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STATUTORY INSTRUMENTS

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**1997 No. 2777**

**The Industrial Pollution Control (Northern Ireland) Order 1997**

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Industrial Pollution Control (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F1</sup>.

(3) An order under paragraph (2) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

<b>F1</b> partly exercised by SR 1998/53, SR 2005/77
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**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) For the purposes of this Order the “environment” consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.

(4) For the purposes of this Order “pollution of the environment” means pollution of the environment due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.

(5) For the purposes of this Order “harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property; and “harmless” has a corresponding meaning.

(6) For the purposes of this Order “process” means any activities carried on in Northern Ireland, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment and “prescribed process” means a process prescribed under Article 3(1).

(7) In paragraph (6)—

“activities” means industrial or commercial activities or activities of any other nature whatsoever (including, with or without other activities, the keeping of a substance);

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise;

“Northern Ireland” does not include the waters beyond 3 international nautical miles seaward from the baseline from which the breadth of the territorial sea adjacent to Northern Ireland is measured.

(8) For the purposes of this Order the “enforcing authority” is the chief inspector or the district council by which, under Article 5, the functions conferred or imposed by this Order otherwise than on the Department or the Secretary of State are for the time being exercisable.

(9) For the purposes of this Order “authorisation” means an authorisation for a process (whether on premises or by means of mobile plant) granted under Article 6; and a reference to the conditions of an authorisation is a reference to the conditions subject to which at any time the authorisation has effect.

(10) A substance is “released” into any environmental medium for the purposes of this Order whenever it is released directly into that medium and “release” includes—

- (a) in relation to air, any emission of the substance into the air;
- (b) in relation to water, any entry (including any discharge) of the substance into water;
- (c) in relation to land, any deposit, keeping or disposal of the substance in or on land;

and for this purpose “water” and “land” shall be construed in accordance with paragraphs (11) and (12).

(11) In order to determine for the purposes of this Order into what medium a substance is released—

- (a) any release into—
  - (i) the sea or the surface of the seabed,
  - (ii) any river, watercourse, lake, lough or pond (whether natural or artificial or above or below ground) or reservoir or the surface of the riverbed or of other land supporting such waters, or
  - (iii) ground waters,is a release into water;
- (b) any release into—
  - (i) land covered by water falling outside sub-paragraph (a) or the water covering such land; or
  - (ii) the land beneath the surface of the seabed or of other land supporting waters falling within sub-paragraph (a)(ii),is a release into land; and
- (c) any release into a sewer (within the meaning of the Water and Sewerage Services (Northern Ireland) Order [F22006] ) shall be treated as a release into water;

but a sewer and its contents shall be disregarded in determining whether there is pollution of the environment at any time.

(12) In paragraph (11) “ground waters” means any waters contained in underground strata, or in—

- (a) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or

(b) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(13) For the purposes of this Order “substance” shall be treated as including electricity or heat and “prescribed substance” has the meaning given by Article 3(7).

**F2** Word in art. 2(11)(c) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 38** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

### **Prescribed processes and prescribed substances**

3.—(1) The Department may, by regulations, prescribe any description of process as a process for the carrying on of which after a prescribed date an authorisation is required under Article 6.

(2) Regulations under paragraph (1) may frame the description of a process by reference to any characteristics of the process or the area or other circumstances in which the process is carried on or the description of person carrying it on.

(3) Regulations under paragraph (1) may prescribe or provide for the determination under the regulations of different dates for different descriptions of processes and may include such transitional provisions as the Department considers necessary or expedient as respects the making of applications for authorisations and suspending the application of Article 6(1) until the determination of applications made within the period allowed by the regulations.

(4) Regulations under paragraph (1) shall, as respects each description of process, designate it as one for—

- (a) integrated central control;
- (b) restricted central control; or
- (c) local control.

(5) The Department may, by regulations, prescribe any description of substance as a substance the release of which into the environment is subject to control under Articles 6 and 7.

(6) Regulations under paragraph (5) may—

- (a) prescribe separately, for each environmental medium, the substances the release of which into that medium is to be subject to control; and
- (b) provide that a description of substance is only prescribed, for any environmental medium, so far as it is released into that medium in such amounts over such periods, in such concentrations or in such other circumstances as may be specified in the regulations;

and in relation to a substance of a description which is prescribed for releases into the air, the regulations may designate the substance as one for restricted central control or one for local control.

(7) In this Order “prescribed substance” means any substance of a description prescribed in regulations under paragraph (5) or, in the case of a substance of a description prescribed only for releases in circumstances specified under paragraph (6)(b), means any substance of that description which is released in those circumstances.

### **Emission etc. limits and quality objectives**

4.—(1) The Department may make regulations under paragraph (2) or (3) establishing standards, objectives or requirements in relation to particular prescribed processes or particular substances.

(2) Regulations under this paragraph may—

- (a) in relation to releases of any substance from prescribed processes into any environmental medium, prescribe standard limits for—
  - (i) the concentration, the amount or the amount in any period of that substance which may be so released; and
  - (ii) any other characteristic of that substance in any circumstances in which it may be so released;
- (b) prescribe standard requirements for the measurement or analysis of, or of releases of, substances for which limits have been set under sub-paragraph (a); and
- (c) in relation to any prescribed process, prescribe standards or requirements as to any aspect of the process.

(3) Regulations under this paragraph may establish for any environmental medium (in all areas or in specified areas) quality objectives or quality standards in relation to any substances which may be released into that or any other medium from any process.

(4) Regulations under this Article may be made for any purposes of this Order or for other purposes.

### **Discharge and scope of functions**

**5.—**(1) This Article determines the authority by which the functions conferred or imposed by this Order otherwise than on the Department or the Secretary of State are exercisable and the purposes for which they are exercisable.

(2) Those functions, in their application to prescribed processes designated for integrated central control, shall be functions of the chief inspector appointed by the Department under Article 16 and shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into any environmental medium.

(3) Those functions, in their application to prescribed processes designated for restricted central control, shall be functions of the chief inspector appointed by the Department under Article 16 and shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium).

(4) Subject to paragraph (5), those functions, in their application to prescribed processes designated for local control, shall be functions of—

- (a) in the case of a prescribed process carried on (or to be carried on) by means of mobile plant, the district council in whose district the person carrying on the process has his principal place of business; and
- (b) in any other cases, the district council in whose district the prescribed processes are (or are to be) carried on;

and the functions applicable to such processes shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium).

(5) The Department may, as respects the functions under this Order being exercised by a district council specified in the direction, direct that those functions shall be exercised instead by the chief inspector while the direction remains in force or during a period specified in the direction.

(6) Functions transferred under paragraph (5) to the chief inspector shall be exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium).

(7) A direction under paragraph (5) may transfer functions as exercisable in relation to all or any description of prescribed processes carried on by all or any description of persons (a “general

direction”) or in relation to a prescribed process carried on by a specified person (a “specific direction”).

(8) A direction under paragraph (5) may include such saving and transitional provisions as the Department considers necessary or expedient.

(9) The Department, on giving or withdrawing a direction under paragraph (5), shall—

(a) in the case of a general direction—

- (i) forthwith serve notice of it on the chief inspector and on the district councils affected by the direction; and
- (ii) cause notice of it to be published as soon as practicable in the Belfast Gazette and in at least one newspaper circulating in the district of each district council affected by the direction;

(b) in the case of a specific direction—

- (i) forthwith serve notice of it on the chief inspector, the district council affected by the direction and the person carrying on or appearing to the Department to be carrying on the process affected, and
- (ii) cause notice of it to be published as soon as practicable in the Belfast Gazette and in at least one newspaper circulating in the council's district;

and any such notice shall specify the date at which the direction is to take (or took) effect and (where appropriate) its duration.

(10) The requirements of head (ii) of sub-paragraph (a) or, as the case may be, of sub-paragraph (b) of paragraph (9) shall not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that head would be contrary to the interests of national security.

(11) It shall be the duty of the chief inspector to follow developments in technology and techniques for preventing or reducing pollution of the environment due to releases of substances from prescribed processes; and district councils shall follow such of those developments as concern releases into the air of substances from prescribed processes designated for local control.

(12) It shall be the duty of the chief inspector and district councils to give effect to any directions given to them under any provision of this Order.

### *Authorisations*

#### **Authorisations: general provisions**

6.—(1) [<sup>F3</sup>Subject to paragraph (6A) below] No person shall carry on a prescribed process after the date prescribed or determined for that description of process by or under regulations under Article 3(1) (but subject to any transitional provision made by the regulations) except under an authorisation granted by the enforcing authority and in accordance with the conditions to which it is subject.

(2) An application for an authorisation shall be made to the enforcing authority in accordance with Part I of Schedule 1 and shall be accompanied by the fee prescribed under Article 8(2)(a).

(3) Where an application is duly made to the enforcing authority, the authority shall either grant the authorisation subject to the conditions required or authorised to be imposed by Article 7 or refuse the application.

(4) An application shall not be granted unless the enforcing authority considers that the applicant will be able to carry on the process so as to comply with the conditions which would be included in the authorisation.

(5) The Department may, if it thinks fit in relation to any application for an authorisation, give to the enforcing authority directions as to whether or not the authority should grant the authorisation.

(6) The enforcing authority shall, as respects each authorisation in respect of which it has functions under this Order, from time to time but not less frequently than once in every period of 4 years, carry out a review of the conditions of the authorisation.

[<sup>F3</sup>(6A) Paragraph (6) above shall not require a review of the conditions of an authorisation to be carried out if—

- (a) the prescribed process covered by the authorisation is carried on in a new Part A installation or by means of a new Part A mobile plant;
- (b) the prescribed process covered by the authorisation is carried on in an existing Part A installation or by means of an existing Part A mobile plant and the review would be carried out within the period of two years ending at the beginning of the relevant period for that installation or mobile plant; or
- (c) the prescribed process covered by the authorisation is carried on in an existing Part B or Part C installation or by means of an existing Part B or Part C mobile plant and the review would be carried out within the period of two years ending on the relevant date for that installation or mobile plant.

(6B) In paragraph (6A) above, "new Part A installation", "existing Part A installation", "new Part A mobile plant", "existing Part A mobile plant", "relevant period", "existing Part B or Part C installation", "existing Part B or Part C mobile plant" and "relevant date" have the meaning given in Schedule 3 to the Pollution Prevention and Control Regulations (Northern Ireland) 2003.]

[<sup>F4</sup>(6C) An authorisation shall cease to have effect if and to the extent that the prescribed process covered by the authorisation is authorised by a permit granted under the Pollution Prevention and Control Regulations (Northern Ireland) 2003.]

(7) The Department may, by order, substitute for the period for the time being specified in paragraph (6) such other period as it thinks fit.

(8) Schedule 1 (supplementary provisions) shall have effect in relation to authorisations.

<b>F3</b>	SR 2003/46
<b>F4</b>	SR 2005/285

### Conditions of authorisations

7.—(1) There shall be included in an authorisation—

- (a) subject to sub-paragraph (b), such specific conditions as the enforcing authority considers appropriate, when taken with the general condition implied by paragraph (4), for achieving the objectives specified in paragraph (2);
- (b) such conditions as are specified in directions given by the Department under paragraph (3); and
- (c) such other conditions (if any) as appear to the enforcing authority to be appropriate;

but no conditions shall be imposed for the purpose only of securing the health of persons at work (within the meaning of Part II of the Health and Safety at Work (Northern Ireland) Order 1978).

(2) Those objectives are—

- (a) ensuring that, in carrying on a prescribed process, the best available techniques not entailing excessive cost will be used—
  - (i) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing

the release of such substances to a minimum and for rendering harmless any such substances which are so released; and

- (ii) for rendering harmless any other substances which might cause harm if released into any environmental medium;
- (b) compliance with any directions by the Department given for the implementation of any obligations of the United Kingdom under [<sup>F5</sup>[<sup>F6</sup>assimilated] obligations] or international law relating to environmental protection;
- (c) compliance with any limits or requirements and achievement of any quality standards or quality objectives prescribed by any Northern Ireland department under any of the relevant statutory provisions;
- (d) compliance with any requirements applicable to the grant of authorisations specified by or under a plan made by the Secretary of State under section 3(5) of the Environmental Protection Act 1990.

(3) Except as respects the general condition implied by paragraph (4), the Department may give directions to the enforcing authorities as to the conditions which are, or are not, to be included in all authorisations, in authorisations of any specified description or in any particular authorisation.

(4) Subject to paragraphs (5) and (6), there is implied in every authorisation a general condition that, in carrying on the process to which the authorisation applies, the person carrying it on must use the best available technique not entailing excessive cost—

- (a) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and for rendering harmless any such substances which are so released; and
  - (b) for rendering harmless any other substances which might cause harm if released into any environmental medium.
- (5) In the application of paragraphs (1) to (4) to authorisations granted—
- (a) by the chief inspector in relation to a process designated for restricted central control, or
  - (b) by a district council,

references to the release of substances into any environmental medium are to be read as references to the release of substances into the air.

(6) The obligation implied by virtue of paragraph (4) shall not apply in relation to any aspect of the process in question which is regulated by a condition imposed under paragraph (1).

- (7) The objectives referred to in paragraph (2) shall, where the process—
- (a) is one designated for integrated central control; and
  - (b) is likely to involve the release of substances into more than one environmental medium;

include the objective of ensuring that the best available techniques not entailing excessive cost will be used for minimising the pollution which may be caused to the environment taken as a whole by the releases having regard to the best practicable environmental option available as respects the substances which may be released.

(8) An authorisation for carrying on a prescribed process may, without prejudice to the generality of paragraph (1), include conditions—

- (a) imposing limits on the amount or composition of any substance produced by or utilised in the process in any period; and
- (b) requiring advance notification of any proposed change in the manner of carrying on the process.

(9) This Article has effect subject to Article 28.

(10) References to the best available techniques not entailing excessive cost, in relation to a process, include (in addition to references to any technical means and technology) references to the number, qualifications, training and supervision of persons employed in the process and the design, construction, lay-out and maintenance of the buildings in which it is carried on.

(11) It shall be the duty of enforcing authorities to have regard to any guidance issued to them by the Department for the purposes of the application of paragraphs (2) and (7) as to the techniques and environmental options that are appropriate for any description of prescribed process.

(12) In paragraph (2) “the relevant statutory provisions” are any statutory provisions contained in or made under—

- (a) Part II of<sup>F7</sup> the Water (Northern Ireland) Order 1999];
- (b) section 2 of the European Communities Act 1972;
- (c) Parts III and IV of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- <sup>F8</sup>(d) Article 7 of the Clean Air (Northern Ireland) Order 1981; and
- (e) Article 4 of this Order.<sup>F9</sup> and]
- <sup>F9</sup>(f) Article 15 of the Environment (Northern Ireland) Order 2002.]

<b>F5</b>	Words in art. 7(2)(b) substituted (31.12.2020) by <a href="#">The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/584)</a> , regs. 1, 6; 2020 c. 1, Sch. 5 para. 1(1)
<b>F6</b>	Word in art. 7(2)(b) substituted (1.1.2024) by <a href="#">The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424)</a> , reg. 1(2), <b>Sch. para. 39(2)</b>
<b>F7</b>	<a href="#">1999 NI 6</a>
<b>F8</b>	prosp. rep. by <a href="#">1997 NI 18</a>
<b>F9</b>	<a href="#">2002 NI 7</a>

### **Fees and charges for authorisations**

**8.—**(1) There shall be charged by and paid to the enforcing authority such fees and charges as may be prescribed by a scheme under paragraph (2) (whether by being specified in or made calculable under the scheme).

(2) The Department may make, and from time to time revise, a scheme prescribing—

- (a) fees payable in respect of applications for authorisations;
- (b) fees payable by persons holding authorisations in respect of, or of applications for, the variation of authorisations; and
- (c) charges payable by such persons in respect of the subsistence of their authorisations.

(3) The Department shall, on making or revising a scheme under paragraph (2), lay a copy of the scheme or of the alterations made in the scheme or, if the Department considers it more appropriate, the scheme as revised, before the Assembly.

(4) The Department may make separate schemes for fees and charges payable to the chief inspector and fees and charges payable to district councils under this Order.

(5) A scheme under paragraph (2) may, in particular—

- (a) allow for reduced fees or charges to be payable in respect of authorisations for a number of prescribed processes carried on by the same person;
- (b) provide for the times at which and the manner in which the payments required by the scheme are to be made; and



- (c) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.
- (6) The Department, in framing a scheme under paragraph (2), shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by—
- (a) the enforcing authorities in exercising their functions under this Order in relation to authorisations; and
  - (b) the Department, in exercising its functions in relation to authorisations for processes which may involve the release of any substance into water.
- (7) If it appears to the enforcing authority that the holder of an authorisation has failed to pay a charge due in consideration of the subsistence of the authorisation, it may, by notice in writing served on the holder, revoke the authorisation.
- (8) Any fees and charges received by the chief inspector under this Article shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

- C1** Art. 8 applied (31.5.2007) by Sulphur Content of Liquid Fuels Regulations (Northern Ireland) 2007 (S.R. 2007/272), reg. 4(5), Sch. 1 para. 10

**Transfer of authorisations**

- 9.—(1) An authorisation for the carrying on of any prescribed process may be transferred by the holder to a person who proposes to carry on the process in the holder's place.
- (2) Where an authorisation is transferred under this Article, the person to whom it is transferred shall notify the enforcing authority in writing of that fact not later than the end of the period of 21 days beginning with the date of the transfer.
- (3) An authorisation which is transferred under this Article shall have effect on and after the date of the transfer as if it had been granted to that person under Article 6, subject to the same conditions as were attached to it immediately before that date.

**Variation of authorisations by enforcing authority**

- 10.—(1) The enforcing authority may at any time, subject to the requirements of Article 7, and, in cases to which they apply, the requirements of Part II of Schedule 1, vary an authorisation and shall do so if it appears to the authority at that time that that Article requires conditions to be included which are different from the subsisting conditions.
- (2) Where the enforcing authority has decided to vary an authorisation under paragraph (1) the authority shall notify the holder of the authorisation and serve a variation notice on him.
- (3) In this Order a “variation notice” is a notice served by the enforcing authority on the holder of an authorisation—
- (a) specifying variations of the authorisation which the enforcing authority has decided to make; and
  - (b) specifying the date or dates on which the variations are to take effect;
- and, unless the notice is withdrawn or is varied under paragraph (4), the variations specified in a variation notice shall take effect on the date or dates so specified.
- (4) Where an enforcing authority has served a variation notice, the enforcing authority may vary that notice by serving on the holder of the authorisation in question a further notice—

- (a) specifying the variations which the enforcing authority has decided to make to the variation notice; and
- (b) specifying the date or dates on which the variations specified in the variation notice, as varied by the further notice, are to take effect;

and any reference in this Order to a variation notice, or to a variation notice served under paragraph (2), includes a reference to such a notice as varied by a further notice served under this paragraph.

(5) A variation notice served under paragraph (2) shall also—

- (a) require the holder of the authorisation, within such period as may be specified in the notice, to notify the authority what action (if any) he proposes to take to ensure that the process is carried on in accordance with the authorisation as varied by the notice; and
- (b) require the holder to pay the fee (if any) prescribed by a scheme under Article 8 within such period as may be specified in the notice.

(6) Where in the opinion of the enforcing authority any action to be taken by the holder of an authorisation in consequence of a variation notice served under paragraph (2) will involve a substantial change in the manner in which the process is being carried on, the enforcing authority shall notify the holder of its opinion.

(7) The Department may, if it thinks fit in relation to authorisations of any description or particular authorisations, direct the enforcing authorities—

- (a) to exercise their powers under this Article, or to do so in such circumstances as may be specified in the directions, in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be so specified;

and the Department shall have the corresponding power of direction in respect of the powers of the enforcing authorities to vary authorisations under Article 11.

(8) In this Article and Article 11 a “substantial change”, in relation to a prescribed process being carried on under an authorisation, means a substantial change in the substances released from the process or in the amount or any other characteristic of any substance so released; and the Department may give directions to the enforcing authorities as to what does or does not constitute a substantial change in relation to processes generally, any description of process or any particular process.

(9) In this Article and Article 11—

“prescribed” means prescribed in regulations made by the Department;

“vary”

- (a) in relation to the subsisting conditions or other provisions of an authorisation, means adding to them or varying or rescinding any of them; and
- (b) in relation to a variation notice, means adding to, or varying or rescinding the notice or any of its contents;

and “variation” shall be construed accordingly.

### **Variation of conditions etc: applications by holders of authorisations**

**11.—**(1) A person carrying on a prescribed process under an authorisation who wishes to make a relevant change in the process may at any time—

- (a) notify the enforcing authority in the prescribed form of that fact; and
- (b) request the enforcing authority to make a determination, in relation to the proposed change, of the matters mentioned in paragraph (2);

and a person making a request under sub-paragraph (b) shall furnish the enforcing authority with such information as may be prescribed or as the authority may by notice require.

- (2) On receiving a request under paragraph (1) the enforcing authority shall determine—
- (a) whether the proposed change would involve a breach of any condition of the authorisation;
  - (b) if it would not involve such a breach, whether the authority would be likely to vary the conditions of the authorisation as a result of the change;
  - (c) if it would involve such a breach, whether the authority would consider varying the conditions of the authorisation so that the change may be made; and
  - (d) whether the change would involve a substantial change in the manner in which the process is being carried on;

and the enforcing authority shall notify the holder of the authorisation of its determination of those matters.

(3) Where the enforcing authority has determined that the proposed change would not involve a substantial change, but has also determined under sub-paragraph (b) or (c) of paragraph (2) that the change would lead to or require the variation of the conditions of the authorisation, then—

- (a) the enforcing authority shall (either on notifying its determination under that paragraph or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making; and
- (b) the holder may apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation so that he may make the proposed change.

(4) Where the enforcing authority has determined that a proposed change would involve a substantial change that would lead to or require the variation of the conditions of the authorisation, then—

- (a) the authority shall (either on notifying its determination under paragraph (2) or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making; and
- (b) the holder of the authorisation shall, if he wishes to proceed with the change, apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation.

(5) The holder of an authorisation may at any time, unless he is carrying on a prescribed process under the authorisation and wishes to make a relevant change in the process, apply to the enforcing authority in the prescribed form for the variation of the conditions of the authorisation.

(6) A person carrying on a process under an authorisation who wishes to make a relevant change in the process may, where it appears to him that the change will require the variation of the conditions of the authorisation, apply to the enforcing authority in the prescribed form for the variation of the conditions of the authorisation specified in the application.

(7) A person who makes an application for the variation of the conditions of an authorisation shall furnish the authority with such information as may be prescribed or as the authority may by notice require.

(8) On an application for variation of the conditions of an authorisation under any provision of this Article—

- (a) the enforcing authority may, having fulfilled the requirements of Part II of Schedule 1 in cases to which they apply, as it thinks fit either refuse the application or, subject to the requirements of Article 7, vary the conditions or, in the case of an application under paragraph (6), treat the application as a request for a determination under paragraph (2); and

(b) if the enforcing authority decides to vary the conditions, it shall serve a variation notice on the holder of the authorisation.

(9) Any application to the enforcing authority under this Article shall be accompanied by the applicable fee (if any) prescribed by a scheme made under Article 8.

(10) This Article applies to any provision other than a condition which is contained in an authorisation as it applies to a condition with the modification that any reference to the breach of a condition shall be read as a reference to acting outside the scope of the authorisation.

(11) For the purposes of this Article a relevant change in a prescribed process is a change in the manner of carrying on the process which is capable of altering the substances released from the process or of affecting the amount or any other characteristic of any substance so released.

### **Revocation of authorisation**

**12.—**(1) The enforcing authority may at any time revoke an authorisation by notice in writing to the person holding the authorisation.

(2) Without prejudice to the generality of paragraph (1), the enforcing authority may revoke an authorisation where it has reason to believe that a prescribed process for which the authorisation is in force has not been carried on at all or has not been carried on for a period of 12 months.

(3) The revocation of an authorisation under this Article shall have effect from the date specified in the notice; and the period between the date on which the notice is served and the date so specified shall not be less than 28 days.

(4) The enforcing authority may, before the date on which the revocation of an authorisation takes effect, withdraw the notice or vary the date specified in it.

(5) The Department may, if it thinks fit in relation to an authorisation, give to the enforcing authority directions as to whether the authority should revoke the authorisation under this Article.

## *Enforcement*

### **Enforcement notices**

**13.—**(1) If the enforcing authority is of the opinion that the person carrying on a prescribed process under an authorisation is contravening any condition of the authorisation, or is likely to contravene any such condition, the authority may serve on him a notice (“an enforcement notice”).

(2) An enforcement notice shall—

- (a) state the authority's opinion;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) The Department may, if it thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to whether the authority should exercise its powers under this Article and as to the steps which are to be required to be taken under this Article.

(4) The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice.

### **Prohibition notices**

14.—(1) If the enforcing authority is of the opinion, as respects the carrying on of a prescribed process under an authorisation, that the continuing to carry it on, or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment the authority shall serve a notice (a “prohibition notice”) on the person carrying on the process.

(2) A prohibition notice may be served whether or not the manner of carrying on the process in question contravenes a condition of the authorisation and may relate to any aspects of the process, whether regulated by the conditions of the authorisation or not.

(3) A prohibition notice shall—

- (a) state the authority's opinion;
- (b) specify the risk involved in the process;
- (c) specify the steps that must be taken to remove it and the period within which they must be taken; and
- (d) direct that the authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect to authorise the carrying on of the process;

and where the direction applies to part only of the process it may impose conditions to be observed in carrying on the part which is authorised to be carried on.

(4) The Department may, if it thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to—

- (a) whether the authority should perform its duties under this Article; and
- (b) the matters to be specified in any prohibition notice in pursuance of paragraph (3) which the authority is directed to issue.

(5) The enforcing authority shall, as respects any prohibition notice it has issued to any person, by notice in writing served on that person, withdraw the notice when it is satisfied that the steps required by the notice have been taken.

### **Appeals as respects authorisations and against variation, enforcement and prohibition notices**

15.—(1) The following persons, namely—

- (a) a person who has been refused the grant of an authorisation under Article 6;
- (b) a person who is aggrieved by the conditions attached, under any provision of this Order, to his authorisation;
- (c) a person who has been refused a variation of an authorisation on an application under Article 11;
- (d) a person whose authorisation has been revoked under Article 12;

may appeal against the decision of the enforcing authority to the Department (except where the decision implements a direction of the Department).

(2) A person on whom a variation notice, an enforcement notice or a prohibition notice is served may appeal against the notice to the Department (except where the notice implements a direction of the Department).

(3) Where a person appeals to the Department under this Article, the Department shall—

- (a) determine the appeal; or
- (b) refer the appeal for determination to the Planning Appeals Commission; or

- (c) refer the appeal or any matter involved in the appeal to the Planning Appeals Commission and consider the report of the Commission before determining the appeal.
- (4) Part I of Schedule 2 shall have effect where an appeal or any matter involved in an appeal is referred to the Planning Appeals Commission under paragraph (3)(b) or (c).
- (5) Before determining an appeal in accordance with paragraph (3)(a), the Department may, if it thinks fit—
- (a) refer any matter involved in the appeal to such person as the Department may appoint for the purpose, with or without payment; or
  - (b) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private),
- and the Department shall act as mentioned in sub-paragraph (b) if a request is made by either party to the appeal to be heard with respect to the appeal.
- (6) On determining an appeal against a decision of an enforcing authority under paragraph (1), the Department—
- (a) may affirm the decision;
  - (b) where the decision was a refusal to grant an authorisation or a variation of an authorisation, may direct the enforcing authority to grant the authorisation or to vary the authorisation, as the case may be;
  - (c) where the decision was as to the conditions attached to an authorisation, may quash all or any of the conditions of the authorisation;
  - (d) where the decision was to revoke an authorisation, may quash the decision;
- and where the Department exercises any of the powers in sub-paragraph (b), (c) or (d), it may give directions as to the conditions to be attached to the authorisation.
- (7) On the determination of an appeal under paragraph (2) the Department may either quash or affirm the notice and, if the Department affirms it, may do so either in its original form or with such modifications as the Department may in the circumstances think fit.
- (8) Where an appeal is brought under paragraph (1) against the revocation of an authorisation, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.
- (9) Where an appeal is brought under paragraph (2) against a notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.
- (10) Provision may be made by the Department by regulations with respect to appeals under this Article; and in particular provision may be so made—
- (a) requiring appeals to be brought within such period as may be prescribed by, or determined under or in accordance with, the regulations;
  - (b) requiring appeals to be advertised in such manner as may be so prescribed;
  - (c) as to the manner in which appeals are to be brought; and
  - (d) as to the manner in which appeals are to be considered by the Department.

### **Appointment of chief inspector and other inspectors**

**16.—**(1) The Department may appoint as inspectors (under whatever title the Department may determine) such persons having suitable qualifications as the Department thinks necessary for carrying this Order into effect in relation to prescribed processes designated for integrated central control or restricted central control or for the time being transferred under Article 5(5) to restricted central control, and may terminate any appointment made under this paragraph.

(2) The Department may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as the Department may determine.

(3) The Department shall constitute one of the inspectors appointed under paragraph (1) to be the chief inspector.

(4) The functions conferred or imposed by or under this Order on the chief inspector as the enforcing authority may, to any extent, be delegated by him to any other inspector appointed under paragraph (1).

(5) A district council may appoint as inspectors (under whatever title the council may determine) such persons having suitable qualifications as the council thinks necessary for carrying this Order into effect in the council's district in relation to prescribed processes designated for local control (and not so transferred), and may terminate any appointment made under this paragraph.

(6) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under Article 17 or 18 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(7) In paragraph (6) and the following provisions of this Order “inspector” means a person appointed as an inspector under paragraph (1) or (5).

### **Powers of inspectors and others**

17.—(1) An inspector may, on production (if so required) of his authority, exercise any of the powers in paragraph (3) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
  - (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
  - (c) determining whether and, if so, how such a function should be discharged.
- (2) Those powers, so far as exercisable in relation to premises, are exercisable in relation—
- (a) to premises on which a prescribed process is, or is believed (on reasonable grounds) to be, carried on; and
  - (b) to premises on which a prescribed process has been carried on (whether or not the process was a prescribed process when it was carried on) the condition of which is believed (on reasonable grounds) to be such as to give rise to a risk of serious pollution of the environment.
- (3) The powers of an inspector are—
- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
  - (b) on entering any premises by virtue of sub-paragraph (a) to take with him—
    - (i) any person duly authorised by the chief inspector or, as the case may be, the district council and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);

- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
  - (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);
  - (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
    - (i) to examine it and do to it anything which he has power to do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before his examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under Article 23 or any other proceedings relating to a variation notice, an enforcement notice or a prohibition notice;
  - (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
  - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Order or it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
  - (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this Article;
  - (l) any other power for the purpose mentioned in paragraph (1) which is conferred by regulations made by the Department.
- (4) The powers which under paragraphs (1) to (3) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that authority is being, or 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, keep or maintain monitoring and other apparatus there.
- (5) Except in an emergency, in any case where it is proposed to take heavy equipment on to any premises which are to be entered, any entry by virtue of this Article shall only be effected—
- (a) after the expiration of at least 7 days' notice of the proposed entry given to a person who appears to the inspector to be in occupation of the premises in question, and
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant by virtue of Schedule 3.



- (6) Except in an emergency, where an inspector proposes to enter any premises and—
- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
  - (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this Article shall only be effected under the authority of a warrant by virtue of Schedule 3.

(7) 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 (3)(f).

(8) Where an inspector proposes to exercise the power conferred by paragraph (3)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(9) Before exercising the power conferred by paragraph (3)(g) in the case of any article or substance, an inspector shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
- (b) such other persons;

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(10) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(i) shall be admissible in evidence against that person in any proceedings.

(11) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(12) In this Article and Schedule 3—

“emergency” means a case in which it appears to the inspector in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“pollution control statutory provisions”

(a) in relation to the chief inspector, means—

- (i) this Order;
- (ii) <sup>F10</sup>the Alkali, & co Works Regulation Act 1906; and
- (iii) regulations made under section 2(2) of the European Communities Act 1972 to the extent that the regulations relate to pollution;

(b) in relation to a district council, means—

- (i) this Order; and
- (ii) regulations made under section 2(2) of the European Communities Act 1972 to the extent that the regulations relate to pollution.

(13) Schedule 3 shall have effect with respect to the powers of entry and related powers which are conferred by this Article.

(14) This Article and Schedule 3 apply (with appropriate modifications) in relation to mobile plant as they apply to premises.

(15) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under this Order.

**F10** prosp. rep. by [1997 NI 18](#)

### **Power to deal with cause of imminent danger of serious pollution, etc.**

**18.**—(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

### **Obtaining of information from persons and authorities**

**19.**—(1) For the purposes of the discharge of its functions under this Order, the Department may, by notice in writing served on an enforcing authority, require the authority to furnish such information about the discharge of its functions as an enforcing authority under this Order as the Department may require.

(2) For the purposes of the discharge of their respective functions under this Order, the following authorities, that is to say—

- (a) the Department,
- (b) a district council, and
- (c) the chief inspector,

may, by notice in writing served on any person, require that person to furnish to the authority such information which the authority reasonably considers that it needs as is specified in the notice, in such form and within such period following service of the notice, or at such time, as is so specified.

(3) For the purposes of this Article the discharge by the Department of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to environmental protection shall be treated as a function of the Department under this Order.

## Publicity

### Public registers of information

**20.**—(1) It shall be the duty of each enforcing authority, as respects prescribed processes for which it is the enforcing authority, to maintain, in accordance with regulations made by the Department, a register containing prescribed particulars of or relating to—

- (a) applications for authorisations made to that authority;
- (b) the authorisations which have been granted by that authority or in respect of which the authority has functions under this Order;
- (c) variation notices, enforcement notices and prohibition notices issued by that authority;
- (d) revocations of authorisations effected by that authority;
- (e) appeals under Article 15;
- (f) convictions for such offences under Article 23(1) as may be prescribed;
- (g) information obtained or furnished in pursuance of the conditions of authorisations or under any provision of this Order;
- (h) directions given to the authority under any provision of this Order by the Department; and
- (i) such other matters relating to the carrying on of prescribed processes or any pollution of the environment caused thereby as may be prescribed;

but that duty is subject to Articles 21 and 22.

(2) The register maintained by a district council shall also contain prescribed particulars of such information contained in any register maintained by the chief inspector as relates to the carrying on in the district of the district council of prescribed processes in relation to which the chief inspector has functions under this Order; and the chief inspector shall furnish each district council with the particulars which are necessary to enable it to discharge its duty under this paragraph.

(3) Where information of any description is excluded from any register by virtue of Article 22, a statement shall be entered in the register indicating the existence of information of that description.

(4) The Department may give to enforcing authorities directions requiring the removal from any register of theirs of any specified information not prescribed for inclusion under paragraph (1) or (2) or which, by virtue of Article 22, ought to have been excluded from the register.

(5) The Secretary of State may give to enforcing authorities directions requiring the removal from any register of theirs of any specified information which by virtue of Article 21 ought to have been excluded from the register.

(6) It shall be the duty of each enforcing authority—

- (a) to secure that the registers maintained by them under this Article are available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraph (a) or (b) are to be available or afforded to the public in pursuance of the sub-paragraph in question.

(7) Registers under this Article may be kept in any form.

(8) In this Article “prescribed” means prescribed in regulations under this Article.

### **Exclusion from registers of information affecting national security**

**21.**—(1) No information shall be included in a register maintained under Article 20 if and so long as, in the opinion of the Secretary of State, the inclusion in the 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 enforcing authorities directions—

- (a) specifying information, or descriptions of information, to be excluded from their 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 enforcing authority shall notify the Secretary of State of any information it excludes from the register in pursuance of directions 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 enforcing authority 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.

### **Exclusion from registers of certain confidential information**

**22.**—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 20, without the consent of that individual or the person for the time being carrying on that business, 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 directions 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 enforcing authority or, on appeal, by the Department.

(2) Where information is furnished to an enforcing authority for the purpose of—

- (a) an application for an authorisation or for the variation of an authorisation;
- (b) complying with any condition of an authorisation; or
- (c) complying with a notice under Article 19(2);

then, if the person furnishing it applies to the authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the authority 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 beginning with the date of the application and if the enforcing authority 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 an enforcing authority that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the authority under any provision of this Order might be commercially confidential, the authority shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register 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 authority for the purpose of justifying any such objection;

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

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

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

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

(6) Where a person appeals to the Department under this Article, the Department shall—

- (a) determine the appeal; or
- (b) refer the appeal for determination to the Planning Appeals Commission; or
- (c) refer the appeal or any matter involved in the appeal to the Planning Appeals Commission and consider the report of the Commission before determining the appeal.

(7) Part II of Schedule 2 shall have effect where an appeal or any matter involved in an appeal is referred to the Planning Appeals Commission under paragraph (6)(b) or (c).

(8) Before determining an appeal in accordance with paragraph (6)(a), the Department may, if it thinks fit—

- (a) refer any matter involved in the appeal to such person as the Department may appoint for the purpose, with or without payment; or
- (b) cause the appeal to take or continue in the form of a hearing (which must be held in private),

and the Department shall act as mentioned in sub-paragraph (b) if a request is made by either party to the appeal to be heard with respect to the appeal.

(9) Provision may be made by the Department by regulations with respect to appeals under this Article; and in particular provision may be so made—

- (a) requiring appeals to be brought within such period as may be prescribed by, or determined under or in accordance with, the regulations;
- (b) as to the manner in which appeals are to be brought; and
- (c) as to the manner in which appeals are to be considered by the Department.

(10) The Department may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under Article 20 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 beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority 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 order, substitute for the period for the time being specified in paragraph (3) such other period as it thinks fit.

(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.

### *Provisions as to offences*

#### **Offences**

**23.**—(1) It is an offence for a person—

- (a) to contravene Article 6(1);
- (b) to fail to give the notice required by Article 9(2);
- (c) to contravene any requirement or prohibition imposed by an enforcement notice or a prohibition notice;
- (d) without reasonable excuse to fail to comply with any requirement imposed under Article 17;
- (e) without reasonable excuse,—
  - (i) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an inspector in the execution of his powers or duties under Article 17; or
  - (ii) to prevent any other person from appearing before an inspector, or answering any question to which an inspector may require an answer, pursuant to Article 17(3);
- (f) intentionally to obstruct an inspector in the exercise or performance of his powers or duties;
- (g) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under Article 19(2);
- (h) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
  - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Order; or
  - (ii) for the purpose of obtaining the grant of an authorisation to himself or any other person or the variation of an authorisation;
- (i) intentionally to make a false entry in any record required to be kept under Article 7;
- (j) with intent to deceive, to forge or use a document issued or authorised to be issued under Article 7 or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
- (k) falsely to pretend to be an inspector;
- (l) to fail to comply with an order made by a court under Article 26.

(2) A person guilty of an offence under sub-paragraph (a), (c) or (l) of paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding 3 months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.

(3) A person guilty of an offence under sub-paragraph (b), (g), (h), (i) or (j) of paragraph (1) 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 2 years, or to both.

(4) A person guilty of an offence under sub-paragraph (d), (e) or (k) of paragraph (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(5) A person guilty of an offence under sub-paragraph (f) of paragraph (1) shall be liable—

- (a) in the case of an offence of obstructing an inspector in the execution of his powers under Article 18—
  - (i) on summary conviction, to a fine not exceeding the statutory maximum;
  - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
- (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(6) An inspector, if authorised to do so by the Department, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under paragraph (1).

**Modifications etc. (not altering text)**

**C2** Art. 23 restricted by [Water \(Northern Ireland\) Order 1999 \(S.I. 1999/662 \(N.I. 6\)\)](#), art. 10(d) (as substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#)), arts. 1(2), **281(1)** (with arts. 8(8), 121(3), 307); [S.R. 2007/194](#), **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2))

**Enforcement by High Court**

**24.** If the enforcing authority is of the opinion that proceedings for an offence under Article 23(1)(c) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a prohibition notice, the authority may take proceedings in the High Court for the purpose of securing compliance with the notice.

**Evidence in connection with certain pollution offences**

**25.—(1)** Information provided or obtained pursuant to or under a condition of an authorisation (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.

(2) For the purposes of paragraph (1), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the authorisation otherwise provides.

(3) Where—

- (a) an entry is required under Article 7 to be made in any record as to the observance of any condition of an authorisation; 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.

(4) In any proceedings for an offence under Article 23(1)(a) consisting in a failure to comply with the general condition implied in every authorisation by Article 7(4), it shall be for the accused

to prove that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition.

(5) In this Article—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of an authorisation” includes any requirement to which a person is subject under or in consequence of an authorisation.

### **Power of court to order cause of offence to be remedied**

**26.**—(1) Where a person is convicted of an offence under Article 23(1)(a) or (c) in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under Article 23 in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

### **Power of chief inspector to remedy harm**

**27.**—(1) Where the commission of an offence under Article 23(1)(a) or (c) causes any harm which it is possible to remedy, the chief inspector may, subject to paragraph (2)—

- (a) arrange for any reasonable steps to be taken towards remedying the harm; and
- (b) recover the cost of taking those steps from any person convicted of that offence.

(2) The chief inspector shall not exercise his powers under this Article except with the approval in writing of the Department and, where any of the steps are to be taken on or will affect land in the occupation of any person other than the person on whose land the prescribed process is being carried on, with the permission of that person.

### *Authorisations and other statutory controls*

#### **Authorisations and other statutory controls**

**28.**—(1) No condition shall at any time be attached to an authorisation granted by the chief inspector so as to regulate the final disposal by deposit in or on land of controlled waste (within the meaning of Part II of the<sup>F11</sup> Waste and Contaminated Land (Northern Ireland) Order 1997) nor shall any condition apply to such a disposal; but the chief inspector shall notify the<sup>F11</sup> Department of the fact that the process involves the final disposal of controlled waste by deposit in or on land.

(2) Where any of the activities comprising a prescribed process are regulated both by an authorisation granted by the enforcing authority under this Order and by a registration or authorisation under the Radioactive Substances Act 1993, then, if different obligations are imposed as respects the same matter by a condition attached to the authorisation under this Order and a condition attached to the registration or authorisation under that Act, the condition imposed by the authorisation under this Order shall be treated as not binding the person carrying on the process.



(3) Where the activities comprising a prescribed process designated for integrated central control include the release of any substances into any waters, then—

- (a) the chief inspector shall not grant an authorisation under this Order if the Department certifies to him its opinion that the release will result in or contribute to—
  - (i) pollution of any waters; or
  - (ii) a failure to achieve any water quality objective in force under Part II of<sup>F12</sup> the Water (Northern Ireland) Order 1999]; and
- (b) any authorisation that is granted shall, as respects such releases, include (with or without others appearing to the chief inspector to be appropriate) such conditions as appear to the Department to be appropriate for the purposes of this Order as the Department requires by notice in writing given to the chief inspector;

but the chief inspector may, if it appears to be appropriate to do so, make the authorisation subject to conditions more onerous than those (if any) notified to him under sub-paragraph (b).

**F11** 1997 NI 19

**F12** 1999 NI 6

### *General*

#### **Disclosure of information**

**29.**—(1) Notwithstanding any prohibition or restriction imposed by or under any statutory provision or rule of law, information of any description may be disclosed—

- (a) by the Department to a district council; or
- (b) by a district council to the Department or another district council,

for the purpose of facilitating the carrying out by the Department of any of its functions under this Order or by any district council of any of its functions under this Order, and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this paragraph.

(2) Nothing in this Article shall authorise the disclosure to a district council of information disclosure of which would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(3) No information disclosed to any person under this Article shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this Article, or any other statutory provision which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under this Article would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(4) Any authorisation by or under this Article of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) Information is for the purposes of this Article commercially confidential in relation to any person if its disclosure would prejudice to an unreasonable degree the commercial interests of that person.

**Power to give effect to <sup>F13</sup><sup>F14</sup>assimilated] obligations and] international obligations etc.**

**30.**—(1) Regulations may provide that the provisions of this Order shall have effect with such modifications as may be prescribed in the regulations for the purpose of enabling Her Majesty's Government in the United Kingdom—

- (a) to give effect to any <sup>F15</sup>assimilated] obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) In this Article—

“modifications” includes additions, alterations and omissions;

“regulations”

- (a) in relation to any <sup>F16</sup>assimilated] obligation, means regulations made by the Department; and
- (b) in relation to any international agreement, means regulations made by the Secretary of State; and

“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(3) Regulations under this Article made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in the like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F13** Words in art. 30 heading substituted (31.12.2020) by [The Environment \(Miscellaneous Amendments\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/584\)](#), regs. 1, **7(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F14** Word in art. 30 heading substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 39(3)**

**F15** Word in art. 30(1)(a) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 39(3)**

**F16** Word in art. 30(2) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 39(3)**

**Application to Crown**

**31.**—(1) Subject to the provisions of this Article, the provisions of this Order and of regulations and orders made under it shall bind the Crown.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of the enforcing authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of this Order and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “Crown premises” means premises held or used by or on behalf of the Crown.

### **Offences by bodies corporate**

**32.** For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **Offences due to fault of others**

**33.** Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings for the offence are taken against the first mentioned person.

### **Regulations, orders and directions**

**34.—(1)** An order or regulations made by the Department under this Order (other than an order under Article 1(2)) shall be subject to negative resolution.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

(4) Paragraphs (5) and (6) apply to any direction given to any body or person under any provision of this Order being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.

(5) A direction to which this paragraph applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in paragraph (4), as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any statutory provision.

(6) Any variation or revocation of a direction to which this paragraph applies shall be published in such manner as the Department considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

(a) copies of the variation or revocation shall be made available to the public; and

(b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given in the Belfast Gazette.

*Art. 35—Amendments and repeals*

**Changes to legislation:**

There are currently no known outstanding effects for the The Industrial Pollution Control (Northern Ireland) Order 1997.