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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART VI**

**SEWERAGE SERVICES**

**CHAPTER I**

**GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS**

*Principal duties and standards of performance*

**General duty to provide sewerage system**

**149.**—(1) It shall be the duty of every sewerage undertaker—

- (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and
- (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of waste water treatment works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under paragraph (1) to have regard—

- (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
- (b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under paragraph (1) shall be enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this Article or Article 150 and shall not be in any way qualified by any such provision.

(5) In this Article “trade effluent” has the same meaning as in Chapter III of this Part; and, accordingly, Article 198 shall have effect for the purposes of this Article as it has effect for the purposes of Chapter III of this Part.

### **Standards of performance in connection with provision of sewerage services**

**150.**—(1) For the purpose—

- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Part are to amount to breaches of the duty imposed by Article 149; or
- (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker,

the Department may, in accordance with Article 152, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Order as breaches of that duty.

(2) The Department may, in accordance with Article 152, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in its opinion, ought to be achieved in individual cases.

(3) Regulations under paragraph (2) may provide that, if a sewerage undertaker fails to meet a prescribed standard, it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.

(4) Without prejudice to the generality of the power conferred by paragraph (2), regulations under that paragraph may—

- (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
- (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Authority;
- (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
- (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

(5) Where the Authority determines any dispute in accordance with regulations under this Article it shall, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.

### **Information with respect to levels of performance**

**151.**—(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation paid by sewerage undertakers under regulations under Article 150(2); and
- (b) the levels of overall performance achieved by sewerage undertakers in connection with the provision of sewerage services.

(2) At such times as the Authority may direct, each sewerage undertaker shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under Article 150(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
- (b) as respects each standard established by regulations under Article 150(1)(b), such information with respect to the level of performance achieved by the undertaker as may be prescribed.

(3) A sewerage undertaker which without reasonable excuse fails to do anything required of it by paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to the Authority under this Article as it may appear to the Authority expedient to give to customers or potential customers of sewerage undertakers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or not, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

#### **Procedure for regulations under Article 150**

**152.**—(1) The Department shall not make any regulations under Article 150 unless—

- (a) the Authority has made to the Department a written application complying with paragraph (3);
- (b) the Department is satisfied that a copy of the application has been served by the Authority on—
  - (i) every sewerage undertaker specified in the application; and
  - (ii) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations;
- (c) such period as the Department considers appropriate has been allowed for the making—
  - (i) by the Authority; or
  - (ii) by any affected sewerage undertaker or person or body on whom a copy of the application has been served under sub-paragraph (b)(ii),of representations or objections with respect to the Authority's proposals and any modifications proposed by the Department; and
- (d) the Department has considered the summary mentioned in paragraph (3)(c), the Authority's reasons for its proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.

(2) Before making an application to the Department under this Article the Authority shall arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.

- (3) An application made by the Authority to the Department complies with this paragraph if it—
- (a) sets out the draft provisions proposed by the Authority for inclusion in regulations under Article 150;
  - (b) specifies the sewerage undertaker or undertakers in relation to which it is proposed those provisions should apply;
  - (c) is accompanied by a written summary of the results of the research carried out in accordance with paragraph (2); and
  - (d) summarises the Authority's reasons for its proposals.

- (4) The Department shall not make any regulations under Article 150 except where—
- (a) the only provisions of the regulations are those proposed by the Authority in its application or those provisions with such modifications as the Department considers appropriate; and
  - (b) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Authority; and
    - (ii) to any sewerage undertaker appearing to the Department to be likely to be affected by the modifications.

### **Information to be given to customers about overall performance**

**153.**—(1) Each sewerage undertaker shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers of—

- (a) the standards of overall performance established under Article 150(1)(b) which are applicable to that undertaker; and
- (b) that undertaker's level of performance as respects each of those standards.

(2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.

(3) The duty of a sewerage undertaker to comply with this Article shall be enforceable by the Authority under Article 30.

## **CHAPTER II**

### **PROVISION OF SEWERAGE SERVICES**

#### *Requisition of public sewer or lateral drain*

### **Duty to comply with sewer and lateral drain requisition**

**154.**—(1) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—

- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by the owner or occupier of any premises in that locality;
- (b) the premises in that locality the drainage of which would be by means of that sewer are—
  - (i) premises on which there are buildings; or
  - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(2) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

- (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by the owner or occupier of premises the drainage of which would be by means of that lateral drain;
- (b) the premises the drainage of which would be by means of that lateral drain are—
  - (i) premises on which there are buildings; or

(ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and

(c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(3) The duty of a sewerage undertaker under this Article to provide a public sewer or a lateral drain shall be owed to the person who requires the provision of the sewer or lateral drain or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of paragraph (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a sewerage undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) In this Article the reference to domestic purposes, in relation to the drainage of premises to which a requirement under this Article relates, is a reference—

- (a) where there are buildings on those premises, to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and
- (b) where any person is proposing to erect buildings on those premises, to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

### **Financial conditions of compliance**

**155.**—(1) The conditions mentioned in Article 154(1)(c) and (2)(c) are satisfied in relation to a requirement for the provision of a public sewer or, as the case may be, lateral drain by a sewerage undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with paragraph (2) have been given by the person or persons who have required the provision of the sewer or lateral drain; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under paragraph (3), may be required to secure his undertakings.

(2) The undertakings which a sewerage undertaker may require for the purposes of paragraph (1) in respect of any public sewer or lateral drain are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that sewer or lateral drain, as determined in accordance with the undertaker's charges scheme; and
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of paragraph (1)(b) a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, lateral drain if he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every three months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by the Authority for the purposes of paragraph (4)

- (a) may be given or made in relation to the provision of a particular public sewer or lateral drain, in relation to the provision of public sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and
- (b) may be revoked at any time.

(6) Any dispute between a sewerage undertaker and any other person as to—

- (a) the undertakings or security required by the undertaker for the purposes of this Article; or
- (b) the amount required to be paid in pursuance of any such undertaking,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

### **Determination of completion date and route for requisitioned sewer or lateral drain**

**156.**—(1) A sewerage undertaker shall not be in breach of a duty imposed by Article 154 in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—

- (a) the period of 6 months beginning with the relevant day has expired; and
- (b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—
  - (i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or
  - (ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,
 at the place or places determined under paragraph (3).

(2) The period mentioned in paragraph (1)(a) may be extended—

- (a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
- (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under paragraph (4).

(3) The places mentioned in paragraph (1)(b) shall be—

- (a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
- (b) in default of agreement, such place or places as are determined by the Authority on a reference under paragraph (4) to be the place or places at which it is reasonable, in all the circumstances—
  - (i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or
  - (ii) in relation to the provision of a lateral drain, for the lateral drain to communicate with a public sewer vested in the undertaker and for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.

(4) A reference for the purposes of paragraph (2) or (3) may be made to the Authority for determination under Article 61 by either party to the dispute.

(5) In this Article “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—

- (a) the day on which the conditions specified in Article 155 are satisfied in relation to the requirement; and
- (b) the day on which the place or places where (as the case may be)—
  - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or
  - (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,are determined under paragraph (3).

*Provision of sewers other than by requisition*

**Further duty to provide sewers**

**157.**—(1) Without prejudice to Article 154, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in paragraph (2) are satisfied.

(2) The conditions mentioned in paragraph (1) are—

- (a) that the premises in question, or any of those premises, are premises on which there are buildings;
- (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
- (c) that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this Article by the Department and all other relevant considerations, to provide a public sewer for the drainage for domestic purposes of the premises in question.

(3) Without prejudice to the generality of paragraph (2)(c), regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this Article—

- (a) the geology of the locality in question or of any other locality;
- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
- (c) the costs of providing that sewer;
- (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises, or, as the case may be, the locality in question not being drained by means of a public sewer; and
- (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this Article or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Department under this Article may—

- (a) relate to how regard is to be had to the considerations mentioned in sub-paragraphs (a) to (e) of paragraph (3);
- (b) relate to any other matter which it considers may be a relevant consideration in any case and to how regard is to be had to any such matter;

- (c) set out considerations, other than those mentioned in sub-paragraphs (a) to (e) of paragraph (3), to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this Article;
  - (d) relate to how regard is to be had to any such consideration as is mentioned in sub-paragraph (c); and
  - (e) without prejudice to sub-paragraphs (a) to (d), relate to how a sewerage undertaker is to discharge its functions under this Article.
- (5) Before issuing guidance under this Article the Department shall consult—
- (a) DOE;
  - (b) the Authority;
  - (c) sewerage undertakers; and
  - (d) such other bodies or persons as it considers appropriate;
- and the Department shall arrange for any guidance issued by it under this Article to be published in such manner as it considers appropriate.
- (6) Subject to the following provisions of this Article, the duty of a sewerage undertaker by virtue of paragraph (1) shall be enforceable under Article 30—
- (a) by the Department; or
  - (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.
- (7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—
- (a) whether the undertaker is under a duty by virtue of paragraph (1) to provide a public sewer to be used for any such drainage of those premises as is mentioned in that paragraph;
  - (b) the domestic sewerage purposes for which any such sewer should be provided; or
  - (c) the time by which any such duty of the undertaker should be performed,
- shall be determined by the Authority, and may be referred to the Authority for determination by either of the parties to the dispute.
- (8) The Authority—
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under paragraph (7); and
  - (b) may make any such recommendation, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.
- (9) The decision of the Authority on any dispute referred to it under paragraph (7) shall be final.
- (10) A sewerage undertaker shall only be taken to be in breach of its duty under paragraph (1) where, and to the extent that, it has accepted, or the Authority has determined under this Article, that it is under such a duty and where any time accepted by it, or determined by the Authority under this Article, as the time by which the duty is to that extent to be performed has passed.

### **Power to construct lateral drains following provision of public sewer**

**158.**—(1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by Article 154 or Article 157, the undertaker may, at the request of the person mentioned in paragraph (2), also provide at the same time one or more lateral drains to be used for the drainage for domestic sewerage purposes of premises in its area and to communicate with that sewer.

- (2) A request under paragraph (1) may be made—



- (a) in the case of a public sewer to be provided under Article 154, by the person who requires the provision of the sewer under that Article; and
  - (b) in the case of a public sewer to be provided under Article 157, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that Article (but any request may only be for the provision of a lateral drain to his premises).
- (3) The person making a request under this Article shall pay to the sewerage undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.
- (4) Any dispute between the sewerage undertaker and the person making a request under this Article as to—
- (a) whether a lateral drain should be provided pursuant to the request; or
  - (b) the costs reasonably incurred in the provision of a lateral drain,
- may be referred to the Authority for determination under Article 61 by either party to the dispute.
- (5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this Article shall belong to the undertaker.

#### *Adoption of sewers and waste water treatment works*

#### **Adoption of sewers and waste water treatment works**

**159.**—(1) Subject to the following provisions of this Article and to Articles 160, 162 and 206(3), a sewerage undertaker may at any time declare that—

- (a) any sewer which is situated within its area or which serves the whole or any part of that area; or
- (b) any lateral drain which communicates or is to communicate with a public sewer which—
  - (i) is so situated or serves the whole or any part of that area; and
  - (ii) is vested in that undertaker; or
- (c) any waste water treatment works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer, lateral drain or waste water treatment works with respect to which a sewerage undertaker might make a declaration under this Article may make an application to that undertaker requesting it to make a declaration under this Article with respect to the sewer, lateral drain or works.

(3) A declaration or application under this Article may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this Article—

- (a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question; and
- (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under Article 162 or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this Article, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
  - (b) whether the sewer or lateral drain is constructed under a road or under land reserved by a planning scheme for a street;
  - (c) the number of buildings which the sewer or lateral drain is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
  - (d) the method of construction and state of repair of the sewer, lateral drain or works; and
  - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.
- (6) Any person who immediately before the making of a declaration under this Article was entitled to use the sewer or lateral drain in question shall be entitled to use it, or any sewer or lateral drain substituted for it, to the same extent as if the declaration had not been made.
- (7) No declaration may be made under this Article in respect of—
- (a) any sewer or works the construction of which was completed before 1st October 1973;
  - (b) any lateral drain the construction of which was completed before the transfer date.

#### **Adoption under Article 159: supplementary**

**160.**—(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under Article 159 with respect to—

- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker;
- (b) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or
- (c) any waste water treatment works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under paragraph (1) to another undertaker, no declaration under Article 159 shall be made by the former undertaker until either—

- (a) the other undertaker has consented to the declaration; or
- (b) the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

(3) Where—

- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any waste water treatment works are vested, in a relevant body; and
- (b) in the case of a sewer, part of a sewer, lateral drain or works vested in a railway undertaking or harbour authority, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to that operator or authority and held or used by that operator or authority for the purposes of its undertaking,

a sewerage undertaker shall not make a declaration under Article 159 with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.

(4) Where a sewerage undertaker makes a declaration under Article 159 with respect to—

- (a) a sewer or lateral drain which is situated within the area of another sewerage undertaker; or
- (b) any waste water treatment works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this Article “relevant body” means any sewerage undertaker, district council, railway undertaking or harbour authority.

### **Agreements to adopt sewer, drain or waste water treatment works at future date**

**161.**—(1) Subject to paragraph (7) and Article 206(3), a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
  - (i) any sewer;
  - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
  - (iii) any waste water treatment works; or
- (b) any person at whose expense the undertaker is, by virtue of an agreement under Article 221, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or waste water treatment works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

(2) A person mentioned in sub-paragraph (a) or (b) of paragraph (1) may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this Article.

(3) An application under paragraph (2) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to paragraph (4) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

- (a) a person who has made an application to a sewerage undertaker under paragraph (2) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 162, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(5) Any agreement made under this Article by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer, lateral drain or works to which it relates.

(6) Without limiting the terms which may be included in an agreement under this Article

- (a) such terms may include terms as to the provision of such security as the undertaker may reasonably require for the discharge of any obligations imposed on the other party to the agreement; and
- (b) such terms relating to a drain may include in particular —
  - (i) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
  - (ii) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
  - (iii) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
  - (iv) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.
- (7) A sewerage undertaker shall not make an agreement under this Article with respect to—
  - (a) a sewer, drain or waste water treatment works situated within the area of another sewerage undertaker; or
  - (b) a drain which is intended to communicate with a sewer which—
    - (i) is so situated; or
    - (ii) is vested in another sewerage undertaker,
 until one of the conditions mentioned in paragraph (8) is satisfied.
- (8) The conditions are—
  - (a) that the other undertaker has consented to the making of the agreement; or
  - (b) that the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

### **Appeals with respect to adoption**

**162.**—(1) An owner of any sewer, lateral drain or waste water treatment works may appeal to the Authority if—

- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under Article 159; or
  - (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.
- (2) Subject to Article 161(4), a person constructing or proposing to construct a drain or sewer or any waste water treatment works may appeal to the Authority where a sewerage undertaker—
- (a) has refused an application under Article 161;
  - (b) has offered to grant such an application on terms to which that person objects; or
  - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (3) The time for the making of an appeal under paragraph (1) by the owner of any sewer, lateral drain or waste water treatment works shall be—
- (a) in the case of an appeal by virtue of sub-paragraph (a) of that paragraph, any time within two months after notice of the proposal is served on that owner; and

- (b) in the case of an appeal by virtue of sub-paragraph (b) of that paragraph, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this Article, the Authority may—
  - (a) in the case of an appeal under paragraph (1), allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
  - (b) in the case of an appeal under paragraph (2)—
    - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
    - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;and any declaration made under sub-paragraph (a) shall have the same effect as if it had been made by the undertaker in question.
- (5) Where the Authority makes a declaration under paragraph (4)(a), it may, if it thinks fit—
  - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
  - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the Authority makes an agreement under paragraph (4)(b) on behalf of a sewerage undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as the Authority considers appropriate for ensuring that the terms of the agreement are reasonable.
- (7) The Authority, in deciding on an appeal under this Article whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in Article 159(5); and for the purposes of this paragraph, in its application in relation to an appeal under paragraph (2), sub-paragraphs (a) to (e) of Article 159(5) shall have effect with the necessary modifications.

#### *Communication of drains and private sewers with public sewers*

#### **Right to communicate with public sewers**

**163.**—(1) Subject to the provisions of this Article—

- (a) the owner or occupier of any premises, or
- (b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.

- (2) In this Article, and in Articles 164 to 166, 168, 170 to 173, 175, 176, 182, 185, 198 and 206—
  - (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
  - (b) for the purposes of sub-paragraph (a)—
    - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under Article 159 or under an agreement made under Article 161; and

(ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.

(3) Subject to the provisions of Chapter III of this Part, nothing in paragraph (1) shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
  - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
  - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any statutory provision; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
  - (i) foul water into a sewer provided for surface water; or
  - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(4) A person whose private sewer or drains do not communicate with a public sewer and who is desirous of availing himself of his entitlement under this Article shall give notice of his proposals to the sewerage undertaker in question.

(5) At any time within 21 days after a sewerage undertaker receives a notice under paragraph (4), the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer—

- (a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker’s sewerage system.

(6) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under paragraph (4) relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

(7) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under Article 159.

(8) Any question arising under paragraphs (4) to (7) between a sewerage undertaker and a person proposing to make a communication as to—

- (a) the reasonableness of the undertaker’s refusal to permit a communication to be made; or
- (b) as to the reasonableness of any requirement under paragraph (6) or (7),

may, on the application of that person, be determined by the Authority under Article 61 and, accordingly, Article 162 shall not apply to any requirement under paragraph (7).

(9) In this Article “factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20).

### **Right of sewerage undertaker to undertake the making of communications with public sewers**

**164.**—(1) Where a person gives to a sewerage undertaker notice under Article 163 of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—

- (a) within 21 days after the receipt of the notice; or
- (b) if any question arising under the notice requires to be determined by the Authority, within 21 days after the determination of that question,

give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given to any person under paragraph (1), that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) Where a sewerage undertaker has given a notice under paragraph (1)—

- (a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but
- (b) it shall not be obligatory on the undertaker to make the communication until either—
  - (i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or
  - (ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

(4) If any payment made to a sewerage undertaker under paragraph (3) exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess shall be repaid by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover summarily as a civil debt the expenses, or the balance of them, from the person for whom the work was done.

(5) Any dispute between a sewerage undertaker and any other person as to—

- (a) whether the undertaker's estimate of the cost of works given under paragraph (3)(b)(i) is reasonable,
- (b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or
- (c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under paragraph (4), or the amount of any such excess or expenses,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(6) For the purposes of this Article, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

### **Communication works by person entitled to communication**

**165.**—(1) Where a sewerage undertaker does not under Article 164 elect itself to make a communication to which a person is entitled under Article 163, the person making it shall—

- (a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and
- (b) afford any such person all reasonable facilities for superintending the carrying out of the work.

(2) For the purpose—

- (a) of exercising his rights under Article 163; or
- (b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by Articles 219 and 222(1).

(3) The provisions of Part VIII of this Order shall apply, with the necessary modifications, in relation to the power conferred by paragraph (2) as they apply in relation to the power conferred by Articles 219 and 222(1).

### **Unlawful communications**

**166.**—(1) Any person who causes a drain or sewer to communicate with a public sewer—

- (a) in contravention of any of the provisions of Article 163 or 165; or
- (b) before the end of the period mentioned in paragraph (5) of Article 163,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this Article, such an undertaker may—

- (a) close any communication made in contravention of any of the provisions of Article 163 or 165; and
- (b) recover summarily as a civil debt from the offender any expenses reasonably incurred by the undertaker in so doing.

### *Connections between public sewers*

### **New connections with public sewers**

**167.**—(1) Where, on the application of any qualifying person—

- (a) it appears to the Authority that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application (“the established undertaker”) should permit a main connection into its sewerage system and
- (b) the Authority is satisfied that the making of such a connection cannot be secured by agreement,

the Authority may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this Article “qualifying person” means—

- (a) a sewerage undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) In paragraph (1) a “main connection” means a connection—

- (a) between a sewer or disposal main and a sewer or disposal main; or
- (b) a connection which allows a sewer or disposal main to discharge directly into a waste water treatment works.

(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this Article in response to that application shall



be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

(5) Subject to paragraph (4), an order under this Article shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Authority on the application of either party to the agreement, as well as by agreement between the parties.

(6) The Authority shall not make an order under this Article unless it has first consulted the Department.

(7) In exercising its functions under this Article, the Authority shall have regard to the desirability of—

- (a) facilitating effective competition within the sewerage services industry;
- (b) the existing undertaker's recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the existing undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.

#### *Provisions protecting public sewers*

#### **Restrictions on use of public sewers**

**168.**—(1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer or into any waste water treatment works—

- (a) any matter likely to—
  - (i) injure the sewer, drain or works,
  - (ii) interfere with the free flow of its contents or
  - (iii) affect prejudicially the treatment and disposal of its contents,either alone or in combination with the contents of the sewer, drain or works; or
- (b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than 43 degrees Celsius, as is by virtue of paragraph (2) a prohibited substance; or
- (c) any petroleum spirit or carbide of calcium.

(2) For the purposes of paragraph (1), chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that paragraph is a prohibited substance if (either alone or in combination with the contents of the sewer, drain or works in question) it is or, in the case of the liquid, is when so heated—

- (a) dangerous;
- (b) the cause of a nuisance; or
- (c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this Article shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) For the purposes of so much of paragraph (3) as makes provision for the imposition of a daily penalty—
  - (a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and
  - (b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.
- (5) In this Article the expression “petroleum spirit” means any such—
  - (a) crude petroleum;
  - (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or
  - (c) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13), gives off an inflammable vapour at a temperature of less than 23 degrees Celsius.

#### **Requirement that proposed drain or sewer be constructed so as to form part of general system**

**169.**—(1) Where—

- (a) a person proposes to construct a drain or sewer; and
- (b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

(2) If any person on whom requirements are imposed under this Article by a sewerage undertaker is aggrieved by the requirements, he may within 28 days appeal to the Authority.

(3) On an appeal under paragraph (2) with respect to any requirements, the Authority may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this Article to comply with those requirements.

(5) The duty of any person by virtue of paragraph (4) to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this Article shall—

- (a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker’s requirements; and
- (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker’s requirements having been imposed and complied with.

(7) Nothing in this Article shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertaking or harbour authority in or on land which—

- (a) belongs to that undertaking or authority; and
- (b) is held or used by it for the purposes of its undertaking.

### **Power to alter drainage system of premises in area**

**170.**—(1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—

- (a) is not adapted to the general sewerage system of the area; or
- (b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by paragraph (1) shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

- (a) is equally effectual for the drainage of the premises; and
- (b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this Article shall give notice of its proposals to the owner of the premises in question.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may refer the matter to the Authority for determination under Article 61.

(5) The Department may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this Article.

(6) In this Article—

“cesspool” includes a settlement tank, septic tank or other tank for the reception or disposal of foul matter from buildings; and

“trade effluent” has the same meaning as in Chapter III.

### **Power to investigate defective drain or sewer**

**171.**—(1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—

- (a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or
- (b) that any such drain or private sewer is so defective as to admit subsoil water,

the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.

(2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

### *Use of pipes for sewerage purposes*

#### **Use of road drains as sewers and vice versa**

**172.**—(1) Subject to the provisions of this Article, the Department and a sewerage undertaker may agree that—

- (a) any drain or sewer which is vested in the Department for the purposes of its functions under the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or roads;
- (b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the Department for conveying surface water from roads.

(2) Where a sewer or drain with respect to which the Department and a sewerage undertaker propose to make an agreement under this Article discharges, whether directly or indirectly, into the sewers or waste water treatment works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

(3) Subject to paragraph (4), a consent given by a sewerage undertaker for the purposes of paragraph (2) may be given on such terms as that undertaker thinks fit.

(4) Neither the Department nor a sewerage undertaker shall—

- (a) unreasonably refuse to enter into an agreement for the purposes of this Article; or
- (b) insist unreasonably upon terms unacceptable to the other party;

and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.

(5) Any question arising under this Article as to whether or not the Department or any sewerage undertaker is acting unreasonably may be referred by either party to the Appeals Commission.

(6) Nothing in this Article affects the powers of the Department under Article 45 of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (road drains).

#### **Power to close or restrict use of public sewer**

**173.**—(1) Subject to paragraph (3), a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.

(2) A discontinuance or prohibition under this Article may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

(3) Before any person who is lawfully using a sewer for any purpose is deprived under this Article by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—

- (a) provide a sewer which is equally effective for his use for that purpose; and
- (b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this paragraph.

(4) Any dispute arising under paragraph (3)(a) between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Authority for determination under Article 61 by either party to the dispute.

## *Interpretation of Chapter II*

### **Interpretation of Chapter II**

**174.—**(1) In this Chapter “domestic sewerage purposes”, in relation to any premises, means any one or more of the following purposes, that is to say—

- (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
- (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and
- (c) the removal, from such buildings and such land, of surface water;

but does not, by virtue of sub-paragraph (b), include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Chapter to the construction of a sewer or of any waste water treatment works include references to the extension of any existing sewer or works.

(3) Every application made or consent given under this Chapter shall be made or given in writing.

(4) Nothing in Articles 159 to 166 or in Articles 168 to 173 shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—

- (a) in contravention of any applicable provision of the Water Order; or
- (b) for the purpose of conveying foul water into any natural or artificial watercourse, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in that watercourse, pond or lake.

(5) A sewerage undertaker shall so carry out its functions under Articles 159 to 162, 169, 172 and 173 as not to create a nuisance.

## **CHAPTER III**

### **TRADE EFFLUENT**

#### *Consent for discharge of trade effluent into public sewer*

### **Consent required for discharge of trade effluent into public sewer**

**175.—**(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker’s public sewers if he does so with the undertaker’s consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say

- (a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and
- (b) Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by paragraph (1) of Article 163.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, 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 to a further fine not exceeding £50 for each day on which the offence continues after conviction; and
- (b) on conviction on indictment, to a fine.

### *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 subparagraph (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.

#### *Application for variation of time for discharge*

#### **Application for variation of time for discharge**

**186.**—(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

- (a) of a failure to complete any works required in connection with the reception and disposal of the trade effluent; or
- (b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to the Authority for such a substitution.

(2) The Authority shall have power, on an application under paragraph (1), to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if it thinks fit, any earlier date.

(3) Not less than one month before making an application under paragraph (1) a sewerage undertaker shall give notice of its intention to the holder of the consent under this Chapter in respect of the trade premises from which the trade effluent is to be discharged.

(4) The Authority, before varying a direction on an application under paragraph (1), shall take into account any representations made to it by the person to whom notice is given under paragraph (3).

#### *Agreements with respect to the disposal etc. of trade effluent*

#### **Agreements with respect to the disposal etc. of trade effluent**

**187.**—(1) Subject to Articles 188 and 191, a sewerage undertaker may enter into and carry into effect—

- (a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;
  - (b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.
- (2) Without prejudice to the generality of paragraph (1), an agreement such as is mentioned in sub-paragraph (a) of that paragraph may, in particular, provide—
- (a) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and
  - (b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.
- (3) The power of a sewerage undertaker to enter into an agreement under this Article includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

#### **Reference to DOE of agreements relating to special category effluent**

**188.**—(1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions

- (a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) 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 any such operations as are mentioned in paragraph (1)(a) at any time before DOE serves notice on the undertaker of its determination on the reference.

(3) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the proposed agreement.

(4) 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 owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.

(5) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1), to refer to DOE any question which it is required by that paragraph 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.

(6) If DOE becomes aware

- (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in paragraph (1), and
- (b) that the sewerage undertaker has not referred to DOE any question which it is required to refer to DOE by that paragraph,

DOE may proceed as if the reference required by that paragraph had been made.

(7) If DOE becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1) without the sewerage undertaker in question having referred to DOE any question which it is required by that paragraph to refer to it, DOE may exercise its powers of review under Article 185 or, as the case may be, Article 189, notwithstanding anything in paragraph (2) of the Article in question.

### **Review by DOE of agreements relating to special category effluent**

**189.**—(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under Article 190) for the time being a party to any agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of special category effluent, DOE may review the questions

- (a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) Subject to paragraph (3), DOE shall not review any question under this Article unless

- (a) the agreement by virtue of which the operations in question are carried out has not previously been the subject matter of a review and was entered into
  - (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 agreement was served under Article 190 on the owner or 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 agreement by virtue of which the operations in question are carried out.

(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.

(4) References in this Article to an agreement include references to an agreement as varied from time to time by a notice under Article 190.

### *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.

### *Supplemental provisions of Chapter III*

#### **Restrictions on power to fix charges under Chapter III**

**193.**—(1) On any appeal under Article 180 or 184(1) conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Authority except in so far as no provision is in force by virtue of a charges scheme under Article 201 in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject matter of the appeal.

(2) In so far as any such conditions as are mentioned in paragraph (1) do fall to be determined by the Authority, they shall be determined having regard to the desirability of that undertaker's—

- (a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and
- (b) securing a reasonable return on its capital.

(3) To the extent that paragraph (1) excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under Article 201 but not otherwise.

#### **Power of DOE to require information for the purpose of its functions in relation to special category effluent**

**194.**—(1) For the purpose of the discharge of its functions under this Chapter, DOE may, by notice in writing served on any person, require that person to furnish such information specified in the notice as DOE reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who

- (a) fails, without reasonable excuse, to comply with a requirement imposed under paragraph (1), or
- (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular,

shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2) shall be liable

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

#### **Evidence from meters etc.**

**195.** Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

#### **Statement of case on appeal**

**196.**—(1) At any stage of the proceedings on an appeal under Article 180 or 184(1), the Authority may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.

(2) The decision of the High Court on a special case under this Article shall be deemed to be a judgment of the Court within the meaning of section 35 of the Judicature (Northern Ireland) Act

1978 (c. 23) (which relates to the jurisdiction of the Court of Appeal); but no appeal to the Court of Appeal shall be brought by virtue of this paragraph except with the leave of the High Court or of the Court of Appeal.

### Meaning of “special category effluent”

**197.**—(1) Subject to paragraphs (2) and (3), trade effluent shall be special category effluent for the purposes of this Chapter if

- (a) such substances as may be prescribed are present in the effluent or are present in the effluent in prescribed concentrations; or
- (b) the effluent derives from any such process as may be prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(2) If trade effluent is produced, or to be produced, by operating any installation or plant or otherwise carrying on any activity, the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(3) In paragraph (2)—

- (a) “determination date”, in relation to an installation, plant or activity, means—
  - (i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;
  - (ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal, and in this paragraph the references to an appeal are references to an appeal under regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 17\)](#);
- (b) “permit” means a permit granted, under regulations under that Article, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions into the air, water and land.

(4) Regulations under this Article shall be made by DOE.

### Power to apply Chapter III to specified activities

**198.**—(1) The Department may by order provide, in relation to discharge into public sewers—

- (a) that a liquid or other matter of a description specified in the order shall be treated as if it were trade effluent for the purposes of this Chapter; or
- (b) that—
  - (i) the discharge restrictions shall not apply to a liquid or other matter of a description specified in the order; and
  - (ii) (in the case of a liquid) the liquid shall be deemed not to be trade effluent for the purposes of this Chapter.

(2) An order under paragraph (1) may so provide whether or not the liquid or other matter specified would otherwise have fallen within (or, as the case may be, outside) a proper construction of “trade effluent” as defined in Article 199(1).

(3) An order under paragraph (1) may so provide, in relation to the liquid or other matter specified, either generally or in particular cases or classes of case or for particular purposes or as otherwise specified in the order.

(4) In this Article, references to the discharge restrictions are references to—

- (a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and
- (b) the restrictions imposed by Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article.

(5) Where any provisions of this Chapter are to apply to a liquid or other matter by virtue of an order under paragraph (1)(a), the order may provide for them so to apply subject to such modifications as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.

(6) The Department may include in an order under paragraph (1) such provisions as appear to it expedient for modifying any statutory provision as it applies in relation to the discharge into sewers of any liquid or other matter specified in the order.

(7) Where the discharge restrictions do not apply to a liquid by virtue of an order under paragraph (1)(b), paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in relation to communication with a sewer for the purpose of making any discharge of that liquid as they apply in relation to any other discharges which are authorised by paragraph (1) of Article 163.

(8) The Department may include in an order under this Article such other supplemental, incidental or transitional provision as appears to it to be expedient.

(9) An order made under this Article shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(10) In this Article, references to a liquid are to a liquid either with or without particles of matter in suspension in the liquid.

### *Interpretation of Chapter III*

#### **Interpretation of Chapter III**

**199.**—(1) In this Chapter, subject to Article 198—

“special category effluent” has the meaning given by Article 197;

“trade effluent”—

- (a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and
- (b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

“trade premises” means, subject to paragraph (2), any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Chapter, any land or premises used or intended for use (in whole or in part and whether or not for profit)—

- (a) for agricultural or horticultural purposes or for the purposes of fish farming;
- (b) for scientific research or experiment;
- (c) for the purposes of a hospital or nursing home;

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of “trade effluent” in paragraph (1) shall include references to

agriculture, horticulture, fish farming, scientific research or experiment and the carrying on of a hospital or nursing home.

(3) In relation to any consent under this Chapter “holder” has the meaning given by Article 182(8).

(4) Every application or consent made or given under this Chapter shall be made or given in writing.

(5) Nothing in this Chapter shall affect any right with respect to water in a watercourse, or authorise any infringement of such a right, except in so far as any such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under Article 197.