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STATUTORY INSTRUMENTS

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**1999 No. 662**

**The Water (Northern Ireland) Order 1999**

**PART II**

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

*Miscellaneous*

**Abandoned mines**

**35.**—(1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the Department at least 6 months before the abandonment takes effect.

(2) A notice under paragraph (1) shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.

(3) A person who fails to give the notice required by paragraph (1) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) A person shall not be guilty of an offence under paragraph (3) if—

- (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
- (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.

(5) Where the operator of a mine is the official receiver acting in a compulsory capacity, he shall not be guilty of an offence under paragraph (3) by reason of any failure to give the notice required by paragraph (1) if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Department notice of the abandonment or proposed abandonment, containing such information as may be prescribed.

(6) Where a person gives notice under paragraph (1), (4)(b) or (5), he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.

(7) For the purposes of this Article, “abandonment”, in relation to a mine,—

- (a) subject to sub-paragraph (b), includes—
  - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
  - (ii) the cessation of working of any relevant seam, vein or vein-system;
  - (iii) the cessation of use of any shaft or outlet of the mine;

- (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine), the discontinuance of some or all of those other activities in the mine and any substantial change in the operations for the removal of water from the mine; but
- (b) does not include any disclaimer under Article 152 or 288 of the Insolvency (Northern Ireland) Order 1989 (power of liquidator, or trustee of a bankrupt's estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity.
- (8) In this Article—
- “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
- (a) liquidator of a company;
  - (b) receiver or manager of a bankrupt's estate, pursuant to Article 260 of the Insolvency (Northern Ireland) Order 1989;
  - (c) trustee of a bankrupt's estate;
  - (d) liquidator of an insolvent partnership;
  - (e) trustee of an insolvent partnership;
  - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
- “the initial period” means the period of 6 months beginning with the day on which paragraph (1) comes into operation;
- “mine” has the same meaning as in the Mines Act (Northern Ireland) 1969;
- “the official receiver” has the same meaning as it has in the Insolvency (Northern Ireland) Order 1989 by virtue of Article 356 of that Order;
- “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

**Power to give effect to <sup>F1</sup>assimilated] and other international obligations, etc.**

**36.**—(1) Regulations may provide that the provisions of this Part shall have effect with such modifications as may be prescribed for the purpose of <sup>F2</sup>...—

- <sup>F3</sup>(a) giving effect to any [<sup>F4</sup>assimilated] obligation or exercising any related right;] or
- (b) [<sup>F5</sup>enabling Her Majesty's Government in the United Kingdom] 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—

“regulations”

- (a) in relation to any [<sup>F6</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;

“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.

- F1** Word in art. 36 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. 43(2)**
- F2** Words in art. 36(1) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/582), regs. 1(1), **3(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Art. 36(1)(a) substituted (31.12.2020) by The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/582), regs. 1(1), **3(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Word in art. 36(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. 43(2)**
- F5** Words in art. 36(1)(b) inserted (31.12.2020) by The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/582), regs. 1(1), **3(2)(b)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Word in art. 36(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. 43(2)**

## [<sup>F7</sup>Civil Liability

**36A.** Except in so far as this Part expressly otherwise provides and subject to the provisions of section 20(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other statutory provision.]

- F7** Art. 36A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **286** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

## Prosecutions

**37.**—[<sup>F8</sup>(1)] No proceedings shall be instituted for an offence under this Part except by the Department or by or with the consent of the Attorney General.

[<sup>F9</sup>(2) Without prejudice to section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33), where the commission by any person of an offence under any provision of this Part (except Article 26(6), 28(3) or 29) is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.]

- F8** Art. 37 renumbered (1.4.2007) as art. 37(1) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **287** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
- F9** Art. 37(2) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **287** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

## Repeal, amendment and adaptation of local enactments

**38.**—(1) If it appears to the Department that any local or private Act passed before the making of this Order—

- (a) is inconsistent with any of the provisions of this Part or of any regulations or order made under this Part, or with anything done in the performance of any functions under this Part; or
- (b) requires to be amended or adapted, having regard to any of those provisions or to anything done in the performance of any of those functions,

it may by order made subject to affirmative resolution repeal, amend or adapt that Act to such extent, or in such manner, as it considers appropriate.

(2) In this Article “Act” includes an Act of the Parliament of the United Kingdom.

## [<sup>F10</sup>[<sup>F11</sup> Application of this Part to the Crown

**38A.**—(1) Subject to the provisions of this Article, this Part binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Part shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under this Part shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown land and any powers of entry exercisable in relation to it 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 that land, those powers shall not be exercised in relation to that land.

(5) Subject to paragraph (4), the powers conferred by Article 24 shall be exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(7) In this Article—

“the appropriate authority” in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.]]

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

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- F10** Art. 38A 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(11)**
- F11** Art. 38A substituted (22.3.2007 for certain purposes, otherwise 1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **288** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2**, Sch. 1 Pts. I, II (with art. 3, Sch. 2)

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