 1999/859

*Consents without applications*

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

(a) that a person has discharged effluent or other matter in contravention of **[**[F7]Article 7(2)**]** ; and

(b) that a similar contravention by that person is likely,

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

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

**[**[F8](a) the Foyle, Carlingford and Irish Lights Commission, where the discharge is to be, or is being, made in the Londonderry Area or the Newry Area;**]**

(b) the Fisheries Conservation Board for Northern Ireland, where the discharge is to be, or is being, made outside**[**[F8] those Areas**]**.

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

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

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

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

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

**F7** Words in Sch. 1 para. 4(1)(a) substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.
**F8** SI 1999/859

*Revocation of consents and alteration and imposition of conditions*

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

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

(a) revoke the consent;

(b) make modifications of the conditions of the consent; or

(c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

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

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

(a) for the purposes of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or

(c) in consequence of any representations made to it or otherwise,

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

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

**[**[F9](a) the Foyle, Carlingford and Irish Lights Commission, where the discharge to which the notice relates is made or to be made in the Londonderry Area or the Newry Area;**]**

(b) the Fisheries Conservancy Board for Northern Ireland where the discharge to which the notice relates is made or to be made outside**[**[F9] those Areas**]**.

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

(a) in taking that action the Department does anything which, apart from sub-paragraph (4), it would be precluded from doing by a restriction imposed under paragraph 6; and

(b) the action is not shown to have been taken in consequence of—

(i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or

(ii) consideration by the Department of material information which was not reasonably available to the Department at the beginning of that period.

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

**F9** SI 1999/859

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

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

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

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

(a) in the case of a period specified under sub-paragraph (1), with the day on which the discharge consent takes effect; and

(b) in the case of a period specified under sub-paragraph (2), with the day on which the notice specifying that period is served.

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

(a) the notice is served not more than 3 months after the beginning of the period prescribed under paragraph 4(6) for the making of representations with respect to the consent; and

(b) the Department considers, in consequence of any representations received by it within that period, that it is appropriate for the notice to be served.

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

**Modifications etc. (not altering text)**

**C1** Sch. 1 para. 6 excluded (1.4.2007) by Urban Waste Water Treatment Regulations (Northern Ireland) 2007 (S.R. 2007/187), **regs. 8(4)**, **10(3)**

*Applications for variation*

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

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

*Transfer of consents*

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

(2) On the death of the holder of a discharge consent given under paragraph 2 or 4, the consent shall [F10]. . . be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a discharge consent given under paragraph 2 or 4, the consent shall [F10]. . . be regarded for the purposes of any of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

(4) [F11]. . . . . .

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

**[**[F12](6) Where a discharge consent given under paragraph 2 or 4 is to be transferred under sub-paragraph (1)—

(a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the Department of the proposed transfer;

(b) the notice may specify the date on which it is proposed that the transfer should take effect;

(c) within 21 days beginning with the date of receipt of the notice duly given in accordance with head (a), the Department shall—

(i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and

(ii) serve notice on the transferor and the transferee that the amendment has been made; and

(d) the transfer shall take effect from the later of—

(i) the date on which the Department amends the consent; and

(ii) the date (if any) specified in the joint notice under paragraph (a).

(6A) A joint notice under sub-paragraph (6)(a) shall include such information as may be prescribed.

(6B) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of sub-paragraph (2) or (3), a joint notice given under sub-paragraph (6)(a) shall be of no effect unless the notice required by sub-paragraph (7) has been given.

(6C) A notice or other instrument given by or on behalf of the Department pursuant to sub-paragraph (6) shall not constitute an instrument signifying the consent of the Department for the purposes of paragraph 6.**]**

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

(8) If—

(a) a discharge consent given under paragraph 2 or 4 vests in any person as mentioned in sub-paragraph (2) or (3), but

(b) that person fails to give the notice required by sub-paragraph (7) within the period there mentioned,

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

(9) A person who fails to give a notice which he is required by sub-paragraph [F13]. . . (7) to give shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both;

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

**F10** Words in Sch. 1 para. 8(2)(3) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(5)(a), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**F11** Sch. 1 para. 8(4) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(5)(b), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**F12** Sch. 1 para. 8(6)-(6C) substituted (1.1.2007 for certain purposes, otherwise 1.4.2007) for Sch. 1 para. 8(6) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(6)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**F13** Words in Sch. 1 para. 8(9) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(7), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**Modifications etc. (not altering text)**

**C2** Sch. 1 para. 8 applied (with modifications) (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 21** (with reg. 5)

## SCHEDULE 2

Article 23(4).

### ORDERS CONFERRING COMPULSORY POWERS FOR EXECUTING WORKS

**1.** Before making an order under Article 23(2) the Department shall prepare a draft of the order and publish at least once in each of two successive weeks, in one or more newspapers circulating in the locality where the waterway or land to which the order relates is situated or the engineering or building operations are to be carried out, a notice—

(a) stating the general effect of the order as prepared in draft;

(b) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of 28 days beginning with the date of the first publication of the notice;

(c) stating that any person may, within that period, by notice in writing to the Department object to the making of the order.

**2.** Not later than the date on which the notice is first published in pursuance of paragraph 1, the Department shall serve a copy of the notice on every person appearing to the Department to have an estate in any land which may be substantially affected by the exercise of any compulsory powers if the order were made in the terms of the draft which may be inspected under paragraph 1(b).

**3.** The Department shall also publish in the Belfast Gazette a notice stating that the draft order has been prepared, specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name of any newspaper in which the notice under paragraph 1 was published and the date of an issue containing the notice.

**4.** The Department shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the Department thinks reasonable.

**5.** The Department may make the order in the terms of the draft or in those terms as altered in such manner as it thinks fit; but where the Department proposes to make any significant alteration and considers that any persons are liable to be adversely affected by it, the Department shall give and publish such additional notices as appear to the Department to be necessary for informing those persons of the effect of the alterations.

**6.**—(1) If before the end of the period of 28 days referred to in paragraph 1, or of 25 days from the publication in the Belfast Gazette of the notice under paragraph 3, or of any period specified in notices under paragraph 5, notice in writing of an objection is received by the Department from any person on whom a notice is served under this Schedule, or from any other person appearing to the Department to be affected by the order as prepared in draft or as proposed to be altered, and the objection is not met or withdrawn, the Department, before making the order shall, unless it is satisfied that the objections are solely of a frivolous or vexatious nature or relate solely to the amount of compensation, cause an inquiry to be held by the Appeals Commission and consider the report on that inquiry.

(2) Sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1 apply in relation to an inquiry under this paragraph as they apply in relation to an inquiry under sub-paragraph (1) of that paragraph.

**7.**—(1) If the value of any estate in land to which this sub-paragraph applies is depreciated by the coming into operation of the order or anything done in pursuance of it, the person entitled to that estate shall be entitled to compensation from the Department of an amount equal to the amount of the depreciation.

(2) Sub-paragraph (1) applies to any estate in any land in respect of which compulsory powers are exercisable by virtue of the order, and to any estate in any land which, on the date on which the order comes into operation, is held with any of that land.

(3) Where the person entitled to an estate in land to which sub-paragraph (1) applies sustains loss or damage which—

(a) is attributable to the coming into operation of the order or anything done in pursuance of it; and

(b) does not consist of depreciation of the value of his estate; and

(c) is loss or damage for which, if his estate in the land in respect of which compulsory powers are exercised by virtue of the order had been vested under Article 24 in pursuance of a vesting order made before the date on which the order comes into operation, he would have been entitled to compensation by way of compensation for disturbance;

he shall be entitled to compensation from the Department in respect of that loss or damage, in addition to compensation under sub-paragraph (1).

(4) A person who suffers damage (other than the depreciation of an estate in land) which is attributable to the operation of the order or anything done in pursuance of it shall be entitled to recover compensation from the Department in respect of the damage.

(5) **[**[F14]Sections 31 and 33(1)**]** of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect in relation to compensation payable by virtue of this paragraph as they have effect in relation to Part III compensation within the meaning of that Act or for the purposes of Part III of that Act, subject to the modification that for any reference to a compensatable estate there shall be substituted a reference to any estate in land.

**F14** 2001 c. 2 (NI)

## SCHEDULE 3

Article 24(3) and 48(3).

### MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972 FOR PURPOSES OF ARTICLE 24(3) AND 48(3)

**1.** References to the Ministry or to the council shall be construed as references to the Department.

**2.** References to Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall be construed as references to that Schedule as modified by this Schedule.

**3.** Omit paragraph 1.

**4.** In paragraph 2—

(a) for the words from the beginning to "directs" substitute the words "Where the Department proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so, and such notice";

(b) in sub-paragraph (c) for the words "as may be prescribed" substitute the words "as the Department considers fit".

**5.** In paragraph 3(1)(ii) for the word "refuse" substitute the words "decide not".

**6.** In paragraph 4 omit the words from "and may provide" onwards.

**7.** In paragraph 5—

(a) in sub-paragraph (1)(a) omit the words "in the prescribed form and manner";

(b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;

(c) in sub-paragraph (1)(d) omit the words "in the prescribed form";

(d) in sub-paragraph (2) for the words "as may be prescribed" substitute the words "as the Department considers fit".

**8.** In paragraph 6(2) for the words "fund out of which the expenses of the council in acquiring the land are to be defrayed" substitute the words "Consolidated Fund" and for the words "out of the compensation fund" there shall be substituted the words "made by the Department".

**9.** In paragraph 11(3) omit the words "in the prescribed form".

**10.** In paragraph 12—

(a) in sub-paragraph (1) omit the words "such" and "as may be prescribed";

(b) in sub-paragraph (2) for the words from "clerk" to "directs" substitute the words "Department as correct, and publish".

**11.** In paragraph 14(1) omit the words "in the prescribed form".

**12.** In paragraph 15(1) for the words "in the prescribed form" substitute the words "in such form as may be approved by the Department".

**13.** Omit paragraph 19.

**14.** Omit paragraph 20(2).

## SCHEDULE 4

Article 42(4)(a).

### DESCRIPTION OF CANAL WORKS, ETC.

**1.** Clearing of waterways, including—

(a) the removal of obstructions, including fallen or ingrowing trees, refuse or other material;

(b) the removal of shoals and cesses;

(c) the shaping, trimming and revetting of banks.

**2.** Works in connection with waterways, including—

(a) the cleansing, widening, deepening, covering or otherwise improving of existing waters;

(b) the dredging and maintenance of channels;

(c) the cutting of new drains where required;

(d) the abstraction from any source of any water necessary to the purposes of navigation;

(e) the construction of locks, dams, culverts, overflow culverts, pumping stations, aqueducts or viaducts;

(f) the raising and repairing of existing embankments, and the construction of new embankments;

(g) the sinking of pumping sumps;

(h) the construction and repairing of sluices or valves;

(i) the removal and disposal of old spoil banks;

(j) the construction of hydro-electric power stations in connection with any pumping station or pumping sump.

**3.** New construction, including—

(a) the diversion of waterways;

(b) the cutting through of "U" or "S" bends so as to straighten and shorten the channel;

(c) the construction of new waterways, and of new outfall channels to existing main drains and their feeders;

(d) the construction, alteration, restoration or improvement of any quay, harbour, mooring, dry dock, fish pass, slipway, navigation aid, towing path, culvert, overflow culvert, pipe, drain or road (other than a road within the meaning of the Roads (Northern Ireland) Order 1993);

(e) the provision of such buildings as the Department considers appropriate in connection with any works described in this Schedule;

(f) the reconstruction and improvement of bridges, locks, overflows, weirs, hatches and outfalls necessitating structural alterations;

(g) the reconstruction of damaged or inadequate bridges and culverts, and the substitution of new bridges and culverts therefor;

(h) the building of embankments and walls for the prevention of flooding or erosion;

(i) the formation of cattle water-places, sheep-dipping and other conveniences, the provision of which is calculated to minimise the risk of future damage to any specified canal which has been improved.

**4.** Removal, alteration or improvement of artificial objects such as sluices, dams, sea defence works, pumping stations and pumping sumps.

**5.** Sea defence works.

**6.** The operation of any works described in this Schedule.

**7.** Such other works or classes of works as may be considered by the Department to be analogous or ancillary to any classes of works described in this Schedule.

[F15SCHEDULE 5 Article 45(1), (1A)

PROVISIONS OF THE DRAINAGE ORDER APPLIED FOR THE PURPOSES OF ENVIRONMENTAL IMPACT ASSESSMENT OF CANAL SCHEMES

**F15** Sch. 5 substituted (20.3.2006) by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), reg. 22(3), **Sch. 2**

# PART I

PROVISIONS OF THE DRAINAGE ORDER APPLIED BY ARTICLE 45(1)

**1.** The provisions of the Drainage Order applied by Article 45(1) of this Order are as follows—

| ***Provision*** | ***Subject Matter*** |
|---|---|
| Part I | Introductory |
| Article | |
| 12 | Restrictions on drainage schemes. |
| 12A | Consultations and determination of whether a drainage scheme has significant effects on the environment. |
| 12B | Drainage schemes likely to have significant effects on the environment. |
| 12C | Preparation of an environmental statement and consultations thereon. |
| 12D | Publicity for an environmental statement. |
| 12E | Assistance in the preparation of an environmental statement. |
| 12F | Charges. |
| 12G | Drainage schemes likely to have significant effects on the environment in another EEA State. |
| 12H | Determination of whether a drainage scheme should proceed. |
| 13 | Confirmation of drainage schemes. |
| 13A | Public Participation. |
| 14 | The carrying out of drainage schemes. |
| 15 | Provisions in regard to roads, bridges, culverts and embankments. |
| 16 | Amendment of drainage schemes. |
| Schedule 2A | Information for inclusion in environmental statement. |

| | |
|---|---|
| Schedule 2B | Selection criteria referred to in Article 4.3 of Council Directive 85/337/EEC as amended by Council Directive 97/11/EC and Council Directive 2003/35/EC. |
| Schedule 2C | Environmental factors to be taken into account. |

# PART II

PROVISIONS OF THE DRAINAGE ORDER APPLIED BY ARTICLE 45(1A)

**2.** The provisions of the Drainage Order applied by Article 45(1A) of this Order are as follows—

| ***Provision*** | ***Subject Matter*** |
|---|---|
| Part I | Introductory |
| Article | |
| 17 | Compensation for certain losses due to construction of drainage works. |
| 18 | Compensation for injury to canals, fisheries, etc. |
| 19 | Matters to be regarded in assessing compensation. |
| 20 | Disposal of surplus lands, etc. |
| 31 | Noxious weeds. |
| 35 | Provision as to recovery of expenses. |
| 36 | Miscellaneous offences. |
| 38 | Limitation of liability for flooding, etc. |
| 39 | Protection for officers of the Department. |
| 40 | Protection of fisheries. |

# PART III

MODIFICATION OF THE PROVISIONS APPLIED BY PARTS I AND II]

**3.** The provisions of the Drainage Order specified in Part I and Part II of this Schedule shall, in their application for the purposes of Part III of this Order have effect with the following modifications—

(a) references therein to the Department of Agriculture and Rural Development shall be construed as references to the Department of Culture, Arts and Leisure;

(b) references therein to a watercourse shall be construed as references to a waterway;

(c) references therein to the Drainage Order shall be construed as references to Part III of this Order;

(d) references therein to—

(i) a scheme or drainage scheme carried out under the Drainage Order, or any part thereof;

(ii) drainage works;

(iii) drainage purposes or purposes connected with drainage;

(iv) the Drainage Council;

shall respectively be construed as references to—

(A) a canal scheme;

(B) works under any provision contained in Part III of this Order or any canal scheme;

(C) the purposes of any such provision or scheme; and

(D) the Water Council;

(e) references therein to sea defences and sea defence works shall be omitted;

(f) in Article 17—

(i) for paragraph (4) substitute—

"(4) Every claim for compensation under this Article—

(a) shall be made in writing to the Department within 3 years from the date of completion of the works from which, or from the operation of which, the claim arises, and such details of the claim as the Department may require shall be furnished in writing to the Department within such period as the Department may determine, and

(b) shall, in default of agreement, be heard and determined by the Lands Tribunal.".

(ii) in paragraph (5), the words, "and may allow a sum in respect of the cost of the employment of any" shall be omitted; and

(g) in Article 38, after paragraph (2) add—

"(3) Every claim duly made for compensation under this Article shall, in default of agreement, be heard and determined by the Lands Tribunal.".

## SCHEDULE 6

Article 57(3).

### PROCEDURE FOR MAKING ORDERS UNDER ARTICLE 57(1)

**1.** Where the Departments propose to adopt a water management programme by order under Article 57(1), they shall publish, in the Belfast Gazette and, at least once in each of two successive weeks, in one or more newspapers circulating in the area to which the programme relates, a notice—

(a) stating that a water management programme has been prepared in draft;

(b) indicating the area to which the draft programme applies;

(c) specifying a place where a copy of the draft programme may be inspected free of charge at all reasonable times during the period of 28 days beginning with the date of the first publication in a newspaper; and

(d) stating that any person may, within that period, by notice in writing to either Department object to the making of an order adopting the draft programme.

**2.** Either Department shall, if so requested by any person, furnish him with a copy of the draft programme on payment of such reasonable charge as it may determine.

**3.** The Departments may alter the terms of the draft programme in such manner as they think fit, but where the Departments propose to alter significantly any such draft programme they shall cause to be published such additional notices as appear to them to be necessary.

**4.** If, before the end of the period of 28 days referred to in paragraph 1, notice in writing of an objection is received by either Department from any person appearing to it to be a person who may be affected by the draft programme or the draft programme as proposed to be altered under paragraph 3, the Departments, before making an order under Article 57(1) adopting the programme shall, unless the objections are met or withdrawn or the Departments are satisfied that they are solely of a frivolous or vexatious nature, cause an inquiry to be held by the Appeals Commission.

**5.** Sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1 apply in relation to an inquiry under paragraph 4 as they apply in relation to an inquiry under sub-paragraph (1) of that paragraph.

**6.** An objection shall not be made to the Appeals Commission in respect of any watercourse in relation to which the Lands Tribunal has, on a review of a determination by the Drainage Council for Northern Ireland, or of a refusal by that Council to make a determination, decided that the watercourse should or should not be a designated watercourse.

**7.** After the expiry of the period of 28 days referred to in paragraph 1 and, where an inquiry is held by the Appeals Commission, after considering the report of the Commission, the Departments may make the order under Article 57(1) adopting the programme in the terms of the draft or in those terms altered in such manner as they think fit.

**8.** If the Departments adopt a water management programme under Article 57(1), they shall make such arrangements as appear to them to be appropriate for the publication of the programme and of notices stating that it has been made.

**9.** In this Schedule “designated watercourse” and “watercourse” have the meanings assigned by Article 2(2) of the Drainage Order.

*Schedule 7—Amendments*

*Schedule 8—Repeals*

**Status:**
Point in time view as at 01/01/2007.

**Changes to legislation:**
There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999.