
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART VI

SEWERAGE SERVICES

CHAPTER III

TRADE EFFLUENT

References and reviews relating to special category effluent

Powers and procedure on references and reviews

190.—(1) This Article applies to

- (a) any reference to DOE under Article 178, 181 or 188; and
- (b) any review by DOE under Article 185 or 189.

(2) On a reference or review to which this Article applies, it shall be the duty of DOE, before determining the questions which are the subject matter of the reference or review

- (a) to give an opportunity of making representations or objections to DOE—
 - (i) to the sewerage undertaker in question;
 - (ii) in the case of a reference or review relating to a consent under this Chapter, to the occupier of the trade premises in question;
 - (iii) in the case of a reference or review relating to an agreement or proposed agreement under this Chapter, to the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier of those premises who is a party or proposed party to the relevant agreement; and
- (b) to consider any representations or objections which are duly made to DOE with respect to those questions by a person to whom DOE is required to give such an opportunity and which are not withdrawn.

(3) On determining any question on a reference or review to which this Article applies, DOE shall serve notice on the sewerage undertaker in question and on the person specified in paragraph (2)(a) (ii) or (as the case may be) (iii).

(4) A notice under this Article shall state, according to what has been determined

- (a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or
- (b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist of or include conditions so specified; or

- (c) that DOE has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.
- (5) Without prejudice to Article 191, a notice under this Article, in addition to containing such provision as is specified in paragraph (4), may do one or both of the following, that is to say
 - (a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and
 - (b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under Article 187.
- (6) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of DOE, by virtue of paragraph (4)(b), to specify such conditions as DOE considers appropriate in a notice under this Article.
- (7) DOE shall send a copy of every notice served under this Article to the Authority.

Effect of determination on reference or review

191.—(1) Where a notice under Article 190 has been served on a sewerage undertaker, it shall be the duty

- (a) of the undertaker; and
- (b) in relation to that undertaker, of the Authority,

so to exercise the powers to which this Article applies as to secure compliance with the provisions of the notice.

- (2) This paragraph applies to the following powers, that is to say
 - (a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under Article 179 or 182 and any power to enter into or vary an agreement under Article 187; and
 - (b) in relation to the Authority, any of its powers under this Chapter.

(3) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this Article, to impose any condition specified in a notice under Article 190.

(4) A sewerage undertaker which fails to perform its duty under paragraph (1) 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.

(5) DOE may, for the purpose of securing compliance with the provisions of a notice under Article 190, by serving notice on the sewerage undertaker in question and on the person specified in Article 190(2)(a)(ii), vary or revoke

- (a) any consent given under this Chapter to make discharges of any special category effluent; or
- (b) any agreement under Article 187.

Compensation in respect of determinations made for the protection of public health etc.

192.—(1) Subject to paragraph (2), DOE shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under Article 190 containing DOE's determination on a review which

- (a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and

- (b) but for being so carried out would have been prohibited by virtue of Article 185(2) or 189(2).
- (2) DOE shall not be required to pay any compensation under this Article if the determination in question is shown to have been given in consequence of—
 - (a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in Article 185(2) or, as the case may be, Article 189(2) began to run; or
 - (b) consideration by DOE of material information which was not reasonably available to DOE at that time.
- (3) No person shall be entitled to any compensation under Article 183 in respect of anything done in pursuance of Article 191.
- (4) In this Article “the relevant person” means
 - (a) in relation to a review of a consent, the holder of the consent;
 - (b) in relation to a review of an agreement, the owner or occupier of the trade premises in question, according to whether it is the owner or the occupier who is a party to the agreement.