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## STATUTORY INSTRUMENTS

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# 2006 No. 3336

## The Water and Sewerage Services (Northern Ireland) Order 2006

### PART XI

#### AMENDMENTS TO THE WATER ORDER

##### **Pollution of water**

**280.** For Article 7 of the Water Order substitute—

**“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—

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- (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.

### 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.

### **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.

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(6) In this Article “main connection” has the same meaning as in Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.”.

**Commencement Information**

- II** [Art. 280](#) wholly in operation at 25.5.2007; [art. 280](#) in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see [art. 1\(3\)\(e\)](#); [art. 280](#) in operation for certain purposes at 1.4.2007 by [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#)); [art. 280](#) in operation for certain purposes at 4.5.2007 by [S.R. 2007/282](#), [art. 2\(1\)](#); [art. 280](#) in operation at 25.5.2007 insofar as not already in operation by [S.R. 2007/282](#), [art. 2\(2\)](#), [Sch.](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 293(10A) inserted by [2015 c. 8 \(N.I.\) Sch. 3 para. 2\(b\)](#)