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STATUTORY INSTRUMENTS

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**2002 No. 3153**

**The Environment (Northern Ireland) Order 2002**

**PART I**  
**INTRODUCTORY**

**Title and commencement**

- 1.—(1) This Order may be cited as the Environment (Northern Ireland) Order 2002.
- (2) Except as provided by paragraph (3), this Order comes into operation on the expiration of one month from the date on which it is made.
- (3) The following provisions come into operation on such day or days as the Department may by order appoint<sup>F1</sup>
- Part IV (together with Schedule 4);
  - Article 53(2);
  - Part III of Schedule 5 (together with so much of Article 53(1) as relates thereto);
  - Schedule 6.
- (4) An order under paragraph (3) may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

<b>F1</b> partly exercised by SR 2003/49, 113
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**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order—
- “the Department” means the Department of the Environment;
  - “modifications” includes additions, alterations and omissions
  - “statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c.33).

*Status: Point in time view as at 17/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002. (See end of Document for details)*

## PART II

### POLLUTION PREVENTION AND CONTROL

#### *Regulation of polluting activities*

#### **Purpose of Article 4**

3. The purpose of Article 4 is to enable provision to be made for or in connection with—
- (a) implementing [<sup>F2</sup>Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)];
  - (b) regulating, otherwise than in pursuance of that Directive, activities which are capable of causing any environmental pollution;
  - (c) otherwise preventing or controlling emissions capable of causing any such pollution.

**F2** Words in art. 3(a) substituted (17.1.2019) by [The Air Quality \(Amendment, etc.\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/215\)](#), regs. 1(1), 2(2)

#### **Regulation of polluting activities**

4.—(1) The Department may by regulations make provision for any of the purposes listed in Part I of Schedule 1; and Part II of that Schedule has effect for supplementing Part I.

(2) In accordance with Article 3, the provision which may be made by regulations under this Article is provision for or in connection with any of the matters mentioned in paragraphs (a) to (c) of that Article.

(3) Regulations under this Article may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking statutory provisions) as the Department considers appropriate.

(4) Before making any regulations under this Article, the Department shall consult—

- (a) district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it may consider appropriate;
- (b) such bodies or persons appearing to it to be representative of the interests of industry, agriculture and business as it may consider appropriate; and
- (c) such other bodies or persons as it may consider appropriate.

(5) Consultation undertaken before the coming into operation of this Article shall constitute as effective compliance with paragraph (4) as if undertaken thereafter.

(6) Regulations under this Article, if made without a draft having been laid before and approved by a resolution of, the Assembly, shall be subject to negative resolution.

(7) No regulations to which this paragraph applies shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly

(8) Paragraph (7) applies to—

- (a) the first regulations to be made under this Article;
- (b) regulations under this Article containing any provision which creates an offence or increases a penalty for an existing offence;
- (c) regulations under this Article containing any provision which amends or repeals any Northern Ireland legislation.

### *Waste management: site licences*

#### **New transitional provisions for disposal licences treated as site licences**

5.—(1) Article 47 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19) (transitional provisions in connection with the commencement of Part II of that Order) shall be amended as follows.

(2) In paragraph (2) for the words “for a period of 3 years from the relevant appointed day for licences” there shall be substituted the words “in accordance with Article 6(10)”.

(3) In paragraph (3) for the words “for a period of 3 years from the relevant appointed day for resolutions” there shall be substituted the words “in accordance with Article 6(10)”.

#### **Disposal licences which expire before commencement of waste management licensing**

6.—(1) This Article applies where—

- (a) a disposal licence under Article 7 of the 1978 Order expires at a time (“the time of expiry”) falling after the relevant day but before the appointed day (so that it is not converted into a site licence by Article 47 of the 1997 Order); and
- (b) relevant activities have taken place at a time falling after the time of expiry (whether before or after the making of this Order).

(2) The licence shall for all purposes be deemed—

- (a) not to have expired; and
- (b) to have been subsisting on the appointed day and (accordingly) to have become on that day a site licence by virtue of Article 47(2) of the 1997 Order.

(3) The terms and conditions of the licence as continued in force by paragraph (2) shall, except so far as providing for the expiry of the licence and subject to paragraph (4)(b) and (c), be such as were in force immediately before the time of expiry (unless and until varied under Part II of the 1997 Order).

(4) Without prejudice to the generality of paragraph (2)—

- (a) activities carried out during the interim period which (by virtue of paragraph (2)) become authorised by the licence shall be treated as authorised at the time they were carried out (even though at that time their being carried out amounted to a contravention of Article 5(1) of the 1978 Order);
- (b) anything done in relation to the licence before the time of expiry but purporting to take effect after that time (such as the serving of a notice under Article 9 of the 1978 Order, specifying a time falling during or after the interim period) shall be treated as having had (or having) effect as if the licence had not in fact expired
- (c) anything which during the interim period purported to be done in relation to the licence (such as a modification, revocation, transfer or cancellation of the licence, the exercise of functions under Article 11 of the 1978 Order or the bringing or determination of an appeal) shall be treated as having had effect as if the licence had then been in force;
- (d) any fees which (by virtue of paragraph (2)) are treated as having become payable before the appointed day shall be taken to have become payable at the time they would have become payable had the licence not in fact expired; and
- (e) the holder of the licence shall be treated as having been an authorised person for the purposes of Article 5(1) of the 1997 Order during the interim period (or so much thereof as falls after the coming into operation of Article 5(1)).

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(5) Nothing in this Article affects any criminal proceedings in which the accused has been convicted before the coming into operation of this Article.

(6) The district council by which a licence affected by this Article was issued shall notify the holder of the licence—

- (a) of the fact that the licence is so affected; and
- (b) of how it is so affected.

(7) For the purposes of this Article “relevant activities”, in relation to a licence, are—

- (a) any activities authorised by the licence or, in the case of an expired licence, any which would have been authorised by it had it not expired, and
- (b) any precautions or works required by the licence to be taken or carried out in connection with or in consequence of those activities or, in the case of an expired licence, any which would have been so required had the licence not expired.

(8) In this Article—

“the 1978 Order” means the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19);

“the 1997 Order” means the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19);

“the appointed day”, in relation to a licence, means the day which in relation to that licence is (or would have been if the licence had not previously expired) the relevant appointed day for licences (within the meaning of Article 47 of the 1997 Order);

“the interim period”, in connection with a licence in relation to which this Article applies, means the period beginning with the time of expiry and ending immediately before the appointed day

“the relevant day” means the day falling one year before the day on which this Order is made;

“site licence” has the same meaning as in the 1997 Order.

#### *Financial assistance by Department*

### **Financial assistance by Department**

7.—(1) The Department may make grants to any body having among its objects—

- (a) the furtherance of the objectives of the strategy in relation to the recovery and disposal of waste prepared by the Department under Article 19 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19); or
- (b) the prevention or control of environmental pollution.

(2) Grants under this Article shall be made—

- (a) in accordance with arrangements approved by the Department of Finance and Personnel; and
- (b) subject to such conditions as the Department may determine (including conditions for repayment in specified circumstances).

#### *Supplementary*

### **Interpretation of this Part**

8.—(1) In this Part—

“activities” means activities of any nature, whether—

- (a) industrial or commercial or other activities, or
- (b) carried on on particular premises or otherwise,

and includes (with or without other activities) the depositing, keeping or disposal of any substance;

“environmental pollution” means pollution of the air, water or land which may give rise to any harm; and for the purposes of this definition (but without prejudice to its generality)—

- (a) “pollution” includes pollution caused by noise, heat or vibrations or any other kind of release of energy, and
- (b) “air” includes air within buildings and air within other natural or man-made structures above or below ground.

(2) In the definition of “environmental pollution” in paragraph (1), “harm” means—

- (a) harm to the health of human beings or other living organisms;
- (b) harm to the quality of the environment, including—
  - (i) harm to the quality of the environment taken as a whole,
  - (ii) harm to the quality of the air, water or land, and
  - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part
- (c) offence to the senses of human beings;
- (d) damage to property; or
- (e) impairment of, or interference with, amenities or other legitimate uses of the environment (expressions used in this paragraph having the same meaning as in <sup>F3</sup>Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)).

**F3** Words in art. 8(2)(e) substituted (17.1.2019) by [The Air Quality \(Amendment, etc.\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/215\)](#), regs. 1(1), **2(3)**

## PART III

### AIR QUALITY

#### *Air quality*

#### **Implementation of Directive**

**9.** This Part contains provision for the purposes of implementing Council Directive 96/62 EC on air quality assessment and management.

#### **Air quality strategy**

**10.—(1)** The Department shall prepare and publish a statement (in this Part referred to as “the strategy”) containing policies with respect to the assessment or management of the quality of air.

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(2) Without prejudice to anything contained in this Article, the Department may, in the exercise of its functions under this Article, co-operate with the Secretary of State in the exercise of his functions under section 80 of the Environment Act 1995 (c. 25).

(3) The strategy may also contain policies for implementing—

- (a) obligations of the United Kingdom under the Community Treaties, or
- (b) international agreements to which the United Kingdom is for the time being a party,

so far as relating to the quality of air.

(4) The strategy shall consist of—

- (a) a statement which relates to the whole of Northern Ireland; or
- (b) part of a joint statement, made with the Secretary of State, which—
  - (i) relates to the whole or part of the United Kingdom; and
  - (ii) includes any strategy made by the Secretary of State under section 80 of the Environment Act 1995 (c. 25).

(5) The Department—

- (a) shall keep under review its policies with respect to the quality of air; and
- (b) may from time to time modify the strategy.

(6) Without prejudice to the generality of what may be included in the strategy, the strategy shall include statements with respect to—

- (a) standards relating to the quality of air;
- (b) objectives for the restriction of the levels at which particular substances are present in the air; and
- (c) measures which are to be taken by relevant authorities and other persons for the purpose of achieving those objectives

(7) In preparing the strategy or any modification of it, the Department shall consult—

- (a) relevant authorities;
- (b) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate; and
- (c) such other bodies or persons as it may consider appropriate.

(8) Before publishing the strategy or any modification of it, the Department shall—

- (a) publish a draft of the proposed strategy or modification, together with notice of a date before which, and an address at which, representations may be made to it concerning the draft so published; and
- (b) take into account any such representations which are duly made and not withdrawn.

### **District council reviews**

**11.**—(1) Each district council shall from time to time cause a review to be conducted of the quality for the time being, and the likely future quality within the relevant period, of air within the council's district.

(2) Where a district council causes a review under paragraph (1) to be conducted, it shall also cause an assessment to be made of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the council's district.

(3) If, on an assessment under paragraph (2), it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the district

council's district, the council shall identify any parts of its district in which it appears that those standards or objectives are not likely to be achieved within the relevant period.

**Designation of air quality management areas**

12.—(1) Where, as a result of an air quality review, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the district of a district council, the council shall by order designate as an air quality management area (in this Part referred to as a “designated area”) all or any part of its district in which it appears that those standards or objectives are not being achieved, or are not likely to be achieved within the relevant period.

(2) An order under this Article shall identify the designated area and shall be in such form as may be prescribed.

(3) A district council shall after making an order under this Article cause to be published in the Belfast Gazette and once at least in each of two successive weeks in more than one newspaper circulating in the district to which the order relates a notice—

- (a) stating that the order has been made, and its general effect; and
- (b) specifying a place in the district of the council where a copy of the order and of any map or plan referred to therein may be inspected by any person free of charge at all reasonable times

(4) An order under this Article may, as a result of a subsequent air quality review,—

- (a) be varied by a subsequent order; or
- (b) be revoked by such an order, if it appears on that subsequent air quality review that the air quality standards and objectives are being achieved, and are likely throughout the relevant period to be achieved, within the designated area,

and paragraphs (2) and (3) also apply to an order made under sub-paragraph (a) or (b).

**Further provisions in relation to designated areas**

13.—<sup>F4</sup>(1) .....

<sup>F5</sup>(2) Where an order under Article 12 comes into operation, the district council which made the order shall] prepare, in accordance with the following provisions, a written plan (in this Part referred to as an “action plan”) for the exercise by the council, in pursuit of the achievement of air quality standards and objectives in the designated area, of any powers exercisable by the council.

(3) A district council shall, before finally determining the content of the action plan, send to the Department and each relevant authority—

- (a) a copy of any order (together with any map or plan referred to therein) made by it under Article 12; <sup>F6</sup> and]

<sup>F7</sup>(b) .....

<sup>F7</sup>(c) .....

- (d) a copy of the proposed action plan.

(4) Where a relevant authority has received the proposed action plan under paragraph (3), it shall, within the relevant period, submit to the district council—

- (a) proposals for the exercise (so far as relating to the designated area) by the authority, in order to comply with or in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the authority; and
- (b) a statement of the time by which it proposes to implement each of the proposals

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(5) Subject to paragraph (8), an action plan shall, in addition to the measures proposed by the district council under [F8 paragraph (2)] , also include a statement of—

- (a) the proposals submitted pursuant to paragraph (4)(a);
- (b) the times set out in the statement submitted pursuant to paragraph (4)(b);
- (c) the time by which the district council in question proposes to implement each of the measures proposed by it comprised in the plan.

(6) Subject to paragraph (7), a district council may from time to time revise an action plan.

(7) Before a district council revises an action plan under paragraph (6), it shall provide the Department and each relevant authority with a copy of the proposed revision, and paragraphs (4) and (5) shall apply to a revision of the action plan as they apply to the making of the action plan.

(8) Where a relevant authority disagrees with a district council about the contents of a proposed action plan or revision of an action plan—

- (a) either of them may refer the matter to the Department;
- (b) on any such reference the Department may confirm the council's proposed action plan or revision of the action plan, with or without modifications (whether or not proposed by the authority) or reject it and, if it rejects it, it may also exercise any of its powers under Article 14; and
- (c) the council shall not finally determine the content of the action plan, or the revision of the action plan, except in accordance with the Department's decision on the reference or in pursuance of directions under Article 14.

(9) When the content of the action plan or the revision of the action plan is finally determined, the district council shall send a copy of the action plan or revision of the action plan to the Department and each relevant authority.

- F4** Art. 13(1) repealed (12.4.2016) by [Environmental Better Regulation Act \(NorthernIreland\) 2016 \(c. 13\), ss. 17\(2\), 27\(1\), Sch. 2](#)
- F5** Words in art. 13(2) substituted (12.4.2016) by [Environmental Better Regulation Act \(NorthernIreland\) 2016 \(c. 13\), ss. 17\(3\), 27\(1\)](#)
- F6** Word in art. 13(3)(a) inserted (12.4.2016) by [Environmental Better Regulation Act \(NorthernIreland\) 2016 \(c. 13\), ss. 17\(4\), 27\(1\)](#)
- F7** Art. 13(3)(b)(c) repealed (12.4.2016) by [Environmental Better Regulation Act \(NorthernIreland\) 2016 \(c. 13\), ss. 17\(5\), 27\(1\), Sch. 2](#)
- F8** Words in art. 13(5) substituted (12.4.2016) by [Environmental Better Regulation Act \(NorthernIreland\) 2016 \(c. 13\), ss. 17\(6\), 27\(1\)](#)

## Reserve powers

**14.—(1)** The Department may conduct or make, or cause to be conducted or made—

- (a) a review of the quality for the time being, and the likely future quality within the relevant period, of air within the district of any district council;
- (b) an assessment of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the district of a district council;
- (c) an identification of any parts of the district of a district council in which it appears that those standards or objectives are not likely to be achieved within the relevant period; or
- (d) an assessment of the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the district of a district council or within a designated area.



(2) Where the Department exercises any of its powers under paragraph (1) in respect of the district of any district council, it may recover the reasonable expenses incurred by it in the exercise of such powers from that council

(3) If it appears to the Department—

- (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the district of a district council;
- (b) that a district council has failed to discharge any duty imposed on it under this Part;
- (c) that the actions, or proposed actions, of a district council in purported compliance with the provisions of this Part are inappropriate in all the circumstances of the case; or
- (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of a district council in pursuance of this Part,

the Department may give directions to the district council requiring it to take such steps as may be specified in the directions.

(4) Without prejudice to the generality of paragraph (3), directions under that paragraph may, in particular, require a district council—

- (a) to cause an air quality review to be conducted under Article 11 in accordance with the directions;
- (b) to cause an air quality review under Article 11 to be conducted afresh, whether in whole or in part, or to be so conducted with such differences as may be specified or described in the directions;
- (c) to make an order under Article 12 designating as an air quality management area an area specified in, or determined in accordance with, the directions;
- (d) to revoke, or modify in accordance with the directions, any order under that Article;
- (e) to prepare in accordance with the directions an action plan for a designated area;
- (f) to modify, in accordance with the directions, any action plan prepared by the council; or
- (g) to implement, in accordance with the directions, any measures in an action plan.

(5) The Department shall also have power to give directions to district councils requiring them to take such steps specified in the directions as the Department considers appropriate for the implementation of—

- (a) any obligations of the United Kingdom under the Community Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party,

so far as relating to the quality of air.

(6) The Department shall after giving any direction under this Article cause to be published in the Belfast Gazette and once at least in each of two successive weeks in more than one newspaper circulating in the district to which the direction relates a notice—

- (a) stating that the direction has been given and its general effect; an
- (b) specifying a place in the district of the council where a copy of the direction may be inspected by any person free of charge at all reasonable times.

(7) A district council shall comply with any direction given to it under this Part.

## **Regulations**

**15.**—(1) Regulations may make provision—

- (a) for, or in connection with, implementing the strategy; or

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- (b) for, or in connection with implementing—
    - (i) obligations of the United Kingdom under the Community Treaties; or
    - (ii) any international agreement to which the United Kingdom is for the time being a party,so far as relating to the quality of air; or
  - (c) otherwise with respect to the assessment or management of the quality of air.
- (2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may make provision—
- (a) prescribing standards relating to the quality of air;
  - (b) prescribing objectives for the restriction of the levels at which particular substances are present in the air;
  - (c) conferring or imposing functions on prescribed competent authorities;
  - (d) for or in connection with—
    - (i) authorising prescribed competent authorities (whether by agreements or otherwise) to exercise any functions of the Department on its behalf;
    - (ii) directing that functions of the Department shall be exercisable concurrently with prescribed competent authorities; or
    - (iii) transferring functions of the Department to prescribed competent authorities;
  - (e) prohibiting or restricting, or for or in connection with prohibiting or restricting,—
    - (i) the carrying on of prescribed activities, or
    - (ii) the access of prescribed vehicles or mobile equipment to prescribed areas, whether generally or in prescribed circumstances;
  - (f) for or in connection with the designation of air quality management areas by orders made by district councils in such cases or circumstances not falling within Article 12 as may be prescribed;
  - (g) for the application, with or without modifications, of any provisions of this Part in relation to areas designated by virtue of sub-paragraph (f) or in relation to orders made by virtue of that sub-paragraph;
  - (h) with respect to—
    - (i) air quality reviews;
    - (ii) assessments under this Part;
    - (iii) orders designating air quality management areas; or
    - (iv) action plans;
  - (j) prescribing measures which are to be adopted by prescribed competent authorities (whether in action plans or otherwise) or other persons in order to comply with, or in pursuance of the achievement of, air quality standards or objectives;
  - (k) for or in connection with the communication to the public of information relating to quality for the time being, or likely future quality, of the air;
  - (l) for or in connection with the obtaining by prescribed competent authorities from any person of information which is reasonably necessary for the discharge of functions conferred or imposed on them under this Part;
  - (m) for or in connection with the recovery by a district council from prescribed persons in prescribed circumstances, and in such manner as may be prescribed, of costs incurred by the council in discharging functions conferred or imposed on the council under this Part;

- (n) for a person who contravenes any prescribed provision of the regulations to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or such lower level on that scale as may be prescribed in relation to the offence;
  - (o) for or in connection with arrangements under which a person may discharge any liability to conviction for a prescribed offence by payment of a penalty of a prescribed amount;
  - (p) for or in connection with appeals against determinations or decisions made, notices given or served, or other things done under the regulations.
- (3) Without prejudice to the generality of sub-paragraph (h) of paragraph (2), the provision that may be made by virtue of that sub-paragraph includes provision for or in connection with any of the following, that is to say—
- (a) the scope or form of a review or assessment;
  - (b) the scope, content or form of an action plan;
  - (c) the time at which, period within which, or manner in which a review or assessment is to be carried out, or a report of the results of an assessment or an action plan is to be prepared;
  - (d) the methods to be employed—
    - (i) in carrying out reviews or assessments; or
    - (ii) in monitoring the effectiveness of action plans;
  - (e) the factors to be taken into account in preparing action plans;
  - (f) the actions which must be taken by prescribed competent authorities or other persons in consequence of reviews, assessments or action plans;
  - (g) requirements for consultation;
  - (h) the treatment of representations or objections duly made;
  - (j) the publication of, or the making available to the public of, or of copies of,—
    - (i) the results, or reports of the results, of reviews or assessments; or
    - (ii) orders or action plans;
  - (k) requirements for—
    - (i) copies of any such reports, orders or action plans, or
    - (ii) prescribed information, in such form as may be prescribed, relating to reviews or assessments,
- (4) In determining—
- (a) any appeal against, or reference or review of, a decision of a district council under regulations, or
  - (b) any application transmitted from a district council under any such regulations,
- the body or person making the determination shall be bound by any direction given by the Department to the district council to the same extent as the council.
- (5) The provisions of any regulations may include—
- (a) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed; and
  - (b) such supplemental, consequential, incidental, transitional or saving provisions (including provisions amending, repealing or revoking statutory provisions) as the Department considers appropriate.
- (6) Before making any regulations, the Department shall consult—

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- (a) such competent authorities as the Department considers appropriate;
- (b) such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate; and
- (c) such other bodies or persons as it may consider appropriate.

### Recommendations and guidance

16.—(1) A relevant authority may make recommendations to a district council with respect to the carrying out of—

- (a) any particular air quality review,
- (b) any particular assessment under Article 11 <sup>F9</sup> ..., or
- (c) the preparation of any particular action plan or revision of an action plan,

and the district council shall take into account any such recommendations.

(2) The Department may issue guidance to a district council or relevant authority with respect to, or in connection with, the exercise of the council's or the authority's functions under this Part.

(3) A district council or relevant authority, in carrying out any of its functions under this Part, shall have regard to any guidance issued by the Department under this Part

**F9** Words in art. 16(1)(b) repealed (12.4.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\)](#), ss. 18(2), 27(1), [Sch. 2](#)

### Supplemental provisions

17. Schedule 2 shall have effect.

### General

### Financial assistance

18.—(1) The Department may make grants or loans to any body or person for the purposes of or in connection with—

- (a) carrying out an air quality review;
- (b) carrying out an assessment under Article 11 <sup>F10</sup> ...;
- (c) preparing and implementing an action plan; and
- (d) the assessment or management of the quality of air.

(2) Grants or loans made by the Department under this Article—

- (a) shall be of such amounts; and
- (b) shall be made on such terms and conditions (including in the case of grants, conditions as to repayment),

as may be determined by the Department.

**F10** Words in art. 18(1)(b) repealed (12.4.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\)](#), ss. 18(3), 27(1), [Sch. 2](#)

### **Powers of enforcing authorities and persons authorised by them**

19.—(1) An authorised person may, on production (if so required) of his authority, exercise any of the powers specified in paragraph (2) for the purpose of—

- (a) determining whether any provision of the pollution control statutory provisions is being, or has 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) The powers of an authorised person are—

- (a) to enter at any reasonable time 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 other person duly authorised by the enforcing authority and, if the authorised person 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, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, in, on, or in the vicinity of, the premises;
- (g) 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 authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
  - (i) which are required to be kept under the pollution control statutory provisions, or
  - (ii) which 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;
- (j) 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 authorised person to exercise any of the powers conferred on him by this Article;
- (k) any other power for a purpose mentioned in paragraph (1) which is conferred by regulations.

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(3) The powers which under paragraphs (1) and (2) 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 is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made, to install, keep or maintain monitoring and other apparatus there.

(4) In any case where it is proposed to enter any premises used for residential purposes, or 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 seven days' notice of the proposed entry given to a person who appears to the authorised person in question 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

(5) Where an authorised person 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.

(6) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2)(f).

(7) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(g) shall be admissible in evidence against that person in any proceedings.

(8) 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.

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

(10) In this Article and Schedule 3—

“authorised person” means a person who is authorised in writing by an enforcing authority for the purposes of this Article;

“enforcing authority” means—

- (a) the Department; or
- (b) a district council;

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

“premises” includes any land, vehicle, vessel or mobile plant.

(11) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 (c. 9) shall apply to functions conferred on a district council under this Part.

## **Offences**

**20.**—(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise of his powers or duties.

- (2) It is an offence for a person, without reasonable excuse,—
  - (a) to fail to comply with any requirement imposed under Article 19;
  - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the discharge of his functions under that Article; or
  - (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer under that Article.
- (3) It is an offence for a person falsely to pretend to be an authorised person
- (4) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In this Article—
  - “authorised person” has the same meaning as in Article 19;
  - “powers or duties” includes powers or duties exercisable by virtue of a warrant under Schedule 3.

### **Disclosure of information**

**21.**—(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 any relevant authority; or
- (b) by any relevant authority to the Department or to any other relevant authority,

for the purpose of facilitating the carrying out by the Department or by any relevant authority of any of its functions under this Part; 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 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 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 interest of that person.

### **Power to give effect to Community and other international obligations, etc.**

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

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- (a) to give effect to any obligations of the United Kingdom under the Community Treaties 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 “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

### **Offences by bodies corporate**

**23.** For the purposes of this Part section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) 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 under this Part due to fault of others**

**24.** Where the commission by any person of an offence under this Part 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.

### **Application to Crown**

**25.—**(1) Subject to the provisions of this Article, the provisions of this Part and of regulations and orders made under it shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

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

(3) Notwithstanding anything in paragraph (2), the provisions of this Part 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 premises held or used by or on behalf of the Crown and any power of entry exercisable in relation to them, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.

(5) Any reference to the Crown in this Article includes the Crown in right of Her Majesty's Government in the United Kingdom.

### **Regulations and directions**

**26.—**(1) No regulations to which this paragraph applies shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(2) Paragraph (1) applies to—

- (a) regulations under this Part containing any provision which creates an offence or increases a penalty for an existing offence
- (b) regulations under this Part containing any provision which amends or repeals any Northern Ireland legislation.

(3) Other regulations under this Part shall be subject to negative resolution.



(4) Any direction given under this Part shall be in writing and may be varied or revoked by subsequent directions.

(5) Paragraphs (6) and (7) apply to any direction given to any body or person under any provision of this Part being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.

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

(7) 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.

### Interpretation of this Part

27.—(1) In this Part—

“action plan” shall be construed in accordance with [F11Article 13(2)] ;

“air” means ambient air;

“air quality objectives” means objectives prescribed by virtue of Article 15(2)(b);

“air quality review” means a review under Article 11 or 14;

“air quality standards” means standards prescribed by virtue of Article 15(2)(a);

“ambient air” means outdoor air in the troposphere, excluding work places;

“competent authority” means a Northern Ireland department, a district council or any other public body;

“designated area” has the meaning given by Article 12(1);

“notice” means notice in writing;

“pollution control statutory provisions” means—

- (a) this Part and any regulations made under it; and
- (b) regulations made under section 2(2) of the European Communities Act 1972 (c. 68) to the extent that the regulations relate to air pollution;

“prescribed” means prescribed by regulations;

“public body” means a body established or constituted by or under a statutory provision

“regulations” means regulations made by the Department;

“relevant authority” in the case of any provision of this Part, means such competent authority as may be prescribed for the purposes of that provision;

“the relevant period” in the case of any provision of this Part, means such period as may be prescribed for the purposes of that provision;

“the strategy” has the meaning given by Article 10(1).

(2) Any reference in this Part to it appearing that any air quality standards or objectives are not likely within the relevant period to be achieved includes a reference to it appearing that those standards or objectives are likely within that period not to be achieved.

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**F11** Words in [art. 27\(1\)](#) substituted (12.4.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\), ss. 18\(4\), 27\(1\)](#)

## PART IV

### AREAS OF SPECIAL SCIENTIFIC INTEREST

#### *Areas of special scientific interest*

#### **Declaration of ASSI**

**28.**—(1) Where the Department after consultation with the Council for Nature Conservation and the Countryside (“the Council”), is satisfied—

- (a) that an area of land is of special interest by reason of any of its flora, fauna, or geological, physiographical or other features, and
- (b) that accordingly it needs to be specially protected,

the Department shall make a declaration that the area is an area of special scientific interest.

(2) A declaration under paragraph (1) shall specify—

- (a) the flora, fauna, or geological, physiographical or other features by reason of which the land is of special interest, and
- (b) any operations appearing to the Department to be likely to damage that flora or fauna or those features,

and shall contain a statement of the Department's views about the management of the land (including any views the Department may have about the conservation and enhancement of that flora or fauna or those features).

(3) Where the Department makes a declaration under paragraph (1) in relation to any land, it shall give notification of that fact—

- (a) to each district council in whose district the land is wholly or partially situated; and
- (b) to every owner and occupier of any of that land.

(4) A notification under paragraph (3) shall—

- (a) set out the terms of the declaration;
- (b) specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to the declaration may be made

(5) The Department shall also publish in at least two newspapers circulating in the area in which the land is situated notice—

- (a) of the making of the declaration; and
- (b) of the places (at least one of which is in that area) at which a copy of the declaration may be inspected at all reasonable hours.

(6) The Department shall—

- (a) consider any representation or objection duly made within the time specified in the notification;
- (b) within three months of that time either—
  - (i) confirm the declaration (with or without modifications); or

- (ii) rescind the declaration; and
  - (c) give notice of its decision to the persons mentioned in paragraph (3).
- (7) The Department's power under paragraph (6)(b) to confirm a declaration with modifications shall not be exercised so as—
- (a) add to the operations specified in the declaration; or
  - (b) extend the area to which it applies.
- (8) A declaration under paragraph (1) has effect as from the time it is made by the Department.
- (9) If such a declaration is confirmed with modifications under paragraph (6) (b)(i), the declaration has effect in its modified form as from the time it is so confirmed by the Department.
- (10) If such a declaration is rescinded under paragraph (6)(b)(ii), it ceases to have effect as from the time it is rescinded by the Department.
- (11) In this Part “ASSI” means an area of land in relation to which a declaration under paragraph (1) has effect.

#### **Variation of declaration**

- 29.**—(1) At any time after a declaration has been confirmed (with or without modifications) under Article 28(6), the Department may vary the matters specified or stated in the confirmed declaration (whether by adding to them, changing them, or removing matter from them).
- (2) The area of land cannot be varied under this Article.
  - (3) Where the Department varies a declaration in relation to any land under paragraph (1) it shall give notice setting out the variation to—
    - (a) each district council in whose district the land is wholly or partially situated; and
    - (b) every owner and occupier of any of the land who in the opinion of the Department may be affected by the variation.
  - (4) A notice under paragraph (3) shall specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to it may be made
  - (5) The Department shall—
    - (a) consider any representation or objection duly made within the time specified in the notice;
    - (b) within three months of that time either—
      - (i) confirm the variation (with or without modifications); or
      - (ii) rescind the variation; and
    - (c) give notice of its decision to the persons mentioned in paragraph (3).
  - (6) A variation under paragraph (1) has effect as from the time it is made by the Department.
  - (7) If such a variation is confirmed with modifications under paragraph (5)(b)(i), the variation has effect in its modified form as from the time it is so confirmed by the Department.
  - (8) If such a variation is rescinded under paragraph (5)(b)(ii), the variation ceases to have effect as from the time it is rescinded by the Department.

#### **Declaration of additional land**

- 30.**—(1) Where the Department, after consultation with the Council, is satisfied that if land adjacent to an ASSI (“the extra land”) were combined with the ASSI, the combined area of land

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would be of special interest by reason of any of its flora, fauna, or geological, physiographical or other features, the Department may make a declaration to that effect.

(2) No such declaration may be made until after the declaration of the ASSI has been confirmed (with or without modifications) under Article 28(6).

(3) A declaration under paragraph (1) shall specify—

- (a) the area of land constituting the ASSI;
- (b) what (as at the date of the declaration) is specified or contained in the declaration under Article 28(1) relating to the ASSI by virtue of Article 28(2);
- (c) the reasons why the Department is of the opinion referred to in paragraph (1); and
- (d) which (if any) things among the matters specified by virtue of sub-paragraph (c) are particularly relevant to the extra land.

(4) Where the Department makes a declaration under paragraph (1) in relation to any land, it shall give notification of that fact—

- (a) to each district council in whose district the extra land is wholly or partially situated; and
- (b) to every owner and occupier of any of the extra land.

(5) A notification under paragraph (4) shall—

- (a) set out the terms of the declaration;
- (b) specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to the declaration may be made

(6) The Department shall also publish in at least two newspapers circulating in the area in which the extra land is situated notice—

- (a) of the making of the declaration; and
- (b) of the places (at least one of which is in that area) at which a copy of the declaration may be inspected at all reasonable hours.

(7) The Department shall—

- (a) consider any representation or objection duly made within the time specified in the notification;
- (b) within three months of that time either—
  - (i) confirm the declaration under paragraph (1) (with or without modifications); or
  - (ii) rescind that declaration; and
- (c) give notice of its decision to the persons mentioned in paragraph (4).

(8) The Department's power under paragraph (7)(b) to confirm a declaration with modifications shall not be exercised so as—

- (a) add to the operations specified in the declaration; or
- (b) extend the area to which it applies.

(9) As from the time a declaration is made by the Department under paragraph (1) in relation to extra land, the declaration of the ASSI under Article 28(1) shall have effect as if it included that declaration.

(10) If a declaration under paragraph (1) is confirmed with modifications under paragraph (7) (b)(i), the declaration of the ASSI under Article 28(1) (as extended by virtue of paragraph (9)) shall have effect in its modified form.

(11) If such a declaration is rescinded under paragraph (7)(b)(ii), it ceases to have effect as from the time it is rescinded by the Department.

## **Denotification**

**31.**—(1) Where the Department, after consultation with the Council, is satisfied that all or part of an ASSI is no longer of special scientific interest by reason of any of the matters mentioned in Article 28(1), it may decide to notify that fact to—

- (a) each district council in whose district the land which the Department no longer considers to be of special scientific interest is wholly or partially situated; and
- (b) every owner and occupier of any of that land.

(2) A notification under paragraph (1) shall specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to it may be made.

(3) The Department shall also publish in at least two newspapers circulating in the area in which the land mentioned in paragraph (1) is situated notice—

- (a) of the giving of the notification under paragraph (1); and
- (b) of the places (at least one of which is in that area) at which a copy of the notification may be inspected at all reasonable hours.

(4) The Department shall—

- (a) consider any representation or objection duly made within the time specified in the notification;
- (b) within three months of that time either—
  - (i) confirm the notification (with or without modifications); or
  - (i) rescind the notification; and
- (c) give notice of its decision to the persons mentioned in paragraph (1).

(5) A notification under paragraph (1) has effect in relation to any land as from the time a notice under paragraph (4)(b)(i) is served on its owner or occupier, and from that time a declaration under Article 28(1) in relation to that land shall cease to have effect.

### *Duties of owners and occupiers of land included in ASSI*

## **Duties of owners and occupiers of land included in ASSI**

**32.**—(1) The owner or occupier of any land included in an ASSI shall not carry out or cause or permit to be carried out, on that land any operation specified in the declaration made under Article 28 in relation to the land unless—

- (a) one of them has given the Department notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in paragraph (3) is fulfilled.

(2) Paragraph (1) does not apply to an owner or occupier being a public body acting in the exercise of its functions.

(3) The conditions are—

- (a) that the operation is carried out with the Department's written consent;
- (b) that the operation is carried out in accordance with the terms of a management agreement under Article 34;
- (c) that the operation is carried out in accordance with a management notice under Article 35.

(4) A consent under paragraph (3)(a) may be given—

- (a) subject to conditions, and

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(b) for a limited period,  
as specified in the consent.

(5) If the Department does not consent, it shall give notice to that effect to the person who gave the notice under paragraph (1).

(6) The Department may, by notice given to every owner and occupier of any of the land included in the ASSI, or the part of the ASSI to which the consent relates—

- (a) withdraw the consent; or
- (b) modify it (or further modify it) in any way.

(7) The following—

- (a) a consent under paragraph (3)(a) granting consent subject to conditions or for a limited period, and
- (b) a notice under paragraph (5) or (6),

must include a notice of the Department's reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in paragraph (8).

(8) The matters referred to in paragraph (7) are—

- (a) the rights of appeal under Article 33;
- (b) the effect of paragraph (9); and
- (c) in the case of a notice under paragraph (6), the effect of Article 37(1).

(9) A withdrawal or modification of a consent does not take effect until—

- (a) the expiry of the period for appealing against it; or
- (b) if an appeal is brought, its withdrawal or final determination.

### **Appeals in connection with consents**

**33.**—(1) The following persons—

- (a) an owner or occupier who has been refused a consent under Article 32(3)(a),
- (b) an owner or occupier who has been granted such a consent but who is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period,
- (c) an owner or occupier who is aggrieved by the modification of a consent;
- (d) an owner or occupier who is aggrieved by the withdrawal of a consent,

may, at any time before the end of the period for appealing, appeal to the planning appeals commission against the relevant decision.

(2) If the Department neither gives consent nor refuses it within the period of three months beginning with the date on which the notice referred to in Article 32(1)(a) was received, the person who gave that notice may for the purposes of paragraph (1) treat the Department as having refused consent (and his appeal is to be determined on that basis).

(3) The period for appealing is—

- (a) except in a case falling within paragraph (2), the period of two months beginning with the date of the notice giving consent or the notice under Article 32(5) or (6), or
- (b) in a case falling within paragraph (2), the period of two months beginning immediately after the expiry of the three month period referred to there.

(4) On determining an appeal against a decision, the planning appeals commission may—

- (a) affirm the decision,
  - (b) where the decision was a refusal of consent, direct the Department to give consent,
  - (c) where the decision was as to the terms of a consent (whether the original or a modified one), quash all or any of those terms,
  - (d) where the decision was a withdrawal or modification of consent, quash the decision,
- and where it exercises any of the powers in sub-paragraph (b), (c) or (d) the commission may give directions to the Department as to the terms on which the Department is to give consent.

### Management agreements

**34.**—(1) The Department may enter into an agreement (“a management agreement”) with the owner or occupier of any land included in an ASSI for securing that his land is managed as (or as part of) an ASSI.

(2) A management agreement may impose such restrictions as may be expedient on the exercise of rights over the land by persons who can be bound by the agreement.

(3) A management agreement—

- (a) may provide for the management of the land in such manner, the carrying out thereon of such operations, and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in sub-paragraph (a) being carried out, or for the cost thereof being defrayed, either by the owner or occupier or by other persons, or by the Department, or partly in one way and partly in another.

(4) Where a person having an estate in any land, by a management agreement grants or agrees to grant any right as respects the land, the grant or agreement shall be binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it is binding upon the grantor notwithstanding that it would not have been binding upon that person apart from this paragraph.

(5) A management agreement may be made irrevocably or subject to such provisions for revocation or variation as may be specified in the agreement.

(6) The Department may waive (either permanently or temporarily) any condition imposed by a management agreement which is inconsistent with any provision of a [<sup>F12</sup>local development plan] or development order under the [<sup>F13</sup>Planning Act (Northern Ireland) 2011].

**F12** Words in art. 34(6) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 6 para. 94\(a\)](#) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

**F13** Words in art. 34(6) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 6 para. 94\(b\)](#) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

### Management notices

**35.**—(1) Where it appears to the Department that—

- (a) an owner or occupier of land included in an ASSI is not giving effect to any provision of a management agreement, and
- (b) as a result any flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest are being inadequately conserved or restored

it may if it thinks fit serve a notice on him.

(2) Where the Department is satisfied that—

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- (a) any land included in an ASSI in respect of which no management agreement is in force is being managed in such a way that any flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest are being inadequately conserved or restored, and
- (b) that it is unable to conclude, on reasonable terms, a management agreement with the owner or occupier,

it may if it thinks fit serve a notice on him.

(3) A notice served under paragraph (1) or (2) is referred to in this Order as a “management notice”.

(4) A management notice is a notice requiring the owner or occupier to—

- (a) carry out such work on the land, and
- (b) do such other things with respect to it,

as are specified in the notice, and to do so before the dates or within the periods so specified.

(5) The work and other things specified in a management notice must appear to the Department to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the statement mentioned in Article 28(2).

(6) A management notice must explain the effect of paragraphs (8) and (9) and of Article 36.

(7) A copy of the management notice must be served on every other owner and occupier of the land.

(8) If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, the Department may—

- (a) carry out the work or do the other things; and
- (b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by it in carrying out the work or doing the other things.

(9) If an appeal is brought against the management notice, and upon the final determination of the appeal the notice is affirmed (with or without modifications), paragraph (8) applies as if the references there to the management notice were to the notice as affirmed.

### **Appeals against management notices**

**36.**—(1) A person who is served with a management notice may, within the period for appealing, appeal against its requirements to the planning appeals commission; and a management notice does not take effect until—

- (a) the expiry of the period for appealing; or
- (b) if an appeal is brought, its withdrawal or final determination

(2) The period for appealing is the period of two months beginning with the date on which the management notice is served.

(3) On determining the appeal, the commission may quash or affirm the management notice; and if the commission affirms it, it may do so either in its original form or with such modifications as it thinks fit.

### **Payments by Department**

**37.**—(1) Where the Department, under Article 32(6), modifies or withdraws a consent, it shall make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal.



(2) The Department may, if it thinks fit, make one or more payments to any owner or occupier of land in relation to which a management agreement has effect.

(3) The amount of a payment under paragraph (1) or (2) is to be determined in accordance with guidance given and published by the Department.

(4) Any dispute as to a person's entitlement to a payment under paragraph (1) or as to its amount shall be referred to and determined by the Lands Tribunal.

#### *Duties of public bodies in relation to land included in ASSI*

#### **Public bodies: general duty**

**38.**—(1) A public body shall have the duty set out in paragraph (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest.

(2) The duty is to take reasonable steps, consistent with the proper exercise of the body's functions, to further the conservation and enhancement of the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest.

(3) In this Part “public body” means—

- (a) a Northern Ireland department;
- (b) a department of the Government of the United Kingdom;
- (c) a district council;
- (d) a statutory undertaker (within the meaning of <sup>F14</sup>the Planning Act (Northern Ireland) 2011]); or
- (e) any other body established or constituted under a statutory provision.

**F14** Words in art. 38(3)(d) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 95](#) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

#### **Public bodies: duties in relation to operations**

**39.**—(1) A public body shall give notice to the Department before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest.

(2) Paragraph (1) applies even if the operations would not take place on land included in an ASSI.

(3) In response to the notice referred to in paragraph (1), the Department may send a notice—

- (a) saying that it does not assent to the proposed operations, or
- (b) assenting to them (with or without conditions),

but if the Department does not send a notice under sub-paragraph (b) within the period of 28 days beginning with the date of the notice under paragraph (1) it shall be treated as having declined to assent.

(4) If the Department does not assent, or if the public body proposes to carry out the operations otherwise than in accordance with the terms of the Department's assent, the body—

- (a) shall not carry out the operations unless the condition set out in paragraph (5) is satisfied, and
- (b) shall comply with the requirements set out in paragraph (6) when carrying them out.

*Status: Point in time view as at 17/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002. (See end of Document for details)*

- (5) The condition is that the body has, after the expiry of the period of 28 days beginning with the date of the notice under paragraph (1), notified the Department of—
- (a) the date on which it proposes to start the operations (which must be after the expiry of the period of 28 days beginning with the date of the notification under this paragraph), and
  - (b) how (if at all) it has taken account of any written advice it received from the Department, before the date of the notification under this paragraph, in response to the notice under paragraph (1).
- (6) The requirements are—
- (a) that the body carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest (taking account, in particular, of any such advice as is referred to in paragraph (5) (b)); and
  - (b) that the body restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur.
- (7) This Article does not apply in relation to operations carried out by the Department.

#### **Public bodies: duties in relation to authorising operations**

**40.**—(1) This Article applies where the permission of a public body is needed before operations may be carried out.

(2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest, a public body shall give notice of the proposed operations to the Department.

(3) Paragraph (2) applies even if the operations would not take place on land included in an ASSI.

(4) The public body shall wait until the expiry of the period of 28 days beginning with the date of the notice under paragraph (2) before deciding whether to give its permission, unless the Department has notified the body that it need not wait until then

(5) The body shall take any advice received from the Department into account—

- (a) in deciding whether or not to permit the proposed operations, and
- (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

(6) If the Department advises against permitting the operations, or advises that certain conditions should be attached, but the public body does not follow that advice, the body—

[<sup>F15</sup>(aa) shall, in granting permission, impose conditions sufficient to ensure that the requirements set out in paragraph (6A) are complied with;]

- (a) shall give notice of the permission, and of its terms, to the Department, the notice to include a statement of how (if at all) the body has taken account of the Department's advice, and
- (b) shall not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice.

[<sup>F16</sup>(6A) The requirements are—

- (a) that the operations are carried out in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest; and
- (b) that the site will be restored to its former condition, so far as is reasonably practicable, if any such damage does occur.]

(7) In this Article “permission”, in relation to any operations, includes authorisation, consent, and any other type of permission.

(8) This Article does not apply where the public body whose permission is needed is the Department.

**F15** Art. 40(6)(aa) inserted (17.8.2011) by Wildlife and Natural Environment Act (Northern Ireland) 2011 (c. 15), ss. 29(2), 40(1); S.R. 2011/285, art. 2, Sch.

**F16** Art. 40(6A) inserted (17.8.2011) by Wildlife and Natural Environment Act (Northern Ireland) 2011 (c. 15), ss. 29(3), 40(1); S.R. 2011/285, art. 2, Sch.

### *Powers of Department*

#### **Powers to acquire land**

**41.**—(1) The Department may in the circumstances set out in paragraph (2) make an order vesting all or any part of land included in an ASSI in the Department.

(2) The circumstances are that the Department is satisfied—

(a) that—

(i) it is unable to conclude, on reasonable terms, a management agreement with the owner or occupier of the land; or

(ii) that a management agreement entered into by the owner or occupier of the land has been breached in such a way that the land is not being managed satisfactorily; and

(b) that it is necessary to acquire the land in order to protect the flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest.

(3) Sections 97(2) and (3) of, and Schedule 6 to, the Local Government Act (Northern Ireland) 1972 (c. 9) shall apply subject to the modifications set out in Schedule 2 to the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (NI 1) for the purpose of vesting orders under this Article.

(4) The Department may by agreement acquire the estate of any owner of land included in an ASSI.

(5) Where the Department acquires an estate in land included in an ASSI under paragraph (1) or (4), it may also acquire under that paragraph land for the purpose of providing a means of access to that ASSI

(6) Where the Department is of the opinion that any land acquired under this Article would be more expediently or efficiently managed or conserved in the public interest by any other person, the Department may convey (either for value or otherwise) that land to that person.

(7) Without prejudice to paragraph (6), the Department may dispose of any land acquired under this Article which the Department no longer requires for the purpose for which it was acquired.

(8) A conveyance under paragraph (6) or disposal under paragraph (7)—

(a) shall be in accordance with arrangements approved by the Department of Finance and Personnel; and

(b) shall be on such terms and conditions as the Department may think fit,

and the Department may—

(i) impose such restrictions as the Department may think necessary on the use of the land conveyed or disposed of; and

*Status: Point in time view as at 17/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002. (See end of Document for details)*

(ii) grant or reserve such rights over the land as the Department may think fit.

(9) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (c. 6) shall affect the disposal by the Department of land acquired under this Article.

#### **Powers to carry out works, etc.**

**42.** The Department may carry out such works and do such other things on land acquired under Article 41 as the Department thinks necessary or expedient for the proper management and use of that land for the purpose for which that land was acquired.

#### **Power to enter into agreements concerning land adjacent to an ASSI**

**43.—**(1) The Department may enter into an agreement with the owner or occupier of any land [<sup>F17</sup>which is not within] an ASSI for securing that his land is managed in such a way as—

- (a) to conserve or enhance any of the flora, fauna, or geological, physiographical or other features by reason of which the ASSI is of special scientific interest, or
- (b) not to destroy or damage any of those features or not to disturb any of those fauna.

(2) Paragraphs (2) to (6) of Article 34 and paragraphs (2) and (3) of Article 37 apply in relation to an agreement under paragraph (1) of this Article as they apply in relation to a management agreement.

**F17** Words in art. 43(1) substituted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\)](#), **ss. 30, 40(1)**; S.R. 2011/285, **art. 2, Sch.**

#### **Powers of entry**

**44.—**(1) Any person authorised in writing by the Department may, at any reasonable time and (if required to do so) upon producing evidence that he is authorised, enter any land for any of the following purposes—

- (a) to determine whether a declaration should be made in relation to the land under Article 28(1)
- (b) to assess the condition of the flora, fauna, or geological, physiographical or other features by reason of which land in relation to which a declaration has been made under Article 28(1) is of special scientific interest;
- (c) to ascertain whether a condition to which a consent referred to in Article 32(3)(a) was subject has been complied with in relation to the land;
- (d) to determine whether or not to offer to enter into a management agreement in relation to the land;
- (e) to formulate a management agreement for the land or determine whether a management agreement for the land should be modified;
- (f) to ascertain whether the terms of a management agreement in relation to the land have been complied with;
- (g) to prepare a management notice for the land;
- (h) to ascertain whether the requirements of a management notice in relation to the land have been complied with;
- (i) to carry out works or do other things on the land under Article 35(8);
- (j) to determine whether or not to offer to make a payment under Article 37 in relation to the land;

- (k) to determine any question in relation to the acquisition of the land by agreement or compulsorily;
  - (l) to ascertain whether an offence under Article 46 is being, or has been, committed on or in relation to the land;
  - [<sup>F18</sup>(la) to put up, maintain or remove notices or signs under Article 46B;]
  - (m) to carry out operations on the land under Article 47(5).
- (2) The power conferred by paragraph (1) to enter land for any purpose includes power to enter for the same purpose any land other than that referred to in paragraph (1).
- (3) More than one person may be authorised for the time being under paragraph (1) to enter any land.
- (4) A person shall not demand admission as of right to any land which is occupied unless either—
- (a) 24 hours notice of the intended entry has been given to the occupier; or
  - (b) the purpose of the entry is to ascertain if an offence under Article 46 is being, or has been, committed on or in relation to that land.
- (5) A person acting in the exercise of a power conferred by paragraph (1) may—
- (a) use a vehicle or a boat to enter the land;
  - (b) take a constable with him if he reasonably believes he is likely to be obstructed;
  - (c) take with him equipment and materials needed for the purpose for which he is exercising the power of entry;
  - (d) take samples of the land and of anything on it.
- (6) If in the exercise of a power conferred by paragraph (1) a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it
- (7) It is the duty of the Department to compensate any person who has sustained damage as a result of—
- (a) the exercise of a power conferred by paragraph (1) by a person authorised under that paragraph, or
  - (b) the failure of a person so authorised to perform the duty imposed on him by paragraph (6),
- except where the damage is attributable to the fault of the person who sustained it.
- (8) Any dispute as to a person's entitlement to compensation under paragraph (7) or as to its amount shall be referred to and determined by the Lands Tribunal.

**F18** Art. 44(1)(la) inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011](#) (c. 15), [ss. 33\(2\), 40\(1\)](#); S.R. 2011/285, [art. 2](#), Sch.

### **Power to make byelaws for ASSI**

- 45.—**(1) The Department may make byelaws for the protection of an ASSI.
- (2) Byelaws under this Article may in relation to land included in an ASSI—
- (a) prohibit or restrict the use of the land, either generally or in a manner specified in the byelaws, by traffic of any description so specified;
  - (b) prohibit or restrict, either generally or in a manner specified in the byelaws, the use of mechanically-propelled vessels on watercourses in, or whose shores lie within, any such land;

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- (c) regulate or prohibit the lighting of fires on the land;
  - (d) regulate or prohibit the taking away of soil, turf, sand or minerals of any description from the land;
  - (e) make provision for securing that persons resorting to the land will so conduct themselves as to avoid undue interference with the enjoyment of the land by other persons.
- (3) Before making any byelaws under this Article the Department shall consult the Council.
- (4) Byelaws under this Article shall not interfere with—
- (a) the exercise by any person of a right vested in him as owner or occupier of any land;
  - (b) the exercise of any public right of way in relation to any land; or
  - (c) the exercise of any statutory functions of any public body in relation to any land.
- (5) The Department may authorise persons appointed or employed to enforce byelaws made under this Article to take any action necessary for that purpose.
- (6) In particular, any person authorised under paragraph (5) may, after due warning, remove or exclude a person from any land included in an ASSI who contravenes, or whom he reasonably suspects of contravening, the byelaws relating to that ASSI.

### *Offences*

#### **Offences**

**46.**—(1) A person who, without reasonable excuse, contravenes Article 32(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(2) A public body which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest—

- (a) without first complying with Article 39(1), or
- (b) (if it has complied with Article 39(1)) without first complying with Article 39(4)(a),

is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(3) A public body acting in the exercise of its functions which, having complied with Article 39(1), fails without reasonable excuse to comply with Article 39(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(4) For the purposes of paragraphs (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if—

- (a) subject to paragraph (5), the operation in question was authorised by a planning permission granted on an application under [F19Part 3 of the Planning Act (Northern Ireland) 2011] or permitted by a public body which has acted in accordance with Article 40; or
- (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the commencement of the operation.

(5) If an operation needs both a planning permission and the permission of a public body, paragraph (4)(a) does not provide reasonable excuse unless both have been obtained.

[<sup>F20</sup>(5A) A public body which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which an ASSI is of special interest—

- (a) without first complying with Article 40(2), or
- (b) where relevant, without first complying with Article 40(4) or (6),

is, unless there was a reasonable excuse for permitting the carrying out of the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(5B) For the purposes of paragraph (5A), it is a reasonable excuse in any event for a public body to permit the carrying out of an operation without first complying with Article 40(2), (4) or (6) if the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the permission was given.]

(6) A person (other than a public body acting in the exercise of its functions) who without reasonable excuse—

- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological, physiographical or other features by reason of which land is of special scientific interest, or intentionally or recklessly disturbs any of those fauna, and
- (b) knew that what he destroyed, damaged or disturbed was within an ASSI,

is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

[<sup>F21</sup>(6A) A person (other than a public body acting in the exercise of its functions) who without reasonable excuse—

- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special scientific interest, or
- (b) intentionally or recklessly disturbs any of those fauna,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

(7) For the purposes of paragraph (6) [<sup>F22</sup>or (6A)] it is a reasonable excuse in any event for a person to do what is mentioned in that paragraph if—

- (a) subject to paragraph (8), the destruction, damage or disturbance in question was authorised by a planning permission granted on an application under [<sup>F23</sup>Part 3 of the Planning Act (Northern Ireland) 2011] or permitted by a public body which has acted in accordance with Article 40; or
- (b) the destruction, damage or disturbance in question was caused by an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the commencement of the operation.

(8) If the destruction, damage or disturbance in question needs both a planning permission and the permission of a public body, paragraph (7)(a) does not provide reasonable excuse unless both have been obtained.

(9) A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(10) A person who intentionally obstructs a person acting in the execution of any power conferred by Article 44(1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) A person who—

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*Changes to legislation: There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002. (See end of Document for details)*

(a) contravenes any byelaw made under Article 45; or  
 (b) intentionally obstructs any person authorised under paragraph (5) of that Article,  
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(13) Proceedings for an offence under this Article shall not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by a person other than the Department.

- F19** Words in art. 46(4)(a) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 96\(a\)](#) (with s. 211); S.R. 2015/49, art. 2, Sch. 1
- F20** Art. 46(5A)(5B) inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\), ss. 31\(2\), 40\(1\)](#); S.R. 2011/285, art. 2, Sch.
- F21** Art. 46(6A) inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\), ss. 31\(3\), 40\(1\)](#); S.R. 2011/285, art. 2, Sch.
- F22** Words in art. 46(7) inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\), ss. 31\(4\), 40\(1\)](#); S.R. 2011/285, art. 2, Sch.
- F23** Words in art. 46(7)(a) substituted (13.2.2015 for specified purposes) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 96\(b\)](#) (with s. 211); S.R. 2015/49, art. 2, Sch. 1

#### [<sup>F24</sup>Notification of change of owner or occupier

**46A.**—(1) This Article applies where the owner of land included in an ASSI—

- (a) disposes of an interest in the land; or  
 (b) becomes aware that it is occupied by an additional or a different occupier.

(2) If this Article applies, the owner shall send a notice to the Department before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.

(3) The notice is to specify the land concerned and—

- (a) in a case falling within paragraph (1)(a), the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or  
 (b) in a case falling within paragraph (1)(b), the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner's knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier.

(4) A person who fails without reasonable excuse to comply with the requirements of this Article is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) For the purposes of paragraph (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage.]

- F24** Art. 46A inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\), ss. 32, 40\(1\)](#); S.R. 2011/285, art. 2, Sch.



## [<sup>F25</sup>Notices and signs relating to ASSIs

**46B.**—(1) The Department may, on any land included in an ASSI, put up and maintain notices or signs relating to the site.

(2) The Department may remove any notice or sign put up under paragraph (1).

(3) Any other person who intentionally or recklessly and without reasonable excuse takes down, damages, destroys or obscures a notice or sign put up under paragraph (1) is guilty of an offence.

(4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

**F25** Art. 46B inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011](#) (c. 15), [ss. 33, 40\(1\)](#); S.R. 2011/285, [art. 2](#), Sch.

## Restoration following offences under Article 46

**47.**—(1) Where—

(a) the operation in respect of which a person is convicted of an offence under Article 46(1), (2) or (3) has destroyed or damaged any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest, or

(b) a person is convicted of an offence under Article 46(6) [<sup>F26</sup>or (6A)],

the court by or before which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the ASSI or not) as may be so specified for the purpose of restoring the ASSI to its former condition.

(2) The period specified in an order made under paragraph (1) shall not begin to run—

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against the conviction

(b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(3) At any time before an order under paragraph (1) is complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in the circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(4) If, within the period specified in an order under paragraph (1), the person against whom it was made fails, without reasonable excuse, to comply with it, he shall be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale; and

(b) in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.

(5) If, within the period specified in an order under paragraph (1), any operations specified in the order have not been carried out, the Department may carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by the Department in doing so.

**F26** Words in [art. 47\(1\)\(b\)](#) inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011](#) (c. 15), [ss. 31\(5\), 40\(1\)](#); S.R. 2011/285, [art. 2](#), Sch.

*Status: Point in time view as at 17/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002. (See end of Document for details)*

## *Supplementary*

### **Matters affecting agriculture, forestry and inland fisheries**

**48.**—(1) It shall be the duty of the Department and the Council and any other body having functions under this Part in the exercise of such functions to have due regard to the needs of agriculture, forestry and fisheries.

<sup>F27</sup>(2) .....

(3) Nothing in this Part shall make unlawful anything done under the Diseases of Animals (Northern Ireland) Order 1981 (NI 22).

**F27** Art. 48(2) omitted (8.5.2016) by virtue of [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), [Sch. 6 para. 73](#) (with art. 9(2))

### **[<sup>F28</sup>Effect of failure to serve certain notices**

**48A.**—(1) This Article applies where the Department—

- (a) has (whether before or after the commencement of this Article) taken all reasonable steps to ensure that, under any provision listed in paragraph (2), notice is served on every owner and occupier of any land to which the notice relates, but
- (b) has failed to do so.

(2) The provisions are—

- (a) Article 28(3)(b) (declaration of ASSI);
- (b) Article 28(6)(c) (confirmation or rescission of declaration of ASSI);
- (c) Article 29(3)(b) (variation of ASSI);
- (d) Article 29(5)(c) (confirmation or rescission of variation of ASSI);
- (e) Article 30(4)(b) (declaration of additional land to be included in ASSI);
- (f) Article 30(7)(c) (confirmation or rescission of declaration of additional land);
- (g) Article 31(1)(b) (denotification);
- (h) Article 31(4)(c) (confirmation or rescission of denotification).

(3) The validity of the notice is not affected by the failure to serve it on every owner and occupier of the land.

(4) For the purposes of this Part, the time when the notice is to be treated as having been served is the time when the Department took the last of the steps referred to in paragraph (1)(a).

(5) If the Department becomes aware of its failure to serve a notice on an owner or occupier, it must serve a copy of the notice on that owner or occupier.

(6) Nothing in paragraph (3) or (4) renders the owner or occupier liable—

- (a) in relation to anything done or omitted to be done before the coming into operation of this Article, or
- (b) under Article 46(1) or 46A(4) in relation to anything done or omitted to be done before the copy of any relevant notice is served under paragraph (5).]

**F28** Art. 48A inserted (17.8.2011) by [Wildlife and Natural Environment Act \(Northern Ireland\) 2011 \(c. 15\)](#), [ss. 34, 40\(1\)](#); S.R. 2011/285, [art. 2](#), [Sch.](#)

### **Application of this Part to the Crown**

**49.**—(1) Subject to the following provisions of this Article, this Part binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) Articles 32 to 37 do not apply to the Crown as owner or occupier of any land.

(3) No contravention by the Crown of any provision of 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.

(4) If the Secretary of State certifies that it appears to him, as respects any land held or used by or on behalf of the Crown and any power of entry exercisable under Article 44 in relation to it, that it is requisite or expedient that, in the interests of national security, the power should not be exercisable in relation to that land, that power shall not be exercisable in relation to that land .

(5) In this Article any reference to the Crown includes the Crown in right of Her Majesty's Government in the United Kingdom

### **Statutory charges**

**50.** In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (matters which are statutory charges)—

(a) in paragraph 39 for “17 or 24(8)(a)” substitute “ or 17 ”; and

(b) at the end there shall be added—

“**43.** Any declaration under Article 28(1) of the Environment (Northern Ireland) Order 2002, any management agreement under Article 34 of that Order or any waiver relating thereto and any management notice under Article 35 of that Order.”.

### **Transitional provisions relating to this Part**

**51.** Schedule 4 (which contains transitional provisions relating to this Part) shall have effect.

### **Interpretation of this Part**

**52.**—(1) In this Part—

“ASSI” has the meaning given by Article 28(11);

“the Council” has the meaning given by Article 28(1);

“management agreement” has the meaning given by Article 34(1);

“management notice” has the meaning given by Article 35(3);

“notice” and “notification” mean notice or notification in writing;

“operation” includes activity;

“owner”, in relation to any land, means any person who has an estate in the land;

“public body” has the meaning given by Article 38(3).

(2) Where a declaration under Article 28(1) has been—

(a) modified under Article 28(6),

(b) varied under Article 29(1),

(c) varied with modifications under Article 29(5),

(d) extended under Article 30(1), or

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**Status:** Point in time view as at 17/01/2019.

**Changes to legislation:** There are currently no known outstanding effects for the  
The Environment (Northern Ireland) Order 2002. (See end of Document for details)

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(e) extended with modifications under Article 30(7),  
a reference in any statutory provision (including this Order) to such a declaration (however expressed) is (unless the context otherwise requires) a reference to the declaration as thus altered.

## PART V SUPPLEMENTARY

### **Amendments and repeals**

*Para. 1—Amendments*

*Para. 2—Repeals*

**Status:**

Point in time view as at 17/01/2019.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environment (Northern Ireland) Order 2002.