



## 2015 CHAPTER 8

PROSPECTIVE

### **PART 8**

#### MISCELLANEOUS

##### **Power of Water Appeals Commission to award costs in an appeal**

**109.**—(1) The Water Appeals Commission may make an order as to the costs of the parties to an appeal mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The appeals are—

- (a) an appeal under section 21 (reservoir designation),
- (b) an appeal by virtue of regulations under section 27(1) (decision of Department as to whether high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained: frequency of visits by supervising engineer),
- (c) an appeal by virtue of regulations under section 57(1) (cost recovery in relation to flood plan),
- (d) an appeal under section 76 (cost recovery under section 69, 71, 73 or 75),
- (e) an appeal by virtue of regulations under section 77(1) (in relation to stop notice),
- (f) an appeal by virtue of regulations under section 81(1) (in relation to enforcement undertaking),

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(g) an appeal by virtue of regulations under section 83(1) (imposition of fixed monetary penalty),

(h) an appeal by virtue of regulations under section 86(1) (in relation to variable monetary penalty).

(3) An order made under this section has effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (3), the Master (Taxing Office) has the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the Commission are, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975, to be regarded as proceedings to which section 1(1) of that Act applies.

#### **Orders as to costs: supplementary**

**110.**—(1) Subsection (2) applies where all of the following apply—

(a) for the purpose of an appeal referred to in section 109(2)—

(i) the Water Appeals Commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether the person wishes, to appear before and be heard by it,

(ii) arrangements are made for a hearing to be held,

(b) the hearing does not take place,

(c) if it had taken place, the Commission would have had power to make an order under section section 109(1) requiring any party to pay any costs of any other party.

(2) The power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.

#### **Fees in relation to appeals**

**111** The Office of the First Minister and deputy First Minister may by regulations specify the fees to be paid to the Water Appeals Commission in connection with appeals referred to in section 109(2).

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

**C1** [S. 111](#): transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 1 Pt. 5** (with art. 9(2))

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### **Time limit for certain summary offences under Act**

**112.**—(1) The Department may by regulations provide that, notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court has jurisdiction to hear and determine a complaint charging the commission of a specified offence if the complaint is made before the end of the specified period.

(2) In subsection (1)—

- (a) “specified offence” means an offence under this Act specified in the regulations,
- (b) “the specified period”, in relation to a specified offence, means such period after the time when the offence was committed or ceased to continue as is specified in the regulations in relation to the offence or category of offences within which the specified offence falls; and different periods may be specified as respects different offences or categories of offence.

### **National security: further provision**

**113.**—(1) Without prejudice to section 9(4), if it appears to the Secretary of State that any other disclosure of any information relating to a controlled reservoir would adversely affect national security, the Secretary of State may issue a notice (“a non-disclosure notice”) to the Department in relation to the information.

(2) Where a non-disclosure notice has been issued under subsection (1), the Department must not publish or disclose any of the information or require any person to do so.

(3) Where a non-disclosure notice states that this subsection applies to any of the information specified in the notice (“the specified information”), the Department must not give to any other person any indication of the existence of the specified information.

(4) Subsections (2) and (3) do not apply to the extent that they would prevent the Department from complying with any other obligation to which it is subject in pursuance of—

- (a) the Environmental Information Regulations 2004,
- (b) the Freedom of Information Act 2000,
- (c) a constable acting in the course of the constable's duties,
- (d) an order of a court of competent jurisdiction.

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## **Grants**

**114.—**(1) The Department may by regulations make provision as to the payment of grants to reservoir managers of controlled reservoirs for the purpose of enabling or assisting the managers to comply with their obligations arising by virtue of this Act.

(2) Regulations made under subsection (1) must require such grants to be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made).

## **Assessment of engineers' reports etc.**

**115.—**(1) The Department may by regulations make provision for the assessment of the quality and content of reports, written statements and certificates given under this Act by—

- (a) supervising engineers,
- (b) inspecting engineers,
- (c) other qualified engineers,
- (d) construction engineers.

(2) The regulations may—

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
- (b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

- (a) the criteria for assessment,
- (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
- (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
- (d) timing,
- (e) reporting by the committee to the Department,
- (f) the steps that may be taken by the Department following an assessment.

## **Publication of information as regards ranges of costs of engineers' services**

**116.—**(1) The Department may publish information as regards ranges of costs of the provision of relevant services by engineers who are members of panels of reservoir engineers established under section 102.

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(2) For the purposes of this section, “relevant services” are services that are provided by such engineers in pursuance of this Act or are available for such provision.

#### **Notice to the Department of revocation of commissioning, or resignation, of engineer**

**117.**—(1) Where the reservoir manager of a controlled reservoir revokes the commissioning of a supervising engineer, an inspecting engineer, other qualified engineer or a construction engineer commissioned in relation to the reservoir, the manager must, not later than 28 days after doing so, give the Department notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns—

- (a) the engineer must, not later than 28 days after the resignation, give the reservoir manager notice of it and the date on which it took, or is to take, effect,
- (b) the reservoir manager who receives notice under paragraph (a) must, not later than 28 days after the receipt, give the Department a copy of the notice.

(3) Failure by a reservoir manager to comply with the requirements of subsection (1) or (2)(b) is an offence.

(4) A reservoir manager guilty of an offence under subsection (3)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, designated as a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) It is a defence to a charge in proceedings for an offence under subsection (3) that the reservoir manager did not receive notice of the resignation.

#### **Form and content of notices, reports, certificates etc.**

**118** The Department may by regulations make provision as to—

- (a) the form and content of any notice required under this Act,
- (b) the form of any written statement by a supervising engineer, or any report or certificate by an inspecting engineer or other qualified engineer or a construction engineer, under this Act.

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### **Electronic serving or giving of notices or other documents**

**119.**—(1) Where subsection (2) applies, except as provided in subsection (4), any notice or other document required or authorised to be served on or sent or given to any person under this Act may be served, sent or given by sending it using electronic communications, in accordance with the condition in subsection (3), to the person at the person's electronic address.

(2) This subsection applies where the person has given an address for service using electronic communications (“the person's electronic address”) and has agreed to the sending of such notices or other documents to the person at that address.

(3) The condition referred to in subsection (1) is that the notice or other document is—

- (a) capable of being accessed by the recipient,
- (b) legible in all material respects,
- (c) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if served, sent or given by means of a notice or document in printed form.

(4) Subsection (1) does not apply to notice under section 95(2)(a) (notice of intention to enter land that is occupied).

(5) Any notice or other document duly served, sent or given by virtue of this section using electronic communications is, unless the contrary is proved, to be taken to have been delivered at 9am on the working day immediately following the day on which it was transmitted.

(6) Where a person is no longer willing to accept the use of electronic communications for any purpose of this Act which is capable of being carried out electronically and gives notice withdrawing the person's electronic address to the Department, a supervising engineer, inspecting engineer, other qualified engineer or construction engineer, the Institution of Civil Engineers or a referee commissioned under section 63, such withdrawal is final and takes effect on a date specified by the person in the notice (but not less than 7 days after the date on which the notice is given).

(7) This section is without prejudice to section 24(2) of the Interpretation Act (Northern Ireland) 1954 (service of documents); and in the application of that section to serving, sending or giving any notice or other document by virtue of this section using electronic communications, in paragraph (e) the references to “premises” are to be construed as references to land or premises on the land.

(8) In this section—

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- (a) “electronic communication” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001,
- (b) reference to the “supervising engineer” is to be construed as including the nominated representative of the supervising engineer under section 26(7)
  - (a) who is acting as such in the event of the supervising engineer being unavailable,
- (c) “working day” means a day which is not a Saturday, Sunday or a public holiday.

### **Change to the Institution of Civil Engineers**

**120** If the Institution of Civil Engineers ceases to exist, the Department may by order amend references in this Act to the Institution and to its President.

### **Civil liability**

**121** This Act does not confer a right to claim damages in respect of a breach of an obligation imposed by the Act.

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