
DRAFT STATUTORY INSTRUMENTS

1999 No.

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

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 Fisheries 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.