PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974

DRAFT STATUTORY INSTRUMENTS

1998 No. (N.I.)

NORTHERN IRELAND

Water (Northern Ireland) Order 1998

Made - - - - 1998
Coming into operation in accordance with Article 1(2) to (4)

At the Court at , the day of 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Water (Northern Ireland) Order 1998.

(2) Subject to paragraphs (3) and (4), this Order shall come into operation on such day or days as the Department of the Environment may by order appoint.

(3) The following provisions of this Order shall come into operation on the expiration of two months from the day on which this Order is made—

(a) this Part;

(b) Part III (except for Articles 49 and 50);

(c) Articles 59 to 62;

(d) Schedule 3 as it applies for the purposes of Article 48(3);

(e) Schedules 4 and 5;

(f) Part I of Schedule 8 and Article 63(2) so far as relating thereto.

(4) The following provisions of this Order shall come into operation on such day or days as the Department of Agriculture may by order appoint—

(a) Articles 49 and 50; and

(b) Part II of Schedule 8 and Article 63(2) so far as relating thereto.

(5) An order under paragraph (2) or (4) may contain such transitional provisions as appear to the Department of the Environment or, as the case may be, the Department of Agriculture, to be necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"abstraction" means the doing of anything whereby water is removed from a waterway or underground stratum;

"the Appeals Commission" means the Water Appeals Commission for Northern Ireland;

"disposal", in relation to sewage, includes treatment;

"the Drainage Order" means the Drainage (Northern Ireland) Order 1973;

"effluent" means any liquid, either with or without particles of matter in suspension therein;

"engineering or building operations", without prejudice to the generality of that expression, includes—

(a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, waterway, dam, weir, well, borehole or other works; and

(b) the installation, modification or removal of any machinery or apparatus;

"information" includes anything contained in any records, accounts, estimates or returns;

"modifications" includes additions, alterations and omissions;

"notice" means notice in writing;

"owner" means a person who is for the time being receiving a rent of not less than two-thirds of the net annual value of any land whether on his own account or as agent or trustee for any person or who, if the land were let at such a rent, would receive it;

"prescribed" means prescribed by regulations;

"public sewage treatment works" means any sewage treatment works vested in or operated by the Department of the Environment or a sewerage undertaker;

"public sewer" means—

(a) a sewer as defined in Article 2(2) of the Water and Sewerage Services (Northern Ireland) Order 1973; or

(b) a sewer, pipe or drain vested in or operated by a sewerage undertaker and connected to a sewer as so defined;

"records" includes computer records and any other records kept otherwise than in a document;

"sewage" and "sewage treatment works" have the same meanings as in the Water and Sewerage Services (Northern Ireland) Order 1973;

"sewage effluent" means the effluent from any sewage treatment works;

"sewerage undertaker" means a person with whom the Department of the Environment has entered into an agreement under Article 13(4) of the Water and Sewerage Services (Northern Ireland) Order 1973 for the execution or performance by that person on behalf of the Department of works or services under that Order;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"tidal waters" includes the sea and the waters of any enclosed dock which adjoins tidal waters;

"underground strata" means strata subjacent to the surface of any land, and any reference to water contained in any underground strata is a reference to water so contained otherwise than in a public sewer, pipe, reservoir, tank or underground works contained in any such strata;

"vessel" means every description of vessel (whether with or without means of propulsion of any kind), and includes anything constructed or used to carry persons, goods or plant or machinery by water, or constructed to be propelled or moved on or in water, a seaplane on or in the water and a hovercraft (within the meaning of the Hovercraft Act 1968);

"the Water Council" means the Northern Ireland Water Council;

"waterway" includes any river, stream, watercourse, inland water (whether natural or artificial) or tidal waters and any channel or passage of whatever kind (whether natural or artificial) through which water flows but does not include—

(a) the waters beyond 3 international nautical miles seaward from the baseline from which the breadth of the territorial sea adjacent to Northern Ireland is measured;

(b) any public sewer or public sewage treatment works;

(c) any main or service pipe within the meaning of the Water and Sewerage Services (Northern Ireland) Order 1973 which is vested in or under the control of the Department of the Environment;

(d) any drain or road drain—

(i) constructed and laid by the Department of the Environment under Article 45(1) of the Roads (Northern Ireland) Order 1993; or

(ii) acquired by the Department of the Environment under Article 45(6) of that Order.

(3) In this Order any reference to a waterway includes a reference to the channel or bed of a waterway which is for the time being dry.

(4) For the purposes of this Order water for the time being contained in—

(a) a well, borehole or similar work, including any adit or passage constructed in connection with it for facilitating the collection of water in the well, borehole or work; or

(b) any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those strata;

shall be treated as water contained in the underground strata into which the well, borehole or work was sunk, or the excavation was made, as the case may be.

PART II

FUNCTIONS OF THE DEPARTMENT OF THE ENVIRONMENT IN RELATION TO MATTERS AFFECTING WATER

Interpretation

Interpretation of Part II

3.—(1) In this Part—

"analyse", in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description;

"apparatus" includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any matter, flow, discharge, emission, deposit or abstraction;

"the Department" means the Department of the Environment;

"deposit" includes store;

"discharge consent" means a consent given for the purposes of Article 9;

"enforcement notice" has the meaning assigned by Article 12;

"Londonderry Area" has the same meaning as in the Foyle Fisheries Act (Northern Ireland) 1952;

"mobile plant" means plant which is designed to move or be moved whether on roads or otherwise;

"premises" includes any land, vehicle, vessel or mobile plant;

"regulations", except in Article 36, means regulations made by the Department;

"representations" includes objections;

"trade" includes agriculture, horticulture, scientific research or experiment and the carrying on of a hospital or nursing home;

"trade effluent" means any effluent which is discharged from premises used for carrying on any trade or industry, other than storm water or domestic sewage;

"works notice" has the meaning assigned by Article 17.

(2) For the purposes of the definition of "trade effluent" in paragraph (1), any premises (whether on land or not) wholly or mainly used (whether for profit or not) for the purposes of fish farming shall be deemed to be premises used for carrying on a trade.

General duty of the Department

Duty of Department to promote conservation and cleanliness of water resources

4.—(1) The Department shall—

(a) promote the conservation of the water resources of Northern Ireland;

(b) promote the cleanliness of water in waterways and underground strata.

(2) The Department shall, in exercising its functions in relation to the conservation of water resources and the cleanliness of water, have regard to—

(a) the needs of industry and agriculture;

(b) the protection of fisheries;

(c) the protection of public health;

(d) the preservation of amenity and the conservation of flora and fauna; and

(e) the conservation of geological or physiographical features of special interest and any feature of archaeological, historical, architectural or traditional interest.

Quality objectives

Classification of quality of waters

5.—(1) The Department may, in relation to any description of waters (being a description applying to some or all waters), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.

(2) The criteria specified in regulations under this Article in relation to any classification shall consist of one or more of the following, that is to say—

(a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;

(b) specific requirements as to the matters which are to be present in or absent from the water and as to the concentrations of matters which are or are required to be present in the water;

(c) specific requirements as to other characteristics of those waters;

and for the purposes of any such classification regulations under this Article may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

Water quality objectives

6.—(1) For the purpose of maintaining and improving the quality of any waters the Department may establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed in regulations for the purposes of Article 5, by publishing in one or more newspapers circulating in the area to which the description of the waters relates, a notice specifying —

(a) one or more of the classifications for the time being prescribed under Article 5; and

(b) in relation to each specified classification, a date.

(2) The water quality objectives for any waters to which a notice under this Article relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.

(3) Where the Department has established water quality objectives under this Article for any waters the Department may review objectives for those waters if 5 years or more have elapsed since the publication of the last notice under paragraph (1) or (6) to be published in respect of those waters and the Department shall not establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

(4) Where the Department proposes to establish or vary the objectives for any waters the Department shall—

(a) give notice setting out the proposal and specifying the period (not being less than 3 months from the date of publication of the notice) within which representations with respect to the proposal may be made; and

(b) consider any representations which are duly made and not withdrawn;