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STATUTORY INSTRUMENTS

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**1973 No. 69**

**Drainage (Northern Ireland) Order 1973**

**PART VI**

**MISCELLANEOUS AND GENERAL**

**Transfer, etc., of drainage trusts and funds to the Ministry**

**29.**—(1) Any trustee or other person (including a government department) holding any property on trust for the purpose of draining, or maintaining or improving the drainage of, any land may, notwithstanding anything in any statutory provision or in any scheme, order of court, deed or other instrument constituting the trust, and without the concurrence of any other person or authority, by agreement, transfer to the Ministry all or any of the property, powers, rights, duties, assets and liabilities of the trust on such terms and conditions as may be agreed with the Ministry, and the Ministry may accept any property so transferred.

(2) The Ministry may apply, for any drainage purpose connected with the land for the benefit of which the trust was constituted, any property accepted under paragraph (1), and any statutory provision or instrument mentioned in that paragraph shall have effect subject to the provisions of this Article.

(3) A transfer made under this Article shall effectively release and discharge the transferor from all duties, claims and liabilities in respect of the trust property thereby transferred to the Ministry, other than a claim or liability in respect of any antecedent breach of trust on the part of the transferor.

(4) Any power conferred by paragraph (1) on a trustee in relation to any trust may be exercised on his behalf by any court having jurisdiction to administer that trust, and any scheme or order made by such court may provide for the appointment, on such terms and subject to such conditions as the court may consider just, of the Ministry as a trustee for the purposes of that trust in any case where the Ministry is willing to act as such.

(5) Paragraphs (2) and (3) shall apply to any property held by the Ministry on trust for any of the purposes mentioned in paragraph (1) as they apply to any property transferred to the Ministry under that paragraph.

**[<sup>F1</sup>]<sup>F2</sup>Dissolution of drainage trusts**

**29A.**—(1) The Department may by order dissolve a trust to which this Article applies.

(2) This Article applies to—

- (a) any trust constituted by a scheme under section 27(2) of the Northern Ireland Land Act 1925 (c. 34) (trusts for the maintenance of watercourses or other works);
- (b) any trust in relation to which there has been a transfer under Article 29;
- (c) any other trust constituted—
  - (i) for the purpose of draining any land; or
  - (ii) for the purpose of maintaining or improving the drainage of any land,

of which the Department is a trustee.

- (3) Before making an order under paragraph (1), the Department shall publish—
- (a) in the Belfast Gazette; and
  - (b) in at least two newspapers circulating in the area to which the trust relates,
- a notice of intention to dissolve the trust.
- (4) The notice of intention to dissolve the trust shall—
- (a) identify the trust;
  - (b) give details of any provision proposed to be included by virtue of paragraph (6)(a) in the order dissolving the trust;
  - (c) give notice that any person, who considers that the proposed dissolution of the trust would subject him to a significant detriment, may object to the Department in writing in relation to that dissolution, at the address specified in the notice, within 28 days of the publication of the notice in the Gazette.
- (5) After considering any objections received in accordance with paragraph(4)(c), the Department may make an order under paragraph (1) unless it is satisfied that the dissolution of the trust in accordance with the order would subject any person to a significant detriment.
- (6) An order under paragraph (1)—
- (a) shall provide for the application of any property forming part of the trust;
  - (b) shall provide for all rights, duties, obligations and liabilities arising under the trust to be extinguished; and
  - (c) may contain such other incidental or supplementary provisions as the Department thinks necessary or expedient in connection with the dissolution of the trust.
- (7) An order under paragraph (1) has effect in relation to a trust notwithstanding anything in any statutory provision or in any scheme, court order, deed or other instrument constituting the trust.
- (8) An order made under paragraph (1) shall be subject to negative resolution.]]

**F1** 2005 NI 8

**F2** 2005 NI 8

### **Drainage schemes extending outside Northern Ireland**

**30.**—(1) The Ministry may co-operate with any persons outside Northern Ireland (in this Article referred to as an “external authority”) in the preparation and carrying out of schemes for the drainage of any land which is situate partly inside and partly outside Northern Ireland, or for the improvement or alteration of any watercourse so situate, and for the use, control or maintenance of works which are provided in pursuance of any such scheme, or which enable drainage to be controlled or improved.

(2) For the purposes of any such scheme, the Ministry, with the approval of the Ministry of Finance, may enter into and carry into effect any arrangement or agreement with an external authority—

- (a) for the carrying out of any work or the doing of any act or thing specified in the arrangement or agreement, or for the settlement of claims for compensation for loss or injury arising therefrom (including the investigation of such claims and, where necessary, the assessment and payment of compensation, the carrying out of remedial works in settlement or partial settlement and the securing in advance of releases from claims)—
  - (i) by the Ministry or by the external authority, or by the Ministry and the external authority acting jointly;

- (ii) by the external authority as agent for and on behalf of the Ministry;
- (iii) by the Ministry as agent for and on behalf of the external authority;
- (b) for making any resources (including plant, machinery, equipment, accommodation and [<sup>F3</sup>, with the approval of the Department of the Civil Service,] services of staff) of one party to the arrangement or agreement available to the other;

but nothing in the arrangement or agreement shall diminish in any respect any responsibility of any party for any act or thing done by it or on its behalf.

- (3) A scheme under paragraph (1) shall specify—
  - (a) the extent of the works to be carried out; and
  - (b) the manner in which, and the persons by whom and in what proportion, the cost of carrying out the scheme and of maintaining or operating anything constructed thereunder are to be borne.

(4) For the purposes of carrying into effect in Northern Ireland any scheme under paragraph (1), the Ministry or any agent authorised by it to act on its behalf may carry out any such works as are referred to in Article 21(3)( a) to ( d), and the Ministry may, without prejudice to any other provision of this Article, exercise any power exercisable by it under any other provision of this Order.

- (5) Nothing in this Article or in any scheme, arrangement or agreement made thereunder shall—
  - (a) prejudice the application of any provision of this Order in relation to any watercourse, or part of a watercourse, which is in Northern Ireland; or
  - (b) prevent the Ministry from preparing and carrying into effect any drainage scheme under this Order, or exercising any other function under this Order, in relation to so much of any watercourse as is in Northern Ireland;

and so much of any scheme under this Article as relates to a part of any watercourse in Northern Ireland may be treated as a separate scheme for the purposes of any provision of this Order, and Article 42(1) shall apply to any expenses incurred by the Ministry in respect thereof.

**F3** SR 1976/281

### **Noxious weeds**

**31.** Notwithstanding any statutory provision or rule of law to the contrary, the deposit by the Ministry on any land, not the property of the Ministry, of spoil or other material excavated in the course of the carrying out of drainage works or sea defence works shall not render the Ministry subject to any civil or criminal liability in respect of any noxious weeds which may grow on such deposit or on any such land from which material has been excavated.

### **Protection of watercourses**

**32.** The provisions of Schedule 6 shall have effect in relation to the protection of watercourses and to the other matters specified in that Schedule.

### **Control of dams and sluices**

**33.—**(1) Subject to paragraphs (2) and (3), where the Ministry considers that it is necessary or expedient to do so for the purpose of preventing or arresting injury to land, it may, by notice in writing served on the person in control of any dam, require him, during such times and in such manner as may be specified in the notice, to regulate or keep open or closed any sluice forming part of the dam, or otherwise to control the quantity of water in the dam.

(2) In exercising its powers under this Article in relation to any dam or sluice, the Ministry shall have regard to any purpose for which the person in control of the dam, or any other person interested in the water, uses or desires to use the water so controlled, and shall so exercise those powers as to interfere as little as may be practicable with such user.

(3) The Ministry shall not exercise the powers conferred by this Article in relation to any dam or sluice which is vested in or controlled by any other government department, any harbour authority, any district council or<sup>F4</sup> any licence holder within the meaning of Part II of the Electricity (Northern Ireland) Order 1992].

(4) If any notice served by the Ministry as aforesaid with respect to any dam or sluice is not complied with—

- (a) the person on whom it is served shall be guilty of an offence;
- (b) without prejudice to any prosecution for such an offence, the Ministry may, after giving notice in writing to that person, take control of the dam or sluice on such date and for such period as may be specified in the last-mentioned notice; and
- (c) if, during that period, any person controls the dam or operates the sluice without the authority of the Ministry, he shall be guilty of an offence.

(5) Any person guilty of an offence under paragraph (4) shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding<sup>F5</sup> level 3 on the standard scale], or to both.

(6) In addition to the duties imposed upon persons in control of dams or sluices by the foregoing provisions of this Article, any such person shall control any dam, or operate any sluice forming part of a dam, over which he has control so that as little damage or injury as is practicable, having regard to the purpose for which the dam was constructed, shall be caused to land through flooding, and, in the event of any such person failing so to control any dam or operate any sluice, compensation for damage or injury suffered by any person by reason of such failure shall, without prejudice to any other remedy, be recoverable summarily by the person so damaged or injured.

**F4** 1992 NI 1

**F5** 1984 NI 3

### **Power of Ministry to execute experimental, etc., work**

**34.** Where the Ministry considers it appropriate, it may—

- (a) carry out any experimental, research or development work either in relation to drainage generally or in relation to any particular problem relating to drainage;
- (b) enter into a contract or arrangement with any person for the carrying out of any such work;
- (c) make grants by way of contribution towards the cost of any such work undertaken by any person.

### **[F1]<sup>F6</sup>Power of Department to charge for exercise of functions**

**34A.**—(1) The Department may by regulations make provision for the payment of charges to the Department in respect of the exercise of its functions under this Order.

(2) Regulations made under paragraph (1) may—

- (a) prescribe the functions in respect of which charges are payable;
- (b) prescribe the persons liable to pay such charges;
- (c) prescribe the amount of the charges or the manner in which charges are to be determined;

- (d) prescribe the times at which, and method by which, charges are payable;
  - (e) make provision for the review by the Lands Tribunal of any charge which the Department proposes to make under the regulations, including provision for the powers of the Lands Tribunal on any such review;
  - (f) provide for the remission or reduction of charges in prescribed circumstances;
  - (g) provide for the recovery by the Department of charges due to it;
  - (h) provide for the payment of interest if charges are not paid on time;
  - (i) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.
- (3) Any regulations made by the Department under this Article shall be subject to negative resolution.]]

F1 2005 NI 8  
F6 2005 NI 8

### Provisions as to recovery of expenses

**35.**—(1) Where, by virtue of any provision of this Order, the Ministry is authorised to recover, or any person is required to pay to the Ministry, the cost of any work or any sum of money—

- (a) the Ministry may, by certificate under the hand of the secretary or of an assistant secretary of the Ministry, certify the amount of such cost or that sum; and
- (b) the amount so certified shall be recoverable by the Ministry summarily as a debt due to it.

[<sup>F7</sup>(1A) Paragraph (1) shall not apply to any sum of money which the Department is authorised to recover by virtue of Article 34A.]

(2) A certificate under paragraph (1) shall be *prima facie* evidence of the amount stated therein.

F7 2005 NI 8

### Miscellaneous offences

**36.**—(1) Any person who—

- (a) wilfully obstructs any officer or servant of the Ministry in the exercise of any functions of the Ministry under this Order, or any person engaged in the construction of any works in pursuance thereof; or
- [<sup>F8</sup>(b) removes any works (whether constructed or in course of construction) which are vested in the Department for the purposes of this Order; or]
- (c) removes, ...<sup>F9</sup> any pegs, poles or marks placed or made by any authorised person for the purpose of, or in connection with, the construction of any such works; or
- (d) places any solid matter in, or causes or permits any solid matter to fall or pass into, any watercourse in respect of which any works are about to be, or are in course of being, constructed by the Ministry<sup>F8</sup>. . . so as to cause any obstruction, hindrance or delay to such construction; or
- (e) obstructs the flow of water to, through or from any works<sup>F8</sup> vested in the Department for the purposes of this Order] in such manner as to prevent or hinder the efficient operation of those works, or to cause flooding of such works or any land drained thereby;

shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding<sup>F10</sup> level 3 on the standard scale], or to both, and, in the case of a continuing offence, to an additional fine not exceeding £5 for every day during which the offence continues.

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| <b>F8</b>  | 1984 NI 2 |
| <b>F9</b>  | 1977 NI 4 |
| <b>F10</b> | 1984 NI 3 |

### **Entry on and inspection of land, etc.**

**37.** For the purposes of enabling the Ministry to exercise any function conferred on it by this Order, or otherwise for the purpose of carrying the provisions of this Order into effect, any person authorised in that behalf by the Ministry may, on production (if so required) of his authority, enter on and inspect any land and make any survey in connection therewith.

### **Limitation of liability for flooding, etc.**

**38.—**(1) Subject to paragraph (2), nothing contained in this Order shall be construed so as to render the Ministry liable for any damage which may happen to any land or other property through or by the accidental overflowing of any watercourse or through or by the breaking, collapse or failure of any bank, embankment, dam, sluice or other work which has been constructed, maintained, repaired or regulated by the Ministry under the provisions of this Order.

(2) Where any damage mentioned in paragraph (1) has been caused by the negligent construction or repair of any embankment, dam or sluice so mentioned, any person who suffers loss from that damage may obtain reasonable compensation therefor from the Ministry, and, in assessing compensation under this paragraph, regard shall be had to any remedial works which the Ministry may have carried out, or agreed to carry out, in order to make good the damage.

### **Protection for officers of Ministry**

**39.** An action shall not lie at law or in equity against the Ministry or any of its officers or servants in respect of any act, matter or thing in respect of which compensation is payable, or protection is provided, by virtue of any provision of this Order.

### **Protection of fisheries**

**40.—**(1) Subject to paragraph (8), where the Ministry, in the exercise of its powers under this Order, carries out any work in relation to a watercourse, the Ministry shall provide such protection for any fishery that may be affected by the carrying out of the work or operations incidental thereto as may be agreed on between the Ministry and the owner of the fishery, or in default of agreement as may be determined by an arbitrator to be agreed on by the parties, or, in default of such agreement, to be appointed by the Lord Chief Justice, by all or any of the following means—

- (a) the construction and maintenance in the watercourse of a fish pass for the free and uninterrupted passage of fish both up and down the watercourse;
- (b) the provision of a hatchery, pool or weir;
- (c) the provision of groynes;
- (d) the replacement of stones and gravel;
- (e) the replanting of trees;

- (f) defraying any reasonable additional expenses incurred by the owner of the fishery by reason of the carrying out of any such work or operations.
- (2) The Ministry may pay such sum as may be agreed on to defray the expenses which may be incurred by the owner of any fishery in providing any protection for such fishery which the Ministry may be required to make under paragraph (1).
- (3) In lieu of proceeding under the foregoing provisions of this Article, the Ministry and the owner of any fishery to which those provisions are applicable may enter into and carry into effect an agreement for the purchase or taking on lease by the Ministry of such fishery, or any fishing rights therein, at such price or rent as may, in default of agreement, be determined by an arbitrator to be agreed on or appointed in like manner as for the purposes of paragraph (1).
- Para. (4) rep. by 1996 c. 23*
- (5) Where the Ministry, in exercise of its powers under this Order, widens or diverts any part of a watercourse of which the bed and soil is vested in the owner or owners of a several fishery in the watercourse, the bed and soil of the watercourse, as so widened or diverted, shall vest by virtue of this Order in that owner or those owners in like manner and for the same purposes as the bed and soil first-mentioned were vested in that owner or those owners.
- (6) In assessing the amount of any compensation payable by the Ministry under Article 17 or 18 with respect to a fishery, regard shall be had to any protection provided for the fishery or any sums paid by the Ministry under this Article.
- (7) In this Article, “owner” includes any lessee or fishery conservators, or any body charged by any statutory provision with the conservation, protection or improvement of any fishery, or the management of any property in connection with such fishery.
- (8) This Article shall not apply to any work carried out by the Ministry in pursuance of an agreement under Article 25.

#### **[<sup>F11</sup>Protection for water and sewerage undertakers**

**40A.**—(1) Nothing in this Order shall confer power on any person, except with the consent of a water or sewerage undertaker, to do anything which, whether directly or indirectly, so interferes or will so interfere—

- (a) with works or property vested in or under the control of that undertaker; or
- (b) with the use of any such works or property,

as to affect injuriously those works or that property or the carrying out of the functions of that undertaker.

(2) A consent for the purposes of sub-paragraph (1) may be given subject to reasonable conditions but shall not be unreasonably withheld.

(3) Any dispute—

- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1);
- (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
- (c) as to whether any condition subject to which any such consent has been given was reasonable,

may be referred by either party to the dispute to the Commission.]

**F11** Art. 40A inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 10(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

### Special provisions relating to Erne drainage and navigation

- 41.** The provisions of Schedule 7 shall have effect in relation to—
- (a) the drainage of Upper and Lower Lough Erne and of the portion of the River Erne which is in Northern Ireland;
  - (b) the dredging and maintenance of channels in those loughs and that river, and the tributaries thereof;
  - (c) the use by vessels of those loughs and that river, and the tributaries thereof; and
  - (d) the other matters specified in that Schedule.

### Financial provisions

**42.—**(1) Any expenses incurred by the Ministry under this Order, and any contributions or grants paid by the Ministry under this Order, not being expenses or sums chargeable or charged to the Erne Development Account under paragraph 11(3) of Schedule 7, may be defrayed out of money hereafter appropriated for the purpose of meeting such expenditure.

(2) Any sum received by the Ministry under Article 17(3), 25, 27<sup>F12</sup>, 28 or 34A], or under paragraph 7 of Schedule 5 or paragraph 5, 6 or 8 of Schedule 6<sup>F13</sup>. . . , shall be appropriated in aid of the expenses incurred by the Ministry under this Order or in the payment of any contributions or grants under this Order.

**F12** [2005 NI 8](#)

**F13** [1999 NI 6](#)

*Art.43, with Schedule 8, effects amendments*

### Transitional and saving provisions

**44.** The transitional and saving provisions specified in Schedule 9 shall have effect for the purposes of this Order.

*Art.45, with Schedule 10, effects repeals*



**Changes to legislation:**

There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, PART VI.