
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**

Enforcement

Powers of entry and inspection

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

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

- (a) enter any premises for the purpose of determining whether, and if so in what manner, any functions conferred on the Department under this Part are to be performed in relation to those premises, or whether any provision of this Part or of any regulations made under this Part has been complied with; and
- (b) carry out such inspections, surveys, measurements and tests on any premises entered by that person or of any articles found on any such premises, and take away such samples of water or effluent or of any land or articles, as the Department—
 - (i) considers appropriate for the purpose mentioned in sub-paragraph (a); and
 - (ii) has authorised that person to carry out or take away.

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

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

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install and keep monitoring and other apparatus there.

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

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

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

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

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

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

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

Supplementary provisions as to powers of entry and inspection

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

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

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

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

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

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

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

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

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

Evidence in connection with certain pollution offences

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

(2) Without prejudice to the generality of paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a right conferred by Article

25, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

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

(4) Information provided or obtained pursuant to or by virtue of a condition attached to a discharge consent (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

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

(6) Where—

(a) by virtue of a condition attached to a discharge consent, an entry is required to be made in any record as to the observance of any condition of the consent, and

(b) the entry has not been made,

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

Power to obtain information

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

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

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

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

Penalties for false information

29. Any person who—

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

(b) for the purpose of obtaining any discharge consent or any variation of such a consent, knowingly or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and liable—

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

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