STATUTORY INSTRUMENTS

2006 No. 1946 (N.I. 15)

NORTHERN IRELAND

The Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006

Made - - - -	*19th July 2006*
Coming into operation	*1st August 2006*

At the Court at Buckingham Palace, the 19th day of July 2006
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Introductory

Title and commencement

1.—(1) This Order may be cited as the Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006.

(2) This Order comes into operation on 1st August 2006.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order "the Department" means the Department for Regional Development.

Information sharing

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3.—(1) This Article applies to any information which is held—

(a) by the Department of Finance and Personnel for the purposes of—

(i) its functions under the Rates (Northern Ireland) Order 1977 (NI 28) or the Rates (Capital Values, etc.) (Northern Ireland) Order 2006 (NI 4); or

(ii) the administration of housing benefit;

(b) by the Northern Ireland Housing Executive for the purposes of—

(i) its functions under the Housing (Northern Ireland) Orders 1981 to 2003; or

(ii) the administration of housing benefit.

(2) Information to which this Article applies must, if an authorised officer so requires, be supplied to—

(a) the Department; or

(b) any person or body providing services to the Department,

for the purpose of enabling or assisting the recipient to make arrangements in connection with the development, introduction and implementation of a charges scheme.

(3) Any requirement under paragraph (2) must specify—

(a) the description of information which is to be supplied;

(b) in the case of information to be supplied to a person other than the authorised officer, the name and address of that person;

(c) the form in which the information is to be supplied; and

(d) the date by which the information is to be supplied.

(4) Such a requirement must not specify under paragraph (3)(d) a date later than 31st March 2007.

(5) This Article—

(a) does not limit the circumstances in which information may be supplied apart from this Article; but

(b) has effect despite any restriction on the purposes for which information may be disclosed or used.

(6) In paragraph (2) "a charges scheme" means a scheme for charging for services provided by a person who supplies water through pipes to, or provides sewerage services in respect of, any premises; and the arrangements referred to in that paragraph include in particular—

(a) arrangements for identifying those owning or occupying premises;

(b) arrangements for identifying those who may be eligible for any special assistance under the scheme and for providing that assistance; and

(c) arrangements for billing and recovery of the charges which may be imposed in accordance with the scheme.

(7) In this Article—

"authorised officer" means an officer of the Department authorised for the purposes of this Order by the Department;

"housing benefit" means housing benefit provided by virtue of a scheme under section 122 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

Unauthorised disclosure of information relating to particular persons

4.—(1) A person to whom this Article applies commits an offence if he discloses without lawful authority any information—

(a) which he acquired in the course of his employment;

(b) which is, or is derived from, information supplied under Article 3; and

(c) which relates to a particular person.

(2) This Article applies to any person who is employed—

(a) in the Department; or

(b) in the provision of services to the Department for the purposes of any arrangements mentioned in Article 3(2);

and "employment" in relation to any such person shall be construed accordingly.

(3) It is not an offence under this Article to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this Article to show that at the time of the alleged offence—

(a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or

(b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

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

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

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this Article a disclosure of information is to be regarded as made with lawful authority if, and only if, it is made—

(a) in accordance with his official duty by a civil servant;

(b) by any other person, in accordance with an authorisation given by the Department;

(c) in accordance with any statutory provision or order of a court;

(d) for the purposes of any criminal proceedings; or

(e) with the consent of the person to whom the information relates.

Abstraction and impounding of water

Abstraction and impounding of water

5.—(1) The Water (Northern Ireland) Order 1999 (NI 6) is amended as follows.

(2) For Article 20 substitute—

"**Abstraction and impounding of water**

20.—(1) Subject to paragraph (2), the Department may by regulations make such provision as appears to it to be expedient for the purpose of—

(a) controlling, restricting or prohibiting the abstraction of water from underground strata or waterways;

(b) controlling, restricting or prohibiting the construction, alteration or operation of any impounding works.

(2) Regulations under paragraph (1) shall not apply to a person who—

(a) holds a licence under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (licences to supply electricity, etc.); and

(b) is acting in accordance with an authorisation obtained from the Department under paragraph 2 of Schedule 5 to that Order (abstraction, diversion and use of water for hydro-electric generating stations).

(3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

(a) prohibiting the abstraction of water except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;

(b) prohibiting the construction, alteration or operation of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;

(c) for the issue, variation, transfer, review, surrender, suspension or revocation by the Department of any such licence as is mentioned in sub-paragraph (a) or (b);

(d) as to the manner in which applications for the issue, variation, transfer, surrender or revocation of any such licence as is mentioned in sub-paragraph (a) or (b) are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications;

(e) for authorising or requiring the carrying out of works by a person carrying on an activity mentioned in paragraph (1)(a) or (b), including provision—

(i) for access to, and the carrying out of such works on, land owned or occupied by another person;

(ii) for, or in connection with, the payment of compensation to that other person;

(f) for, and in connection with, the holding of public local inquiries in prescribed circumstances;

(g) for the payment, in such circumstances as may be prescribed, of compensation where any such licence as is mentioned in sub-paragraph (a) or (b) is varied, suspended, or revoked;

(h) for appeals to the Appeals Commission against prescribed decisions of the Department taken under or for the purposes of the regulations (including provision applying with or without modification any statutory provision relating to appeals to that Commission);

(i) for ensuring the taking of steps by way of preventative or remedial action where there is a contravention of any of the regulations, including provision—

(i) enabling the Department to require prescribed persons to take such steps;

(ii) for the enforcement by the Department of any such requirement;

(iii) for the taking of those steps by the Department in prescribed circumstances;

(iv) in relation to the bearing or recovery of the cost of taking any such steps;

(j) creating offences punishable —

(i) on summary conviction, with a fine not exceeding £20,000 and, in the case of a continuing offence, with a fine not exceeding £200 for each day during which the offence is continued after conviction;

(ii) on indictment, with a fine or with imprisonment for a term not exceeding 5 years, or both; and

(k) conferring on courts power, on conviction of a person of such an offence, to order the taking by that person of steps by way of remedial action.

(4) Where regulations made under this Article include provisions prohibiting the construction, alteration or operation of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence, the Department shall consult the Department of Agriculture and Rural Development before issuing such a licence.

(5) References in this Article to a waterway shall not include references to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

(6) Any reference in this Article to the doing of anything in pursuance of such a licence as is mentioned in paragraph (3)(a) or (b) is a reference to its being done—

(a) by the holder of such a licence; or

(b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by regulations made under this Article.

(7) In this Article and in Article 21, "impounding works" means—

(a) any dam, weir or other works in any waterway by which water may be impounded; and

(b) any works for diverting the flow of any waterway in connection with the construction or alteration of any such dam, weir or other works.".

(3) In Article 21 (1)—

(a) for "or alteration" substitute ", alteration or operation";

(b) in sub-paragraph (a) for "or transfer" substitute ", surrender or transfer".

(4) In Article 27(4) after "discharge consent" insert "or a licence mentioned in Article 20(3)(a) or (b)".

(5) In Article 27(6)(a)—

(a) after "discharge consent" insert "or a licence mentioned in Article 20(3) (a) or (b)";

(b) after "consent" insert "or licence".

(6) In Article 28 after paragraph (1) insert—

"(1A) The Department may give directions requiring any person who is operating any impounding works to give such information to the Department as to the operation of those works, at such times and in such form, as may be specified in the directions.".

(7) In Article 28(2), (3) and (4) after "(1)" insert "or (1A)".

(8) In Article 29(b)—

(a) after "discharge consent" insert "or any licence mentioned in Article 20(3) (a) or (b)"; and

(b) for "variation of such a consent" substitute "variation, transfer or surrender of such a consent or licence".

(9) In Article 30 (1) after sub-paragraph (o) insert—

"(oa) such matters relating to the abstraction or impounding of water as may be prescribed;".

(10) In Article 32(2) after "to the Department" insert "under regulations under Article 20 or".

(11) After Article 38 insert—

"**Application to the Crown**

38A.—(1) Subject as follows, Article 20 binds the Crown.

(2) No contravention by the Crown of any provision made by or under Article 20 shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under Article 20 shall apply to persons in the public service of the Crown as it applies to other persons.

(4) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.".

A.K.Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the disclosure of certain information for the purpose of enabling or assisting the recipient to make arrangements in connection with the development, introduction and implementation of a charges scheme in connection with water and sewerage services.

The Order also amends the Water (Northern Ireland) Order 1999 in relation to the abstraction and impounding of water.