



2016 CHAPTER 13

PART 1

GENERAL ENVIRONMENTAL REGULATION

General purpose: protecting and improving the environment

1.—(1) The purpose of this Part is to enable provision to be made for or in connection with protecting and improving the environment, including (but not limited to) the following—

- (a) regulating environmental activities;
- (b) implementing EU obligations of the United Kingdom relating to protecting and improving the environment;
- (c) implementing international obligations of the United Kingdom relating to protecting and improving the environment.

(2) In subsection (1) “international obligations” has the same meaning as in the Northern Ireland Act 1998.

Regulations relating to protecting and improving the environment

2.—(1) The Department, by regulations, may make provision for, or in connection with, any of the matters specified in Schedule 1.

(2) In accordance with section 1, the provision that may be made by regulations under this section is provision for or in connection with protecting and improving the environment, including (but not limited to) any of the matters mentioned in paragraphs (a) to (c) of subsection (1) of that section.

(3) The regulations may provide for specified provisions of the regulations to have effect in relation only to—

- (a) specified regulated activities;
 - (b) the carrying on of regulated activities in specified circumstances; or
 - (c) the carrying on of regulated activities by specified persons or classes of person.
- (4) The regulations may—
- (a) modify any statutory provision or document;
 - (b) in making different provision for different purposes, make different provision for different cases, persons, circumstances or areas;
 - (c) provide for the delegation of functions; or
 - (d) impose requirements in relation to any standards or other matters set out in such documents as may be specified in the regulations.
- (5) The regulations may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

Regulations relating to protecting and improving the environment: consultation

3.—(1) Before making any regulations under section 2, the Department must consult—

- (a) any regulator on whom the proposed regulations would confer functions; and
- (b) such other persons, including persons appearing to it to be representative of the interests of district councils, industry, agriculture, fisheries or small businesses, as it considers appropriate.

(2) Consultation undertaken before the coming into operation of this section is as effective compliance with subsection (1) as if undertaken after its coming into operation.

Regulations relating to protecting and improving the environment: objective

4. The Department must, in making regulations under section 2, have as an objective reducing the regulatory and administrative burden on persons carrying on regulated activities to the greatest extent possible consistent with protecting and improving the environment.

General environmental rules

5.—(1) General environmental rules specified in, or made under, the regulations under section 2 pursuant to paragraph 4(3)(c) of Schedule 1 may—

- (a) impose conditions or requirements;

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- (b) prescribe standards or objectives to be complied with or achieved; or
 - (c) require standards or objectives specified in or under other statutory provisions to be complied with or achieved.
- (2) Before making any general environmental rules in accordance with a procedure specified under paragraph 4(5) of Schedule 1, the Department must—
- (a) publish a draft of the proposed rules;
 - (b) publicise the opportunity to make representations about the proposed rules under subsection (3) in such manner as the Department thinks fit; and
 - (c) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as the Department may determine.
- (3) Any person who wishes to make a representation about the proposed rules to the Department may do so within the period determined under subsection (2) (c).
- (4) The Department must, in making the rules, have regard to any representations on the proposed rules received by it within that period.

Interpretation

6. In this Part—

“activities” means activities of any nature, whether industrial, commercial or otherwise and whether carried on in particular premises or otherwise and includes (with or without other activities) the production, treatment, keeping, transportation, depositing or disposal of any substance;

“archaeological object” has the same meaning as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;

“energy efficiency” means the ratio of output of performance, service, goods or energy, to input of energy;

“environmental activities” means—

- (a) activities that are capable of causing, or liable to cause, environmental harm; or
- (b) activities connected with such activities;

“environmental harm” means—

- (a) harm to the health of human beings or other living organisms;
- (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole;
 - (ii) harm to the quality of air, water or land; and
 - (iii) other impairment of, or interference with, ecosystems, biodiversity, geodiversity, habitats, species, historic monuments, archaeological objects or protected landscapes;

- (c) offence to the senses of human beings;
- (d) damage to property; or
- (e) impairment of, or interference with, amenities or other legitimate uses of the environment;

“historic monuments” has the same meaning as in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;

“protecting and improving the environment” includes—

- (a) preventing deterioration (or further deterioration) of, and protecting and enhancing, the status of ecosystems, biodiversity, geodiversity, habitats, species, historic monuments, archaeological objects or protected landscapes;
- (b) promoting the sustainable use of natural resources based on the long-term protection of available natural resources; and
- (c) promoting and enhancing the energy efficiency of regulated activities;

“regulated activities” means any environmental activities in respect of which provision may be made by regulations under section 2;

“regulator” means any person by whom functions conferred by the regulations for, or in connection with, regulating regulated activities are, or are to be, exercisable.

PART 2

POWERS OF ENTRY AND ASSOCIATED POWERS

Repealing, etc. unnecessary or inappropriate powers of entry, etc.

7. The Department, by regulations, may amend, repeal or revoke any statutory provision under which it has any function to the extent necessary to remove from it any of the following that it considers to be unnecessary or inappropriate—

- (a) a power of entry or associated power;
- (b) an offence connected with the exercise of such a power of a kind mentioned in section 9(1)(b).

Adding safeguards to powers of entry

8.—(1) The Department, by regulations, may provide for safeguards in relation to any power of entry or associated power contained in any statutory provision under which it has any function.

- (2) Such safeguards may include, in particular—

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- (a) restrictions as to the premises over which the power may be exercised;
- (b) restrictions as to the times at which the power may be exercised;
- (c) restrictions as to the number or description of persons who may exercise the power;
- (d) a requirement for a judicial or other authorisation before the power may be exercised;
- (e) a requirement to give notice within a particular period before the power may be exercised;
- (f) other conditions which must be met before the power may be exercised;
- (g) modifications of existing conditions which must be met before the power may be exercised;
- (h) other restrictions on the circumstances in which the power may be exercised;
- (i) new obligations on the person exercising the power which must be met before, during or after its exercise;
- (j) modifications of existing obligations on the person exercising the power which must be met before, during or after its exercise; and
- (k) restrictions on any power to use force, or any other power, which may be exercised in connection with the power of entry or associated power.

Rewriting powers of entry

9.—(1) The Department, by regulations, may rewrite (with or without modifications)—

- (a) powers of entry or associated powers contained in any statutory provision under which it has any function or any aspects of any such powers;
- (b) offences connected with the exercise of any such powers, including (but not limited to) offences of—
 - (i) obstructing a person in the exercise of a power of entry or associated power;
 - (ii) failing or refusing to provide facilities, assistance or information to a person exercising a power of entry or associated power; and
 - (iii) falsely pretending to be a person authorised to exercise a power of entry or associated power; or
- (c) statutory provisions relating to, or connected with, any such powers or aspects.

(2) The power under subsection (1) to rewrite a power of entry or associated power includes—

- (a) the power to remove an aspect of such a power without replacing it; and

- (b) the power to attach an offence of a kind mentioned in subsection (1)(b) to the exercise of such a power even if such an offence did not exist in relation to that power immediately before the changes made by the regulations.
- (3) The power under subsection (1) to rewrite an offence connected with the exercise of a power of entry or associated power includes the power to provide for the offence to be—
- (a) triable only summarily or either summarily or on indictment;
 - (b) punishable on summary conviction by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 3 months);
 - (ii) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale for an offence that is triable only summarily or the statutory maximum for an offence that is triable summarily or on indictment); or
 - (iii) both; or
 - (c) punishable on conviction on indictment by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years); or
 - (ii) a fine; or
 - (iii) both.
- (4) Subsection (3) applies irrespective of whether the mode of trial provided for the offence is different to the mode of trial, or the penalty provided for the offence is greater or lesser than the penalty, applicable to the offence immediately before the changes made by the regulations.
- (5) But regulations under this section may not alter the effect of—
- (a) a power of entry or associated power; or
 - (b) any safeguard relating to, but not forming part of, such a power—
- unless, on or after the changes made by the regulations, the safeguards in relation to the power, taken together, provide a greater level of protection than any safeguards applicable immediately before the changes.

Review of powers of entry

- 10.—**(1) The Department must, within the period of two years beginning with the day on which this section comes into operation—
- (a) review powers of entry and associated powers contained in any statutory provision under which it has any function with a view to deciding whether to make regulations under section 7, 8(1) or 9(1) in relation to any of them;
 - (b) prepare a report of that review; and

(c) lay a copy of the report before the Assembly.

(2) A failure by the Department to comply with a duty under subsection (1) in relation to a power of entry or associated power does not affect the validity of the power.

Consultation requirements

11. Before making any regulations under section 7, 8(1) or 9(1) in relation to a power of entry or associated power or an offence connected with the exercise of any such power, the Department must consult—

- (a) such persons appearing to the Department to be representative of the views of persons entitled to exercise the power of entry or associated power as it considers appropriate; and
- (b) such other persons as the Department considers appropriate.

Regulations

12. Regulations under section 7, 8(1) or 9(1) may—

- (a) modify any statutory provision; or
- (b) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

Code of practice in relation to powers of entry

13.—(1) The Department must prepare a code of practice in connection with the exercise by the Department, a district council or any other person of a power of entry or associated power contained in any statutory provision under which the Department has any function.

(2) After preparing a draft of the code the Department—

- (a) must publish the draft in any manner that it considers appropriate and invite representations regarding the draft;
- (b) must consider any representations made to it regarding the draft; and
- (c) may amend the draft accordingly.

(3) After the Department has proceeded under subsection (2) it must cause a draft of the code to be laid before the Assembly.

(4) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further steps may be taken in relation to the draft.

(5) Nothing in subsection (4) prevents a new draft being prepared and dealt with in accordance with this section, including subsection (3).

(6) If the Assembly does not resolve as mentioned in subsection (4), the Department must publish the code in any manner that it considers appropriate.

(7) The Department must from time to time review the code and, if it considers it appropriate to do so, revise the code.

(8) Subsections (1) to (7) apply to a revision of the code in the same way as they apply to its preparation.

(9) A person who exercises a power of entry or associated power of a kind mentioned in subsection (1) must have regard to a code of practice published and in force under this section that relates to the exercise of that power.

(10) A failure on the part of any person to have regard to a code of practice in exercising a power of entry or associated power of a kind mentioned in subsection (1) does not of itself make that person liable to criminal or civil proceedings.

(11) A code of practice is admissible in evidence in any such proceedings.

(12) A court or tribunal may, in particular, take into account a failure by a person to have regard to a code of practice in determining a question in any such proceedings.

Interpretation

14.—(1) In this Part—

“associated power” means any power which—

- (a) is contained in a statutory provision;
- (b) is connected with a power of entry; and
- (c) is a power—
 - (i) to do anything on, or in relation to, the land or other premises entered under the power of entry;
 - (ii) to do anything in relation to any person, or anything, found on the land or other premises entered under the power of entry; or
 - (iii) otherwise to do anything in connection with the power of entry—and includes any safeguard that forms part of the associated power;

“power of entry” means a power (however expressed) in any statutory provision to enter land or other premises, and includes any safeguard that forms part of the power;

“premises” includes—

- (a) any land;
- (b) any vehicle, vessel, aircraft or hovercraft; and
- (c) any tent or movable property.

(2) A reference in this Part to a function of the Department under a statutory provision is a reference to a function that is related to environmental activities, or to protecting and improving the environment, within the meaning of Part 1 and includes—

- (a) a function of the Department of such a kind that is exercisable by a district council or any other person; and
- (b) a function of such a kind that a district council or any other person has under any statutory provision.

PART 3

AMENDMENTS TO THE CLEAN AIR (NORTHERN IRELAND) ORDER 1981

Authorised fuel

15.—(1) In Article 2(2) of the Clean Air (Northern Ireland) Order 1981 (interpretation), for the definition of “authorised fuel” substitute—

“authorised fuel” means a fuel that is included on a list of authorised fuels kept by the Department under Article 17(3A);”.

(2) After Article 17(3) of the Clean Air (Northern Ireland) Order 1981 (smoke control areas) insert—

“(3A) The Department must keep a list of authorised fuels for the purposes of this Article.

(3B) The Department, having regard (among other things) to the sulphur content of a fuel, may include the fuel on the list of authorised fuels.

(3C) The Department must publish in such manner as it considers appropriate—

- (a) the list of authorised fuels; and
- (b) a revised copy of the list as soon as is reasonably practicable after any change is made to it.”.

Exempt fireplaces

16. For Article 17(7) of the Clean Air (Northern Ireland) Order 1981 (smoke control areas) substitute—

“(7) The Department may exempt any class of fireplace from the provisions of this Article if it is satisfied that such class of fireplace can be used for burning fuel, other than authorised fuels, without producing any smoke or a substantial quantity of smoke.

(7A) An exemption under paragraph (7) may be made subject to such conditions as the Department considers appropriate.

(7B) The Department must publish in such manner as it considers appropriate—

- (a) a list of those classes of fireplace that are exempt under paragraph (7), including details of any conditions to which an exemption is subject; and
- (b) a revised copy of the list as soon as is reasonably practicable after any change is made to the classes of fireplace that are so exempt or to the conditions to which an exemption is subject.”.

PART 4

AMENDMENTS TO THE ENVIRONMENT (NORTHERN IRELAND) ORDER 2002

Removal of assessments under Article 13

17.—(1) Article 13 of the Environment (Northern Ireland) Order 2002 (further provisions in relation to designated areas) is amended as follows.

(2) Paragraph (1) ceases to have effect.

(3) In paragraph (2) for the expression beginning “A district council” and ending “(b)” substitute “Where an order under Article 12 comes into operation, the district council which made the order shall”.

(4) After paragraph (3)(a) insert “and”.

(5) Paragraphs (3)(b) and (c) cease to have effect.

(6) In paragraph (5), for “paragraph (2)(b)” substitute “paragraph (2)”.

Amendments consequential on the amendments to Article 13

18.—(1) The Environment (Northern Ireland) Order 2002 is amended as follows.

(2) In Article 16(1)(b) (recommendations and guidance) omit the words “or 13”.

(3) In Article 18(1)(b) (financial assistance) omit the words “or 13”.

(4) In Article 27(1) (interpretation of this Part), in the definition of “action plan”, for “Article 13(2)(b)” substitute “Article 13(2)”.

(5) In paragraphs 1(1)(b) and 4(2)(b) of Schedule 2 (air quality: supplemental provisions) omit the words “or 13”.

PART 5

AMENDMENTS TO THE WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

Enforcement authorities

19.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

(2) After Article 30(6)(c)(i) (orders for securing compliance with certain provisions) insert—

“(ia) DOE;”.

(3) In Article 30(6)(c)(iii) for “either” substitute “any”.

(4) In Article 30(7), in the definition of “enforcement authority”, for paragraph (a) substitute—

“(a) the Department;

(ab) DOE; or”.

(5) In Article 31(2)(a) and (b) after “Department” insert “or DOE”.

(6) In Article 108(5) (duties of water undertakers with respect to water quality), for “the Department” substitute “DOE”.

(7) In Article 110(4) (offence of supplying water unfit for human consumption), for “the Department” substitute “DOE”.

(8) In Article 124(1) (rights of entry) omit the words “the Department or”.

(9) In Article 267(3)(a) (provision of false information), for “of any provision” substitute “provision in Articles 107 to 112 or”.

(10) In Article 300(2)(a) (regulations) for “or by the Authority, or by either” substitute “or by DOE or by the Authority, or by any”.

(11) In Article 300(2)(e)(iii) (regulations) after “the Department,” insert “DOE,”.

Regulations relating to wholesomeness of water

20.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

(2) In Article 107(1) (standards of wholesomeness)—

(a) for “The Department” substitute “DOE”; and

(b) after “water undertaker” insert “or by means of a private supply”.

(3) Article 107(2) ceases to have effect.

(4) In Article 107(3)—

(a) for “paragraphs (1) and (2)” substitute “paragraph (1)”; and

- (b) in sub-paragraph (e), for “the Department (in the case of regulations under paragraph (1)) or DOE (in the case of regulations under paragraph (2))” substitute “DOE”.
- (5) In Article 109(1) (regulations for preserving water quality), for “The Department” substitute “DOE”.
- (6) In Article 109(3) for “the Department” substitute “DOE”.
- (7) In Article 109(5) for “The Department” substitute “DOE”.
- (8) Article 117 (functions of the Department where piped supplies insufficient or unwholesome) ceases to have effect.

Appointment and powers of inspectors

21.—(1) Article 125 of the Water and Sewerage Services (Northern Ireland) Order 2006 (assessors for the enforcement of water quality) is amended as follows.

- (2) In paragraph (1) for “The Department” substitute “DOE”.
- (3) In paragraph (1)(a) omit the words “and 117”.
- (4) In paragraphs (1)(a) and (b) omit the words “and sufficiency”.
- (5) In paragraph (1)(b) for “the Department” substitute “DOE”.
- (6) In paragraph (3) for “the Department and DOE (acting jointly)” substitute “DOE”.
- (7) In paragraph (4) for “the Department” (wherever occurring) substitute “DOE”.
- (8) In paragraph (4)(a)(i) omit the words “or Article 117”.
- (9) In paragraph (4)(a)(ii) omit the words “and 117”.
- (10) In paragraph (7)—
 - (a) after “paragraph (1)” insert “or (2)”;
 - (b) for “the Department” substitute “DOE”;
 - (c) in sub-paragraph (a), after “paragraph (4)” insert “or (5)”; and
 - (d) in sub-paragraph (c), omit the words “or Article 117”.
- (11) Paragraph (8) ceases to have effect.
- (12) In paragraph (9) omit the words “or (8)”.
- (13) In paragraph (11) omit the words “and sufficiency”.

Publication of certain information and advice

22.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

(2) In Article 259(2) and (7) (publication of certain information and advice), for “its private supply functions” substitute “its functions relating to the supply of water for domestic or food production purposes”.

(3) For Article 259(8) substitute—

“(8) References in this Article to the functions of DOE relating to the supply of water for domestic or food production purposes are to its functions under Articles 107 to 112 and 118 to 125.”.

Transitional provisions

23. After Article 302 of the Water and Sewerage Services (Northern Ireland) Order 2006 insert—

“302A Transitional provisions (Environmental Better Regulation Act (Northern Ireland) 2016)

(1) The amendment of any provision of this Order made by section 19 of the 2016 Act does not affect anything done by the Department before the commencement of that section that, on or after that commencement, could only have been done by DOE and any such thing has the same effect as if it had been done by DOE.

(2) The amendments of Articles 107 and 109 made by section 20 of, and Schedule 2 to, the 2016 Act do not affect any regulations made by the Department under those Articles and in force immediately before the commencement of that section and Schedule and any such regulations have the same effect as if they had been made by DOE and as if any reference in them to the Department were a reference to DOE.

(3) The amendment of Article 124(1) made by Schedule 2 to the 2016 Act does not affect a designation made by the Department for the purpose of Article 124(1) and in force under that Article immediately before the commencement of that Schedule and any such designation has the same effect as if it had been made by DOE.

(4) The amendments of Article 125 made by section 21 of, and Schedule 2 to, the 2016 Act do not affect an appointment of an inspector made by the Department, or an appointment of a person as the Chief Inspector of Drinking Water made jointly by the Department and DOE, under that Article and in force under that Article immediately before the commencement of that section and Schedule and any such appointment has the same effect as if it had been made by DOE.

(5) This Article is additional to, and does not take away from, the Interpretation Act (Northern Ireland) 1954.

(6) In this Article “the 2016 Act” means the Environmental Better Regulation Act (Northern Ireland) 2016.”.

PART 6

MISCELLANEOUS AND SUPPLEMENTARY

Regulations and orders

24.—(1) Except as provided by subsection (2), regulations made by the Department under this Act are subject to negative resolution.

(2) The following regulations may not be made unless a draft of them has been laid before, and approved by a resolution of, the Assembly—

- (a) the first regulations to be made under section 2;
- (b) regulations under section 2, 7 or 9(1) containing any provision that creates an offence or increases a penalty for an existing offence;
- (c) regulations under section 2, 7, 8(1) or 9(1) containing any provision that amends or repeals any Northern Ireland legislation.

(3) An order may not be made by the Department under section 27(2) that contains any provision that modifies any Northern Ireland legislation unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

Interpretation

25. In this Act—

“Department” means Department of the Environment;

“modify”, in relation to a statutory provision, includes amend, repeal and revoke;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Repeals and revocations

26.—(1) The statutory provisions set out in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

(2) The statutory provisions set out in Schedule 3 are revoked to the extent specified in the second column of that Schedule.

Commencement

27.—(1) This Act, except Parts 1, 2 and 3 and section 26(2), comes into operation on the day after Royal Assent.

(2) The provisions of Parts 1, 2 and 3 and section 26(2) come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions

modifying statutory provisions) as the Department considers necessary or expedient.

Short title

28. This Act may be cited as the Environmental Better Regulation Act (NorthernIreland) 2016.