STATUTORY INSTRUMENTS

2006 No. 3336

The Water and Sewerage Services (Northern Ireland) Order 2006

PART XI

AMENDMENTS TO THE WATER ORDER

Pollution of water

280. For Article 7 of the Water Order substitute—

"**Pollution of water: offences**

7.—(1) Subject to the following provisions of this Part, a person commits an offence if, whether knowingly or otherwise—

(a) he discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata; or

(b) he discharges or deposits any matter so that it enters a waterway or water contained in any underground strata and tends either directly or in combination with similar acts (whether his own or those of another) to impede the proper flow of the water of the waterway or strata in a manner leading or likely to lead to pollution or a substantial aggravation of pollution due to other causes or of its consequences.

(2) Subject to the following provisions of this Part, a person commits an offence if, by any means whatsoever, he makes any discharge of any trade or sewage effluent—

(a) into a waterway or water contained in any underground strata; or

(b) from land, through a pipe, into the sea outside the seaward limits of any waterway.

(3) On a person's conviction of an offence under paragraph (1), the court by or before which he is convicted may on the application of the Department, of which not less than 10 days' notice has been given to the person charged, make an order directing him to take such measures as the court may consider necessary to remedy or nullify any contravention of paragraph (1).

(4) A person who fails to comply with an order under paragraph (3) shall be guilty of an offence.

(5) In paragraph (1) any reference to matter entering a waterway or water contained in any underground strata includes a reference to its entering the waterway or water by being carried into it.

(6) Subject to the following provisions of this Part, a person who contravenes the conditions of any consent under Article 7A(3)(a) shall be guilty of an offence.

(7) A person guilty of an offence under this Article shall be liable—

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

(b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

Exceptions

7A.—(1) A person shall not be guilty of an offence under Article 7(2) or (6) by reason of any discharge of trade or sewage effluent from a vessel.

(2) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of the discharge or deposit of any effluent or other matter if—

(a) the discharge or deposit is made in an emergency in order to avoid danger to life or health;

(b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the discharge or deposit and of its polluting effects; and

(c) particulars of the discharge or deposit are furnished to the Department as soon as reasonably practicable after it occurs.

(3) A person shall not be guilty of an offence under Article 7(1) or (2) or (6) in respect of the discharge or deposit of any effluent or other matter if the discharge or deposit is made under and in accordance with, or as a result of any act or omission under and in accordance with—

(a) a consent given by the Department under this Article;

(b) a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;

(c) a licence granted under Part II of the Food and Environment Protection Act 1985;

(d) an authorisation granted under the Industrial Pollution Control (Northern Ireland) Order 1997;

(e) a waste management licence granted under the Waste and Contaminated Land (Northern Ireland) Order 1997;

(f) a permit granted under regulations under Article 4 of the Environment (Northern Ireland) Order 2002;

(g) Article 226 of the Water and Sewerage Services (Northern Ireland) Order 2006;

(h) any statutory order which expressly confers power to discharge effluent into water;

(i) any prescribed statutory provision.

(4) Schedule 1 shall have effect, subject to Article 13, with respect to the making of applications for consents under paragraph (3)(a) ("discharge consents") and with respect to the giving, revocation, transfer and modification of such consents.

(5) Nothing in any disposal licence shall be treated for the purposes of paragraph (3) as authorising—

(a) any discharge as is mentioned in Article 7(2); or

(b) any act or omission so far as it results in any such discharge.

(6) In paragraph (3)(h) "statutory order" means—

(a) an order under Article 138(1)(c) or 228 of the Water and Sewerage Services (Northern Ireland) Order 2006;

(b) an order under Article 23(2);

(c) any other order or scheme made under a statutory provision.

(7) A person shall not be guilty of an offence under Article 7(1), (2) or (6) if he discharges any effluent or other matter into a drain mentioned in paragraph (8) so that it enters a waterway or water contained in underground strata, if the Department for Regional Development has given its consent to the discharge (either unconditionally or subject to conditions which were observed).

(8) The drains referred to in paragraph (7) are —

(a) a road drain within the meaning of Article 45 of the Roads (Northern Ireland) Order 1993; or

(b) a drain constructed and laid by the Department for Regional Development under Article 45(1)(b) of that Order.

Discharges into and from public sewers, etc.

7B.—(1) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of a discharge made into a sewer or waste water treatment works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(2) A sewerage undertaker shall not be guilty of an offence under Article 7(1), (2) or (6) by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

(a) the contravention is attributable to a discharge which another person made into the sewer or works;

(b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and

(c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(3) Paragraph (4) applies for the purpose of determining liability where—

(a) sewage effluent is discharged as mentioned in Article 7(1) or(2) from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”); and

(b) the effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or waste water treatment works vested in the discharging undertaker by another sewerage undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.

(4) The sending undertaker shall be deemed to have made the discharge if—

(a) matter included in the discharge was received by it into a sewer or works vested in it; and

(b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or waste water treatment works.

(5) The Department for Regional Development may by regulations make further provision for the purpose of determining liability under Article 7(1), (2) or (6) as between two or more persons in respect of any discharge into or from any public sewer or any waste water treatment works.

(6) In this Article "main connection" has the same meaning as in Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.".

Commencement Information

I1 Art. 280 wholly in operation at 25.5.2007; art. 280 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); art. 280 in operation for certain purposes at 1.4.2007 by S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2); art. 280 in operation for certain purposes at 4.5.2007 by S.R. 2007/282, **art. 2(1)**; art. 280 in operation at 25.5.2007 insofar as not already in operation by S.R. 2007/282, **art. 2(2)**, Sch.

Relationship of Part II of Water Order with other statutory provisions

281.—(1) For Article 10 of the Water Order (relationship with other statutory provisions) substitute—

"Relationship of this Part with other statutory provisions controlling pollution

10. The discharge or deposit of any effluent or matter made under and in accordance with, or as a result of any act or omission under and in accordance with, a discharge consent shall not constitute an offence under or a contravention of—

(a) section 41 of the Foyle Fisheries Act (Northern Ireland) 1952 or any regulations under section 13 of that Act;

(b) section 47 of the Fisheries Act (Northern Ireland) 1966 or any byelaws under section 26 of that Act;

(c) regulations under Article 4 of the Environment (Northern Ireland) Order 2002;

(d) Article 23 of the Industrial Pollution Control (Northern Ireland) Order 1997; or

(e) any regulations under Article 14 or 36.".

Commencement Information

I2 Art. 281 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Charges for transfer of discharge consent

282. In Article 11 of the Water Order (scheme of charges) in paragraph (1)(a) after "variation" insert " or transfer ".

Commencement Information

I3 Art. 282 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Anti-pollution works

283.—(1) In Article 16 of the Water Order (anti-pollution works) in paragraph (1)(b)(iii) for "in them" substitute " dependent on the aquatic environment of the waters ".

(2) In Article 17 of that Order (notices to carry out anti-pollution works) in paragraph (2)(b)(iii) for "in them" substitute " dependent on the aquatic environment of the waters ".

Commencement Information

I4 Art. 283 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Provision of information

284. In the Water Order after Article 28 insert—

"**Provision of information**

28A.—(1) It shall be the duty of the Department—

(a) to provide a water undertaker with all such information to which this Article applies as is in the possession of the Department and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and

(b) to provide reasonable facilities to all persons—

(i) for the inspection of the contents of any records kept by the Department and containing information to which this Article applies; and

(ii) for the taking of copies of, or of extracts from, any such records.

(2) It shall be the duty of every water undertaker to provide the Department with all such information to which this Article applies as is in the possession of the undertaker and is reasonably requested by the Department for purposes connected with the carrying out of any of its functions.

(3) Where records of the flow, level or volume of water in any waterway are kept by a person other than a water undertaker, the Department shall have the right at all reasonable times—

(a) to inspect the contents of any of those records; and

(b) to take copies of, or of extracts from, the contents of any of those records,

and any person who, without reasonable excuse, refuses or fails to permit the Department to exercise its right under this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(4) Information provided to a water undertaker or to the Department under paragraph (1) or (2) shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the Department may reasonably require; and the duties of the Department under paragraph (1) shall extend to information provided to or obtained by the Department under paragraph (2) or (3).

(5) Information or facilities provided under paragraph (1) or (2) to—

(a) the Department,

(b) the Department of Agriculture and Rural Development;

(c) the Department of Culture, Arts and Leisure;

(d) a water undertaker; or

(e) Waterways Ireland,

shall be provided free of charge; and facilities provided under paragraph (1) to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the Department may determine.

(6) The duties of a water undertaker under paragraph (2) shall be enforceable under Article 30 of the Water and Sewerage Services (Northern Ireland) Order 2006 by the Northern Ireland Authority for Utility Regulation.

(7) This Article applies to information about—

(a) the flow, level or volume of any water in any waterway or contained in underground strata;

(b) rainfall or any fall of snow, hail or sleet; or

(c) the evaporation of any water.”.

Commencement Information

I5 Art. 284 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Restriction on disclosure of information

285. After Article 29 of the Water Order insert—

“**Restriction on disclosure of information**

29A.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

(a) has been obtained by virtue of any of the provisions of this Order; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the performance by the Department, the Department for Regional Development, the Northern Ireland Authority for Utility Regulation, the General Consumer Council, the Competition Commission or the Appeals Commission of any functions under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;

(b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;

(c) for the purposes of a register maintained under Article 30.”.

Commencement Information

I6 Art. 285 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Civil liability

286. After Article 36 of the Water Order insert—

"**Civil Liability**

36A. Except in so far as this Part expressly otherwise provides and subject to the provisions of section 20(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (which relates to offences under two or more laws), nothing in this Part—

(a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;

(b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or

(c) affects any restriction imposed by or under any other statutory provision.".

Commencement Information

I7 Art. 286 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Liability to prosecution for certain offences

287. Renumber Article 37 of the Water Order (prosecutions) as paragraph (1) of that Article and after that paragraph insert—

"(2) Without prejudice to section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33), where the commission by any person of an offence under any provision of this Part (except Article 26(6), 28(3) or 29) is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.".

Commencement Information

I8 Art. 287 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Application of Part II of the Water Order to the Crown

288.—(1) For Article 38A of the Water Order insert—

"**Application of this Part to the Crown**

38A.—(1) Subject to the provisions of this Article, this Part binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Part 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 this Part shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown land and any powers of entry exercisable in relation to it specified in the certificate, that it is requisite

or expedient that, in the interests of national security, the powers should not be exercisable in relation to that land, those powers shall not be exercised in relation to that land.

(5) Subject to paragraph (4), the powers conferred by Article 24 shall be exercisable in relation to Crown land only with the consent of the appropriate authority.

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

(7) In this Article—

"the appropriate authority" in relation to any land, means—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

(b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;

(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

"Crown estate" means an estate—

(a) belonging to Her Majesty in right of the Crown; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

"Crown land" means land in which there is a Crown estate.".

Commencement Information

I9 Art. 288 wholly in operation at 1.4.2007; art. 288 not in operation at date of making see art. 1(2); art. 288(1) in operation for certain purposes at 22.3.2007 by S.R. 2007/194, **art. 2(1)**, Sch. 1 Pt. I (subject to art. 3, Sch. 2); art. 288 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Matters to be taken into account in exercising certain functions under Part III of Water Order

289. In Article 40(1) of the Water Order (matters to be taken into account in exercising functions under Part III of that Order) after sub-paragraph (e) insert—

"(ea) the duties imposed under Parts III to VI of the Water and Sewerage Services (Northern Ireland) Order 2006 on any relevant undertaker (within the meaning of that Order) which is likely to be affected by the exercise of the function in question;".

Commencement Information

I10 Art. 289 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Discharge consents

290.—(1) Schedule 1 to the Water Order (discharge consents) is amended as follows.

(2) After paragraph 1 insert—

"**Consultation in connection with applications**

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.".

(3) In paragraph 2(1)(b) at the end add " or paragraph 1A ".

(4) In paragraph 4(1)(a) for "Article 9" substitute " Article 7(2) ".

(5) In paragraph 8 omit—

(a) in sub-paragraphs (2) and (3), the words ", subject to sub-paragraph (4),"; and

(b) sub-paragraph (4).

(6) In paragraph 8 for sub-paragraph (6) substitute—

"(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) In paragraph 8(9), omit the words “(6) or”.

Commencement Information

I11 Art. 290 wholly in operation at 25.5.2007; art. 290 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); art. 290 in operation for certain purposes at 1.4.2007 by S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2); art. 290 in operation at 25.5.2007 insofar as not already in operation by S.R. 2007/282, **art. 2(2)**, Sch.

Minor amendments

291.—(1) The Water Order is amended as follows.

(2) In Article 2(2) for the definitions of “public sewage treatment works” and “public sewer” substitute—

““public sewer” has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;”.

(3) In Article 2(2) for the definitions of “sewage”, “sewage treatment works” “sewage effluent” and “sewerage undertaker” substitute—

““sewage effluent” includes any effluent from any waste water treatment works, but does not include surface water (within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006);”.

(4) In Article 2(2) after the definition of “vessel” insert—

““waste water treatment works” has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;”.

(5) In Article 2(2) in the definition of “waterway” for paragraph (c) substitute—

“(c) any main or service pipe within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006 which is vested in or under the control of a sewerage undertaker;”.

(6) In Article 3(1) in the definition of “discharge consent” for “for the purposes of Article 9” substitute “ under Article 7A(3)(a) ”.

(7) Omit Article 9.

(8) In Article 14(2)(c) for “Article 9(4)” substitute “ Article 7(7) ”.

(9) In Article 15(2)(a) and (b) for "its consent for the purposes of Article 9 to" substitute " a discharge consent in relation to ".

(10) In Article 15 at the end add—

"(7) Article 7A(2) applies in relation to an offence under paragraph (6) as it applies in relation to an offence under Article 7(1), (2) or (6).".

(11) In Article 30(1)(i) for "Article 9" substitute " Article 7(2) ".

Commencement Information

I12 Art. 291 wholly in operation at 25.5.2007; art. 291 not in operation at date of making see art. 1(2); art. 291 in operation for certain purposes at 1.4.2007 by S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2); art. 291 in operation at 25.5.2007 insofar as not already in operation by S.R. 2007/282, **art. 2(2)**, Sch.

Changes to legislation:
The Water and Sewerage Services (Northern Ireland) Order 2006, PART XI is up to date with all changes known to be in force on or before 15 September 2024. 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.
View outstanding changes

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. 23(6) inserted by 2024 c. 13 Sch. 30 para. 41(4)
- art. 27(11) inserted by 2024 c. 13 Sch. 30 para. 42(4)
- art. 29(11) inserted by 2024 c. 13 Sch. 29 para. 4
- art. 265(5)(u) inserted by 2024 c. 13 Sch. 30 para. 43(b)
- art. 293(10A) inserted by 2015 c. 8 (N.I.) Sch. 3 para. 2(b)