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STATUTORY INSTRUMENTS

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**2006 No. 3336**

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

**PART VI**

**SEWERAGE SERVICES**

**CHAPTER III**

**TRADE EFFLUENT**

*Consent for discharge of trade effluent into public sewer*

**Consent required for discharge of trade effluent into public sewer**

**175.**—(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say—

- (a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and
- (b) Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by paragraph (1) of Article 163.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction; and
- (b) on conviction on indictment, to a fine.

### *Consents on an application*

#### **Application for consent**

**176.**—(1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the occupier of the premises.

(2) An application under this Article with respect to a proposed discharge of any such effluent shall state—

- (a) the nature, temperature and composition of the trade effluent;
  - (b) the steps proposed to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising—
    - (i) the polluting effects of the discharge on any controlled waters; and
    - (ii) the impact of the discharge on sewerage services;
  - (c) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and
  - (d) the highest rate at which it is proposed to discharge the trade effluent.
- (3) In this Article “controlled waters” means—
- (a) a waterway (within the meaning of the Water Order); or
  - (b) water in any underground strata.

#### **Transfer of consent**

**177.**—(1) A consent given under this Chapter 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 consent given under this Chapter, the consent shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a consent given under this Chapter, the consent shall, subject to paragraph (4), be regarded for the purposes of any of Parts IX and 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 paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

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

- (5) Where a consent given under this Chapter is to be transferred under paragraph (1)—
- (a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the sewerage undertaker 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 paragraph (6), the sewerage undertaker 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 sewerage undertaker amends the consent; and
  - (ii) the date (if any) specified in the joint notice under sub-paragraph (a).
- (6) A joint notice under paragraph (5)(a) shall include such information as may be prescribed.
- (7) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of paragraph (2) or (3), a joint notice given under paragraph (5)(a) shall be of no effect unless the notice required by paragraph (8) has been given.
- (8) Where a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), that person shall give notice of that fact to the sewerage undertaker not later than the end of the period of 15 months beginning with the date of the vesting.
- (9) If—
  - (a) a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), but
  - (b) that person fails to give the notice required by paragraph (8) within the period there mentioned,the consent, to the extent that it permits the making of any discharges, shall cease to have effect.
- (10) A person who fails to give a notice which he is required by paragraph (5) or (8) 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.
- (11) It shall be the duty of a sewerage undertaker to notify DOE of the happening of any of the following events—
  - (a) the receipt by the undertaker of a joint notice under paragraph (5) in relation to a consent which authorises the discharge of special category effluent;
  - (b) the assignment by the undertaker of any rights under an agreement under this Chapter which authorises the discharge of special category effluent;
  - (c) the undertaker receiving notice of, or otherwise becoming aware of, the assignment by the other party to such an agreement of any rights under that agreement.
- (12) The duty of a sewerage undertaker under paragraph (11) is enforceable under Article 30 by the Authority.

### **Applications for the discharge of special category effluent**

**178.**—(1) Subject to paragraph (3), where a notice containing an application under Article 176 is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions—

- (a) whether the discharges to which the notice relates should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to paragraph (3), a reference which is required to be made by a sewerage undertaker by virtue of paragraph (1) shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.

(3) There shall be no obligation on a sewerage undertaker to make a reference under this Article in respect of any application if, before the end of the period mentioned in paragraph (2), there is a refusal by the undertaker to give any consent on the application.

(4) It shall be the duty of a sewerage undertaker where it has made a reference under this Article not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before DOE serves notice on the undertaker of its determination on the reference.

(5) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.

(6) It shall be the duty of a sewerage undertaker, on making a reference under this Article, to serve a copy of the reference on the occupier of the trade premises in question.

(7) If a sewerage undertaker fails, within the period provided by paragraph (2), to refer to DOE any question which he is required by paragraph (1) to refer to DOE, the undertaker 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.

(8) If DOE becomes aware of any such failure as is mentioned in paragraph (7), it may—

- (a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under Article 185 or 189, notwithstanding anything in paragraph (2) of the Article in question; or
- (b) in any other case, proceed as if the reference required by this Article had been made.

### **Conditions of consent**

**179.**—(1) The power of a sewerage undertaker, on an application under Article 176, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—

- (a) the sewer or sewers into which the trade effluent may be discharged;
- (b) the nature, temperature or composition of the trade effluent which may be discharged;
- (c) the steps to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of the matter discharged to treatment or any other process, for minimising—
  - (i) the polluting effects of the discharge on any controlled waters; and
  - (ii) the impact of the discharge on sewerage services;
- (d) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
- (e) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

(2) Conditions with respect to all or any of the following matters may also be attached under this Article to a consent to the discharge of trade effluent from any trade premises—

- (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;
- (b) the exclusion from the trade effluent of all condensing water;
- (c) the elimination or diminution of any specified constituent of the trade effluent before it enters the sewer;

- (d) the acidity or alkalinity of the trade effluent at the time when it is discharged into the sewer;
  - (e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;
  - (f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;
  - (g) the provision, location, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;
  - (h) the provision, testing and maintenance of apparatus for determining the nature, temperature and composition of any trade effluent being discharged from the premises into the sewer;
  - (i) the keeping of records of the volume, rate of discharge, nature, temperature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and
  - (j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature, temperature and composition of any trade effluent discharged from the trade premises into the sewer.
- (3) In the exercise of the power conferred by virtue of paragraph (2)(e), regard shall be had—
- (a) to the nature, temperature and composition and to the volume and rate of discharge of the trade effluent discharged;
  - (b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and
  - (c) to any revenue likely to be derived by the undertaker from the trade effluent.
- (4) If, in the case of any trade premises, a condition imposed under this Article is contravened, the occupier of the premises shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (5) In this Article “controlled waters” means—
- (a) a waterway (within the meaning of the Water Order); or
  - (b) water in any underground strata.
- (6) This Article has effect subject to the provisions of Articles 191 and 193(3).

#### **Appeals to the Authority with respect to decisions on applications etc.**

**180.**—(1) Any person aggrieved by—

- (a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under Article 176;
- (b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or
- (c) any condition attached by a sewerage undertaker to such a consent,

may appeal to the Authority.

(2) On an appeal under this Article in respect of a refusal or failure to give a consent, the Authority may give the necessary consent, either unconditionally or subject to such conditions as it thinks fit

to impose for determining any of the matters as respects which the undertaker has power to impose conditions under Article 179.

(3) On an appeal under this Article in respect of a condition attached to a consent, the Authority may take into review all the conditions attached to the consent, whether appealed against or not, and may—

- (a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or
- (b) annul any of the conditions.

(4) The Authority may, under paragraph (3), include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this Article, the Authority may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of the Authority under this Article shall be subject to the provisions of Articles 181, 186, 191, 193 and 196.

#### **Appeals with respect to the discharge of special category effluent**

**181.**—(1) Where a reference is made to DOE under Article 178, the period mentioned in subparagraph (b) of paragraph (1) of Article 180 shall not begin to run for the purposes of that paragraph, in relation to the application to which the reference relates, until the day after DOE serves notice on the sewerage undertaker in question of its determination on the reference.

(2) If, on an appeal under Article 180, it appears to the Authority—

- (a) that the case is one in which the sewerage undertaker in question is required to make a reference under Article 178 before giving a consent; and
- (b) that the undertaker has not made such a reference, whether because the case falls within paragraph (3) of that Article or otherwise,

the Authority shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in paragraph (3) are satisfied.

(3) The conditions mentioned in paragraph (2) are satisfied if the Authority—

- (a) has itself referred the questions mentioned in Article 178(1) to DOE; and
- (b) has been sent a copy of the notice of DOE's determination on the reference.

(4) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.

(5) It shall be the duty of the Authority, on making a reference under this Article, to serve a copy of the reference—

- (a) on the occupier of the trade premises in question; and
- (b) on the sewerage undertaker in question.

#### **Variation of consents**

**182.**—(1) Subject to Articles 186, 191 and 193(3), a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.

(2) Subject to paragraphs (3) and (4) and Article 183, no direction shall be given under this Article with respect to a consent under this Chapter—

- (a) within two years from the date of the consent; or
- (b) where a previous direction has been given under this Article with respect to that consent, within two years from the date on which notice was given of that direction.

(3) Paragraph (2) shall not prevent a direction being given before the time specified in that paragraph if it is given with the consent of the holder of the consent under this Chapter.

(4) A direction given with the consent mentioned in paragraph (3) shall not affect the time at which any subsequent direction may be given.

(5) The sewerage undertaker shall give notice of any direction under this Article with respect to a consent under this Chapter to the holder of that consent.

(6) A notice under paragraph (5) shall—

- (a) include information as to the right of appeal conferred by paragraph (1) of Article 184; and
- (b) state the date, being a date not less than two months after the giving of the notice, on which (subject to paragraph (2) of that Article) the direction is to take effect.

(7) For the purposes of this Article references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

(8) In this Chapter “holder”, in relation to a consent under this Chapter, means the person on whose application the consent was granted (or a person treated as such under Article 177(4)).

### **Variations within time limit**

**183.**—(1) A sewerage undertaker may give a direction under Article 182 before the time specified in paragraph (2) of that Article and without the consent required by paragraph (3) of that Article if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.

(2) Subject to Article 192(3), where a sewerage undertaker gives a direction by virtue of paragraph (1), the undertaker shall be liable to pay compensation to the holder of the consent under this Chapter to which the direction relates unless the undertaker is of the opinion that the direction is required—

- (a) in consequence of a change of circumstances which—
  - (i) has occurred since the beginning of the period of two years in question; and
  - (ii) could not reasonably have been foreseen at the beginning of that period; and
- (b) otherwise than in consequence of consents for discharges given after the beginning of that period.

(3) Where a sewerage undertaker gives a direction by virtue of paragraph (1) and is of the opinion mentioned in paragraph (2), it shall be the duty of the undertaker to give notice of the reasons for its opinion to the holder of the consent under this Chapter to which the direction relates.

(4) For the purposes of this Article the circumstances referred to in paragraph (2)(a) may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

(5) The Department may by regulations make provision as to the manner of determining the amount of any compensation payable under this Article, including the factors to be taken into account in determining that amount.

**Appeals with respect to variations of consent**

**184.**—(1) The holder of any consent under this Chapter may—

- (a) within two months of the giving to him under paragraph (5) of Article 182 of a notice of a direction under that Article ; or
- (b) with the written permission of the Authority, at any later time,

appeal to the Authority against the direction.

(2) Subject to paragraph (3), if an appeal against a direction is brought under paragraph (1) before the date specified under Article 182(6)(b) in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.

(3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.

(4) On an appeal under paragraph (1) with respect to a direction, the Authority shall have power—

- (a) to annul the direction given by the sewerage undertaker; and
- (b) to substitute for it any other direction, whether more or less favourable to the appellant;

and any direction given by the Authority may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

(5) A person to whom notice is given in pursuance of Article 183(3) may, in accordance with regulations made by the Department, appeal to the Authority against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.

(6) On an appeal under paragraph (5) the Authority may direct that Article 183 shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.

(7) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(8) The powers of the Authority under this Article shall be subject to the provisions of Articles 191, 193 and 196.

**Review by DOE of consents relating to special category effluent**

**185.**—(1) Where the occupier of any trade premises is (whether or not in accordance with a notice under Article 190) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special category effluent from those premises into a sewerage undertaker's public sewer, DOE may review the questions—

- (a) whether the discharges authorised by the consent should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to paragraph (3), DOE shall not review any question under this Article unless—

- (a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made—
  - (i) before the transfer date; or
  - (ii) in contravention of Article 191;
- (b) a period of more than two years has elapsed since the time, or last time, when notice of DOE's determination on any reference or review relating to that consent or the consent



to which that variation relates was served under Article 190 on the occupier of the trade premises in question; or

- (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under Article 190 in the consent or variation by virtue of which the discharges in question are made.

(3) Paragraph (2) shall not apply if the review is carried out—

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

#### *Application for variation of time for discharge*

#### **Application for variation of time for discharge**

**186.**—(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

- (a) of a failure to complete any works required in connection with the reception and disposal of the trade effluent; or
- (b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to the Authority for such a substitution.

(2) The Authority shall have power, on an application under paragraph (1), to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if it thinks fit, any earlier date.

(3) Not less than one month before making an application under paragraph (1) a sewerage undertaker shall give notice of its intention to the holder of the consent under this Chapter in respect of the trade premises from which the trade effluent is to be discharged.

(4) The Authority, before varying a direction on an application under paragraph (1), shall take into account any representations made to it by the person to whom notice is given under paragraph (3).

#### *Agreements with respect to the disposal etc. of trade effluent*

#### **Agreements with respect to the disposal etc. of trade effluent**

**187.**—(1) Subject to Articles 188 and 191, a sewerage undertaker may enter into and carry into effect—

- (a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;
- (b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.

(2) Without prejudice to the generality of paragraph (1), an agreement such as is mentioned in sub-paragraph (a) of that paragraph may, in particular, provide—

- (a) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and
  - (b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.
- (3) The power of a sewerage undertaker to enter into an agreement under this Article includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

### **Reference to DOE of agreements relating to special category effluent**

**188.**—(1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions—

- (a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) It shall be the duty of a sewerage undertaker where it has made a reference under this Article not to give any consent or enter into any agreement with respect to any such operations as are mentioned in paragraph (1)(a) at any time before DOE serves notice on the undertaker of its determination on the reference.

(3) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the proposed agreement.

(4) It shall be the duty of a sewerage undertaker, on making a reference under this Article, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.

(5) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1), to refer to DOE any question which it is required by that paragraph to refer to DOE, the undertaker 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.

(6) If DOE becomes aware—

- (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in paragraph (1), and
- (b) that the sewerage undertaker has not referred to DOE any question which it is required to refer to DOE by that paragraph,

DOE may proceed as if the reference required by that paragraph had been made.

(7) If DOE becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1) without the sewerage undertaker in question having referred to DOE any question which it is required by that paragraph to refer to it, DOE may exercise its powers of review under Article 185 or, as the case may be, Article 189, notwithstanding anything in paragraph (2) of the Article in question.

### **Review by DOE of agreements relating to special category effluent**

**189.**—(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under Article 190) for the time being a party to any agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of special category effluent, DOE may review the questions—

- (a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) Subject to paragraph (3), DOE shall not review any question under this Article unless—

- (a) the agreement by virtue of which the operations in question are carried out has not previously been the subject matter of a review and was entered into—
  - (i) before the transfer date; or
  - (ii) in contravention of Article 191;
- (b) a period of more than two years has elapsed since the time, or last time, when notice of DOE's determination on any reference or review relating to that agreement was served under Article 190 on the owner or occupier of the trade premises in question; or
- (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under Article 190 in the agreement by virtue of which the operations in question are carried out.

(3) Paragraph (2) shall not apply if the review is carried out—

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

(4) References in this Article to an agreement include references to an agreement as varied from time to time by a notice under Article 190.

### *References and reviews relating to special category effluent*

### **Powers and procedure on references and reviews**

**190.**—(1) This Article applies to—

- (a) any reference to DOE under Article 178, 181 or 188; and
- (b) any review by DOE under Article 185 or 189.

(2) On a reference or review to which this Article applies, it shall be the duty of DOE, before determining the questions which are the subject matter of the reference or review—

- (a) to give an opportunity of making representations or objections to DOE—
  - (i) to the sewerage undertaker in question;
  - (ii) in the case of a reference or review relating to a consent under this Chapter, to the occupier of the trade premises in question;
  - (iii) in the case of a reference or review relating to an agreement or proposed agreement under this Chapter, to the owner or the occupier of the trade premises in question,

according to whether it is the owner or the occupier of those premises who is a party or proposed party to the relevant agreement; and

- (b) to consider any representations or objections which are duly made to DOE with respect to those questions by a person to whom DOE is required to give such an opportunity and which are not withdrawn.

(3) On determining any question on a reference or review to which this Article applies, DOE shall serve notice on the sewerage undertaker in question and on the person specified in paragraph (2)(a)(ii) or (as the case may be) (iii).

(4) A notice under this Article shall state, according to what has been determined—

- (a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or
- (b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist of or include conditions so specified; or
- (c) that DOE has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.

(5) Without prejudice to Article 191, a notice under this Article, in addition to containing such provision as is specified in paragraph (4), may do one or both of the following, that is to say—

- (a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and
- (b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under Article 187.

(6) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of DOE, by virtue of paragraph (4)(b), to specify such conditions as DOE considers appropriate in a notice under this Article.

(7) DOE shall send a copy of every notice served under this Article to the Authority.

#### **Effect of determination on reference or review**

**191.**—(1) Where a notice under Article 190 has been served on a sewerage undertaker, it shall be the duty—

- (a) of the undertaker; and
- (b) in relation to that undertaker, of the Authority,

so to exercise the powers to which this Article applies as to secure compliance with the provisions of the notice.

(2) This paragraph applies to the following powers, that is to say—

- (a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under Article 179 or 182 and any power to enter into or vary an agreement under Article 187; and
- (b) in relation to the Authority, any of its powers under this Chapter.

(3) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this Article, to impose any condition specified in a notice under Article 190.

(4) A sewerage undertaker which fails to perform its duty under 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.

(5) DOE may, for the purpose of securing compliance with the provisions of a notice under Article 190, by serving notice on the sewerage undertaker in question and on the person specified in Article 190(2)(a)(ii), vary or revoke—

(a) any consent given under this Chapter to make discharges of any special category effluent; or

(b) any agreement under Article 187.

### **Compensation in respect of determinations made for the protection of public health etc.**

**192.**—(1) Subject to paragraph (2), DOE shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under Article 190 containing DOE's determination on a review which—

(a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and

(b) but for being so carried out would have been prohibited by virtue of Article 185(2) or 189(2).

(2) DOE shall not be required to pay any compensation under this Article if the determination in question is shown to have been given in consequence of—

(a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in Article 185(2) or, as the case may be, Article 189(2) began to run; or

(b) consideration by DOE of material information which was not reasonably available to DOE at that time.

(3) No person shall be entitled to any compensation under Article 183 in respect of anything done in pursuance of Article 191.

(4) In this Article “the relevant person” means—

(a) in relation to a review of a consent, the holder of the consent;

(b) in relation to a review of an agreement, the owner or occupier of the trade premises in question, according to whether it is the owner or the occupier who is a party to the agreement.

### *Supplemental provisions of Chapter III*

### **Restrictions on power to fix charges under Chapter III**

**193.**—(1) On any appeal under Article 180 or 184(1) conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Authority except in so far as no provision is in force by virtue of a charges scheme under Article 201 in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject matter of the appeal.

(2) In so far as any such conditions as are mentioned in paragraph (1) do fall to be determined by the Authority, they shall be determined having regard to the desirability of that undertaker's—

(a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and

(b) securing a reasonable return on its capital.

(3) To the extent that paragraph (1) excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under Article 201 but not otherwise.

**Power of DOE to require information for the purpose of its functions in relation to special category effluent**

**194.**—(1) For the purpose of the discharge of its functions under this Chapter, DOE may, by notice in writing served on any person, require that person to furnish such information specified in the notice as DOE reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who—

- (a) fails, without reasonable excuse, to comply with a requirement imposed under paragraph (1), or
- (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular,

shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

**Evidence from meters etc.**

**195.** Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

**Statement of case on appeal**

**196.**—(1) At any stage of the proceedings on an appeal under Article 180 or 184(1), the Authority may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.

(2) The decision of the High Court on a special case under this Article shall be deemed to be a judgment of the Court within the meaning of section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23) (which relates to the jurisdiction of the Court of Appeal); but no appeal to the Court of Appeal shall be brought by virtue of this paragraph except with the leave of the High Court or of the Court of Appeal.

**Meaning of “special category effluent”**

**197.**—(1) Subject to paragraphs (2) and (3), trade effluent shall be special category effluent for the purposes of this Chapter if—

- (a) such substances as may be prescribed are present in the effluent or are present in the effluent in prescribed concentrations; or
- (b) the effluent derives from any such process as may be prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(2) If trade effluent is produced, or to be produced, by operating any installation or plant or otherwise carrying on any activity, the operation or carrying on of which requires a permit,

that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(3) In paragraph (2)—

(a) “determination date”, in relation to an installation, plant or activity, means—

(i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;

(ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal, and in this paragraph the references to an appeal are references to an appeal under regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 17\)](#);

(b) “permit” means a permit granted, under regulations under that Article, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions into the air, water and land.

(4) Regulations under this Article shall be made by DOE.

### **Power to apply Chapter III to specified activities**

**198.**—(1) The Department may by order provide, in relation to discharge into public sewers—

(a) that a liquid or other matter of a description specified in the order shall be treated as if it were trade effluent for the purposes of this Chapter; or

(b) that—

(i) the discharge restrictions shall not apply to a liquid or other matter of a description specified in the order; and

(ii) (in the case of a liquid) the liquid shall be deemed not to be trade effluent for the purposes of this Chapter.

(2) An order under paragraph (1) may so provide whether or not the liquid or other matter specified would otherwise have fallen within (or, as the case may be, outside) a proper construction of “trade effluent” as defined in Article 199(1).

(3) An order under paragraph (1) may so provide, in relation to the liquid or other matter specified, either generally or in particular cases or classes of case or for particular purposes or as otherwise specified in the order.

(4) In this Article, references to the discharge restrictions are references to—

(a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and

(b) the restrictions imposed by Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article.

(5) Where any provisions of this Chapter are to apply to a liquid or other matter by virtue of an order under paragraph (1)(a), the order may provide for them so to apply subject to such modifications as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.

(6) The Department may include in an order under paragraph (1) such provisions as appear to it expedient for modifying any statutory provision as it applies in relation to the discharge into sewers of any liquid or other matter specified in the order.

(7) Where the discharge restrictions do not apply to a liquid by virtue of an order under paragraph (1)(b), paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in

relation to communication with a sewer for the purpose of making any discharge of that liquid as they apply in relation to any other discharges which are authorised by paragraph (1) of Article 163.

(8) The Department may include in an order under this Article such other supplemental, incidental or transitional provision as appears to it to be expedient.

(9) An order made under this Article shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(10) In this Article, references to a liquid are to a liquid either with or without particles of matter in suspension in the liquid.

### *Interpretation of Chapter III*

#### **Interpretation of Chapter III**

**199.**—(1) In this Chapter, subject to Article 198—

“special category effluent” has the meaning given by Article 197;

“trade effluent”—

(a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and

(b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

“trade premises” means, subject to paragraph (2), any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Chapter, any land or premises used or intended for use (in whole or in part and whether or not for profit)—

(a) for agricultural or horticultural purposes or for the purposes of fish farming;

(b) for scientific research or experiment;

(c) for the purposes of a hospital or nursing home;

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of “trade effluent” in paragraph (1) shall include references to agriculture, horticulture, fish farming, scientific research or experiment and the carrying on of a hospital or nursing home.

(3) In relation to any consent under this Chapter “holder” has the meaning given by Article 182(8).

(4) Every application or consent made or given under this Chapter shall be made or given in writing.

(5) Nothing in this Chapter shall affect any right with respect to water in a watercourse, or authorise any infringement of such a right, except in so far as any such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under Article 197.