

# WATER AND SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 3336

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## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE ORDER

#### Part Xi - Amendments to the Water Order

##### Other Provisions

148. [Article 281](#) extends the provisions of the current Article 10(1) of the 1999 Order so that additionally a discharge or deposit made in accordance with a discharge consent shall not constitute an offence under or a contravention of section 41 of the Foyle Fisheries Act (NI) 1952 or regulations under Articles 14 or 36 of the 1999 Order.
149. [Article 282](#) extends the ambit of Article 11(1) (a) of the 1999 Order to include a power to make a scheme that specifies or determines the charges required to be paid in respect of the transfer of a discharge consent to another person.
150. [Article 283](#) extends the references to flora and fauna in Articles 16(1) (b) (iii) and 17(2) (b)(iii) of the 1999 Order (anti-pollution works) so as to incorporate any flora or fauna that are dependent on the aquatic environment of the waters.
151. [Article 284](#) places duties on DOE, water undertakers and third parties in relation to the provision of specified information. It is an offence by a third party to refuse or fail to permit DOE to inspect its records. The duties of a water undertaker under this Article are enforceable under Article 30 of the Water and Sewerage Services (NI) Order 2006.
152. [Article 285](#) places restrictions on DOE in relation to the disclosure of information, subject to specified exceptions, without the consent of the individual, or person carrying on the business in question.
153. [Article 286](#) limits the extent to which civil liability applies, given that Part II of the 1999 Order is intended to set out a comprehensive system for pollution control.
154. [Article 287](#) extends criminal liability to prosecution to a third party where the commission of a water pollution offence is due to the act or default of that third party, irrespective of whether proceedings are taken against a first-named person.
155. [Article 288](#) binds the Crown in relation to the provisions of Part II of the 1999 Order, and any regulations or orders made under that same Part. The Crown is exempt from criminal liability, but DOE may apply to the High Court to have any act or omission that constitutes a contravention of Part II declared unlawful. The Secretary of State can certify, in the interests of national security, that any powers of entry to Crown land should not be exercisable in relation to the land specified.
156. [Article 289](#) extends the matters that the Department of Agriculture and Rural Development (DARD) should take into account in exercising its functions under

*This Explanatory Memorandum refers to the Water and Sewerage Services (Northern Ireland) Order 20063336*

the 1999 Order to the duties imposed on water and sewerage undertakers under the proposed Order.

157. [Article 290](#) inserts a new paragraph in Schedule 1 to the 1999 Order. It places a duty on DOE to give notice to persons who may be prescribed or directed to be consulted in relation to discharge consent applications. DOE has a power to exempt any class of application or exclude any class of information from this requirement. Any representations must be received by DOE within a specified time, and must be considered before a determination is made.
158. [Article 290](#) also amends the transfer of consent provisions contained in paragraph (8) of Schedule 1 to the 1999 Order. The intended transferor and transferee must give joint notice to DOE of the proposed transfer; the notice should specify the date on which the transfer is to take effect; and DOE should amend the consent, and serve notice on the transferor and transferee that the amendment has been made, within a specified time.
159. [Article 291](#) makes minor amendments to a number of definitions currently contained in the 1999 Order, so that they are consistent with those in the Order. It also amends paragraph (1) of Schedule 6 to the 1999 Order, so that where DOE and DARD acting jointly propose to adopt a water management programme, those Departments should, before publication of a notice to that effect, consult all water undertakers.