STATUTORY INSTRUMENTS

1999 No. 662

The Water (Northern Ireland) Order 1999

PART II

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

Prevention of pollution of water

Pollution, etc., of water

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) A person does not commit an offence under paragraph (1) if he discharges any matter into a public sewer or public sewage treatment works, so that it enters a waterway or water contained in underground strata, if the Department is bound to receive the matter, or it has consented to do so unconditionally, or it has consented to do so subject to conditions and the person observes the conditions.

(3) Where a person is charged with an offence under paragraph (1), it shall be a defence to prove that he exercised all reasonable care to prevent the discharge or deposit of the matter in question.

(4) 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).

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

(6) 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.

(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.

VALID FROM 01/01/2007

[F1 Exceptions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) any prescribed statutory provision.

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

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

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

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

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

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

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

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

(7) A person shall not be guilty of an offence under Article 7(1), (2) or (6) if he discharges any effluent or other matter into a drain mentioned in paragraph (8) so that it enters a waterway or

water contained in underground strata, if the Department for Regional Development has given its consent to the discharge (either unconditionally or subject to conditions which were observed).

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

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

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

F1 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.

VALID FROM 01/01/2007

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.**]**

F1 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.—(1) No person shall, without the consent of the Department, by any means whatsoever, make any discharge into a waterway or underground stratum—

(a) of any trade or sewage effluent; or

(b) of any poisonous, noxious or polluting matter not falling within sub-paragraph (a).

(2) This Article shall not apply to any discharge which is made from a vessel.

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

(4) Subject to the following provisions of this Part, a person who contravenes this Article or the conditions of any discharge consent 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.

(5) A sewerage undertaker shall not be guilty of an offence under this Article by reason only of the fact that a discharge from a public sewer or public sewage treatment works operated by him contravenes conditions of a discharge consent if—

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

(b) the sewerage undertaker—

(i) was obliged under the terms of the operating agreement to receive the discharge;

(ii) could not reasonably have been expected to prevent the discharge into the sewer or works; and

(iii) made all reasonable efforts to dispose of the discharge in accordance with the terms of the operating agreement and of the discharge consent.

(6) In paragraph (5) "operating agreement", in relation to a sewer or sewage treatment works of a sewerage undertaker, means the agreement under Article 13(4) of the Water and Sewerage Services (Northern Ireland) Order 1973, by virtue of which he operates that sewer or sewage treatment works.

Relationship with other statutory provisions controlling pollution

10.—(1) 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) any regulations under section 13 of the Foyle Fisheries Act (Northern Ireland) 1952;

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

[[F2](bb) regulations under Article 4 of the Environment (Northern Ireland) Order 2002;**]**

[F3](c) Article 23 of the Industrial Pollution Control (Northern Ireland) Order 1997; or

(d) Article 7(1).

(2) A person shall not be guilty of an offence under Article 7(1) or 9 in respect of the discharge or deposit of any 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 licence granted under Part II of the Food and Environment Protection Act 1985;

[F3](b) an authorisation granted under the Industrial Pollution Control (Northern Ireland) Order 1997;

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

[[F2](d) a permit granted under regulations under Article 4 of the Environment (Northern Ireland) Order 2002;**]**

(3) A person shall not be guilty of an offence under Article 7(1) or 9 if he discharges any matter into a road drain within the meaning of Article 45 of the Roads (Northern Ireland) Order 1993, or a drain constructed and laid by the Department under Article 45(1)(b) of that Order, so that it enters a waterway or water contained in underground strata, if the Department has given its consent to the discharge unconditionally, or has given its consent to the discharge subject to conditions and the person observes the conditions.

F2 2002 NI 7
F3 prosp. rep. by 2002 NI 7

Power to make scheme of charges

11.—(1) Where—

(a) an application is made to the Department for a discharge consent, or a variation 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.

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**[**[F4], 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.

F4 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 Article 9(4).

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 its consent for the purposes of Article 9 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 its consent for the purposes of Article 9 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.

Status:
Point in time view as at 01/01/2006. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999, Cross Heading: Prevention of pollution of water.