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DRAFT STATUTORY INSTRUMENTS

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**1998 No.**

**Water (Northern Ireland) Order 1998**

**PART III**

**POWERS OF DEPARTMENT OF AGRICULTURE  
IN RELATION TO WATERWAYS**

*Introductory*

**Application and interpretation of Part III**

**39.**—(1) This Part does not apply to a reservoir or the sea.

(2) In this Part—

“canal scheme” means a scheme prepared under Article 42(1);

“the Department” means the Department of Agriculture;

“premises” includes any land, vehicle or vessel;

“regulations” means regulations made by the Department;

“specified canal” has the meaning assigned to it by Article 42(5).

**Matters to be taken into account in exercising certain functions**

**40.**—(1) The Department shall, in exercising its functions under this Part and any statutory provision relating to drainage, have regard to—

- (a) the conservation of water resources;
- (b) the prevention of pollution;
- (c) the needs of the community with respect to water and the disposal of effluent;
- (d) the conservation and enhancement of the natural beauty and amenity of waterways and of land associated with waterways;
- (e) the conservation and enhancement of flora and fauna;
- (f) the conservation of any feature of archaeological, historical, architectural or traditional interest.

(2) In Article 11(2)(d) of, and paragraph 5(2) of Schedule 7 to, the Drainage Order for “section 2(2) of the Water Act (Northern Ireland) 1972” there shall be substituted “Article 40(1) of the Water (Northern Ireland) Order 1998”.

*Principal powers of Department in relation to waterways***Power of Department to carry out works and provide facilities in relation to waterways**

**41.—**(1) The Department may execute and maintain such works, including the dredging and maintenance of channels and the provision and maintenance of aids to navigation, as it considers appropriate for the purpose of improving or restoring, or promoting the recreational or navigational use of, any waterway.

(2) The Department may provide, maintain, operate, improve or restore such facilities as it considers appropriate for the purpose of promoting the recreational or navigational use of any waterway.

(3) In this Article “works” does not include any works which may be carried out in accordance with paragraph 12 of Schedule 7 to the Drainage Order.

**Canal schemes**

**42.—**(1) Where the Department intends to carry out works under Article 41 in relation to a specified canal, the Department may prepare a scheme (a “canal scheme”) for the carrying out of those works.

(2) A canal scheme shall contain such particulars and shall be in such form as the Department may consider fit and, in particular, and without prejudice to the generality of the foregoing, shall contain such provisions as the Department may consider necessary for the protection of rights or interests affected by the scheme.

(3) Every reference in this Part to a canal scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such scheme.

(4) Without prejudice to the generality of any other provision of this Part, the Department may, for the purposes of its functions under this Part—

- (a) in relation to a specified canal, undertake, construct and maintain all such canal works and do all such things as are mentioned in Schedule 4;
- (b) reconstruct any works interfered with under the powers of a canal scheme, or construct new works in lieu thereof either in the same or a different place or position.

(5) In this Part “specified canal” means a waterway specified in an order subject to negative resolution made by the Department for the purposes of this Article, being a waterway which, in the opinion of the Department is, or has been, a canal.

**Powers of maintenance**

**43.—**(1) This Article applies to any waterway which is not a designated watercourse within the meaning of the Drainage Order.

(2) The Department may, in relation to any waterway to which this Article applies, carry out such works of repair and maintenance as the Department may consider fit, and, for that purpose, the Department may exercise any of the powers mentioned in paragraph (3) and any other powers which may be reasonably necessary for, or incidental to, the carrying out of such works.

(3) For the purposes of repairing or maintaining any waterway to which this Article applies, the Department may—

- (a) maintain existing works, that is to say, cleanse, repair or otherwise maintain in a due state of efficiency any existing waterway or works carried out under this Part or under any canal scheme;

- (b) improve any existing works, that is to say, deepen, widen, straighten or otherwise improve any existing waterway or works carried out under this Part or under any canal scheme, or remove or alter dams, weirs or other obstructions to waterways, or raise, widen or otherwise improve any works carried out under this Part or any canal scheme;
- (c) construct new works which may be required for the purpose of repairing or improving the waterway;
- (d) repair, strengthen, alter, replace or renew any existing embankment and, for that purpose, use any shingle, sand, clay, gravel, stone, rock or other material removed in the carrying out of any works under this Part or any canal scheme, and deposit any material so removed on any adjacent land.

### **General powers of the Department**

44.—(1) Without prejudice to the generality of any other provision of this Part, the Department may, for the purposes of its functions under this Part—

- (a) cause such surveys, reports and plans to be made as the Department may think necessary;
  - (b) abstract water from, or vary the water flow or water level in, a waterway;
  - (c) improve the supply of water in a waterway;
  - (d) discharge water into any waterway or underground strata or on to land;
  - (e) execute such works and do all such other things as the Department may think necessary.
- (2) The power conferred by paragraph (1)(a) to survey land includes power—
- (a) to sink boreholes; and
  - (b) to survey land for the purpose of determining whether it is appropriate or practicable for the Department to exercise any of its powers under this Part.
- (3) Subject to paragraph (4), the Department may temporarily close any waterway.
- (4) The Department, before closing any waterway, shall, except in the case of an emergency, give to all persons likely to be affected by the closure, such notice as is reasonably practicable.
- (5) Where the Department considers it appropriate, it may—
- (a) carry out any experimental, advisory, research or development work either in relation to waterways generally or in relation to any particular problem relating to waterways;
  - (b) enter into a contract or arrangement with any person for the carrying out of any such work;
  - (c) make grants by way of contribution towards the cost of any such work undertaken by any person.

### **Provisions of the Drainage Order applied for the purposes of this Part**

45.—(1) The provisions of the Drainage Order specified in Part I of Schedule 5 shall, with the modifications of those provisions specified in Part II of that Schedule, apply in relation to works under this Part in the same manner as those provisions apply in relation to works under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.

(2) Article 25 of the Drainage Order (power of Department to carry out works on behalf of other persons) and Article 32 of, and Schedule 6 (except paragraph 2) to, that Order (protection of watercourses) shall apply in relation to waterways as those provisions apply to watercourses within the meaning of that Order.

(3) Article 26 of the Drainage Order (power of Department to contribute to cost of works) shall apply in relation to waterways as that Article applies to designated watercourses within the meaning of the Drainage Order.

**Power of Department to enter into arrangements for improvement or restoration of waterways**

46.—(1) The Department may enter into arrangements with any other body or person designed to bring about the improvement or restoration, or promote the recreational or navigational use, of any waterway.

(2) The Department shall have power to do all things necessary or expedient for the purposes of, or in connection with, the carrying out of, any arrangements entered into by it under this Article and, in particular, may—

- (a) form or promote, or join with any other body or person in forming or promoting, companies (within the meaning of the Companies (Northern Ireland) Order 1986);
- (b) provide financial or other assistance to any other body or person entering into the arrangements under this Article or to any company formed or promoted by virtue of subparagraph (a);
- (c) exercise any power exercisable by it under any other provision of this Part or the Drainage Order.

**Schemes extending outside Northern Ireland**

47.—(1) The Department may co-operate with any persons outside Northern Ireland (in this Article referred to as an “external authority”) in the preparation and carrying out of schemes for the improvement or alteration of any waterway which is situated partly inside and partly outside Northern Ireland, and for the use, control or maintenance of works in relation to any such waterway whether provided in pursuance of any such scheme or otherwise.

(2) For the purposes of any such scheme, the Department may enter into and carry into effect any arrangement or agreement with an external authority—

- (a) for the carrying out of any work or the doing of any act or thing specified in the arrangement or agreement, or for the settlement of claims for compensation for loss or injury arising therefrom (including the investigation of such claims and, where necessary, the assessment and payment of compensation, the carrying out of remedial works in settlement or partial settlement and the securing in advance of releases from claims)—
  - (i) by the Department or by the external authority, or by the Department and the external authority acting jointly;
  - (ii) by the external authority as agent for and on behalf of the Department;
  - (iii) by the Department as agent for and on behalf of the external authority
- (b) for making any resources (including plant, machinery, equipment, accommodation and services of staff) of one party to the arrangement or agreement available to the other;

but nothing in the arrangement or agreement shall diminish in any respect any responsibility of any party for any act or thing done by it or on its behalf.

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

- (a) the extent of the works to be carried out; and
- (b) the manner in which, and the persons by whom and in what proportion, the cost of carrying out the scheme and of maintaining or operating anything constructed thereunder are to be borne.

(4) For the purposes of carrying into effect in Northern Ireland any scheme under paragraph (1), the Department or any agent authorised by it to act on its behalf may carry out any such works as are referred to in Article 43(3)(a) to (d), and the Department may, without prejudice to any other

provision of this Article, exercise any power exercisable by it under any other provision of this Part or the Drainage Order.

- (5) Nothing in this Article or in any scheme, arrangement or agreement made thereunder shall—
- (a) prejudice the application of any provision of this Part in relation to any waterway, or part of a waterway, which is in Northern Ireland; or
  - (b) prevent the Department from preparing and carrying into effect any canal scheme under this Part, or exercising any other function under this Part or the Drainage Order, in relation to so much of any waterway as is in Northern Ireland;

and so much of any scheme under this Article as relates to a part of any waterway in Northern Ireland may be treated as a separate scheme for the purposes of any provision of this Part.

### **Acquisition of land and other rights by the Department**

**48.**—(1) The Department may, for any purpose in connection with its functions under this Part (including the settlement of claims for compensation arising under this Part)—

- (a) by agreement acquire or take on lease any land or acquire land compulsorily;
- (b) dispose of any land for the time being vested in it;
- (c) acquire either by agreement or compulsorily any fisheries, water rights, navigation or other rights; or
- (d) restrict, terminate, or otherwise interfere with easements, fisheries, water rights, inland navigation rights or other rights.

(2) Where the Department desires to acquire, otherwise than by agreement, any land for any purpose referred to in paragraph (1) the Department may make an order (in this Article referred to as a “vesting order”) vesting such land, in the Department.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply, subject to the modifications specified in Schedule 3 of this Order, for the purpose of the acquisition of land by means of a vesting order under this Article as it applies for the purpose of the acquisition of land by means of a vesting order under that Act.

(4) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (which relates to the taking and disposal of land for the public services) shall affect the disposal of any land acquired or taken on lease by the Department under this Article.

- (5) The power to make a vesting order under this Article in respect of land—
- (a) which is the property of any public body which has power under any statutory provision to acquire land compulsorily; or
  - (b) which is declared by or under any statutory provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

- (6) In paragraph (5) “public body” means a body established by or under any statutory provision.

### **Regulation of recreational and navigational use of waterways**

**49.**—(1) The Department may by order subject to negative resolution regulate the way in which any waterway specified in the order may be used for recreation or navigation.

(2) Without prejudice to the generality of paragraph (1), an order made under that paragraph may make provision—

- (a) regulating the use of a waterway by vessels;

- (b) requiring vessels using a waterway to be licensed for that purpose by the Department;
  - (c) regulating the grant, renewal, transfer and revocation of licences under sub-paragraph (b) and the conditions subject to which such licences are to be granted;
  - (d) requiring vessels using a waterway to be registered with the Department;
  - (e) regulating the manner in which vessels may be registered under sub-paragraph (d) and the manner in which registration may be withdrawn;
  - (f) regulating the construction, condition, safety and control of vessels which may use a waterway and the equipment to be carried on such vessels;
  - (g) regulating the movement of vessels, and the use of lights, on a waterway;
  - (h) regulating the opening of locks or the operation of any other works executed under any relevant statutory provision;
  - (i) regulating the conduct of persons on—
    - (i) a waterway; or
    - (ii) on land adjacent to a waterway and owned by the Department;
  - (j) prohibiting a waterway from being used for navigation or recreational purposes, except as permitted by the order;
  - (k) for prohibiting or restricting access to—
    - (i) a waterway; or
    - (ii) to land adjacent to a waterway and owned by the Department;
  - (l) preventing the improper use of any works executed or maintained by the Department under any relevant statutory provision or facilities provided or maintained by the Department under any such provision, or preserving such works or facilities from damage or destruction;
  - (m) preventing the obstruction of a waterway;
  - (n) for the removal by the Department of vessels or objects from a waterway in such circumstances as may be specified in the order and the storage or disposal by the Department of vessels or objects so removed;
  - (o) for the recovery by the Department of the cost of removing, storing or disposing of such vessels or objects as are mentioned in sub-paragraph (n);
  - (p) making persons guilty of an offence where there is a contravention of the order and for the imposition of fines on summary conviction for an offence.
- (3) Any person duly authorised by the Department may, on production if so required of evidence of his authority, require any person suspected of contravening any provision of an order under this Article—
- (a) to state his name and address;
  - (b) to leave the waterway.
- (4) Any person who fails to comply with a requirement imposed under paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In paragraph 12(1) of Schedule 7 to the Drainage Order for “bye-laws under paragraph 13” there shall be substituted “an order under Article 49 of the Water (Northern Ireland) Order 1998”.
- (6) Nothing in this Article shall affect the operation of the provisions of the Merchant Shipping Act 1995.
- (7) In this Article and in Article 50, “relevant statutory provision” means any provision of—

- (a) the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955;
- (b) Schedule 7 to the Drainage Order; or
- (c) this Part.

### **Charges for recreational and navigational use of waterways**

**50.**—(1) The Department may make charges—

- (a) for the use of any facilities provided or maintained by it under any relevant statutory provision;
- (b) without prejudice to the generality of sub-paragraph (a), for the passage through any lock constructed or maintained by the Department under any relevant statutory provision;
- (c) in respect of the registration or licensing of any vessel in accordance with an order under Article 49.

(2) Without prejudice to the generality of paragraph (1), the Department may—

- (a) provide for exemption from payment of charges imposed under this Article in such cases as the Department may determine;
- (b) provide for the payment of concessionary charges in such cases as the Department may determine.

(3) The Department shall, in such manner as it considers appropriate, publish a scale of charges payable under this Article.

(4) Where, by virtue of this Article any person is required to pay any sum of money to the Department—

- (a) the Department may certify in writing the amount of that sum; and
- (b) the amount so certified shall be recoverable by the Department summarily as a debt due to it.

(5) A certificate under paragraph (4) shall be prima facie evidence of the amount stated therein.

### *Supplementary provisions*

### **Powers of entry and inspection**

**51.**—(1) Any person duly authorised by the Department may at any reasonable time—

- (a) enter any premises for the purpose of performing, whether in relation to those premises or not, any functions conferred on the Department under this Part;
- (b) for the purpose of determining whether, and if so in what manner, any such functions are to be performed in relation to any premises, enter any premises and inspect or survey the premises and inspect any article thereon;
- (c) for the purpose of ascertaining whether any provision of an order made under Article 49 is being or has been contravened, enter any premises and inspect or survey the premises and inspect any article thereon.

(2) Any person duly authorised by the Department may—

- (a) stop, if necessary, and enter and search any vessel for the purpose of ascertaining whether any provision of an order made under Article 49 is being or has been contravened;
- (b) carry out inspections, measurements and tests on any vessel entered by that person or of any articles found on any such vessel.

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

- (a) that admission to any premises which any person is entitled to enter under paragraph (1) or (2) has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry upon the premises for the purpose for which entry is required;

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

(4) A warrant granted under paragraph (3) shall continue in force until the purpose for which entry is required has been satisfied.

(5) The power conferred by paragraph (1) to survey premises includes power to sink boreholes.

(6) The power conferred by paragraphs (1)(b) and (c) and (2)(b) shall be exercisable for the purpose of inspecting any documents in the possession of any body relating to the functions of the body, and the person carrying out any such inspection may take copies of, or extracts from, any such documents.

### **Supplementary provisions as to powers of entry and inspection**

**52.**—(1) A person authorised under Article 51 to enter any premises shall, if so required, produce evidence of his authority before so entering.

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

(3) Admission to any land used for residential purposes, and admission with heavy equipment to any other land, shall not except in an emergency be demanded under Article 51 unless 7 days' notice in writing of the intended entry has been given to the occupier.

(4) Any person who, in the exercise of his powers under Article 51, enters any premises which are unoccupied or the occupier of which is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.

(5) Any person who intentionally obstructs a person acting in the exercise of his powers under Article 51 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If any person assaults a person acting in the exercise of his powers under Article 51 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(7) Where in the exercise of any power conferred by Article 51 any damage is caused to land or to chattels, any person interested in the land or chattels shall be entitled to compensation in respect of the damage from the Department.

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

### **Prosecutions**

**53.** No proceedings shall be instituted for an offence under this Part or under an order made in accordance with Article 49 except by the Department or by or with the consent of the Attorney General.



### **Power to give effect to Community obligations, etc.**

**54.**—(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 to give effect to any Community obligation or exercise any related right.

(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.

### **Financial provision**

**55.** Any sum received by the Department under this Part shall be appropriated in aid of the expenses incurred by the Department under this Part or in the payment of any contributions or grants under this Part.

### **Repeal, amendment and adaptation of local enactments**

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

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

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

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