

*Status: Point in time view as at 25/07/2015. This version of this part contains provisions that are prospective.*

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## 2015 CHAPTER 8

### PART 9

#### GENERAL

PROSPECTIVE

#### **Application to the Crown**

**122.**—(1) This Act binds the Crown and applies to any Crown land to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) Notwithstanding subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(3) In this section and sections 123 and 124, reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(4) In this section and section 123—

- (a) “Crown land” means land in which there is a Crown estate,
- (b) “Crown estate” means either—
  - (i) an estate belonging to Her Majesty in right of the Crown,
  - (ii) an estate belonging to a government department or held in trust for Her Majesty for the purposes of a government department,
- (c) “government department” means a department of the Government of the United Kingdom or a Northern Ireland Department.

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PROSPECTIVE

### **Enforcement in relation to the Crown**

**123.**—(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) 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) The powers conferred by section 93 (whether those specified in that section or the ancillary powers referred to in section 95(1)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(4) In this section and section 124, “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 the 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, the government department.

(5) If any question arises as to what authority is the appropriate authority in relation to any land, the question must be referred to the Department of Finance and Personnel or (as appropriate) the Treasury, whose decision is final.

PROSPECTIVE

### **Service or giving of notices or other documents: the Crown**

**124.**—(1) Any—

- (a) notice required under this Act to be served on or given to the Crown,
- (b) other document required by this Act to be given to the Crown,

is to be served on, or given to, the appropriate authority.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 does not apply for the purposes of the service of such a notice.

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## PROSPECTIVE

### Offences by bodies corporate and partnerships

**125.**—(1) For the purposes of an offence under this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954—

- (a) applies with the omission of the words “the liability of whose members is limited”,
- (b) in a case where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(2) If an offence under this Act is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of any of the following—

- (a) a partner,
- (b) a person purporting to act as a partner,

that person (as well as the partnership) commits the offence.

### Supplementary, incidental, consequential etc. provision

**126.**—(1) The Department may by order make—

- (a) such supplementary, incidental or consequential provision,
- (b) such transitional, transitory or saving provision,

as it considers appropriate for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision made by or under it.

(2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(3) In subsection (2), “modify” includes the making of additions, omissions and exceptions.

### Orders and regulations

**127.**—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 130(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

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(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

- (i) section 2(3) (structure or area to be treated as controlled reservoir),
- (ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),
- (iii) section 23(1) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),
- (iv) section 27(1) (regulations as to visits by supervising engineer to high-consequence or medium-consequence reservoir),
- (v) section 56(1) (incident reporting),
- (vi) section 57(1) (flood plans),
- (vii) section 77(1) (stop notices),
- (viii) section 81(1) (enforcement undertakings),
- (ix) section 83(1) (fixed monetary penalties),
- (x) section 86(1) (variable monetary penalties),
- (xi) section 112(1) (extension of time limit for specified summary offences),
- (xii) section 114(1) (grants),

(b) an order under—

- (i) section 4(1) (substituting different volume of water in certain sections),
- (ii) section 120 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 126(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of Northern Ireland legislation or an Act of Parliament.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

## Definitions

**128.—**(1) In this Act—

“the Department” means the Department of Agriculture and Rural Development,

“notice” means notice in writing,

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“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954,

“the Water Appeals Commission” means the Water Appeals Commission for Northern Ireland,

“the 1975 Act” means the Reservoirs Act 1975.

(2) The expressions listed in Schedule 2 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the Schedule.

PROSPECTIVE

### **Minor and consequential amendments and repeals**

**129.**—(1) The statutory provisions set out in Schedule 3 have effect subject to the minor and consequential amendments specified in the Schedule.

(2) The provisions set out in the first column of Schedule 4 are repealed to the extent specified in the second column of that Schedule.

### **Commencement**

**130.**—(1) The following provisions of this Act come into operation on the day after Royal Assent—

- (a) sections 1, 2, 5, 6, 42, 93 to 97, 126 to 128 and Schedule 2,
- (b) this section,
- (c) section 132.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 25(1), (2), (4) and (5),
- (b) in section 26—
  - (i) subsections (1) to (9),
  - (ii) subsection (10), for the purposes of sections 27 to 31 and 37,
- (c) sections 27, 28 and 29,
- (d) in section 30—
  - (i) subsections (2) to (4),
  - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 34 to supervise the taking of a measure referred to in section 34(1)(b),

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- (e) sections 31(2) to (5),
- (f) in section 34—
  - (i) in subsection (1), paragraph (b),
  - (ii) subsection (3),
- (g) in section 35—
  - (i) subsections (2) and (3),
  - (ii) in subsection (4), paragraphs (c), (d) and (i),
  - (iii) in subsection (5), paragraph (b),
  - (iv) in subsection (6), paragraph (b),
- (h) sections 36 and 37,
- (i) in section 38(1)—
  - (i) paragraphs (a), (b), (c) and (d),
  - (ii) paragraph (e) (in relation to the requirements of section 34(1)(b)),
  - (iii) paragraph (f),
- (j) in section 38(2), paragraphs (a), (b), (d) and (e),
- (k) section 38(3), in relation to the following offences—
  - (i) an offence under section 38(1)(a), (b), (c) or (d),
  - (ii) an offence under section 38(1)(e) that is attributable to a failure to comply with the requirements of section 34(1)(b),
  - (iii) an offence under section 38(1)(f),
  - (iv) an offence under section 38(2)(a), (b), (d) or (e),
- (l) section 39,
- (m) section 40,
- (n) in section 67(1), paragraph (a),
- (o) sections 68 and 69, in so far as they concern the commissioning of a supervising engineer,
- (p) in section 70, paragraph (a),
- (q) sections 71 to 73,
- (r) section 74, in relation to an offence under section 39(1),
- (s) section 76, as regards costs in relation to the commissioning of a supervising engineer under section 69 and costs under section 71 or 73,
- (t) sections 81 to 89,
- (u) section 90, in relation to the consultation required by sections 81(2), 83(2) and 86(2),
- (v) section 91, in relation to regulations under sections 81(1) and 86(1),

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- (w) section 92,
- (x) section 98, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 26(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (y) section 100, in relation to failure to comply with the requirements of section 98 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 26(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (z) sections 109, 110 and 111, in relation to—
  - (i) an appeal by virtue of regulations under section 27(1),
  - (ii) an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69 and costs under section 71 or 73,
  - (iii) an appeal by virtue of regulations under section 81(1), 83(1) or 86(1),
- (za) section 114.

(4) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act including, in the case of an order in respect of any provision referred to in subsection (3), such transitional or transitory modifications of this Act as the Department considers necessary or expedient in connection with any other provisions of this Act not yet having come into operation.

PROSPECTIVE

#### **Duty to report on operation of this Act**

**131.—**(1) The Department must, not later than three years after this Act receives Royal Assent, publish a report on the operation of this Act.

(2) The Department must lay the report before the Assembly.

#### **Short title**

**132** This Act may be cited as the Reservoirs Act (Northern Ireland) 2015.

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