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STATUTORY INSTRUMENTS

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**2002 No. 3153**

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

**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.

(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.**—(1) Where an order under Article 12 comes into operation, the district council which made the order shall, for the purpose of supplementing such information as it has in relation to the designated area in question, cause an assessment to be made of—

- (a) the quality for the time being, and the likely future quality within the relevant period, of air within the designated area to which the order relates; and
- (b) 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 that designated area.

(2) A district council which is required by paragraph (1) to cause an assessment to be made shall also—

- (a) prepare, within the prescribed period, a report of the results of that assessment; and
- (b) 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;
- (b) a copy of the results of the assessment mentioned in paragraph (1);
- (c) a copy of the report mentioned in paragraph (2)(a); and
- (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

(5) Subject to paragraph (8), an action plan shall, in addition to the measures proposed by the district council under paragraph (2)(b), 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.

### **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
- (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—
  - (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 or 13, 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

### **Supplemental provisions**

**17.** Schedule 2 shall have effect.