STATUTORY INSTRUMENTS

1999 No. 662 (N.I. 6)

The Water (Northern Ireland) Order 1999 [F1]

- - - - - - *10th March 1999*

F1 certain functions transf. by SR 1999/481

Modifications etc. (not altering text)

C1 Order modified by S.R. 2003/493, Sch. 3 Pt. I para. 11 (as substituted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127), **reg. 40** (with reg. 9(2)))

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Water (Northern Ireland) Order 1999.

(2) Subject to paragraphs (3) and (4), this Order shall come into operation on such day or days as the Department of the Environment may by order appoint[F2].

(3) The provisions of this Order set out in paragraph (4) shall come into operation on—

(a) the expiration of one month from the day on which this Order is made; or

(b) the day before the day appointed by an Order in Council under section 3 of the Northern Ireland Act 1998 for the commencement of Parts II and III of that Act,

whichever is the earlier.

(4) The provisions referred to in paragraph (3) are—

(a) this Part;

(b) Part III;

(c) Articles 59 to 62;

(d) Schedule 3 as it applies for the purposes of Article 48(3);

(e) Schedules 4 and 5;

(f) Part I of Schedule 8 and Article 63(2) so far as relating thereto.

(5) An order under paragraph (2) may contain such transitional provisions as appear to the Department of the Environment to be necessary or expedient.

F2 fully exercised by SR 2001/283

Interpretation

2.—(1) 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.

(2) In this Order—

"abstraction" means the doing of anything whereby water is removed from a waterway or underground stratum;

"the Appeals Commission" means the Water Appeals Commission for Northern Ireland;

"disposal", in relation to sewage, includes treatment;

"the Drainage Order" means the Drainage (Northern Ireland) Order 1973;

"effluent" means any liquid, either with or without particles of matter in suspension therein;

"engineering or building operations", without prejudice to the generality of that expression, includes—

(a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, waterway, dam, weir, well, borehole or other works; and

(b) the installation, modification or removal of any machinery or apparatus;

"information" includes anything contained in any records, accounts, estimates or returns;

"modifications" includes additions, alterations and omissions;

"notice" means notice in writing;

[[F3]"owner" in relation to land, means any person for the time being receiving or entitled to receive the rack rent of any land, whether on his own account or as agent or trustee for another or who, if the land were let at a rack rent, would so receive or be entitled to receive that rent**]**

"prescribed" means prescribed by regulations;

[[F4]"public sewer" has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;**]**

"records" includes computer records and any other records kept otherwise than in a document;

[[F5]"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);**]**

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"tidal waters" includes the sea and the waters of any enclosed dock which adjoins tidal waters;

"underground strata" means strata subjacent to the surface of any land, and any reference to water contained in any underground strata is a reference to water so contained otherwise than in a public sewer, pipe, reservoir, tank or underground works contained in any such strata;

"vessel" means every description of vessel (whether with or without means of propulsion of any kind), and includes anything constructed or used to carry persons, goods or plant or machinery by water, or constructed to be propelled or moved on or in water, a seaplane on or in the water and a hovercraft (within the meaning of the Hovercraft Act 1968);

[[F6]"waste water treatment works" has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;**]**

[F7] . . . . . .

"waterway" includes any river, stream, watercourse, inland water (whether natural or artificial) or tidal waters and any channel or passage of whatever kind (whether natural or artificial) through which water flows but does not include—

(a) the waters beyond 3 international nautical miles seaward from the baseline from which the breadth of the territorial sea adjacent to Northern Ireland is measured;

(b) any public sewer or public sewage treatment works;

(c) **[**[F8]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;**]**

(d) any drain or road drain—

(i) constructed and laid by the Department of the Environment under Article 45(1) of the Roads (Northern Ireland) Order 1993; or

(ii) acquired by the Department of the Environment under Article 45(6) of that Order.

(3) In this Order any reference to a waterway includes a reference to the channel or bed of a waterway which is for the time being dry.

(4) For the purposes of this Order water for the time being contained in—

(a) a well, borehole or similar work, including any adit or passage constructed in connection with it for facilitating the collection of water in the well, borehole or work; or

(b) any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those strata;

shall be treated as water contained in the underground strata into which the well, borehole or work was sunk, or the excavation was made, as the case may be.

F3 Art. 2(2): definition of "owner" substituted (1.4.2007) by Rates (Consequential Provisions) Order (Northern Ireland) 2007 (S.R. 2007/192), art. 2(1), **Sch. 1 para. 8**

F4 Art. 2(2): definition of "public sewer" substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) for definitions of "public sewage treatment works" and "public sewer" by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F5 Art. 2(2): definition of "sewage effluent" substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) for definitions of "sewage", "sewage treatment works", "sewage effluent" and "sewerage undertaker" by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F6 Art. 2(2): definition of "waste water treatment works" inserted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F7 Art. 2(2): definition of "the Water Council" repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F8 Art. 2(2): words in definition of "waterway" substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(5)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

PART II

FUNCTIONS OF THE DEPARTMENT OF THE ENVIRONMENT IN RELATION TO MATTERS AFFECTING WATER

Interpretation

Interpretation of Part II

3.—(1) In this Part—

"analyse", in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description;

"apparatus" includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any matter, flow, discharge, emission, deposit or abstraction;

"the Department" means the Department of the Environment;

"deposit" includes store;

"discharge consent" means a consent given **[**[F9]under Article 7A(3)(a)**]**;

"enforcement notice" has the meaning assigned by Article 12;

"Londonderry Area" has the same meaning as in the Foyle Fisheries Act (Northern Ireland) 1952;

"mobile plant" means plant which is designed to move or be moved whether on roads or otherwise;

[[F10]"Newry Area" has the same meaning as in the Foyle Fisheries Act (Northern Ireland) 1952;**]**

"premises" includes any land, vehicle, vessel or mobile plant;

"regulations", except in Article 36, means regulations made by the Department;

"representations" includes objections;

"trade" includes agriculture, horticulture, scientific research or experiment and the carrying on of a hospital or nursing home;

"trade effluent" means any effluent which is discharged from premises used for carrying on any trade or industry, other than storm water or domestic sewage;

"works notice" has the meaning assigned by Article 17.

(2) For the purposes of the definition of "trade effluent" in paragraph (1), any premises (whether on land or not) wholly or mainly used (whether for profit or not) for the purposes of fish farming shall be deemed to be premises used for carrying on a trade.

F9 Art. 3(1): words in definition of "discharge consent" substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(6)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F10 SI 1999/859

General duty of the Department

Duty of Department to promote conservation and cleanliness of water resources

4.—(1) The Department shall—

(a) promote the conservation of the water resources of Northern Ireland;

(b) promote the cleanliness of water in waterways and underground strata.

(2) The Department shall, in exercising its functions in relation to the conservation of water resources and the cleanliness of water, have regard to—

(a) the needs of industry and agriculture;

(b) the protection of fisheries;

(c) the protection of public health;

(d) the preservation of amenity and the conservation of flora and fauna; and

(e) the conservation of geological or physiographical features of special interest and any feature of archaeological, historical, architectural or traditional interest.

Quality objectives

Classification of quality of waters

5.—(1) The Department may, in relation to any description of waters (being a description applying to some or all waters), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.

(2) The criteria specified in regulations under this Article in relation to any classification shall consist of one or more of the following, that is to say—

(a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;

(b) specific requirements as to the matters which are to be present in or absent from the water and as to the concentrations of matters which are or are required to be present in the water;

(c) specific requirements as to other characteristics of those waters;

and for the purposes of any such classification regulations under this Article may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

Water quality objectives

6.—(1) For the purpose of maintaining and improving the quality of any waters the Department may establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed in regulations for the purposes of Article 5, by publishing in one or more newspapers circulating in the area to which the description of the waters relates, a notice specifying—

(a) one or more of the classifications for the time being prescribed under Article 5; and

(b) in relation to each specified classification, a date.

(2) The water quality objectives for any waters to which a notice under this Article relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.

(3) Where the Department has established water quality objectives under this Article for any waters the Department may review objectives for those waters if 5 years or more have elapsed since the publication of the last notice under paragraph (1) or (6) to be published in respect of those waters and the Department shall not establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

(4) Where the Department proposes to establish or vary the objectives for any waters the Department shall—

(a) give notice setting out the proposal and specifying the period (not being less than 3 months from the date of publication of the notice) within which representations with respect to the proposal may be made; and

(b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations, to establish or vary those objectives, the Department may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as the Department considers appropriate.

(5) A notice under paragraph (4) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by it.

(6) If, on a review under this Article or in consequence of any representations made following such a review for the purposes of paragraph (4), the Department decides that the water quality objectives for any waters should remain unchanged, the Department shall publish notice of that decision and serve a copy of that notice on any person who made such representations.

(7) Where a person who has made representations following a review for the purposes of paragraph (4) is not satisfied with the decision of the Department under paragraph (6), he may appeal to the Appeals Commission within 28 days from the date on which notice of the decision is served on him.

Prevention of pollution of water

[[F11]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.**]**

F11 Arts. 7-7B substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, 4.5.2007 for certain purposes, otherwise 25.5.2007) for art. 7 by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3)(e), **280** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2**, Sch.

[F12Exceptions

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.

F12 Arts. 7-7B substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, 4.5.2007 for certain purposes, otherwise 25.5.2007) for art. 7 by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3)(e), **280** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2**, Sch.

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.**]**

F12 Arts. 7-7B substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, 4.5.2007 for certain purposes, otherwise 25.5.2007) for art. 7 by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3)(e), **280** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2**, Sch.

Prevention and making good of defaults under Article 7(1)

8.—(1) Where it appears to the Department that a contravention of Article 7(1) (whether a new contravention or a repetition or continuation of one already occurred or occurring) is likely to occur—

(a) by reason of any use or proposed use of a waterway or of any land for the disposal of any matter;

(b) by reason of any use or proposed use of any land for the storage of any matter; or

(c) by reason of any use or proposed use of a vessel or vehicle from which poisonous, noxious or polluting matter may enter a waterway or water contained in any underground strata;

the Department may serve a notice on the owner of the land or the person so using or proposing so to use the waterway, land, vessel or vehicle—

(i) prohibiting the use complained of; or

(ii) permitting it only subject to conditions designed to remove the grounds of complaint; or

(iii) requiring it to be stopped within such period as may be specified in the notice.

(2) A notice under paragraph (1) may include provisions requiring the removal from the waterway, land, vessel or vehicle of any matter which, before the service of the notice, has been dealt with in the way complained of by the notice.

(3) A person on whom a notice under paragraph (1) is served may, within 28 days from the date of the service of the notice, appeal to the Appeals Commission.

(4) A notice under paragraph (1)—

(a) shall, if no appeal is brought under paragraph (3), take effect on the expiration of the period of 28 days mentioned in paragraph (3) and be final and conclusive as to any matters which could have been raised on such an appeal;

(b) shall, if an appeal is brought under paragraph (3), take effect—

(i) if and so far as the notice is confirmed on appeal, from the date on which the appeal is finally determined;

(ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal.

(5) It is an offence for any person to contravene any prohibition, condition or requirement imposed by a notice served on that person under paragraph (1) which has taken effect in accordance with paragraph (4).

(6) Where a notice served under paragraph (1) which has taken effect in accordance with paragraph (4) is not complied with, the Department may undertake the removal of any matter referred to in paragraph (2) and dispose of it in such manner as it considers appropriate.

(7) The Department shall, at the request of any person appearing to it to be interested in any land, and at his expense, furnish him or such other person as may be specified in the request with such particulars as may be so specified of any notices served under paragraph (1), being notices about any use or proposed use of that land or otherwise material to its use.

(8) Any expenses reasonably incurred by the Department in removing any matter under this Article, or in disposing of any matter so removed, shall be defrayed out of any money obtained by the Department from disposing of it and, in so far as they are not so defrayed, shall be recoverable by the Department from the person in default under the notice.

(9) 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 the statutory maximum.

Discharge of effluent into waterway or underground stratum

9. [F13] . . . . . .

F13 Art. 9 repealed (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 291(7), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

[[F14]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.**]**

F14 Art. 10 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **281** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C2 Art. 10 applied (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 20(1)** (with reg. 5)

Power to make scheme of charges

11.—(1) Where—

(a) an application is made to the Department for a discharge consent, or a variation **[**[F15]or transfer**]** of such a consent;

(b) the Department gives a discharge consent otherwise than in a case where an application for such a consent was made under paragraph 1 of Schedule 1; or

(c) a discharge consent is for the time being in force,

the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this Article.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this Article shall be—

(a) in the case of a charge by virtue of paragraph (1)(a), the person who makes the application;

(b) in the case of a charge by virtue of paragraph (1)(b), any person who is authorised to do anything by virtue of the consent and on whom the instrument giving the consent is served; and

(c) in the case of a charge by virtue of paragraph (1)(c), any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) Provision made by a scheme for the purposes of paragraph (1)(c) may impose a single charge in respect of the whole period for which the consent is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) A scheme under this Article may—

(a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme; and

(b) contain supplemental, consequential and transitional provision for the purposes of the scheme.

(5) The Department, in framing a scheme under this Article, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by the Department in exercising its functions under this Part in relation to discharge consents.

(6) Where the Department proposes to make a scheme under this Article the Department shall—

(a) give notice setting out its proposals and specifying the period within which representations with respect to the proposals may be made; and

(b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations to make a scheme under this Article, the Department may do so either in accordance with the proposals contained in the notice or in accordance with those proposals as modified in such manner as the Department considers appropriate.

(7) A notice under paragraph (6) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by it.

(8) The Department shall take such steps as it considers appropriate for bringing the provisions of any scheme made under this Article which is for the time being in operation to the attention of persons likely to be affected by them.

(9) If it appears to the Department that the holder of a discharge consent has failed to pay a charge payable by virtue of paragraph (1)(c), it may, by notice served on the holder, revoke the consent.

F15 Words in art. 11(1)(a) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **282** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C3 Art. 11 applied (with modifications) (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 20(2)** (with reg. 5)

Enforcement notices

12.—(1) If the Department is of the opinion that the holder of a discharge consent is contravening any condition of the consent, or is likely to contravene any such condition, the Department may serve on him a notice (an "enforcement notice").

(2) An enforcement notice shall—

(a) state the opinion of the Department;

(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;

(c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and

(d) specify the period within which those steps must be taken.

(3) Any person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence and 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.

(4) If the Department is of the opinion that proceedings for an offence under paragraph (3) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Department may take proceedings in the High Court for the purpose of securing compliance with the notice.

Appeals in respect of consents

13.—(1) Where the Department—

(a) on an application for a discharge consent, has refused a consent for any discharges;

(b) in giving a discharge consent, has given that consent either unconditionally or subject to conditions;

(c) has revoked a discharge consent;

(d) has modified the conditions of a discharge consent or provided that any such consent which was unconditional shall be subject to conditions;

(e) has, for the purposes of paragraph 6(1) or (2) of Schedule 1, specified a period in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent;

(f) has refused a person a variation of a discharge consent;

(g) in allowing a variation of a discharge consent, has made the consent subject to conditions; or

(h) has served an enforcement notice on any person,

the person, if any, who applied for the consent or variation in question, or any person whose discharges are or would be authorised by the consent, or the person on whom the enforcement notice was served, may appeal to the Appeals Commission against the decision within 28 days from—

(i) in the case of an enforcement notice, the day on which the enforcement notice was served;

(ii) in the case of a consent deemed to have been refused under paragraph 2(2) of Schedule 1, the first day on which the applicant may treat the consent applied for as having been refused;

(iii) in any other case, the day on which notice of the decision was given to that person.

(2) In paragraph (1)(iii) "notice of the decision", in relation to a discharge consent given without an application for such a consent having been made, includes an instrument in writing served in accordance with paragraph 4(1) of Schedule 1.

(3) Where the Department has given notice of any decision referred to in paragraph (1)(b), (d) or (g) to the Foyle**[**[F16], Carlingford and Irish Lights**]** Commission or the Fisheries Conservancy Board for Northern Ireland, that Commission or that Board may appeal to the Appeals Commission against the decision to which the notice relates within 28 days from the day on which notice of the decision was given to the Commission or the Board, as the case may be.

(4) Paragraphs (1) and (3) of this Article shall not apply to any decision referred to in paragraph (1)(a), (b), (f) or (g) where the Department has made a direction under paragraph 3(1) or (4) of Schedule 1.

(5) Subject to paragraph (6), where an appeal is brought by virtue of paragraph (1)(c) or (d) against a decision—

(a) to revoke a discharge consent,

(b) to modify the conditions of any such consent, or

(c) to provide that any such consent which was unconditional shall be subject to conditions,

the revocation, modification or provision shall not take effect pending the final determination or the withdrawal of the appeal.

(6) Paragraph (5) shall not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of the Department it is necessary for the purpose of preventing or, where that is not practicable, minimising—

(a) the entry into any waterway or underground stratum of any poisonous, noxious or polluting matter, or

(b) harm to human health,

that that paragraph should not apply.

(7) Where the decision under appeal is one falling within paragraph (6), if, on the application of the holder or former holder of the consent, the Appeals Commission determines that the Department acted unreasonably in excluding the application of paragraph (5), then—

(a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (5) shall apply to the decision from the end of that day; and

(b) the holder or former holder of the consent shall be entitled to recover compensation from the Department in respect of any loss suffered by him in consequence of the exclusion of the application of that paragraph;

and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by the Lands Tribunal.

(8) Where an appeal is brought under this Article against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

F16 SI 1999/859

Regulations as to prevention of pollution

14.—(1) The Department may by regulations make such provision as appears to it expedient—

(a) for prohibiting or restricting the washing or cleansing in waterways of things of any class or description, or the putting into waterways of litter or other objectionable matter, whether poisonous, noxious or polluting or not;

(b) for prohibiting or restricting the keeping or use on waterways of vessels provided with sanitary appliances from which polluting matter passes or can pass into the waterway;

(c) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing or controlling the entry of the matter into any waterway or water contained in any underground strata;

(d) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.

(2) Without prejudice to the generality of the power conferred by paragraph (1), regulations under that paragraph may—

(a) make provision for the Department—

(i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or to take any precautions or other steps; and

(ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;

(b) provide for appeals to the Appeals Commission against notices served by the Department in pursuance of provision made by virtue of sub-paragraph (a); and

(c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in **[**[F17]Article 7(7)**]** .

F17 Words in art. 14(2)(c) substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(8)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

Pollution emergencies

15.—(1) Where the Department is satisfied that it is necessary in the public interest to do so, it may give to any person a notice prohibiting him from depositing or discharging any matter of

a class or description specified in the notice on to any land or into any waterway or underground stratum so specified.

(2) A notice under paragraph (1)—

(a) shall have effect notwithstanding that the Department has given **[**[F18]a discharge consent in relation to**]** the discharge, whether unconditionally or subject to conditions;

(b) shall, subject to paragraph (3), continue in force until revoked by the Department or the Department gives **[**[F19]a discharge consent in relation to**]** the discharge in pursuance of an application in that behalf made by the person to whom the notice is given.

(3) A person to whom a notice under paragraph (1) is given may, within 28 days from the date of the service of the notice, appeal to the Appeals Commission.

(4) Where—

(a) a notice given under paragraph (1) is varied or quashed on appeal; and

(b) the person to whom the notice was given has complied with the notice,

the Department shall pay to that person an amount equal to the loss suffered, or expenditure incurred, by that person in complying with the notice.

(5) Any dispute under paragraph (4) as to the loss suffered or expenditure incurred shall be determined by the Lands Tribunal.

(6) Any person who contravenes any prohibition imposed by a notice served on that person under paragraph (1) shall be guilty of an offence and 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.

[[F20](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).**]**

F18 Words in art. 15(2)(a) substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(9)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F19 Words in art. 15(2)(b) substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(9)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F20 Art. 15(7) added (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(10)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

Anti-pollution works

Anti-pollution works and operations

16.—(1) Subject to paragraphs (2) and (3), where it appears to the Department that any poisonous, noxious or polluting matter is likely to enter, or to be or have been present in, any waterway or water contained in underground strata ("relevant waters"), the Department may carry out such works and operations as it considers appropriate—

(a) in a case where the matter appears likely to enter the relevant waters, for the purpose of preventing it from doing so; and

(b) in a case where the matter appears to be or to have been present in the relevant waters, for the purpose—

(i) of removing or disposing of the matter;

(ii) of remedying or mitigating any pollution caused by its presence in the waters;

(iii) of restoring the waters (including the fauna and flora **[**[F21]dependent on the aquatic environment of the waters**]**), so far as it is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters; or

(iv) of assessing the effect, or likely effect, on the waters of existing or potential levels of pollution of the waters,

and, in either case, the Department shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or permitted, whether knowingly or otherwise, the matter to be present in relevant waters or at a place from which it was likely, in the opinion of the Department, to enter relevant waters.

(2) Without prejudice to the power of the Department to carry out investigations under paragraph (1), the power conferred by that paragraph to carry out works and operations shall only be exercisable in a case where—

(a) the Department considers it necessary to carry out forthwith any works or operations falling within sub-paragraph (a) or (b) of that paragraph; or

(b) it appears to the Department, after reasonable inquiry, that no person can be found on whom to serve a works notice under Article 17.

(3) Nothing in paragraph (1) shall entitle the Department to impede or prevent the making of any discharge in pursuance of a discharge consent.

(4) Any expenses or costs reasonably incurred by the Department in pursuance of paragraph (1) shall be defrayed out of any money obtained by the Department from disposing of any matter under paragraph (1)(b) and, in so far as they are not so defrayed, shall be recoverable by the Department from the person in default.

F21 Words in art. 16(1)(b)(iii) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **283(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Notices requiring persons to carry out anti-pollution works and operations

17.—(1) Subject to the following provisions of this Article, where it appears to the Department that any poisonous, noxious or polluting matter is likely to enter, or to be or have been present in, any waterway or water contained in underground strata ("relevant waters"), the Department shall be entitled to serve a works notice on any person who, as the case may be,—

(a) caused or permitted, whether knowingly or otherwise, the matter in question to be present at the place from which it is likely, in the opinion of the Department, to enter any relevant waters; or

(b) caused or permitted, whether knowingly or otherwise, the matter in question to be present in any relevant waters.

(2) For the purposes of this Part, a "works notice" is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say—

(a) in a case where the matter in question appears likely to enter any relevant waters, works or operations for the purpose of preventing it from doing so; or

(b) in a case where it appears that the matter appears to be or have been present in any relevant waters, works or operations for the purpose—

(i) of removing or disposing of the matter;

(ii) of remedying or mitigating any pollution caused by its presence in the waters; or

(iii) so far as it is reasonably practicable to do so, of restoring the waters (including the fauna and flora **[**[F22]dependent on the aquatic environment of the waters**]**) to their state immediately before the matter became present in the waters.

(3) A works notice—

(a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and

(b) is without prejudice to the powers of the Department by virtue of Article 16(2)(a).

(4) Before serving a works notice on any person, the Department shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.

(5) The Department may by regulations make provision for or in connection with—

(a) the form or content of works notices;

(b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;

(c) steps to be taken for the purposes of any consultation required under paragraph (4) or regulations made by virtue of sub-paragraph (b); or

(d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.

(6) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of paragraph (4) or of regulations made by virtue of paragraph (5)(b).

(7) A person on whom a works notice is served may, within the period of 21 days beginning with the day on which the notice is served, appeal against the notice to the Appeals Commission.

(8) Nothing in paragraph (1) shall entitle the Department to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a discharge consent.

(9) Where the Department—

(a) carries out any such investigations as are mentioned in Article 16(1), and

(b) serves a works notice on a person in connection with the matter to which the investigations relate,

it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.

F22 Words in art. 17(2)(b)(iii) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **283(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Grant of, and compensation for, rights of entry, etc.

18.—(1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.

(2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.

(3) Before serving a works notice, the Department shall reasonably endeavour to consult every person who appears to it—

(a) to be the owner or occupier of any relevant land, and

(b) to be a person who might be required by paragraph (2) to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of paragraph (3).

(5) A person who grants, or joins in granting, any rights pursuant to paragraph (2) shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of paragraph (5), regulations by virtue of that paragraph may make such provision in relation to compensation under this Article as may be made by regulations by virtue of Article 7 of the Waste and Contaminated Land (Northern Ireland) Order 1997 in relation to compensation under that Article.

(7) In this Article "relevant land" means—

(a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or

(b) any land or waters adjoining or adjacent to that land or those waters.

Consequences of not complying with a works notice

19.—(1) If a person on whom the Department serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) A person who commits an offence under paragraph (1) 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.

(3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the Department may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Department in doing it.

(4) If the Department is of the opinion that proceedings for an offence under paragraph (1) would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the Department may take proceedings in the High Court for the purpose of securing compliance with the notice.

Abstraction and impounding

[F23 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.

[F24](4) . . . . . .

(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.**]**

F23 Art. 20 substituted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(2)**

F24 Art. 20(4) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 67** (with art. 9(2))

Modifications etc. (not altering text)

C4 Art. 20(4): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

Power to make scheme of charges in connection with water resources

21.—(1) Where regulations made under Article 20 include provisions prohibiting the abstraction of water or, as the case may be, the construction **[**[F25], alteration or operation**]** of impounding works except in pursuance of a licence granted by the Department and—

(a) an application is made for any licence under those regulations or for the variation **[**[F26], surrender or transfer**]** of any such licence;

(b) a licence under those regulations to abstract water is granted to any person or there is a variation of any such licence or of the conditions of any such licence; or

(c) a licence under those regulations to abstract water is in force,

the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this Article.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this Article shall be—

(a) in the case of a charge by virtue of paragraph (1)(a), the person who makes the application;

(b) in the case of a charge by virtue of paragraph (1)(b) or (c), the person to whom the licence is granted or, as the case may be, the person holding the licence which is varied or is in force.

(3) Provision made by a scheme for the purposes of paragraph (1)(c) may impose a single charge in respect of the whole period for which a licence is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) A scheme under this Article may—

(a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme; and

(b) contain supplemental, consequential and transitional provision for the purposes of the scheme.

(5) The Department, in framing a scheme under this Article, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by the Department in exercising its functions under regulations made under Article 20.

(6) Where the Department proposes to make a scheme under this Article the Department shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—

(a) setting out its proposals and specifying the period within which representations with respect to the proposals may be made; and

(b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations, to make a scheme under this Article, the Department may do so either in accordance with the proposals contained in the notice or in accordance with those proposals as modified in such manner as the Department considers appropriate.

(7) The Department shall take such steps as it considers appropriate for bringing the provisions of any scheme made under this Article which is for the time being in operation to the attention of persons likely to be affected by them.

F25 Words in art. 21(1) substituted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(3)(a)**

F26 Words in art. 21(1)(a) substituted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(3)(b)**

Orders as to charges for abstractions of water or discharges

22.—(1) Without prejudice to Article 21, the Department may, for the purpose of defraying any expenses incurred by it under this Part in the execution of works for the purpose of ensuring the better use of water, by order make such provision as appears to it to be expedient with respect to the levying of charges on—

(a) persons who abstract water from waterways or underground strata;

(b) persons who discharge any matter into waterways or underground strata;

being in each case persons who receive a measurable benefit by reason of the execution of the works.

(2) An order under paragraph (1) shall be subject to affirmative resolution.

Works, etc.

Power of Department to carry out engineering or building operations

23.—(1) The Department may—

(a) carry out such engineering or building operations as it considers necessary or expedient for the purposes of any of its functions under this Part;

(b) vary the flow of water in a waterway for those purposes; and

(c) discharge water into any waterway or underground strata or on to land for those purposes.

(2) The Department may, for the purpose of performing any functions under paragraph (1), exercise such compulsory powers relating to the performance of those functions as may be specified in an order made by the Department under this paragraph.

(3) The Department shall, in exercising its functions under this Article, have regard to—

(a) the conservation of water resources;

(b) the prevention of pollution;

(c) the needs of the community with respect to water and the disposal of effluent;

(d) the conservation and enhancement of the natural beauty and amenity of waterways and of land associated with waterways;

(e) the conservation and enhancement of flora and fauna;

(f) the conservation of any feature of archaeological, historical, architectural or traditional interest.

(4) Schedule 2 shall have effect with respect to orders under paragraph (2).

Acquisition of land by Department

24.—(1) The Department may, for any purpose in connection with the performance of any of its functions under this Part—

(a) by agreement acquire or take on lease any land or acquire land compulsorily;

(b) dispose of any land so acquired or taken on lease.

(2) Where the Department wishes to acquire, otherwise than by agreement, any land for a purpose referred to in paragraph (1), the Department may make an order (in this Article referred to as a "vesting order") vesting that land in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply subject to the modifications specified in Schedule 3 of this Order for the purpose of the acquisition of land by means of a vesting order under this Article as it applies for the purpose of the acquisition of land by means of a vesting order under that Act.

(4) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (which relates to the taking and disposal of land for the public services) shall affect the disposal of any land acquired or taken on lease by the Department under this Article.

(5) The power to make a vesting order under this Article in respect of land—

(a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or

(b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(6) In paragraph (5) "public body" means a body established by or under any statutory provision.

Enforcement

Powers of entry and inspection

25.—(1) Any person duly authorised by the Department may at any reasonable time enter any premises for the purpose of performing, whether in relation to those premises or not, any functions conferred on the Department under this Part.

(2) Any person duly authorised by the Department may at any reasonable time—

(a) enter any premises for the purpose of determining whether, and if so in what manner, any functions conferred on the Department under this Part are to be performed in relation to those premises, or whether any provision of this Part or of any regulations made under this Part has been complied with; and

(b) carry out such inspections, surveys, measurements and tests on any premises entered by that person or of any articles found on any such premises, and take away such samples of water or effluent or of any land or articles, as the Department—

(i) considers appropriate for the purpose mentioned in sub-paragraph (a); and

(ii) has authorised that person to carry out or take away.

(3) The Department may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2).

(4) The powers which by virtue of paragraph (2) are conferred in relation to any premises for the purpose of enabling the Department to determine whether any provision of this Part or of any regulations made under this Part has been complied with, shall include power, in order to obtain the information on which that determination may be made—

(a) to carry out experimental borings or other works on those premises; and

(b) to install and keep monitoring and other apparatus there.

(5) The Department may, after consulting the occupier of any land or owner of any vehicle, vessel or mobile plant from which effluent is discharged, fix the points at which samples are to be taken of effluent passing into a waterway or underground strata.

(6) If it is shown to the satisfaction of a justice of the peace on sworn complaint in writing—

(a) that admission to any premises which any person is entitled to enter under this Article has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and

(b) that there is reasonable ground for entry upon the premises for the purpose for which entry is required;

the justice may by warrant under his hand authorise that person to enter the premises, if need be by force.

(7) A warrant granted under paragraph (6) shall continue in force until the purpose for which entry is required has been satisfied.

(8) The power conferred by paragraph (2)(b) shall be exercisable for the purpose of inspecting any documents in the possession of any body relating to the functions of the body, and the person carrying out any such inspection may take copies of, or extracts from, any such documents.

Supplementary provisions as to powers of entry and inspection

26.—(1) A person authorised under Article 25 to enter any premises shall, if so required, produce evidence of his authority before so entering.

(2) A person so authorised may take with him onto the premises in question such other persons, and such equipment, as may be necessary.

(3) Admission to any land used for residential purposes, and admission with heavy equipment to any other land, shall not except in an emergency be demanded under Article 25 unless 7 days' notice of the intended entry has been given to the occupier.

(4) Any person who, in the exercise of his powers under Article 25, enters any premises which are unoccupied or premises of which the occupier is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.

(5) Any person who intentionally obstructs a person acting in the exercise of his powers under Article 25 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If any person assaults a person acting in the exercise of his powers under Article 25 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(7) Where in the exercise of any power conferred by Article 25 any damage is caused to premises or to chattels, any person interested in the premises or chattels shall be entitled to compensation in respect of the damage from the Department; and where in consequence of the exercise of any such power any person is disturbed in his enjoyment of any premises or chattels, he shall be entitled to compensation in respect of the disturbance from the Department.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7) or the amount of it shall be determined by the Lands Tribunal.

(9) If any person who, under Article 25, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein with regard to any manufacturing process or trade secret he shall, unless the disclosure is made in the performance of his duty, be liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

Evidence in connection with certain pollution offences

27.—(1) Information obtained in consequence of the exercise of a right conferred by Article 25, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a right conferred by Article 25, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

(3) In any legal proceedings it shall be presumed, until the contrary is shown, that any sample of effluent taken at a point fixed under Article 25(5) or an inspection chamber or manhole or other place provided in compliance with a condition imposed under this Part in relation to any waterway or underground stratum is a sample of what was passing from premises to that waterway or stratum.

(4) Information provided or obtained pursuant to or by virtue of a condition attached to a discharge consent **[**[F27]or a licence mentioned in Article 20(3)(a) or (b)**]** (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

(5) For the purposes of paragraphs (2) and (4), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the consent otherwise provides.

(6) Where—

(a) by virtue of a condition attached to a discharge consent **[**[F28]or a licence mentioned in Article 20(3) (a) or (b)**]** , an entry is required to be made in any record as to the observance of any condition of the consent **[**[F29]or licence**]** , and

(b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed.

F27 Words in art. 27(4) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(4)**

F28 Words in art. 27(6)(a) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(5)(a)**

F29 Words in art. 27(6)(a) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(5)(b)**

Power to obtain information

28.—(1) The Department may give directions requiring any person who is abstracting water from any waterway or underground stratum or is discharging effluent into any waterway or underground stratum to give such information to the Department as to the abstraction or discharge, at such times and in such form, as may be specified in the directions.

[[F30](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.**]**

(2) A person to whom a direction under paragraph (1) **[**[F31]or (1A)**]** is given may, within 28 days from the date the direction is given to him, appeal to the Appeals Commission.

(3) Any person who fails to comply with any direction given under paragraph (1) **[**[F32]or (1A)**]** shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Any direction given under paragraph (1) **[**[F33]or (1A)**]** shall be in writing and may be varied or revoked by a subsequent direction.

F30 Art. 28(1A) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(6)**

F31 Words in art. 28(2) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(7)**

F32 Words in art. 28(3) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(7)**

F33 Words in art. 28(4) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(7)**

[[F34]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,

[F35](b) . . . . . .

(c) the **[**[F36]Department for Infrastructure**]**;

(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.**]**

F34 Art. 28A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **284** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F35 Art. 28A(5)(b) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 68** (with art. 9(2))

F36 Words in art. 28A(5)(c) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 25** (with art. 9(2))

Penalties for false information

29. Any person who—

(a) in giving any information which he is required to give under this Part, knowingly or recklessly makes a statement which is false or misleading in a material particular; or

(b) for the purpose of obtaining any discharge consent **[**[F37]or any licence mentioned in Article 20(3) (a) or (b)**]** or any **[**[F38]variation, transfer or surrender of such a consent or licence**]** , knowingly or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and liable—

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

(ii) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum.

F37 Words in art. 29(b) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(8)(a)**

F38 Words in art. 29(b) substituted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(8)(b)**

[[F39]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 **[**[F40]Competition and Markets Authority**]** 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.**]**

F39 Art. 29A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **285** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F40 Words in art. 29A(2)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 222** (with art. 3)

Registers and other information

Pollution control register

30.—(1) The Department shall, in accordance with regulations, maintain registers containing prescribed particulars of or relating to—

(a) any notices of water quality objectives or other notices published or served under Article 6;

(b) any notices served under Article 8 and any convictions for offences under that Article;

(c) applications made for discharge consents;

(d) discharge consents given by the Department and the conditions, if any, to which the consents are subject;

(e) applications made to the Department for the variation of discharge consents;

(f) enforcement notices served under Article 12;

(g) revocations under paragraph 5 of Schedule 1 of discharge consents;

(h) appeals under Article 13;

(i) convictions, for offences under **[**[F41]Article 7(2)**]** , of persons who have the benefit of discharge consents;

(j) information obtained or furnished in pursuance of conditions of discharge consents;

(k) works notices;

(l) appeals under Article 17(7);

(m) convictions for offences under Article 19;

(n) any matter about which particulars are required to be kept in any register**[**[F42] under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002 or;**]** under Article 20 of the Industrial Pollution Control (Northern Ireland) Order 1997 (particulars about authorisations for prescribed processes, etc.) by the chief inspector appointed under that Order;

(o) the following, that is to say—

(i) particulars of sampling points fixed under Article 25(5);

(ii) samples of water or effluent taken by the Department for the purposes of any of the provisions of this Part;

(iii) information produced by analyses of those samples;

(iv) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples as is acquired by the Department from any person under arrangements made by the Department for the purposes of any of those provisions; and

(v) the steps taken in consequence of any such information as is mentioned in any of heads (ii) to (iv);

[[F43](oa) such matters relating to the abstraction or impounding of water as may be prescribed;**]**

(p) such other matters relating to the quality of water or the pollution of water as may be prescribed.

(2) Where information of any description is excluded from any register by virtue of Article 32, a statement shall be entered in the register indicating the existence of information of that description.

(3) The Department shall—

(a) ensure that the contents of registers maintained under this Article are available, at all reasonable times, for inspection by the public free of charge; and

(b) afford members of the public reasonable facilities for obtaining from the Department, on payment of reasonable charges, copies of entries in any of the registers.

(4) A register maintained under this Article shall, in favour of a person charged with an offence under this Part, be conclusive evidence as to the terms of any discharge consent, or any condition to which such a consent is subject, as that consent, or that condition, as the case may be, has effect for the time being.

F41 Words in art. 30(1)(i) substituted (1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **291(11)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F42 2002 NI 7

F43 Art. 30(1)(oa) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(9)**

Exclusion from registers of information affecting national security

31.—(1) No information shall be included in a register maintained under Article 30 if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

(a) specifying information, or descriptions of information, to be excluded from its registers; or

(b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from a register in pursuance of directions given under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

(a) he shall notify the Department that he has done so; and

(b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

(5) Any direction given under paragraph (2) shall be in writing and may be varied or revoked by a subsequent direction.

Modifications etc. (not altering text)

C5 Art. 31 applied (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 28(2)** (with reg. 5)

Exclusion from registers of certain confidential information

32.—(1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register maintained under Article 30, if and so long as the information—

(a) is, in relation to him, commercially confidential; and

(b) is not required to be included in the register in pursuance of a specification under paragraph (10);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department, or, on appeal, by the Appeals Commission.

(2) Where information is furnished to the Department **[**[F44]under regulations under Article 20 or**]** for the purpose of—

(a) an application for a discharge consent or for the variation of such a consent,

(b) complying with any condition of a discharge consent, or

(c) complying with a direction under Article 28,

then, if the person furnishing it applies to the Department to have the information excluded from any register maintained under Article 30, on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) must be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any statutory provision might be commercially confidential, the Department shall—

(a) give to the person to whom or whose business it relates notice that that information is required to be included in a register maintained under Article 30, unless excluded under this Article; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

(a) the information shall not be entered on the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned; and

(b) that person may appeal to the Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) If either party to an appeal under paragraph (5) so requests, the appeal shall be or continue in the form of a hearing which must be held in private.

(7) [F45] . . . . . .

(8) [F45] . . . . . .

(9) [F45] . . . . . .

(10) The Department may specify information, or descriptions of information, which the public interest requires to be included in a register maintained under Article 30 notwithstanding that the information may be commercially confidential.

(11) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(12) Paragraphs (5) **[**[F46]and (6)**]** shall apply in relation to a determination under paragraph (11), as they apply in relation to a determination under paragraph (2) or (4).

(13) The Department may by regulations substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(14) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

F44 Words in art. 32(2) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(10)**

F45 Art. 32(7)-(9) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F46 Words in art. 32(12) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 40(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C6 Art. 32 applied (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 28(2)** (with reg. 5)

Maps of fresh-water limits of waterways

33.—(1) The Department shall—

(a) maintain maps showing what appear to the Department to be the fresh-water limits of every waterway; and

(b) make such maps available, at all reasonable times, for inspection by the public free of charge.

(2) This Article does not apply to any waterway of a description specified in an order made by the Department subject to negative resolution.

Collection of data and information by Department

34.—(1) The Department may—

(a) collect, or cause to be collected, such data and information;

(b) carry out, or cause to be carried out, such research,

as it considers to be necessary for the purpose of performing any of its functions under this Part.

(2) The Department may publish, or permit the publication of, any data or information collected, or the results of any research carried out, by or on behalf of the Department under paragraph (1).

(3) The Department shall provide reasonable facilities for the inspection of records of data and information collected by it, or on its behalf, in pursuance of paragraph (1)(a), and for the taking of copies of, and extracts from, those records.

Miscellaneous

Abandoned mines

35.—(1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the Department at least 6 months before the abandonment takes effect.

(2) A notice under paragraph (1) shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.

(3) A person who fails to give the notice required by paragraph (1) shall be guilty of an offence and liable—

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

(b) on conviction on indictment, to a fine.

(4) A person shall not be guilty of an offence under paragraph (3) if—

(a) the abandonment happens in an emergency in order to avoid danger to life or health; and

(b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.

(5) Where the operator of a mine is the official receiver acting in a compulsory capacity, he shall not be guilty of an offence under paragraph (3) by reason of any failure to give the notice required by paragraph (1) if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Department notice of the abandonment or proposed abandonment, containing such information as may be prescribed.

(6) Where a person gives notice under paragraph (1), (4)(b) or (5), he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.

(7) For the purposes of this Article, “abandonment”, in relation to a mine,—

(a) subject to sub-paragraph (b), includes—

(i) the discontinuance of any or all of the operations for the removal of water from the mine;

(ii) the cessation of working of any relevant seam, vein or vein-system;

(iii) the cessation of use of any shaft or outlet of the mine;

(iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine), the discontinuance of some or all of those other activities in the mine and any substantial change in the operations for the removal of water from the mine; but

(b) does not include any disclaimer under Article 152 or 288 of the Insolvency (Northern Ireland) Order 1989 (power of liquidator, or trustee of a bankrupt's estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity.

(8) In this Article—

"acting in a compulsory capacity", in the case of the official receiver, means acting as—

(a) liquidator of a company;

(b) receiver or manager of a bankrupt's estate, pursuant to Article 260 of the Insolvency (Northern Ireland) Order 1989;

(c) trustee of a bankrupt's estate;

(d) liquidator of an insolvent partnership;

(e) trustee of an insolvent partnership;

(f) trustee, or receiver or manager, of the insolvent estate of a deceased person;

"the initial period" means the period of 6 months beginning with the day on which paragraph (1) comes into operation;

"mine" has the same meaning as in the Mines Act (Northern Ireland) 1969;

"the official receiver" has the same meaning as it has in the Insolvency (Northern Ireland) Order 1989 by virtue of Article 356 of that Order;

"relevant seam, vein or vein-system", in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

Power to give effect to Community and other international obligations, etc.

36.—(1) Regulations may provide that the provisions of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

(a) to give effect to any Community obligation or exercise any related right; or

(b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) In this Article—

"regulations"

(a) in relation to any Community obligation, means regulations made by the Department; and

(b) in relation to any international agreement, means regulations made by the Secretary of State;

"related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(3) Regulations under this Article made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in the like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

[[F47]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.**]**

F47 Art. 36A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **286** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Prosecutions

37.—[[F48](1)**]** No proceedings shall be instituted for an offence under this Part except by the Department or by or with the consent of the Attorney General.

[[F49](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.**]**

F48 Art. 37 renumbered (1.4.2007) as art. 37(1) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **287** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F49 Art. 37(2) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **287** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Repeal, amendment and adaptation of local enactments

38.—(1) If it appears to the Department that any local or private Act passed before the making of this Order—

(a) is inconsistent with any of the provisions of this Part or of any regulations or order made under this Part, or with anything done in the performance of any functions under this Part; or

(b) requires to be amended or adapted, having regard to any of those provisions or to anything done in the performance of any of those functions,

it may by order made subject to affirmative resolution repeal, amend or adapt that Act to such extent, or in such manner, as it considers appropriate.

(2) In this Article "Act" includes an Act of the Parliament of the United Kingdom.

[[F50]**[**[F51]**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.**]]**

F50 Art. 38A inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), **5(11)**

F51 Art. 38A substituted (22.3.2007 for certain purposes, otherwise 1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **288** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2**, Sch. 1 Pts. I, II (with art. 3, Sch. 2)

PART III

POWERS OF DEPARTMENT OF AGRICULTURE IN RELATION TO WATERWAYS

Introductory

Application and interpretation of Part III

39.—(1) This Part does not apply to a reservoir or the sea.

(2) In this Part—

"canal scheme" means a scheme prepared under Article 42(1);

"the Department" means the Department of Agriculture;

"premises" includes any land, vehicle or vessel;

"regulations" means regulations made by the Department;

"specified canal" has the meaning assigned to it by Article 42(5).

Modifications etc. (not altering text)

C7 Art. 39: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Matters to be taken into account in exercising certain functions

40.—(1) The Department shall, in exercising its functions under this Part, have regard to—

(a) the conservation of water resources;

(b) the prevention of pollution;

(c) the needs of the community with respect to water and the disposal of effluent;

(d) the conservation and enhancement of the natural beauty and amenity of waterways and of land associated with waterways;

(e) the conservation and enhancement of flora and fauna;

[[F52](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;**]**

(f) the conservation of geological or physiographical features of special interest and any feature of archaeological, historical, architectural or traditional interest.

(2) The Department shall, in exercising its functions under any statutory provision relating to drainage, have regard to the matters set out in sub-paragraphs (a) to (f) of paragraph (1).

(3) In Article 11(2)(d) of, and paragraph 5(2) of Schedule 7 to, the Drainage Order for "section 2(2) of the Water Act (Northern Ireland) 1972" there shall be substituted "Article 40(2) of the Water (Northern Ireland) Order 1999".

F52 Art. 40(1)(ea) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **289** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C8 Art. 40(1): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

C9 Art. 40(2): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

C10 Art. 40(3): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Principal powers of Department in relation to waterways

Power of Department to carry out works and provide facilities in relation to waterways

41.—(1) The Department may execute and maintain such works, including the dredging and maintenance of channels and the provision and maintenance of aids to navigation, as it considers appropriate for the purpose of improving or restoring, or promoting the recreational or navigational use of, any waterway.

(2) The Department may provide, maintain, operate, improve or restore such facilities as it considers appropriate for the purpose of promoting the recreational or navigational use of any waterway.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Canal schemes

42.—(1) Where the Department intends to carry out works under Article 41 in relation to a specified canal, the Department may prepare a scheme (a "canal scheme") for the carrying out of those works.

(2) A canal scheme shall contain such particulars and shall be in such form as the Department may consider fit and, in particular, and without prejudice to the generality of the foregoing, shall contain such provisions as the Department may consider necessary for the protection of rights or interests affected by the scheme.

(3) Every reference in this Part to a canal scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such scheme.

(4) Without prejudice to the generality of any other provision of this Part, the Department may, for the purposes of its functions under this Part—

(a) in relation to a specified canal, undertake, construct and maintain all such canal works and do all such things as are mentioned in Schedule 4;

(b) reconstruct any works interfered with under the powers of a canal scheme, or construct new works in lieu thereof either in the same or a different place or position.

(5) In this Part "specified canal" means a waterway specified in an order subject to negative resolution made by the Department for the purposes of this Article, being a waterway which, in the opinion of the Department is, or has been, a canal.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Powers of maintenance

43.—(1) This Article applies to any waterway which is not a designated watercourse within the meaning of the Drainage Order.

(2) The Department may, in relation to any waterway to which this Article applies, carry out such works of repair and maintenance as the Department may consider fit, and, for that purpose, the Department may exercise any of the powers mentioned in paragraph (3) and any other powers which may be reasonably necessary for, or incidental to, the carrying out of such works.

(3) For the purposes of repairing or maintaining any waterway to which this Article applies, the Department may—

(a) maintain existing works, that is to say, cleanse, repair or otherwise maintain in a due state of efficiency any existing waterway or works carried out under this Part or under any canal scheme;

(b) improve any existing works, that is to say, deepen, widen, straighten or otherwise improve any existing waterway or works carried out under this Part or under any canal scheme, or remove or alter dams, weirs or other obstructions to waterways, or raise, widen or otherwise improve any works carried out under this Part or any canal scheme;

(c) construct new works which may be required for the purpose of repairing or improving the waterway;

(d) repair, strengthen, alter, replace or renew any existing embankment and, for that purpose, use any shingle, sand, clay, gravel, stone, rock or other material removed in the carrying out of any works under this Part or any canal scheme, and deposit any material so removed on any adjacent land.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

General powers of the Department

44.—(1) Without prejudice to the generality of any other provision of this Part, the Department may, for the purposes of its functions under this Part—

(a) cause such surveys, reports and plans to be made as the Department may think necessary;

(b) abstract water from, or vary the water flow or water level in, a waterway;

(c) improve the supply of water in a waterway;

(d) discharge water into any waterway or underground strata or on to land;

(e) execute such works and do all such other things as the Department may think necessary.

(2) The power conferred by paragraph (1)(a) to survey land includes power—

(a) to sink boreholes; and

(b) to survey land for the purpose of determining whether it is appropriate or practicable for the Department to exercise any of its powers under this Part.

(3) Subject to paragraph (4), the Department may temporarily close any waterway.

(4) The Department, before closing any waterway, shall, except in the case of an emergency, give to all persons likely to be affected by the closure, such notice as is reasonably practicable.

(5) Where the Department considers it appropriate, it may—

(a) carry out any experimental, advisory, research or development work either in relation to waterways generally or in relation to any particular problem relating to waterways;

(b) enter into a contract or arrangement with any person for the carrying out of any such work;

(c) make grants by way of contribution towards the cost of any such work undertaken by any person.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Provisions of the Drainage Order applied for the purposes of this Part

45.—**[**[F53](1) The provisions of the Drainage Order specified in Part I of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to canal schemes in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.

(1A) The provisions of the Drainage Order specified in Part II of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to works under this Part (including works undertaken in pursuance of a canal scheme) in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions as so modified shall have effect as if they were provisions of this Part.**]**

[[F54](1A) The provisions of the Drainage Order specified in Part II of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to works under this Part (including works undertaken in pursuance of a canal scheme) in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions as so modified shall have effect as if they were provisions of this Part.**]**

(2) Article 25 of the Drainage Order (power of Department to carry out works on behalf of other persons) and Article 32 of, and Schedule 6 (except paragraph 2) to, that Order (protection of watercourses) shall apply in relation to waterways as those provisions apply to watercourses within the meaning of that Order.

(3) Article 26 of the Drainage Order (power of Department to contribute to cost of works) shall apply in relation to waterways as that Article applies to designated watercourses within the meaning of the Drainage Order.

F53 Art. 45(1)(1A) substituted (20.3.2006) for art. 45(1) by virtue of Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 22(2)**

F54 SR 2001/394

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Power of Department to enter into arrangements for improvement or restoration of waterways

46.—(1) The Department may enter into arrangements with any other body or person designed to bring about the improvement or restoration, or promote the recreational or navigational use, of any waterway.

(2) The Department shall have power to do all things necessary or expedient for the purposes of, or in connection with, the carrying out of, any arrangements entered into by it under this Article and, in particular, may—

(a) form or promote, or join with any other body or person in forming or promoting, companies **[**[F55]under the Companies Act 2006**]**;

(b) provide financial or other assistance to any other body or person entering into the arrangements under this Article or to any company formed or promoted by virtue of sub-paragraph (a);

(c) exercise any power exercisable by it under any other provision of this Part or the Drainage Order.

F55 Words in art. 46(2)(a) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 180** (with art. 10)

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Schemes extending outside Northern Ireland

47.—(1) The Department may co-operate with any persons outside Northern Ireland (in this Article referred to as an "external authority") in the preparation and carrying out of schemes for the improvement or alteration of any waterway which is situated partly inside and partly outside Northern Ireland, and for the use, control or maintenance of works in relation to any such waterway whether provided in pursuance of any such scheme or otherwise.

(2) For the purposes of any such scheme, the Department may enter into and carry into effect any arrangement or agreement with an external authority—

(a) for the carrying out of any work or the doing of any act or thing specified in the arrangement or agreement, or for the settlement of claims for compensation for loss or injury arising therefrom (including the investigation of such claims and, where necessary, the assessment and payment of compensation, the carrying out of remedial works in settlement or partial settlement and the securing in advance of releases from claims)—

(i) by the Department or by the external authority, or by the Department and the external authority acting jointly;

(ii) by the external authority as agent for and on behalf of the Department;

(iii) by the Department as agent for and on behalf of the external authority

(b) for making any resources (including plant, machinery, equipment, accommodation and services of staff) of one party to the arrangement or agreement available to the other;

but nothing in the arrangement or agreement shall diminish in any respect any responsibility of any party for any act or thing done by it or on its behalf.

(3) A scheme under paragraph (1) shall specify—

(a) the extent of the works to be carried out; and

(b) the manner in which, and the persons by whom and in what proportion, the cost of carrying out the scheme and of maintaining or operating anything constructed thereunder are to be borne.

(4) For the purposes of carrying into effect in Northern Ireland any scheme under paragraph (1), the Department or any agent authorised by it to act on its behalf may carry out any such works as are referred to in Article 43(3)(a) to (d), and the Department may, without prejudice to any other provision of this Article, exercise any power exercisable by it under any other provision of this Part or the Drainage Order.

(5) Nothing in this Article or in any scheme, arrangement or agreement made thereunder shall—

(a) prejudice the application of any provision of this Part in relation to any waterway, or part of a waterway, which is in Northern Ireland; or

(b) prevent the Department from preparing and carrying into effect any canal scheme under this Part, or exercising any other function under this Part or the Drainage Order, in relation to so much of any waterway as is in Northern Ireland;

and so much of any scheme under this Article as relates to a part of any waterway in Northern Ireland may be treated as a separate scheme for the purposes of any provision of this Part.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Acquisition of land and other rights by the Department

48.—(1) The Department may, for any purpose in connection with its functions under this Part (including the settlement of claims for compensation arising under this Part)—

(a) by agreement acquire or take on lease any land or acquire land compulsorily;

(b) dispose of any land for the time being vested in it;

(c) acquire either by agreement or compulsorily any fisheries, water rights, navigation or other rights; or

(d) restrict, terminate, or otherwise interfere with easements, fisheries, water rights, inland navigation rights or other rights.

(2) Where the Department desires to acquire, otherwise than by agreement, any land for any purpose referred to in paragraph (1) the Department may make an order (in this Article referred to as a "vesting order") vesting such land, in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply, subject to the modifications specified in Schedule 3 to this Order, for the purpose of the acquisition of land by means of a vesting order under this Article as it applies for the purpose of the acquisition of land by means of a vesting order under that Act.

(4) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (which relates to the taking and disposal of land for the public services) shall affect the disposal of any land acquired or taken on lease by the Department under this Article.

(5) The power to make a vesting order under this Article in respect of land—

(a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or

(b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(6) In paragraph (5) "public body" means a body established by or under any statutory provision.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Regulation of recreational and navigational use of waterways

49.—(1) The Department may by order subject to negative resolution regulate the way in which any waterway specified in the order may be used for recreation or navigation.

(2) Without prejudice to the generality of paragraph (1), an order made under that paragraph may make provision—

(a) regulating the use of a waterway by vessels;

(b) requiring vessels using a waterway to be licensed for that purpose by the Department;

(c) regulating the grant, renewal, transfer and revocation of licences under sub-paragraph (b) and the conditions subject to which such licences are to be granted;

(d) requiring vessels using a waterway to be registered with the Department;

(e) regulating the manner in which and the conditions subject to which vessels may be registered under sub-paragraph (d) and the manner in which registration may be withdrawn;

(f) regulating the construction, condition, safety and control of vessels which may use a waterway and the equipment to be carried on such vessels;

(g) regulating the movement of vessels, and the use of lights, on a waterway;

(h) regulating the opening of locks or the operation of any other works executed under any relevant statutory provision;

(i) regulating the conduct of persons on—

(i) a waterway; or

(ii) on land adjacent to a waterway and owned by the Department;

(j) prohibiting a waterway from being used for navigation or recreational purposes, except as permitted by the order;

(k) for prohibiting or restricting access to—

(i) a waterway; or

(ii) to land adjacent to a waterway and owned by the Department;

(l) preventing the improper use of any works executed or maintained by the Department under any relevant statutory provision or facilities provided or maintained by the Department under any such provision, or preserving such works or facilities from damage or destruction;

(m) preventing the obstruction of a waterway;

(n) for the removal by the Department of vessels or objects from a waterway in such circumstances as may be specified in the order and the storage or disposal by the Department of vessels or objects so removed;

(o) for the recovery by the Department of the cost of removing, storing or disposing of such vessels or objects as are mentioned in sub-paragraph (n);

(p) making persons guilty of an offence where there is a contravention of the order and for the imposition of fines on summary conviction for an offence.

(3) Any person duly authorised by the Department may, on production if so required of evidence of his authority, require any person suspected of contravening any provision of an order under this Article—

(a) to state his name and address;

(b) to leave the waterway.

(4) Any person who fails to comply with a requirement imposed under paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Nothing in this Article shall affect the operation of the provisions of the Merchant Shipping Act 1995.

(6) In this Article and in Article 50, "relevant statutory provision" means any provision of—

(a) the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955;

(b) Schedule 7 to the Drainage Order; or

(c) this Part.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Charges for recreational and navigational use of waterways

50.—(1) The Department may make charges—

(a) for the use of any facilities provided or maintained by it under any relevant statutory provision;

(b) without prejudice to the generality of sub-paragraph (a), for the passage through any lock constructed or maintained by the Department under any relevant statutory provision;

(c) in respect of the registration or licensing of any vessel in accordance with an order under Article 49.

(2) Without prejudice to the generality of paragraph (1), the Department may—

(a) provide for exemption from payment of charges imposed under this Article in such cases as the Department may determine;

(b) provide for the payment of concessionary charges in such cases as the Department may determine.

(3) The Department shall, in such manner as it considers appropriate, publish a scale of charges payable under this Article.

(4) Where, by virtue of this Article any person is required to pay any sum of money to the Department—

(a) the Department may certify in writing the amount of that sum; and

(b) the amount so certified shall be recoverable by the Department summarily as a debt due to it.

(5) A certificate under paragraph (4) shall be prima facie evidence of the amount stated therein.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Supplementary provisions

Powers of entry and inspection

51.—(1) Any person duly authorised by the Department may at any reasonable time—

(a) enter any premises for the purpose of performing, whether in relation to those premises or not, any functions conferred on the Department under this Part;

(b) for the purpose of determining whether, and if so in what manner, any such functions are to be performed in relation to any premises, enter any premises and inspect or survey the premises and inspect any article thereon;

(c) for the purpose of ascertaining whether any provision of an order made under Article 49 is being or has been contravened, enter any premises and inspect or survey the premises and inspect any article thereon.

(2) Any person duly authorised by the Department may—

(a) stop, if necessary, and enter and search any vessel for the purpose of ascertaining whether any provision of an order made under Article 49 is being or has been contravened;

(b) carry out inspections, measurements and tests on any vessel entered by that person or of any articles found on any such vessel.

(3) If it is shown to the satisfaction of a justice of the peace on sworn complaint in writing—

(a) that admission to any premises which any person is entitled to enter under paragraph (1) or (2) has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and

(b) that there is reasonable ground for entry upon the premises for the purpose for which entry is required;

the justice may by warrant under his hand authorise that person to enter the premises, if need be by force.

(4) A warrant granted under paragraph (3) shall continue in force until the purpose for which entry is required has been satisfied.

(5) The power conferred by paragraph (1) to survey premises includes power to sink boreholes.

(6) The power conferred by paragraphs (1)(b) and (c) and (2)(b) shall be exercisable for the purpose of inspecting any documents in the possession of any body relating to the functions of the body, and the person carrying out any such inspection may take copies of, or extracts from, any such documents.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Supplementary provisions as to powers of entry and inspection

52.—(1) A person authorised under Article 51 to enter any premises shall, if so required, produce evidence of his authority before so entering.

(2) A person so authorised may take with him onto the premises in question such other persons, and such equipment, as may be necessary.

(3) Admission to any land used for residential purposes, and admission with heavy equipment to any other land, shall not except in an emergency be demanded under Article 51 unless 7 days' notice in writing of the intended entry has been given to the occupier.

(4) Any person who, in the exercise of his powers under Article 51, enters any premises which are unoccupied or the occupier of which is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.

(5) Any person who intentionally obstructs a person acting in the exercise of his powers under Article 51 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If any person assaults a person acting in the exercise of his powers under Article 51 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(7) Where in the exercise of any power conferred by Article 51 any damage is caused to land or to chattels, any person interested in the land or chattels shall be entitled to compensation in respect of the damage from the Department.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7) or the amount of it shall be determined by the Lands Tribunal.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Prosecutions

53. No proceedings shall be instituted for an offence under this Part or under an order made in accordance with Article 49 except by the Department or by or with the consent of the Attorney General.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Power to give effect to Community obligations, etc.

54.—(1) Regulations may provide that the provisions of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or exercise any related right.

(2) In this Article “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Financial provision

55. Any sum received by the Department under this Part shall be appropriated in aid of the expenses incurred by the Department under this Part or in the payment of any contributions or grants under this Part.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

Repeal, amendment and adaptation of local enactments

56.—(1) If it appears to the Department that any local or private Act passed before the making of this Order—

(a) is inconsistent with any of the provisions of this Part or of any regulations or order made under this Part, or with anything done in the performance of any functions under this Part; or

(b) requires to be amended or adapted, having regard to any of those provisions or to anything done in the performance of any of those functions,

it may by order made subject to affirmative resolution repeal, amend or adapt that Act to such extent, or in such manner, as it considers appropriate.

(2) In this Article "Act" includes an Act of the Parliament of the United Kingdom.

Modifications etc. (not altering text)

C11 Arts. 41-56: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

PART IV

MISCELLANEOUS AND GENERAL

Water management programmes

57.—(1) The **[**[F56]Department**]** may by order adopt a water management programme with respect to the water resources of any area.

(2) A water management programme may contain—

(a) an assessment of the quantity and quality of the water resources of the area;

(b) a description of the present pattern of use of those resources;

(c) a forecast of the future demand for the use of those resources;

(d) proposals for the future use and management of those resources;

(e) provisions with respect to such matters relating to those resources as appear to the **[**[F56]Department**]** to be appropriate.

(3) Schedule 6 shall have effect with respect to the making of orders under paragraph (1).

(4) A water management programme shall become operative on the date appointed for the purpose in the order under paragraph (1) adopting the programme.

(5) The **[**[F56]Department**]** shall, at intervals which do not exceed 7 years, review any water management programme adopted under this Article.

[F57](6) . . . . . .

F56 Word in art. 57 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 69(a)** (with art. 9(2))

F57 Art. 57(6) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 69(b)** (with art. 9(2))

Modifications etc. (not altering text)

C12 Art. 57: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

Northern Ireland Water Council

58. [F58] . . . . . .

F58 Art. 58 repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 296(2)(a), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Power of Laganside Corporation to make byelaws

59. [F59] . . . . . .

F59 Art. 59 repealed (1.6.2009) by Public Authorities (Reform) Act (Northern Ireland) 2009 (c. 3), ss. 6, 7(1), **Sch. 3** (with Sch. 1 Pt. 1 para. 4(3)); S.R. 2009/172, **art. 2(e)**

Protection of watercourses – penalty in relation to nuisance

60. In paragraph 6(ii)(A) of Schedule 6 to the Drainage Order for the words "not exceeding £100" there shall be substituted the words "not exceeding £1,000 or such other sum as the Department may specify by order subject to affirmative resolution".

Regulations and orders

61.—(1) Regulations made under this Order (other than regulations made under Article 36 by the Secretary of State) shall be subject to negative resolution.

(2) Regulations and orders under this Order may contain consequential, incidental, supplementary and transitional provisions.

Transitional and saving provisions

62.—(1) Nothing in this Order shall affect the operation of section 9(2) of the Northern Ireland (Miscellaneous Provisions) Act 1932.

(2) Nothing in this Order shall be taken as applying to the ordinary use for the purpose of sanitation on vessels in tidal waters of sanitary appliances from which polluting matter passes or can pass into such waters, unless regulations made under Article 14(1)(b) are in operation in relation to those waters.

(3) Any bye-laws made under paragraph 13 of Schedule 7 to the Drainage Order and in operation immediately before the coming into operation of Article 49 shall continue to have effect as if made under that Article.

Article 63—Amendments and repeals

SCHEDULES

SCHEDULE 1

Article 9(3).

DISCHARGE CONSENTS

Application for consent

1.—(1) An application for a discharge consent—

(a) shall be made to the Department on a form provided for the purpose by the Department; and

(b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations.

(2) Regulations may provide that any advertising of an application as is required under sub-paragraph (1)(b) may, in any case, be dispensed with if, in that case, it appears to the Department to be appropriate for that advertising to be dispensed with.

(3) The applicant for a discharge consent must provide to the Department, either on, or together with, the form mentioned in sub-paragraph (1)(a) such information as may be prescribed for the purpose, but, subject to paragraph 2(3) and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to an application under this paragraph, a failure to provide information in pursuance of this sub-paragraph shall not invalidate an application.

(4) The Department may give the applicant notice requiring him to provide it with such further information of any description specified in the notice as the Department may require for the purpose of determining the application.

(5) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Department as separate applications for consents for discharges at each of those places.

[F60 Consultation in connection with applications

F60 Sch. 1 para. 1A inserted (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

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.**]**

Consideration and determination of applications

2.—(1) On an application under paragraph 1 the Department shall be under a duty, if the requirements—

(a) of that paragraph, and

(b) of any regulations made under that paragraph **[**[F61]or paragraph 1A**]** ,

are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it.

(2 [F62] Subject to the following provisions of this Schedule, on an application made in accordance with paragraph 1, the applicant may treat the consent applied for as having been refused if it is not given within the period of 4 months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Department and the applicant.

(3) Where any person, having made an application to the Department for a discharge consent, has failed to comply with—

(a) his obligation under paragraph 1(1)(b) to advertise the application; or

(b) his obligation under paragraph 1(3) or (4) to provide information to the Department,

the Department may refuse to proceed with the application, or refuse to proceed with it until the application has been advertised or, as the case may be, the information has been provided.

(4) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Department may think fit and a consent may be given under this paragraph subject to different conditions in respect of different periods.

(5) The Department may, by regulations, substitute for any period for the time being specified in sub-paragraph (2), such other period as it thinks fit.

(6) Where an application is made under paragraph 1, the Department shall give notice of its decision on that application to—

(a) the person making the application;

[[F63](b) the Foyle, Carlingford and Irish Lights Commission, where the discharge is being, or is to be, made in the Londonderry Area or the Newry Area;**]**

[F64](c) . . . . . .

F61 Words in Sch. 1 para. 2(1)(b) added (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
F62 mod. by SR 2001/284
F63 SI 1999/859
F64 Sch. 1 para. 2(6)(c) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 72(2)** (with art. 9(2))

Public inquiries

3.—(1) For the purpose of considering representations made in respect of an application made under paragraph 1, the Department may direct the Appeals Commission to hold a public local inquiry.

(2) [F65] . . . . . .

(3) [F65] . . . . . .

(4) Where any representations made in respect of an application made under paragraph 1 are, in the opinion of the Department, relevant to a public local inquiry to be held **[**[F66]under section 26 of the Planning Act (developments of regional significance)**]**, the Department may direct that those representations shall be considered by that inquiry.

(5) The Department shall give notice of any direction made under sub-paragraph (1) or (4) to—

(a) the person making the application;

[[F67](b) the Foyle, Carlingford and Irish Lights Commission, where the discharge to which the application relates is to be made in the Londonderry Area or the Newry Area;**]**

[F68](c) . . . . . .

and (without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954) that person and the Foyle Fisheries Commission **[**[F69](in a case within head (b))**]** shall be entitled to appear and be heard at the relevant inquiry.

(6) The Department shall give notice of any direction under sub-paragraph (4) to the person who made the application under the **[**[F70]Planning Act**]** which is the subject of the public local inquiry to which the notice relates.

(7) Paragraph 2(2) shall not apply to an application made under paragraph 1 where the Department makes a direction under sub-paragraph (1) or (4) of this paragraph.

(8) Where the Department makes a direction under paragraph (1) or (4) in relation to an application, it shall in determining the application consider the report on the public local inquiry held by the Appeals Commission or, as the case may be, the Planning Appeals Commission **[**[F71]or other person appointed to hold a public local inquiry under section 26 of the Planning Act**]**.

[[F72](9) In this paragraph, " the Planning Act " means the Planning Act (Northern Ireland) 2011. **]**

F65 Sch. 1 para. 3(2)(3) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
F66 Words in Sch. 1 para. 3(4) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 91(a)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)
F67 SI 1999/859
F68 Sch. 1 para. 3(5)(c) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 72(3)(a)** (with art. 9(2))

F69 Words in Sch. 1 para. 3(5) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 72(3)(b)** (with art. 9(2))

F70 Words in Sch. 1 para. 3(6) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 91(b)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

F71 Words in Sch. 1 para. 3(8) added (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 91(c)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

F72 Sch. 1 para. 3(9) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 91(d)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Consents without applications

4.—(1) If it appears to the Department—

(a) that a person has discharged effluent or other matter in contravention of **[**[F73]Article 7(2)**]** ; and

(b) that a similar contravention by that person is likely,

the Department may, if it thinks fit, serve on him an instrument in writing giving its consent for the purposes of that Article, subject to any conditions specified in the instrument, for discharges of a description so specified.

(2) Where a discharge consent has been given under this paragraph, the Department shall give notice of its decision to give that consent to—

[[F74](a) the Foyle, Carlingford and Irish Lights Commission, where the discharge is to be, or is being, made in the Londonderry Area or the Newry Area;**]**

[F75](b) . . . . . .

(3) A discharge consent given under this paragraph shall not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument.

(4) Sub-paragraph (4) of paragraph 2 shall have effect in relation to a consent given under this paragraph as it has effect in relation to a consent given under that paragraph.

(5) Where a discharge consent has been given under this paragraph, the Department shall publish notice of the consent in such manner as may be prescribed and send copies of the instrument containing the consent to such bodies or persons as may be prescribed.

(6) It shall be the duty of the Department to consider any representations with respect to a discharge consent under this paragraph as are made to it in such manner, and within such period, as may be prescribed and have not been withdrawn.

(7) Where notice of a discharge consent is published by the Department under sub-paragraph (5) the Department shall be entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served.

F73 Words in Sch. 1 para. 4(1)(a) substituted (1.1.2007 for certain purposes, 1.4.2007 for certain purposes, otherwise 25.5.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2); S.R. 2007/282, **art. 2(2)**, Sch.

F74 SI 1999/859

F75 Sch. 1 para. 4(2)(b) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 72(4)** (with art. 9(2))

Revocation of consents and alteration and imposition of conditions

5.—(1) The Department may from time to time review any discharge consent given under paragraph 2 or 4 and the conditions (if any) to which the consent is subject.

(2) Subject to such restrictions on the exercise of the power conferred by this sub-paragraph as are imposed under paragraph 6, where the Department has reviewed a discharge consent under this paragraph, it may by a notice served on the person making a discharge in pursuance of the consent—

(a) revoke the consent;

(b) make modifications of the conditions of the consent; or

(c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

(3) If on a review under sub-paragraph (1) it appears to the Department that no discharge has been made in pursuance of the discharge consent to which the review relates at any time during the preceding 12 months, the Department may revoke the discharge consent by a notice served on the holder of the consent.

(4) If it appears to the Department appropriate to do so—

(a) for the purposes of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or

(c) in consequence of any representations made to it or otherwise,

the Department may, subject to such restrictions on the exercise of the power conferred by virtue of paragraph (c) as are imposed under paragraph 6, at any time, in relation to a discharge consent given under paragraph 2 or 4, by a notice served on the person making a discharge in pursuance of the consent, do anything mentioned in sub-paragraph (2)(a) to (c).

(5) Where the Department, in relation to a discharge consent given under paragraph 2 or 4, has served a notice on any person by virtue of sub-paragraph (2) or (4) (except a notice which only revokes a consent), the Department shall give notice stating the effect of the first-mentioned notice on—

[[F76](a) the Foyle, Carlingford and Irish Lights Commission, where the discharge to which the notice relates is made or to be made in the Londonderry Area or the Newry Area;**]**

[F77](b) . . . . . .

(6) The Department shall be liable to pay compensation to any person in respect of any loss or damage sustained by that person as a result of action taken by the Department in relation to any discharge consent by virtue of sub-paragraph (4)(b) if—

(a) in taking that action the Department does anything which, apart from sub-paragraph (4), it would be precluded from doing by a restriction imposed under paragraph 6; and

(b) the action is not shown to have been taken in consequence of—

(i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or

(ii) consideration by the Department of material information which was not reasonably available to the Department at the beginning of that period.

(7) For the purposes of sub-paragraph (6) information is material, in relation to a discharge consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction

of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter.

F76 SI 1999/859
F77 Sch. 1 para. 5(5)(b) omitted (8.5.2016) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 72(5)** (with art. 9(2))

Restriction on variation and revocation of consent and previous variation

6.—(1) Each instrument signifying the consent of the Department under paragraph 2 or 4 shall specify a period during which no notice by virtue of paragraph 5(2) or (4)(c) shall be served in respect of the consent except, in the case of a notice doing anything mentioned in paragraph 5(2)(b) or (c), with the agreement of the holder of the consent.

(2) Each notice served by the Department by virtue of paragraph 5(2) or (4)(c) (except a notice which only revokes a consent) shall specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice shall not be served except, in the case of a notice doing anything mentioned in paragraph 5(2)(b) or (c), with the agreement of the holder of the discharge consent.

(3) The period specified under sub-paragraph (1) or (2) in relation to any discharge consent shall not, unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, be less than the period of 4 years beginning—

(a) in the case of a period specified under sub-paragraph (1), with the day on which the discharge consent takes effect; and

(b) in the case of a period specified under sub-paragraph (2), with the day on which the notice specifying that period is served.

(4) A restriction imposed under sub-paragraph (1) or (2) shall not prevent the service by the Department of a notice by virtue of paragraph 5(2) or (4)(c) in respect of a discharge consent given under paragraph 4 if—

(a) the notice is served not more than 3 months after the beginning of the period prescribed under paragraph 4(6) for the making of representations with respect to the consent; and

(b) the Department considers, in consequence of any representations received by it within that period, that it is appropriate for the notice to be served.

(5) A restriction imposed under sub-paragraph (1) or (2) shall not prevent the service by the Department of a notice by virtue of paragraph 5(2)(b) or (c) or (4)(c) in respect of a discharge consent given under paragraph 4 if the holder has applied for a variation under paragraph 7.

Modifications etc. (not altering text)
C13 Sch. 1 para. 6 excluded (1.4.2007) by Urban Waste Water Treatment Regulations (Northern Ireland) 2007 (S.R. 2007/187), **regs. 8(4)**, **10(3)**

Applications for variation

7.—(1) The holder of a discharge consent given under paragraph 2 or 4 may apply to the Department, on a form provided for the purpose by the Department, for the variation of the consent.

(2) The provisions of paragraphs 1 to 3 shall apply (with the necessary modifications) to applications under sub-paragraph (1), and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, discharge consents.

Transfer of consents

8.—(1) A discharge consent given under paragraph 2 or 4 may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.

(2) On the death of the holder of a discharge consent given under paragraph 2 or 4, the consent shall [F78]. . . be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a discharge consent given under paragraph 2 or 4, the consent shall [F78]. . . be regarded for the purposes of any of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

(4) [F79]. . . . . .

(5) A discharge consent given under paragraph 2 or 4 which is transferred to, or which vests in, a person under this paragraph shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under paragraph 2 or 4, subject to the same conditions as were attached to it immediately before that date.

[[F80](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) Where a discharge consent given under paragraph 2 or 4 vests in any person as mentioned in sub-paragraph (2) or (3), that person shall give notice of that fact to the Department not later than the end of the period of 15 months beginning with the date of the vesting.

(8) If—

(a) a discharge consent given under paragraph 2 or 4 vests in any person as mentioned in sub-paragraph (2) or (3), but

(b) that person fails to give the notice required by sub-paragraph (7) within the period there mentioned,

the consent, to the extent that it permits the making of any discharges, shall cease to have effect.

(9) A person who fails to give a notice which he is required by sub-paragraph [F81]. . . (7) to give shall be guilty of an offence and liable—

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

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

F78 Words in Sch. 1 para. 8(2)(3) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(5)(a), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F79 Sch. 1 para. 8(4) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(5)(b), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F80 Sch. 1 para. 8(6)-(6C) substituted (1.1.2007 for certain purposes, otherwise 1.4.2007) for Sch. 1 para. 8(6) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), **290(6)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F81 Words in Sch. 1 para. 8(9) repealed (1.1.2007 for certain purposes, otherwise 1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21), arts. 1(2)(3)(e), 290(7), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C14 Sch. 1 para. 8 applied (with modifications) (10.8.2009) by Groundwater Regulations (Northern Ireland) 2009 (S.R. 2009/254), **reg. 21** (with reg. 5)

SCHEDULE 2

Article 23(4).

ORDERS CONFERRING COMPULSORY POWERS FOR EXECUTING WORKS

1. Before making an order under Article 23(2) the Department shall prepare a draft of the order and publish at least once in each of two successive weeks, in one or more newspapers circulating in the locality where the waterway or land to which the order relates is situated or the engineering or building operations are to be carried out, a notice—

(a) stating the general effect of the order as prepared in draft;

(b) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of 28 days beginning with the date of the first publication of the notice;

(c) stating that any person may, within that period, by notice in writing to the Department object to the making of the order.

2. Not later than the date on which the notice is first published in pursuance of paragraph 1, the Department shall serve a copy of the notice on every person appearing to the Department to have an estate in any land which may be substantially affected by the exercise of any compulsory powers if the order were made in the terms of the draft which may be inspected under paragraph 1(b).

3. The Department shall also publish in the Belfast Gazette a notice stating that the draft order has been prepared, specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name of any newspaper in which the notice under paragraph 1 was published and the date of an issue containing the notice.

4. The Department shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the Department thinks reasonable.

5. The Department may make the order in the terms of the draft or in those terms as altered in such manner as it thinks fit; but where the Department proposes to make any significant alteration and considers that any persons are liable to be adversely affected by it, the Department shall give and publish such additional notices as appear to the Department to be necessary for informing those persons of the effect of the alterations.

6.—(1) If before the end of the period of 28 days referred to in paragraph 1, or of 25 days from the publication in the Belfast Gazette of the notice under paragraph 3, or of any period specified in notices under paragraph 5, notice in writing of an objection is received by the Department from any person on whom a notice is served under this Schedule, or from any other person appearing to the Department to be affected by the order as prepared in draft or as proposed to be altered, and the objection is not met or withdrawn, the Department, before making the order shall, unless it is satisfied that the objections are solely of a frivolous or vexatious nature or relate solely to the amount of compensation, cause an inquiry to be held by the Appeals Commission and consider the report on that inquiry.

(2) Sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1 apply in relation to an inquiry under this paragraph as they apply in relation to an inquiry under sub-paragraph (1) of that paragraph.

7.—(1) If the value of any estate in land to which this sub-paragraph applies is depreciated by the coming into operation of the order or anything done in pursuance of it, the person entitled to that estate shall be entitled to compensation from the Department of an amount equal to the amount of the depreciation.

(2) Sub-paragraph (1) applies to any estate in any land in respect of which compulsory powers are exercisable by virtue of the order, and to any estate in any land which, on the date on which the order comes into operation, is held with any of that land.

(3) Where the person entitled to an estate in land to which sub-paragraph (1) applies sustains loss or damage which—

(a) is attributable to the coming into operation of the order or anything done in pursuance of it; and

(b) does not consist of depreciation of the value of his estate; and

(c) is loss or damage for which, if his estate in the land in respect of which compulsory powers are exercised by virtue of the order had been vested under Article 24 in pursuance of a vesting order made before the date on which the order comes into operation, he would have been entitled to compensation by way of compensation for disturbance;

he shall be entitled to compensation from the Department in respect of that loss or damage, in addition to compensation under sub-paragraph (1).

(4) A person who suffers damage (other than the depreciation of an estate in land) which is attributable to the operation of the order or anything done in pursuance of it shall be entitled to recover compensation from the Department in respect of the damage.

(5) **[**[F82]Sections 31 and 33(1)**]** of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect in relation to compensation payable by virtue of this paragraph as they have effect in relation to Part III compensation within the meaning of that Act or for the purposes of Part III of that Act, subject to the modification that for any reference to a compensatable estate there shall be substituted a reference to any estate in land.

F82 2001 c. 2 (NI)

SCHEDULE 3

Article 24(3) and 48(3).

MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972 FOR PURPOSES OF ARTICLE 24(3) AND 48(3)

Modifications etc. (not altering text)

C15 Schs. 3-5: transfer of functions (8.5.2016 for specified purposes) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 3 Pt. 2** (with art. 9(2))

1. References to the Ministry or to the council shall be construed as references to the Department.

2. References to Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall be construed as references to that Schedule as modified by this Schedule.

3. Omit paragraph 1.

4. In paragraph 2—

(a) for the words from the beginning to "directs" substitute the words "Where the Department proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so, and such notice";

(b) in sub-paragraph (c) for the words "as may be prescribed" substitute the words "as the Department considers fit".

5. In paragraph 3(1)(ii) for the word "refuse" substitute the words "decide not".

6. In paragraph 4 omit the words from "and may provide" onwards.

7. In paragraph 5—

(a) in sub-paragraph (1)(a) omit the words "in the prescribed form and manner";

(b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;

(c) in sub-paragraph (1)(d) omit the words "in the prescribed form";

(d) in sub-paragraph (2) for the words "as may be prescribed" substitute the words "as the Department considers fit".

8. In paragraph 6(2) for the words "fund out of which the expenses of the council in acquiring the land are to be defrayed" substitute the words "Consolidated Fund" and for the words "out of the compensation fund" there shall be substituted the words "made by the Department".

9. In paragraph 11(3) omit the words "in the prescribed form".

10. In paragraph 12—

(a) in sub-paragraph (1) omit the words "such" and "as may be prescribed";

(b) in sub-paragraph (2) for the words from "clerk" to "directs" substitute the words "Department as correct, and publish".

11. In paragraph 14(1) omit the words "in the prescribed form".

12. In paragraph 15(1) for the words "in the prescribed form" substitute the words "in such form as may be approved by the Department".

13. Omit paragraph 19.

14. Omit paragraph 20(2).

SCHEDULE 4

Article 42(4)(a).

DESCRIPTION OF CANAL WORKS, ETC.

1. Clearing of waterways, including—

(a) the removal of obstructions, including fallen or ingrowing trees, refuse or other material;

(b) the removal of shoals and cesses;

(c) the shaping, trimming and revetting of banks.

2. Works in connection with waterways, including—

(a) the cleansing, widening, deepening, covering or otherwise improving of existing waters;

(b) the dredging and maintenance of channels;

(c) the cutting of new drains where required;

(d) the abstraction from any source of any water necessary to the purposes of navigation;

(e) the construction of locks, dams, culverts, overflow culverts, pumping stations, aqueducts or viaducts;

(f) the raising and repairing of existing embankments, and the construction of new embankments;

(g) the sinking of pumping sumps;

(h) the construction and repairing of sluices or valves;

(i) the removal and disposal of old spoil banks;

(j) the construction of hydro-electric power stations in connection with any pumping station or pumping sump.

3. New construction, including—

(a) the diversion of waterways;

(b) the cutting through of "U" or "S" bends so as to straighten and shorten the channel;

(c) the construction of new waterways, and of new outfall channels to existing main drains and their feeders;

(d) the construction, alteration, restoration or improvement of any quay, harbour, mooring, dry dock, fish pass, slipway, navigation aid, towing path, culvert, overflow culvert, pipe, drain or road (other than a road within the meaning of the Roads (Northern Ireland) Order 1993);

(e) the provision of such buildings as the Department considers appropriate in connection with any works described in this Schedule;

(f) the reconstruction and improvement of bridges, locks, overflows, weirs, hatches and outfalls necessitating structural alterations;

(g) the reconstruction of damaged or inadequate bridges and culverts, and the substitution of new bridges and culverts therefor;

(h) the building of embankments and walls for the prevention of flooding or erosion;

(i) the formation of cattle water-places, sheep-dipping and other conveniences, the provision of which is calculated to minimise the risk of future damage to any specified canal which has been improved.

4. Removal, alteration or improvement of artificial objects such as sluices, dams, sea defence works, pumping stations and pumping sumps.

5. Sea defence works.

6. The operation of any works described in this Schedule.

7. Such other works or classes of works as may be considered by the Department to be analogous or ancillary to any classes of works described in this Schedule.

[[F83]SCHEDULE 5

Article 45(1), (1A)

PROVISIONS OF THE DRAINAGE ORDER APPLIED FOR THE PURPOSES OF ENVIRONMENTAL IMPACT ASSESSMENT OF CANAL SCHEMES

F83 Sch. 5 substituted (20.3.2006) by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), reg. 22(3), **Sch. 2**

PART I

PROVISIONS OF THE DRAINAGE ORDER APPLIED BY ARTICLE 45(1)

1. The provisions of the Drainage Order applied by Article 45(1) of this Order are as follows—

Provision	***Subject Matter***
Part I	Introductory
Article	
12	Restrictions on drainage schemes.
12A	Consultations and determination of whether a drainage scheme has significant effects on the environment.
12B	Drainage schemes likely to have significant effects on the environment.
12C	Preparation of an environmental statement and consultations thereon.
12D	Publicity for an environmental statement.
12E	Assistance in the preparation of an environmental statement.
12F	Charges.

12G	Drainage schemes likely to have significant effects on the environment in another EEA State.
12H	Determination of whether a drainage scheme should proceed.
13	Confirmation of drainage schemes.
13A	Public Participation.
14	The carrying out of drainage schemes.
15	Provisions in regard to roads, bridges, culverts and embankments.
16	Amendment of drainage schemes.
Schedule 2A	Information for inclusion in environmental statement.
Schedule 2B	Selection criteria referred to in Article 4.3 of Council Directive 85/337/EEC as amended by Council Directive 97/11/EC and Council Directive 2003/35/EC.
Schedule 2C	Environmental factors to be taken into account.

PART II

PROVISIONS OF THE DRAINAGE ORDER APPLIED BY ARTICLE 45(1A)

2. The provisions of the Drainage Order applied by Article 45(1A) of this Order are as follows—

Provision	***Subject Matter***
Part I	Introductory
Article	
17	Compensation for certain losses due to construction of drainage works.
18	Compensation for injury to canals, fisheries, etc.
19	Matters to be regarded in assessing compensation.
20	Disposal of surplus lands, etc.
31	Noxious weeds.
35	Provision as to recovery of expenses.
36	Miscellaneous offences.
38	Limitation of liability for flooding, etc.
39	Protection for officers of the Department.
40	Protection of fisheries.

[F84Article 40A — Protection of water and sewerage undertakers.]

F84 Entry in Sch. 5 inserted (1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 40(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

PART III

MODIFICATION OF THE PROVISIONS APPLIED BY PARTS I AND II

3. The provisions of the Drainage Order specified in Part I and Part II of this Schedule shall, in their application for the purposes of Part III of this Order have effect with the following modifications—

(a) references therein to the Department of Agriculture and Rural Development shall be construed as references to the Department of Culture, Arts and Leisure;

(b) references therein to a watercourse shall be construed as references to a waterway;

(c) references therein to the Drainage Order shall be construed as references to Part III of this Order;

(d) references therein to—

(i) a scheme or drainage scheme carried out under the Drainage Order, or any part thereof;

(ii) drainage works;

(iii) drainage purposes or purposes connected with drainage;

(iv) F85. . . . . .

shall respectively be construed as references to—

(A) a canal scheme;

(B) works under any provision contained in Part III of this Order or any canal scheme;

(C) the purposes of any such provision or scheme; and

(D) F86. . . . . .

(e) references therein to sea defences and sea defence works shall be omitted;

[F87(ea) references to the Drainage Council shall be omitted;]

(f) in Article 17—

(i) for paragraph (4) substitute—

"(4) Every claim for compensation under this Article—

(a) shall be made in writing to the Department within 3 years from the date of completion of the works from which, or from the operation of which, the claim arises, and such details of the claim as the Department may require shall be furnished in writing to the Department within such period as the Department may determine, and

(b) shall, in default of agreement, be heard and determined by the Lands Tribunal.".

(ii) in paragraph (5), the words, "and may allow a sum in respect of the cost of the employment of any" shall be omitted; and

(g) in Article 38, after paragraph (2) add—

"(3) Every claim duly made for compensation under this Article shall, in default of agreement, be heard and determined by the Lands Tribunal.".**]**

F85 Sch. 5 para. 3(d)(iv) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F86 Sch. 5 para. 3(d)(D) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

F87 Sch. 5 para. 3(ea) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 40(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

SCHEDULE 6

Article 57(3).

PROCEDURE FOR MAKING ORDERS UNDER ARTICLE 57(1)

Modifications etc. (not altering text)

C16 Sch. 6: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

1. Where the **[**[F88]Department**][**[F89]proposes**]** to adopt a water management programme by order under Article 57(1), **[**[F90]the Department**]** shall publish, in the Belfast Gazette and, at least once in each of two successive weeks, in one or more newspapers circulating in the area to which the programme relates, a notice—

(a) stating that a water management programme has been prepared in draft;

(b) indicating the area to which the draft programme applies;

(c) specifying a place where a copy of the draft programme may be inspected free of charge at all reasonable times during the period of 28 days beginning with the date of the first publication in a newspaper; and

(d) stating that any person may, within that period, by notice in writing to **[**[F91]the**]** Department object to the making of an order adopting the draft programme.

F88 Word in Sch. 6 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(2)** (with art. 9(2))

F89 Word in Sch. 6 para. 1 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(3)(a)** (with art. 9(2))

F90 Words in Sch. 6 para. 1 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(3)(b)** (with art. 9(2))

F91 Word in Sch. 6 para. 1(d) substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(3)(c)** (with art. 9(2))

2. **[**[F92]The**]** Department shall, if so requested by any person, furnish him with a copy of the draft programme on payment of such reasonable charge as it may determine.

F92 Word in Sch. 6 para. 2 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(4)** (with art. 9(2))

3. The **[**[F88]Department**]** may alter the terms of the draft programme in such manner as **[**[F93]the Department thinks**]** fit, but where the **[**[F88]Department**]**[[F94]proposes**]** to alter significantly any such draft programme **[**[F95]the Department shall**]** cause to be published such additional notices as appear to **[**[F96]the Department**]** to be necessary.

F88 Word in Sch. 6 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(2)** (with art. 9(2))
F93 Words in Sch. 6 para. 3 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(5)(a)** (with art. 9(2))
F94 Word in Sch. 6 para. 3 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(5)(b)** (with art. 9(2))
F95 Words in Sch. 6 para. 3 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(5)(c)** (with art. 9(2))
F96 Words in Sch. 6 para. 3 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(5)(d)** (with art. 9(2))

4. If, before the end of the period of 28 days referred to in paragraph 1, notice in writing of an objection is received by **[**[F97]the**]** Department from any person appearing to it to be a person who may be affected by the draft programme or the draft programme as proposed to be altered under paragraph 3, the **[**[F88]Department**]** , before making an order under Article 57(1) adopting the programme shall, unless the objections are met or withdrawn or the **[**[F88]Department**]**[[F98]is satisfied**]** that they are solely of a frivolous or vexatious nature, cause an inquiry to be held by the Appeals Commission.

F88 Word in Sch. 6 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(2)** (with art. 9(2))
F97 Word in Sch. 6 para. 4 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(6)(a)** (with art. 9(2))
F98 Words in Sch. 6 para. 4 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(6)(b)** (with art. 9(2))

5. Sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1 apply in relation to an inquiry under paragraph 4 as they apply in relation to an inquiry under sub-paragraph (1) of that paragraph.

6. An objection shall not be made to the Appeals Commission in respect of any watercourse in relation to which the Lands Tribunal has, on a review of a determination by the Drainage Council for Northern Ireland, or of a refusal by that Council to make a determination, decided that the watercourse should or should not be a designated watercourse.

7. After the expiry of the period of 28 days referred to in paragraph 1 and, where an inquiry is held by the Appeals Commission, after considering the report of the Commission, the **[**[F88]Department**]** may make the order under Article 57(1) adopting the programme in the terms of the draft or in those terms altered in such manner as **[**[F99]the Department thinks**]** fit.

F88 Word in Sch. 6 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(2)** (with art. 9(2))
F99 Words in Sch. 6 para. 7 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(7)** (with art. 9(2))

8. If the **[**[F88]Department**]** adopt a water management programme under Article 57(1), **[**[F100]the Department**]** shall make such arrangements as appear to **[**[F100]the Department**]** to be appropriate for the publication of the programme and of notices stating that it has been made.

F88 Word in Sch. 6 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(2)** (with art. 9(2))

F100 Words in Sch. 6 para. 8 substituted (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 6 para. 70(8)** (with art. 9(2))

9. In this Schedule "designated watercourse" and "watercourse" have the meanings assigned by Article 2(2) of the Drainage Order.

Schedule 7—Amendments

Schedule 8—Repeals

Status:
Point in time view as at 08/05/2016.

Changes to legislation:
There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999.