
STATUTORY INSTRUMENTS

1999 No. 662

The Water (Northern Ireland) Order 1999

PART II

**FUNCTIONS OF THE DEPARTMENT OF THE ENVIRONMENT
IN RELATION TO MATTERS AFFECTING WATER**

Enforcement

Powers of entry and inspection

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

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

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

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

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

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

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

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

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

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

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

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

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

Supplementary provisions as to powers of entry and inspection

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

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

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

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

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

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

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

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

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

Evidence in connection with certain pollution offences

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

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

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

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

(4) Information provided or obtained pursuant to or by virtue of a condition attached to a discharge consent [^{F1}or a licence mentioned in Article 20(3)(a) or (b)] (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

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

(6) Where—

(a) by virtue of a condition attached to a discharge consent [^{F2}or a licence mentioned in Article 20(3) (a) or (b)] , an entry is required to be made in any record as to the observance of any condition of the consent [^{F3}or licence] , 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.

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| F1 | Words in art. 27(4) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)) , arts. 1(2), 5(4) |
| F2 | Words in art. 27(6)(a) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)) , arts. 1(2), 5(5)(a) |
| F3 | Words in art. 27(6)(a) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)) , arts. 1(2), 5(5)(b) |

Power to obtain information

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

[^{F4}(1A) The Department may give directions requiring any person who is operating any impounding works to give such information to the Department as to the operation of those works, at such times and in such form, as may be specified in the directions.]

(2) A person to whom a direction under paragraph (1) [^{F5}or (1A)] is given may, within 28 days from the date the direction is given to him, appeal to the Appeals Commission.

(3) Any person who fails to comply with any direction given under paragraph (1) [^{F6}or (1A)] shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Any direction given under paragraph (1) [^{F7}or (1A)] shall be in writing and may be varied or revoked by a subsequent direction.

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| F4 | Art. 28(1A) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)) , arts. 1(2), 5(6) |
| F5 | Words in art. 28(2) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)) , arts. 1(2), 5(7) |

Status: Point in time view as at 01/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999, Cross Heading: Enforcement. (See end of Document for details)

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| F6 | Words in art. 28(3) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), 5(7) |
| F7 | Words in art. 28(4) inserted (1.8.2006) by Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006 (S.I. 2006/1946 (N.I. 15)), arts. 1(2), 5(7) |

[F8] Provision of information

28A.—(1) It shall be the duty of the Department—

- (a) to provide a water undertaker with all such information to which this Article applies as is in the possession of the Department and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
- (b) to provide reasonable facilities to all persons—
 - (i) for the inspection of the contents of any records kept by the Department and containing information to which this Article applies; and
 - (ii) for the taking of copies of, or of extracts from, any such records.

(2) It shall be the duty of every water undertaker to provide the Department with all such information to which this Article applies as is in the possession of the undertaker and is reasonably requested by the Department for purposes connected with the carrying out of any of its functions.

(3) Where records of the flow, level or volume of water in any waterway are kept by a person other than a water undertaker, the Department shall have the right at all reasonable times—

- (a) to inspect the contents of any of those records; and
- (b) to take copies of, or of extracts from, the contents of any of those records,

and any person who, without reasonable excuse, refuses or fails to permit the Department to exercise its right under this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(4) Information provided to a water undertaker or to the Department under paragraph (1) or (2) shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the Department may reasonably require; and the duties of the Department under paragraph (1) shall extend to information provided to or obtained by the Department under paragraph (2) or (3).

(5) Information or facilities provided under paragraph (1) or (2) to—

- (a) the Department,
- (b) the Department of Agriculture and Rural Development;
- (c) the Department of Culture, Arts and Leisure;
- (d) a water undertaker; or
- (e) Waterways Ireland,

shall be provided free of charge; and facilities provided under paragraph (1) to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the Department may determine.

(6) The duties of a water undertaker under paragraph (2) shall be enforceable under Article 30 of the Water and Sewerage Services (Northern Ireland) Order 2006 by the Northern Ireland Authority for Utility Regulation.

(7) This Article applies to information about—

- (a) the flow, level or volume of any water in any waterway or contained in underground strata;
- (b) rainfall or any fall of snow, hail or sleet; or

(c) the evaporation of any water.]

F8 Art. 28A inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **284** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

Penalties for false information

29. Any person who—

- (a) in giving any information which he is required to give under this Part, knowingly or recklessly makes a statement which is false or misleading in a material particular; or
- (b) for the purpose of obtaining any discharge consent [^{F9}or any licence mentioned in Article 20(3) (a) or (b)] or any [^{F10}variation, transfer or surrender of such a consent or licence], knowingly or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and liable—

- (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum.

F9 Words in art. 29(b) inserted (1.8.2006) by [Water and Sewerage Services \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2006 \(S.I. 2006/1946 \(N.I. 15\)\)](#), arts. 1(2), **5(8)(a)**

F10 Words in art. 29(b) substituted (1.8.2006) by [Water and Sewerage Services \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2006 \(S.I. 2006/1946 \(N.I. 15\)\)](#), arts. 1(2), **5(8)(b)**

[^{F11}Restriction on disclosure of information

29A.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained by virtue of any of the provisions of this Order; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance by the Department, the Department for Regional Development, the Northern Ireland Authority for Utility Regulation, the General Consumer Council, the Competition Commission or the Appeals Commission of any functions under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (c) for the purposes of a register maintained under Article 30.]

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Changes to legislation: There are currently no known outstanding effects for the The Water (Northern Ireland) Order 1999, Cross Heading: Enforcement. (See end of Document for details)

F11 Art. 29A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **285** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

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