
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**

Registers and other information

Pollution control register

30.—(1) The Department shall, in accordance with regulations, maintain registers containing prescribed particulars of or relating to—

- (a) any notices of water quality objectives or other notices published or served under Article 6;
- (b) any notices served under Article 8 and any convictions for offences under that Article;
- (c) applications made for discharge consents;
- (d) discharge consents given by the Department and the conditions, if any, to which the consents are subject;
- (e) applications made to the Department for the variation of discharge consents;
- (f) enforcement notices served under Article 12;
- (g) revocations under paragraph 5 of Schedule 1 of discharge consents;
- (h) appeals under Article 13;
- (i) convictions, for offences under Article 9, of persons who have the benefit of discharge consents;
- (j) information obtained or furnished in pursuance of conditions of discharge consents;
- (k) works notices;
- (l) appeals under Article 17(7);
- (m) convictions for offences under Article 19;
- (n) any matter about which particulars are required to be kept in any register under Article 20 of the Industrial Pollution Control (Northern Ireland) Order 1997 (particulars about authorisations for prescribed processes, etc.) by the chief inspector appointed under that Order;
- (o) the following, that is to say—
 - (i) particulars of sampling points fixed under Article 25(5);
 - (ii) samples of water or effluent taken by the Department for the purposes of any of the provisions of this Part;
 - (iii) information produced by analyses of those samples;

- (iv) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples as is acquired by the Department from any person under arrangements made by the Department for the purposes of any of those provisions; and
 - (v) the steps taken in consequence of any such information as is mentioned in any of heads (ii) to (iv);
 - (p) such other matters relating to the quality of water or the pollution of water as may be prescribed.
- (2) Where information of any description is excluded from any register by virtue of Article 32, a statement shall be entered in the register indicating the existence of information of that description.
- (3) The Department shall—
- (a) ensure that the contents of registers maintained under this Article are available, at all reasonable times, for inspection by the public free of charge; and
 - (b) afford members of the public reasonable facilities for obtaining from the Department, on payment of reasonable charges, copies of entries in any of the registers.
- (4) A register maintained under this Article shall, in favour of a person charged with an offence under this Part, be conclusive evidence as to the terms of any discharge consent, or any condition to which such a consent is subject, as that consent, or that condition, as the case may be, has effect for the time being.

Exclusion from registers of information affecting national security

31.—(1) No information shall be included in a register maintained under Article 30 if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

- (a) specifying information, or descriptions of information, to be excluded from its registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from a register in pursuance of directions given under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the Department that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

(5) Any direction given under paragraph (2) shall be in writing and may be varied or revoked by a subsequent direction.

Exclusion from registers of certain confidential information

32.—(1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register maintained under Article 30, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of a specification under paragraph (10);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department, or, on appeal, by the Appeals Commission.

(2) Where information is furnished to the Department for the purpose of—

- (a) an application for a discharge consent or for the variation of such a consent,
- (b) complying with any condition of a discharge consent, or
- (c) complying with a direction under Article 28,

then, if the person furnishing it applies to the Department to have the information excluded from any register maintained under Article 30, on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) must be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any statutory provision might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register maintained under Article 30, unless excluded under this Article; and
- (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

- (a) the information shall not be entered on the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned; and
- (b) that person may appeal to the Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) If either party to an appeal under paragraph (5) so requests, the appeal shall be or continue in the form of a hearing which must be held in private.

(7) Paragraphs (3) to (6) of Article 8 of the Water and Sewerage Services (Northern Ireland) Order 1973 shall not apply in relation to any appeal under paragraph (5).

(8) The Appeals Commission shall notify the Department and the appellant of its decision on an appeal under paragraph (5).

(9) The decision of the Appeals Commission on an appeal under paragraph (5) shall be final, except on a point of law.

(10) The Department may specify information, or descriptions of information, which the public interest requires to be included in a register maintained under Article 30 notwithstanding that the information may be commercially confidential.

(11) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(12) Paragraphs (5) to (9) shall apply in relation to a determination under paragraph (11), as they apply in relation to a determination under paragraph (2) or (4).

(13) The Department may by regulations substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(14) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

Maps of fresh-water limits of waterways

33.—(1) The Department shall—

- (a) maintain maps showing what appear to the Department to be the fresh-water limits of every waterway; and
- (b) make such maps available, at all reasonable times, for inspection by the public free of charge.

(2) This Article does not apply to any waterway of a description specified in an order made by the Department subject to negative resolution.

Collection of data and information by Department

34.—(1) The Department may—

- (a) collect, or cause to be collected, such data and information;
- (b) carry out, or cause to be carried out, such research,

as it considers to be necessary for the purpose of performing any of its functions under this Part.

(2) The Department may publish, or permit the publication of, any data or information collected, or the results of any research carried out, by or on behalf of the Department under paragraph (1).

(3) The Department shall provide reasonable facilities for the inspection of records of data and information collected by it, or on its behalf, in pursuance of paragraph (1)(a), and for the taking of copies of, and extracts from, those records.