STATUTORY RULES OF NORTHERN IRELAND

2007 No. 281

WATER AND SEWERAGE

The Pollution of Water: Offences (Determination of Liability) Regulations (Northern Ireland) 2007

Made - - - -	*4th May 2007*
Coming into operation	*25th May 2007*

The Department for Regional Development, in exercise of the powers conferred by Article 7B(5) of the Water (Northern Ireland) Order 1999(**1**), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Pollution of Water: Offences (Determination of Liability) Regulations (Northern Ireland) 2007 and shall come into operation on 25th May 2007.

Interpretation

2.—(1) In these Regulations—

"operator" means a person operating a private waste water treatment works;

"private waste water treatment works" means a waste water treatment works operated by a person other than a sewerage undertaker under, or pursuant to, an agreement with a sewerage undertaker;

"the 1999 Order" means the Water (Northern Ireland) Order 1999.

(2) In these Regulations—

(a) references to a sewer or works vested in a sewerage undertaker include references to a sewer or works controlled, operated or used by the undertaker for the purposes of its functions as such, and references to a sewer or works so vested shall be construed accordingly;

(b) references to works vested in a sewerage undertaker include references to a tanker operated by, or on behalf of, such an undertaker, whether or not for the purposes of its functions as such; and

(c) references to anything being or to be done, or to a person being bound or entitled, pursuant to an agreement with a sewerage undertaker include references to that thing being or to

(**1**) S.I.1999/662 (N.I.6) as inserted by S.I.2006/3336 (N.I.21) Article 280

be done, or to that person being bound or entitled, in the capacity of a subcontractor of a party to that agreement.

Application

3. These Regulations make provision, further to Articles 7A and 7B of the 1999 Order, for the purpose of determining liability under Article 7(1), (2) or (6) of that Order as between two or more persons in respect of any discharge into or from any waste water treatment works.

Determination of liability

4.—(1) This regulation applies for the purpose of determining liability where any discharge is made into or from a private waste water treatment works.

(2) A sewerage undertaker shall not be guilty of an offence under Article 7(1), (2) or (6) of the 1999 Order in respect of a discharge from a sewer or works vested in the undertaker into a private waste water treatment works if—

(a) the operator was bound to receive the discharge there—

(i) unconditionally; or

(ii) subject to conditions which were observed; or

(b) the operator was bound to receive the discharge there subject to conditions which were not observed in circumstances where—

(i) the non-observance is attributable to a discharge which a person other than the undertaker made into the sewer or works so vested;

(ii) the undertaker either was not bound to receive the discharge into the sewer or works so vested or was bound to receive it there subject to conditions which were not observed; and

(iii) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works so vested.

(3) A person other than a sewerage undertaker or an operator of a private waste water treatment works shall not be guilty of an offence under Article 7(1), (2) or (6) of the 1999 Order in respect of a discharge into the works if the operator was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(4) An operator of a private waste water treatment works shall not be guilty of an offence under Article 7(1), (2) or (6) of the 1999 Order by reason only of the fact that a discharge from the works contravenes conditions of a discharge consent relating to the discharge if—

(a) the contravention is attributable to a discharge which another person made into the works;

(b) the operator either was not bound to receive the discharge into the works or was bound to receive it there subject to conditions which were not observed; and

(c) the operator could not reasonably have been expected to prevent the discharge into the works.

(5) Where —

(a) under or pursuant to an agreement with a sewerage undertaker—

(i) an operator of a private waste water treatment works is bound to receive a discharge into the works unconditionally; and

(ii) receipt of the discharge entitles the operator to relevant relief under or pursuant to the agreement; and

(b) the discharge causes a failure by the operator to comply with any obligation as to quality of treatment under the agreement, compliance with which would have avoided a relevant contravention,

paragraph (4)(b) shall apply as if the reference in it to the operator either not being bound to receive the discharge into the works or being bound to receive it there subject to conditions which were not observed were a reference to the operator being bound to receive the discharge into the works unconditionally and being so entitled.

(6) Where—

(a) under or pursuant to an agreement with a sewerage undertaker—

(i) an operator of a private waste water treatment works is bound to receive a discharge into the works unconditionally; and

(ii) receipt of the discharge entitles the operator to relevant relief under or pursuant to the agreement; and

(b) the discharge causes a failure by the operator to comply with any obligation as to quality of treatment under the agreement, compliance with which would have avoided a relevant contravention,

paragraph (2)(a) shall apply as if, except in the circumstances mentioned in paragraph (7), sub-paragraph (i) were omitted.

(7) The circumstances referred to in paragraph (6) are where—

(a) the entitlement of the operator to relevant relief is attributable to a discharge which a person other than the sewerage undertaker made into the sewer or works vested in the undertaker;

(b) the undertaker either was not bound to receive the discharge into the sewer or works so vested or was bound to receive it there subject to conditions which were not observed; and

(c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works so vested.

(8) In paragraphs (5) and (6) and (7) "relevant relief", in relation to a discharge which an operator of a private waste water treatment works is bound to receive into the works under or pursuant to an agreement with a sewerage undertaker, means relief available to the operator under or pursuant to the terms of the agreement, in consequence of receipt of the discharge, from any reduction in payment to the operator which the undertaker would, but for the availability of the relief, be entitled to make under or pursuant to the terms of the agreement.

(9) In paragraphs (5) and (6) "relevant contravention", in relation to a discharge received into any works, means a contravention attributable to that discharge of conditions of a discharge consent relating to discharges from the works.

(10) In this regulation references to an agreement with a sewerage undertaker include references to an agreement under Article 13(4) of the Water and Sewerage Services (Northern Ireland) Order 1973.

Former sewerage undertakers

5.—(1) A former sewerage undertaker shall not be guilty of an offence under Article 7(1), (2) or (6) of the 1999 Order by reason only of the fact that a discharge from a private waste water treatment works operated by him contravenes conditions of a discharge consent if —

(a) the contravention is attributable to a discharge which another person made into the works; and

(b) the former sewerage undertaker —

(i) was obliged under the terms of the operating agreement to receive the discharge;