

## SCHEDULES

### SCHEDULE 5

Articles 8(4), 23(1) and (4) and 24.

#### DUTIES OF OCCUPIERS WITH RESPECT TO UNDESIGNATED WATERCOURSES, ETC.

**1.** Subject to paragraphs 2 and 3, the occupier of any land on or through which an undesignated watercourse runs, or of which such a watercourse forms a boundary, shall so scour out and cleanse and maintain the portion of the watercourse running on or through, or bounding, the land occupied by him that the efficiency of the watercourse, for the due discharge of any water that may flow into it, is not impaired by reason of any act or omission of his or of anyone acting under his authority.

**2.—(1)** Where an undesignated watercourse forms a boundary between land in the occupation of different persons, the liability of each person under paragraph 1 shall extend only so far as the middle line of the watercourse.

(2) Sub-paragraph (1) shall apply whether the bed and soil of the watercourse is owned by one only of the persons mentioned in that sub-paragraph, or partly by the one and partly by the other, or by some other person, or partly by that other person and partly by one or both of the persons mentioned in that sub-paragraph.

**3.** This Schedule shall not be construed as imposing any obligation on an occupier of land in respect of an undesignated watercourse that does not perform any function connected with the drainage of that land, but where—

- (a) any other person is—
  - (i) required by paragraph 2 to scour out, cleanse and maintain any part of a watercourse mentioned in that paragraph; or
  - (ii) prejudicially affected by the inefficiency of such a watercourse; and
- (b) the Ministry, by notice in writing served on that occupier, requires him to permit that other person to enter on the land and to carry out, in relation to the watercourse, such works as may be specified in the notice;

the occupier shall comply with the requirement; and an occupier may, after such compliance, recover from the person concerned the amount of any damage suffered as a result of his compliance.

**4.** The Ministry may at any time, by a notice in writing served on the occupier of any land, require him to scour out and cleanse, or, for the purpose of maintenance, to carry out any work specified in the notice in relation to, so much of an undesignated watercourse as runs on or through, or bounds, land occupied by him; and, subject to the provisions of this Schedule, the occupier shall, within such time as may be specified in the notice, comply with the requirements of the notice.

**5.** Any notice under paragraph 4 shall—

- (a) specify in reasonable detail the works that the Ministry considers necessary for the purpose of complying with the requirements of the notice; and
- (b) state the right of the person on whom the notice is served to send to the Ministry an objection to the notice.

**6.** When a notice under paragraph 4 has been served on a person, the following provisions shall have effect—

**Changes to legislation:** There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, SCHEDULE 5. (See end of Document for details)

- (a) that person (in this paragraph referred to as “the objector”) may, within twenty-one days after the service of the notice on him, send to the Ministry an objection in writing to the notice;
- (b) every objection shall contain a full statement of the grounds on which the objection is based;
- (c) the Ministry shall consider every such objection, and shall either—
  - (i) notify the objector that the Ministry has withdrawn the notice; or
  - (ii) serve upon him a further notice—
    - (A) setting out the grounds for the rejection, in whole or in part, of the objection;
    - (B) requiring him to carry out the works specified therein (being either the works required by the notice under paragraph 4 or such variation of those works as the Ministry considers fit, having regard to the objection) within such time as may be specified in the notice; and
    - (C) stating his right of appeal under sub-paragraph ( d);
- (d) if an objector on whom a notice has been served under sub-paragraph ( c)(ii) gives to the Ministry, within twenty-one days of that service, a written statement of his intention to appeal and specifies in that statement the ground on which the appeal is to be brought, the objector may appeal to the county court <sup>F1</sup> ..., on any ground specified in the objection mentioned in sub-paragraph ( a), and the court, on the hearing of the appeal, may confirm or annul the notice, or vary any requirement thereof.

**F1** Words in Sch. 5 para. 6(d) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 68](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)](#) (with [art. 3](#))

**7.** If, within the specified time, an occupier of land has failed to comply with a notice under paragraph 4 or 6( c)(ii)—

- (a) the Ministry may take such action and execute all such work as the Ministry considers necessary for carrying out anything required by the notice, and, for the purposes of this paragraph, may do anything that it is empowered to do by Article 14 or 21 to do in the carrying out of a drainage scheme or by way of repair and maintenance of a designated watercourse; and
- (b) the Ministry shall recover from the occupier the expenses incurred by it in carrying out the work mentioned in sub-paragraph ( a).

**8.** In paragraphs 7 and 9, “specified time” means—

- (a) in relation to a notice under paragraph 4, where objections are not sent under paragraph 6( a), such time as is specified in the notice;
- (b) in relation to a notice under paragraph 6( c)(ii), where the person on whom it is served does not appeal to the county court against the notice or where, having so appealed, he does not proceed to have his appeal duly heard and determined by the court, such time as is specified in the notice, or such longer time as the Ministry may specify in writing;
- (c) in relation to a notice as respects which an appeal has been duly heard and determined by the county court, such time after the confirmation or variation of the notice as the court directs.

**9.** If a person on whom a notice has been served under this Schedule fails to comply with the notice, then—

- (a) in the case of a notice under paragraph 3, on the expiration of any time stated in the notice; or

(b) in the case of a notice under paragraph 4 or 6( c)(ii), on the expiration of the specified time; unless, before any such expiration, the notice has been withdrawn by the Ministry, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F2</sup> level 3 on the standard scale] and to an additional fine not exceeding £5 for every day during which the offence continues.

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**10.** Nothing in this Schedule shall affect the right of every person to recover under the terms of any covenant, lease, trust or contract the amount of any expenses incurred by him under the foregoing provisions of this Schedule, or recovered from him by the Ministry.

**11.** Where a person has, in order to comply with the requirements of this Schedule, scoured out and cleansed any watercourse, it shall, in any proceedings taken against him under any statutory provision relating to fisheries in respect of any injury or disturbance thereby caused to any spawn, smolts or fry of any kind of fish, or to any spawning bed, bank or shallow, be a good defence to him to prove—

- (a) if the watercourse was scoured out and cleansed in accordance with a notice under paragraph 4 or 6( c)(ii) and the notice included directions for the purpose of avoiding such injury or disturbance, that those directions were complied with; or
- (b) in any other case, that such injury or disturbance was unavoidable.

**12.** In this Schedule—

“construction” includes any embankment, wall, valve or sluice connected with a watercourse, and also includes any fencing or other erection or thing interfering, or likely to interfere, with the free flow of the watercourse;

“scour out and cleanse” includes the cutting, topping or removal of any tree, the removal of any obstruction, construction, accretion, silt, deposit or fall, where such removal is necessary to restore the normal depth or width of a watercourse, and the repair and protection of any bank or construction;

“undesignated watercourse” means a watercourse that is not a designated watercourse;

“watercourse” includes a drain or sewer (not being a drain or sewer vested in <sup>F3</sup>a sewerage undertaker]), where the Ministry is satisfied that the source of contamination has been eliminated from the drain or sewer, but, save as aforesaid, has the meaning assigned to it by Article 2(2).

**F3** Words in Sch. 5 para. 12 substituted (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(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**Changes to legislation:**

There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, SCHEDULE 5.