
STATUTORY INSTRUMENTS

1985 No. 756 (N.I. 7)

NORTHERN IRELAND

**The Water and Sewerage Services (Amendment)
(Northern Ireland) Order 1985**

Laid before Parliament in draft

Made

15th May 1985

Coming into operation on a day to be appointed under Article 1(2)

At the Court at Buckingham Palace, the 15th day of May 1985

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 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:—

1974 c. 28

Title and commencement

1.—(1) This Order may be cited as the Water and Sewerage Services (Amendment) (Northern Ireland) Order 1985.

(2) This Order shall come into operation on such day as the Head of the Department of the Environment may by order appoint.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1954 c. 33 (N.I.)

Civil liability of Department of the Environment for escapes of water

3. After Article 57 of the Water and Sewerage Services (Northern Ireland) Order 1973 there shall be inserted the following Article—

1973 NI 2

“Civil liability of Department for escapes of water

57A.—(1) Where an escape of water onto agricultural land or

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forestry land, however caused, from a main or from a service pipe (within the meaning of paragraph (7)) causes loss or damage, the Department shall be liable, except as otherwise provided by this Article, for the loss or damage.

(2) The Department shall not incur any liability under paragraph (1) if the escape was due wholly to the fault of the person who suffered the loss or damage or of any servant, agent or contractor of his.

(3) The Department shall not incur any liability under paragraph (1) in respect of any loss or damage suffered by—

(a) any person authorised by any statutory provision to carry on any railway or road transport undertaking or any undertaking for the supply of electricity or gas; or

(b) any person to whom the telecommunications code applies falling within section 10(1)(a) of the Telecommunications Act 1984 (persons authorised by licence to run a telecommunication system); or

(c) the Post Office;

if the Department would not be liable for that loss or damage apart from paragraph (1).

(4) The Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948, the Limitation Acts (Northern Ireland) 1958 to 1982 and the Fatal Accidents (Northern Ireland) Order 1977 shall apply in relation to any loss or damage for which the Department is liable under this Article, but which is not due to the fault of the Department, as if it were due to the fault of the Department.

(5) Nothing in paragraph (1) affects any entitlement which the Department may have to recover contribution under the Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which the Department is liable under that paragraph shall be treated as if it were damage.

(6) Where the Department is liable under any agreement or statutory provision made (in either case) before the commencement of the Water and Sewerage Services (Amendment) (Northern Ireland) Order 1985 to make a payment in respect of any loss or damage, the Department shall not incur any liability under paragraph (1) in respect of the same loss or damage.

(7) In this Article—

“agricultural land” means land used for agriculture for the purposes of a trade or business, and “agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

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“damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition);

“fault” has the same meaning as in the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948;

“forestry land” means land used for forestry for the purposes of a trade or business, and “forestry” means the growing of woods and forests for the production of timber and other forest products and the growing of trees for planting in such woods and forests;

“land” does not include any house or other building;

“service pipe” means so much of a service pipe as is vested in the Department.”.

G. I. de Deney,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Water and Sewerage Services (Northern Ireland) Order 1973 and extends the civil liability of the Department of the Environment for loss or damage caused by escapes of water from mains or service pipes vested in the Department. If the escape of water is onto agricultural land or forestry land, this Order makes the Department liable for the resulting loss or damage irrespective of the cause of the escape. However, the Department’s liability to the person who suffers the loss or damage may be reduced if it is partly the result of his own fault. The Department is not liable if the loss or damage is suffered by certain bodies such as the Post Office.

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