
DRAFT STATUTORY INSTRUMENTS

2006 No.

**The Water and Sewerage Services
(Northern Ireland) Order 2006**

PART VI

SEWERAGE SERVICES

CHAPTER III

TRADE EFFLUENT

Consents on an application

Application for consent

176.—(1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the occupier of the premises.

(2) An application under this Article with respect to a proposed discharge of any such effluent shall state

- (a) the nature, temperature and composition of the trade effluent;
 - (b) the steps proposed to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising
 - (i) the polluting effects of the discharge on any controlled waters; and
 - (ii) the impact of the discharge on sewerage services;
 - (c) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and
 - (d) the highest rate at which it is proposed to discharge the trade effluent.
- (3) In this Article “controlled waters” means
- (a) a waterway (within the meaning of the Water Order); or
 - (b) water in any underground strata.

Transfer of consent

177.—(1) A consent given under this Chapter may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.

(2) On the death of the holder of a consent given under this Chapter, the consent shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a consent given under this Chapter, the consent shall, subject to paragraph (4), be regarded for the purposes of any of Parts IX and X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals: bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

(4) A consent given under this Chapter which is transferred to, or which vests in, a person under this Article shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under this Chapter, subject to the same conditions as were attached to it immediately before that date.

(5) Where a consent given under this Chapter is to be transferred under paragraph (1)—

- (a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the sewerage undertaker of the proposed transfer;
- (b) the notice may specify the date on which it is proposed that the transfer should take effect;
- (c) within 21 days beginning with the date of receipt of the notice duly given in accordance with paragraph (6), the sewerage undertaker shall—
 - (i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and
 - (ii) serve notice on the transferor and the transferee that the amendment has been made; and
- (d) the transfer shall take effect from the later of—
 - (i) the date on which the sewerage undertaker amends the consent; and
 - (ii) the date (if any) specified in the joint notice under sub-paragraph (a).

(6) A joint notice under paragraph (5)(a) shall include such information as may be prescribed.

(7) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of paragraph (2) or (3), a joint notice given under paragraph (5)(a) shall be of no effect unless the notice required by paragraph (8) has been given.

(8) Where a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), that person shall give notice of that fact to the sewerage undertaker not later than the end of the period of 15 months beginning with the date of the vesting.

(9) If—

- (a) a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), but
- (b) that person fails to give the notice required by paragraph (8) within the period there mentioned,

the consent, to the extent that it permits the making of any discharges, shall cease to have effect.

(10) A person who fails to give a notice which he is required by paragraph (5) or (8) to give shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(11) It shall be the duty of a sewerage undertaker to notify DOE of the happening of any of the following events—

- (a) the receipt by the undertaker of a joint notice under paragraph (5) in relation to a consent which authorises the discharge of special category effluent;

- (b) the assignment by the undertaker of any rights under an agreement under this Chapter which authorises the discharge of special category effluent;
 - (c) the undertaker receiving notice of, or otherwise becoming aware of, the assignment by the other party to such an agreement of any rights under that agreement.
- (12) The duty of a sewerage undertaker under paragraph (11) is enforceable under Article 30 by the Authority.

Applications for the discharge of special category effluent

178.—(1) Subject to paragraph (3), where a notice containing an application under Article 176 is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions

- (a) whether the discharges to which the notice relates should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to paragraph (3), a reference which is required to be made by a sewerage undertaker by virtue of paragraph (1) shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.

(3) There shall be no obligation on a sewerage undertaker to make a reference under this Article in respect of any application if, before the end of the period mentioned in paragraph (2), there is a refusal by the undertaker to give any consent on the application.

(4) It shall be the duty of a sewerage undertaker where it has made a reference under this Article not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before DOE serves notice on the undertaker of its determination on the reference.

(5) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.

(6) It shall be the duty of a sewerage undertaker, on making a reference under this Article, to serve a copy of the reference on the occupier of the trade premises in question.

(7) If a sewerage undertaker fails, within the period provided by paragraph (2), to refer to DOE any question which he is required by paragraph (1) to refer to DOE, the undertaker shall be guilty of an offence and liable

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

(8) If DOE becomes aware of any such failure as is mentioned in paragraph (7), it may

- (a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under Article 185 or 189, notwithstanding anything in paragraph (2) of the Article in question; or
- (b) in any other case, proceed as if the reference required by this Article had been made.

Conditions of consent

179.—(1) The power of a sewerage undertaker, on an application under Article 176, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to

- (a) the sewer or sewers into which the trade effluent may be discharged;

- (b) the nature, temperature or composition of the trade effluent which may be discharged;
 - (c) the steps to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of the matter discharged to treatment or any other process, for minimising
 - (i) the polluting effects of the discharge on any controlled waters; and
 - (ii) the impact of the discharge on sewerage services;
 - (d) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
 - (e) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.
- (2) Conditions with respect to all or any of the following matters may also be attached under this Article to a consent to the discharge of trade effluent from any trade premises
- (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;
 - (b) the exclusion from the trade effluent of all condensing water;
 - (c) the elimination or diminution of any specified constituent of the trade effluent before it enters the sewer;
 - (d) the acidity or alkalinity of the trade effluent at the time when it is discharged into the sewer;
 - (e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;
 - (f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;
 - (g) the provision, location, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;
 - (h) the provision, testing and maintenance of apparatus for determining the nature, temperature and composition of any trade effluent being discharged from the premises into the sewer;
 - (i) the keeping of records of the volume, rate of discharge, nature, temperature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and
 - (j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature, temperature and composition of any trade effluent discharged from the trade premises into the sewer.
- (3) In the exercise of the power conferred by virtue of paragraph (2)(e), regard shall be had
- (a) to the nature, temperature and composition and to the volume and rate of discharge of the trade effluent discharged;
 - (b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and
 - (c) to any revenue likely to be derived by the undertaker from the trade effluent.
- (4) If, in the case of any trade premises, a condition imposed under this Article is contravened, the occupier of the premises shall be guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and

- (b) on conviction on indictment, to a fine.
- (5) In this Article “controlled waters” means
 - (a) a waterway (within the meaning of the Water Order); or
 - (b) water in any underground strata.
- (6) This Article has effect subject to the provisions of Articles 191 and 193(3).

Appeals to the Authority with respect to decisions on applications etc.

180.—(1) Any person aggrieved by

- (a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under Article 176;
- (b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or
- (c) any condition attached by a sewerage undertaker to such a consent,

may appeal to the Authority.

(2) On an appeal under this Article in respect of a refusal or failure to give a consent, the Authority may give the necessary consent, either unconditionally or subject to such conditions as it thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under Article 179.

(3) On an appeal under this Article in respect of a condition attached to a consent, the Authority may take into review all the conditions attached to the consent, whether appealed against or not, and may

- (a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or
- (b) annul any of the conditions.

(4) The Authority may, under paragraph (3), include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this Article, the Authority may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of the Authority under this Article shall be subject to the provisions of Articles 181, 186, 191, 193 and 196.

Appeals with respect to the discharge of special category effluent

181.—(1) Where a reference is made to DOE under Article 178, the period mentioned in sub-paragraph (b) of paragraph (1) of Article 180 shall not begin to run for the purposes of that paragraph, in relation to the application to which the reference relates, until the day after DOE serves notice on the sewerage undertaker in question of its determination on the reference.

(2) If, on an appeal under Article 180, it appears to the Authority

- (a) that the case is one in which the sewerage undertaker in question is required to make a reference under Article 178 before giving a consent; and
- (b) that the undertaker has not made such a reference, whether because the case falls within paragraph (3) of that Article or otherwise,

the Authority shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in paragraph (3) are satisfied.

(3) The conditions mentioned in paragraph (2) are satisfied if the Authority

- (a) has itself referred the questions mentioned in Article 178(1) to DOE; and
- (b) has been sent a copy of the notice of DOE's determination on the reference.

(4) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.

(5) It shall be the duty of the Authority, on making a reference under this Article, to serve a copy of the reference

- (a) on the occupier of the trade premises in question; and
- (b) on the sewerage undertaker in question.

Variation of consents

182.—(1) Subject to Articles 186, 191 and 193(3), a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.

(2) Subject to paragraphs (3) and (4) and Article 183, no direction shall be given under this Article with respect to a consent under this Chapter

- (a) within two years from the date of the consent; or
- (b) where a previous direction has been given under this Article with respect to that consent, within two years from the date on which notice was given of that direction.

(3) Paragraph (2) shall not prevent a direction being given before the time specified in that paragraph if it is given with the consent of the holder of the consent under this Chapter.

(4) A direction given with the consent mentioned in paragraph (3) shall not affect the time at which any subsequent direction may be given.

(5) The sewerage undertaker shall give notice of any direction under this Article with respect to a consent under this Chapter to the holder of that consent.

(6) A notice under paragraph (5) shall

- (a) include information as to the right of appeal conferred by paragraph (1) of Article 184; and
- (b) state the date, being a date not less than two months after the giving of the notice, on which (subject to paragraph (2) of that Article) the direction is to take effect.

(7) For the purposes of this Article references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

(8) In this Chapter “holder”, in relation to a consent under this Chapter, means the person on whose application the consent was granted (or a person treated as such under Article 177(4)).

Variations within time limit

183.—(1) A sewerage undertaker may give a direction under Article 182 before the time specified in paragraph (2) of that Article and without the consent required by paragraph (3) of that Article if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.

(2) Subject to Article 192(3), where a sewerage undertaker gives a direction by virtue of paragraph (1), the undertaker shall be liable to pay compensation to the holder of the consent under

this Chapter to which the direction relates unless the undertaker is of the opinion that the direction is required

- (a) in consequence of a change of circumstances which
 - (i) has occurred since the beginning of the period of two years in question; and
 - (ii) could not reasonably have been foreseen at the beginning of that period; and
- (b) otherwise than in consequence of consents for discharges given after the beginning of that period.

(3) Where a sewerage undertaker gives a direction by virtue of paragraph (1) and is of the opinion mentioned in paragraph (2), it shall be the duty of the undertaker to give notice of the reasons for its opinion to the holder of the consent under this Chapter to which the direction relates.

(4) For the purposes of this Article the circumstances referred to in paragraph (2)(a) may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

(5) The Department may by regulations make provision as to the manner of determining the amount of any compensation payable under this Article, including the factors to be taken into account in determining that amount.

Appeals with respect to variations of consent

184.—(1) The holder of any consent under this Chapter may

- (a) within two months of the giving to him under paragraph (5) of Article 182 of a notice of a direction under that Article ; or
- (b) with the written permission of the Authority, at any later time,

appeal to the Authority against the direction.

(2) Subject to paragraph (3), if an appeal against a direction is brought under paragraph (1) before the date specified under Article 182(6)(b) in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.

(3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.

(4) On an appeal under paragraph (1) with respect to a direction, the Authority shall have power

- (a) to annul the direction given by the sewerage undertaker; and
- (b) to substitute for it any other direction, whether more or less favourable to the appellant;

and any direction given by the Authority may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

(5) A person to whom notice is given in pursuance of Article 183(3) may, in accordance with regulations made by the Department, appeal to the Authority against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.

(6) On an appeal under paragraph (5) the Authority may direct that Article 183 shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.

(7) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(8) The powers of the Authority under this Article shall be subject to the provisions of Articles 191, 193 and 196.

Review by DOE of consents relating to special category effluent

185.—(1) Where the occupier of any trade premises is (whether or not in accordance with a notice under Article 190) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special category effluent from those premises into a sewerage undertaker's public sewer, DOE may review the questions

- (a) whether the discharges authorised by the consent should be prohibited; and
 - (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.
- (2) Subject to paragraph (3), DOE shall not review any question under this Article unless
- (a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made
 - (i) before the transfer date; or
 - (ii) in contravention of Article 191;
 - (b) a period of more than two years has elapsed since the time, or last time, when notice of DOE's determination on any reference or review relating to that consent or the consent to which that variation relates was served under Article 190 on the occupier of the trade premises in question; or
 - (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under Article 190 in the consent or variation by virtue of which the discharges in question are made.
- (3) Paragraph (2) shall not apply if the review is carried out
- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party; or
 - (b) for the protection of public health or of flora and fauna dependent on an aquatic environment.