

## SCHEDULES

### SCHEDULE 1

Article 3(1) to (3).

#### CONSTITUTION AND PROCEEDINGS OF THE DRAINAGE COUNCIL

1. The Drainage Council shall consist of eighteen persons appointed by the Minister of whom—
  - (a) ten shall be appointed in accordance with paragraph 2 and shall represent district councils;
  - (b) one shall be an officer of the Ministry, who shall represent drainage and navigational interests;
  - (c) <sup>F1</sup> one shall be an officer of the Ministry of Finance nominated by the Minister of Finance;
  - (d) one shall represent agricultural interests;
  - (e) one shall represent fishery interests;
  - (f) two shall be appointed after consultation with the Minister of Commerce, one to represent industrial interests and one to represent tourist interests;
  - (g) one shall be appointed after consultation with the Minister of Development<sup>F2</sup> and shall represent conservation interests;
  - (h) one shall be specially qualified to advise on drainage matters.

**F1** functions transf. by 1982 NI 6

**F2** Now Head of D/Env., SRO (NI) 1973/504; 1976 NI 6

2. Where a body which the Minister is satisfied represents the interests of district councils comes into being, the persons to be appointed under paragraph 1( a) shall be appointed after consultation with that body and, until then, those persons shall be appointed after consultation with persons who, in his opinion, are representative of district councils.

3.—(1) The members of the Council shall be appointed in the year 1973 and in every fourth year thereafter and shall be appointed as soon as possible after the date on which a local general election is held in that year under section 11(2) of the Electoral Law Act (Northern Ireland) 1962, and—

- (a) persons appointed to the Council shall become members of the Council from such date as shall be specified in their appointment;
- (b) subject to sub-paragraph (2), the appointments shall cease to have effect after the day preceding that from which the next subsequent appointments made under this paragraph are effective.

(2) Where a person appointed under paragraph 1( a) is a member of a district council at the date of his appointment to the Drainage Council, he shall, if he ceases to be a member of the district council, cease to be a member of the Drainage Council, but no such cessation shall take effect until that person's successor is appointed.

(3) A member whose term of office has expired may be re-appointed.

4. The chairman of the Drainage Council shall be such one of the members thereof as the Council may elect.

**Status:** Point in time view as at 01/04/2007.

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5. A casual vacancy occurring in the membership of the Drainage Council shall be filled by a person appointed by the Minister, being a person of the category and appointed in the manner specified in such one of sub-paragraph (a) to (h) of paragraph 1 to which the member being replaced belonged, and that person shall hold office for the residue of the term of office of that member.

6. A member of the Drainage Council may resign his membership by giving notice in writing to the Minister.

7. The quorum of the Drainage Council shall be five and, subject thereto, the Council may, with the approval of the Ministry, make rules regulating the procedure of the Council.

8. The Ministry, after consultation with the Ministry of Finance<sup>F3</sup>, shall appoint a fit and proper person to be secretary of the Drainage Council and may assign for service under the Council such officers, clerks and servants as the Ministry, with the approval of the Ministry of Finance<sup>F3</sup>, may consider necessary.

<b>F3</b> Now D/CS, SR 1976/281
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## SCHEDULE 2

Article 7(a).

### DESCRIPTION OF DRAINAGE WORKS, ETC.

1. Clearing of watercourses, whether natural or artificial, including—
  - (a) the removal of obstructions, including fallen or ingrowing trees, refuse or other material;
  - (b) the removal of shoals and cesses;
  - (c) the shaping, trimming and revetting of banks.
2. Works in connection with watercourses, whether natural or artificial, and their feeders, including—
  - (a) the cleansing, widening, deepening, covering or otherwise improving of existing watercourses;
  - (b) the cutting of new drains where required;
  - (c) the raising and repairing of existing embankments, and the construction of new embankments;
  - (d) the sinking of pumping sumps;
  - (e) the construction and repairing of sluices or valves;
  - (f) the removal and disposal of old spoil banks.
3. Works in connection with agricultural land, that is to say—
  - (a) the draining of farm roads and tracks;
  - (b) the clearing of watercourses on agricultural land in cases where, after the service of a notice under Schedule 5, the owner or occupier of the land fails or neglects to scour out and cleanse a watercourse.
4. New construction, including—
  - (a) the diversion of watercourses, whether natural or artificial, and their feeders;
  - (b) the cutting through of “U” or “S” bends so as to straighten and shorten the channel;
  - (c) the construction of new watercourses, and of new outfall channels to existing main drains and their feeders;

- (d) the reconstruction and improvement of bridges, locks, overflows, weirs, hatches and outfalls necessitating structural alterations;
  - (e) the reconstruction of damaged or inadequate bridges and culverts, and the substitution of new bridges and culverts therefor;
  - (f) the building of embankments and walls for the prevention of flooding or erosion;
  - (g) the formation of cattle water-places, sheep-dipping and other conveniences, the provision of which is calculated to minimise the risk of future damage to improved watercourses.
5. Removal or alteration of artificial objects such as weirs, sluices, dams, sea defence works, etc.
6. Sea defence works.
7. Such other works or classes of works as may be considered by the Ministry to be analogous or ancillary to any classes of works described in this Schedule.

[<sup>F4</sup>SCHEDULE 2A

Article 2(2)

**F4** Schs. 2A-2C substituted (20.3.2006) by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), regs. 1, 21, Sch. 1

## PART I

### INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENT

1. Description of the drainage works including in particular—
- (a) a description of the physical characteristics of the drainage works and the land use requirements during the construction and operational phases;
  - (b) a description of the main characteristics of the production processes, for instance, the nature and quantity of the materials used;
  - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc.) resulting from the operation of the proposed drainage works.
2. An outline of the main alternatives studied by the Department and an indication of the main reasons for its choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed drainage works, including in particular, population, fauna, flora, soil, water, air, climatic factors, material assets including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed drainage works on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the drainage works, resulting from—
- (a) the existence of the drainage works;
  - (b) the use of natural resources;
  - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

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and the Department's description of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 above.
7. An indication of any difficulties (technical difficulties or lack of know-how) encountered by the Department in compiling the required information.

## PART II

1. A description of the drainage works comprising information on the site, design and size of the works.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the works are likely to have on the environment.
4. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4.]

[<sup>F5</sup>SCHEDULE 2B

Articles 12A(1) and (10)

SELECTION CRITERIA REFERRED TO IN ARTICLE 4.3 OF  
COUNCIL DIRECTIVE 85/337/EEC<sup>F6</sup> AMENDED BY COUNCIL  
DIRECTIVE 97/11/EC<sup>F7</sup> AND COUNCIL DIRECTIVE 2003/35/EC<sup>F8</sup>

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|-----------|---|
| <b>F5</b> | Schs. 2A-2C substituted (20.3.2006) by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), reg. 21, Sch. 1 |
| <b>F6</b> | O.J. No. L175, 5.7.85, p. 40  |
| <b>F7</b> | O.J. No. L73, 14.3.97, p. 5   |
| <b>F8</b> | O.J. No. L156, 25.6.2003, p. 17   |

### Characteristics of drainage works

1. The characteristics of drainage works must be considered having regard, in particular, to—
  - (a) the size of the works;
  - (b) their cumulative effects with other works;
  - (c) the use of natural resources;
  - (d) the production of waste;
  - (e) pollution and nuisances;
  - (f) the risk of accidents, having regard in particular to substances or technologies used.

## Location of drainage works

2. The environmental sensitivity of geographical areas likely to be affected by drainage works must be considered, having regard in particular, to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
  - (i) wetlands;
  - (ii) coastal zones;
  - (iii) mountain and forest areas;
  - (iv) nature reserves and parks;
  - (v) areas classified or protected under member States' legislation; special protection areas designated by member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds <sup>F9</sup>, as amended and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora <sup>F10</sup>, as amended;
  - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
  - (vii) densely populated areas;
  - (viii) landscapes of historical, cultural or archaeological significance.

**F9** O.J. No. L103, 25.4.79, p. 1

**F10** O.J. No. L206, 22.7.92, p. 7

## Characteristics of the potential impact

3. The potential significant effects of drainage works must be considered in relation to the criteria set out under paragraphs 1 and 2 above, and having regard, in particular, to—

- (a) the extent of the impact of the works (geographical area and size of the affected population);
- (b) the transfrontier nature of that impact;
- (c) the magnitude and complexity of that impact;
- (d) the probability of that impact; and
- (e) the duration, frequency and reversibility of that impact.]

[<sup>F11</sup>SCHEDULE 2C

Article 13(3)(d)

## ENVIRONMENTAL FACTORS TO BE TAKEN INTO ACCOUNT

**F11** Schs. 2A-2C substituted (20.3.2006) by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), reg. 21, Sch. 1

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Account shall be taken in particular of the direct and indirect effects of the drainage works on the following factors—

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between the factors mentioned in heads (a) to (c).]

### SCHEDULE 3 <sup>F12</sup>

Articles 10(3) and 16(3).

#### MODIFICATION OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 10

**F12** 1948 c.25 (NI); 1950 c.11 (NI); 1954 c.1 (NI); 1955 c.15 (NI); 1965 c.9 (NI)

1. References to the Ministry or to the Council shall be construed as references to the Ministry within the meaning of this Order.
2. References to the said Schedule 6 shall be construed as references to that Schedule as modified by this Schedule.
3. Paragraph 1 shall be omitted.
4. In paragraph (2)—
  - (a) for the words from the beginning to “directs,” there shall be substituted the words “ Where the Ministry proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so, and such notice ”; and
  - (b) in sub-paragraph ( c ), for the words “as may be prescribed” there shall be substituted the words “ as the Ministry considers fit ”.
5. In paragraph 3(1)(ii), for the word “refuse” there shall be substituted the words “ decide not ”.
6. In paragraph 4, the words from “and may provide” to the end of the paragraph shall be omitted.
7. In paragraph 5—
  - (a) in sub-paragraph (1)( a ), the words “in the prescribed form and manner” shall be omitted;
  - (b) in sub-paragraph (1)( b ), the two references to the said Act of 1972 shall be construed as references to this Order;
  - (c) in sub-paragraph 1( d ), the words “in the prescribed form” shall be omitted; and
  - (d) in sub-paragraph (2), for the words “as may be prescribed” there shall be substituted the words “ as the Ministry considers fit ”.
8. In paragraph 6(2), for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” there shall be substituted the words “ Consolidated Fund ” and for the words “out of the Compensation Fund” there shall be substituted the words “ made by the Ministry ”.
9. In paragraph 11(3), the words “in the prescribed form” shall be omitted.
10. In paragraph 12—
  - (a) in sub-paragraph (1), the words “such” and “as may be prescribed” shall be omitted;

- (b) in sub-paragraph (2), for the words from “clerk” to “directs” there shall be substituted the words “Ministry as correct, and shall publish”.
- 11. In paragraph 14(1), the words “in the prescribed form” shall be omitted.
- 12. In paragraph 15(1), for the words “in the prescribed form” there shall be substituted the words “in such form as the Ministry may approve”.
- 13. Paragraph 19 shall be omitted.
- 14. In paragraph 20, sub-paragraph (2) shall be omitted.

#### SCHEDULE 4

Article 22(2) and paragraph 13(2) of  
Schedule 7.

#### PROCEDURE FOR MAKING BYE-LAWS

1. Before making any bye-laws under Article 22, the Ministry shall prepare a draft of the bye-laws and publish in the Belfast Gazette, and at least once in two successive weeks in one or more newspapers, a notice—
  - (a) stating the general effect of the bye-laws;
  - (b) specifying a place where a copy of the draft bye-laws may be inspected free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice in a newspaper;
  - (c) stating that any person may, within that period, by notice in writing to the Ministry, object to the making of the bye-laws.
2. The Ministry shall, at the request of any person, furnish him with a copy of the draft bye-laws on payment of such reasonable sum as it may determine.
3. The Ministry may make the bye-laws in the terms of the draft or in those terms altered in such manner as it considers fit; but, where the Ministry considers that any persons may be adversely affected by any significant alterations, the Ministry shall publish such notices as appear to it to be necessary for informing those persons of the effect of the alterations.
4. If, before the end of the period of twenty-eight days mentioned in paragraph 1 or, where the Ministry has published a notice under paragraph 3, within such further time as the Ministry may consider reasonable, notice in writing of an objection is received by the Ministry from any person appearing to it to be a person who may be adversely affected by the bye-laws as prepared in draft or as proposed to be altered, the Ministry, before making the bye-laws, shall, unless the objections are met or withdrawn or it is satisfied that they are solely of a frivolous or vexatious nature, either—
  - (a) cause an independent inquiry to be held; or
  - (b) afford to the objector an opportunity of appearing before, and being heard by an independent person appointed by the Ministry for the purpose.

#### 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

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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—

- (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 for the division in which the land, or any part thereof, occupied by him, being the land on or through which the watercourse runs, or to which it forms a boundary, is situate, 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.

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>F13</sup> level 3 on the standard scale] and to an additional fine not exceeding £5 for every day during which the offence continues.

**F13** 1984 NI 3

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

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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;

“undesigned 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>F14</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).

**F14** 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)

## SCHEDULE 6

Article 32.

### PROTECTION OF WATERCOURSES

**1.** A person shall not—

- (a) place any solid matter in any watercourse or, save as permitted by any other statutory provision, cause, allow or suffer the discharge, flow or fall into any watercourse of any matter, whether solid or liquid, likely to render that watercourse, or any other watercourse, less effective for drainage purposes; or
- (b) do any act likely to impair the efficiency of any sea defences or sea defence works; or
- (c) subject to paragraphs 2 to 4, construct or reconstruct a bridge in or over any watercourse, or alter the waterway of any such bridge, except with the consent of the Ministry; or
- (d) so use any vehicle, machinery or implement as to break down or damage the bank or embankment of any watercourse or sea defences; or
- (e) subject to paragraphs 3 and 4, erect or place any structure in, over or under any watercourse, or carry out any work of alteration or repair on any structure in, over or under any watercourse, if the work is likely to—
  - (i) affect the flow of water in the watercourse; or
  - (ii) impede any drainage work; or
  - (iii) prevent or impede the passage of fish; or

- (iv) interfere with, or in any way hinder, the maintenance of the watercourse; except with the consent in writing of the Ministry and, in any case where the Ministry so directs, in accordance with plans, sections and specifications approved by the Ministry; or
- (f) erect or alter any structure designed to contain or divert the waters of<sup>F15</sup> any designated watercourse], except<sup>F16</sup> in accordance with regulations under Article 20 of the Water (Northern Ireland) Order 1999 or] with the approval in writing of, and in accordance with plans, sections and specifications approved by, the Ministry; or
- (g) suffer any structure which is or has been erected, placed, raised, altered or repaired in contravention of any provision of sub-paragraph ( c), ( e) or ( f), or of section 30(1)( a) or 31(1) of the Drainage Act (Northern Ireland) 1947 or section 10(1) or (2) of the Drainage Act (Northern Ireland) 1964, to remain, unless the Ministry is satisfied that, if an application for the Ministry's consent or approval with respect to the structure had been made under the provision in question, such consent or approval would have been forthcoming, and gives its consent in writing to the structure remaining.

**F15** 1984 NI 2

**F16** 1999 NI 6

2. The construction, reconstruction or alteration of a bridge by an authority, within the meaning of Article 15(5), in accordance with plans, sections and specifications approved by the Ministry of Development<sup>F17</sup> shall, for the purposes of paragraph 1( c), be deemed to have been done with the consent of the Ministry.

**F17** Now D/Env., SRO (NI) 1973/504

3. A consent or approval required under paragraph 1 shall not be unreasonably withheld, and—
- (a) any such consent may be given subject to any reasonable condition as to the time at which, and the manner in which, the work is to be carried out; and
- (b) any such consent or approval shall, if neither given nor refused within three months after the application therefor is made, be deemed to have been given.

4. If any question arises under this Schedule as to whether the consent of the Ministry is unreasonably withheld or whether any condition imposed under paragraph 3( a) is reasonable, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

5. If any person contravenes paragraph 1, then, without prejudice to the following provisions of this Schedule—

- (a) that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F18</sup> level 3 on the standard scale] and, in the case of a continuing offence, to an additional fine not exceeding £5 for every day during which the offence continues; and
- (b) the Ministry may remove, alter or pull down any work in relation to which any contravention is or has been committed, and may recover from that person the expenses incurred in doing so.

**F18** 1984 NI 3

6. If, in contravention of paragraph 1—

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- (a) any solid matter is placed; or
- (b) the discharge, flow or fall of any matter, whether solid or liquid, is caused, allowed or suffered; or
- (c) any structure is erected, placed, altered, repaired or suffered to remain;

it shall be deemed to be a nuisance and, without prejudice to any other remedy, shall be liable to be dealt with summarily in the manner provided by the following provisions—

- (i) the Ministry may serve on that person a notice requiring him to abate the nuisance within a time to be specified in the notice, and, if he makes default in doing so, the Ministry may cause a complaint relating to the nuisance to be made before a justice of the peace, and the justice shall thereupon issue a summons requiring that person to appear before a court of summary jurisdiction;
- (ii) if the court is satisfied that, with respect to that solid matter, discharge or structure, that person has contravened paragraph 1, the court shall make an order requiring him to abate the nuisance within a time specified in the order, and may by order—
  - (A) impose on him a penalty<sup>F19</sup> not exceeding £1,000 or such other sum as the Department may specify by order subject to affirmative resolution]; and
  - (B) give directions as to the payment of all costs incurred up to the time of the making of the order;
- (iii) if any person does not obey an order under this paragraph to abate a nuisance, he shall, unless he satisfies the court that he used all due diligence to carry out the order, be liable to a penalty not exceeding 5 for every day during which his default continues, and the Ministry may—
  - (A) abate the nuisance; and
  - (B) recover from that person the expenses incurred in doing so.

**F19** 1999 NI 6

7. A person shall not be liable to both a fine under paragraph 5 and a penalty under paragraph 6 in respect of the same contravention.

8.—(1) Without prejudice to paragraphs 5 to 7, the Ministry may, where it is satisfied that the free flow of any water is obstructed or diminished, or the passage of fish is prevented or impeded, by any work done by any person in contravention of paragraph 1( c)—

- (a) alter or remove any such work; and
- (b) recover from that person the expenses incurred in doing so.

(2) Where the banks of any watercourse are damaged from any cause, the Ministry may, without prejudice to any other remedy, repair the banks and may recover the cost thereof from any person responsible for the damage.

9.—(1) The occupier of any land in the vicinity of any watercourse or sea defences shall ensure that the banks or embankments thereof are not broken down or damaged by cattle or other animals grazing or being on that land.

(2) Where, by reason of a contravention of sub-paragraph (1) by any such occupier, any watercourse is, or sea defences are, rendered, or likely to be rendered, less effective for drainage purposes, that occupier shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F20</sup> level 2 on the standard scale].

**F20** 1984 NI 3

**10.**—(1) The Ministry may, if it considers that any tree or structure in the vicinity of any watercourse is in danger of collapsing in such a way as to obstruct the free flow of water in, or injure the banks of, the watercourse, serve a notice in writing on the occupier of the land on which the tree or structure is requiring him, at his own expense and within the time specified in the notice—

- (a) in the case of a tree, to remove it; or
- (b) in the case of a structure, either to remove it or to carry out such repairs to it as are necessary to remove the danger of its collapsing.

(2) If the requirements of the notice mentioned in sub-paragraph (1) are not complied with, the Ministry may enter on the land and remove the tree or structure, and the cost of such removal, and compensation for any damage or injury suffered by any person (including the Ministry) by reason of the collapse of the tree or structure, may, without prejudice to any other remedy, be recovered from the occupier respectively by the Ministry and by any person so damaged or injured.

**11.** The giving of any consent or approval, or the approval of any plan, section or specification, by the Ministry under paragraph 1 shall not affect the liability of any person to comply with the provisions of any statutory provision applicable to any works proposed to be carried out in pursuance of that consent or approval, or in accordance with any such plan, section or specification.

**12.** Nothing in this Schedule shall—

- (a) operate in derogation of any provision having the force of law by which the consent of any government department is required for the erection of a bridge over any watercourse, or by virtue of which any powers are exercisable by any government department in relation to such a bridge; or
- (b) impose any liability on the Ministry in respect of the erection, placing, alteration or repairing of any structure; or
- (c) apply to any works under the control of a harbour authority or conservancy authority, or maintained under any statutory provision;

but, where any work under the control of any authority mentioned in paragraph (c), or of any person exercising powers under any statutory provision, is likely to interfere in any way with the proper functioning or maintenance of, or of the carrying out of any works on, a watercourse, or with the passage of fish, that authority or person shall consult with the Ministry for the purpose of ensuring that, so far as possible, any such interference is avoided.

**13.** In this Schedule—

“bridge” includes a culvert or other like structure in or over a watercourse;

“structure” (without prejudice to the generality of its meaning) includes any building, embankment, wall, bridge, dam, valve, sluice or pipe.

**Status:** Point in time view as at 01/04/2007.  
**Changes to legislation:** There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973. (See end of Document for details)

## SCHEDULE 7

Article 41.

### ERNE DRAINAGE AND NAVIGATION

#### PART I

##### GENERAL PROVISIONS

###### The principal agreement

1. In this Schedule, “the principal agreement” means the agreement made on the 4th September 1950 between the Ministry of Finance and the Electricity Supply Board, Dublin (in this Schedule referred to as “the Board”), but, where any agreement has been made pursuant to paragraph 2, it means the said agreement made on the 4th September 1950 as supplemented or modified by the agreement made pursuant to paragraph 2.

2.—(1) Subject to the provisions of this paragraph, the Ministry may at any time enter into further agreements with the Board (in this paragraph referred to as “supplemental agreements”) for supplementing or modifying the principal agreement.

(2) A supplemental agreement shall not be entered into until it has been laid before each House of Parliament for the statutory period, but, if, during that period, a resolution is passed by either House declaring that the supplemental agreement so laid ought not to be entered into by the Ministry, the Ministry shall not enter into the agreement, but without prejudice to the power to make a new supplemental agreement.

3. For the purposes of carrying the principal agreement into effect, the Ministry may exercise the powers conferred on it under any of the following provisions of this Schedule and all such other powers as may be necessary for, or incidental to, the due performance by the Ministry of its obligations under the principal agreement.

###### Drainage of Upper and Lower Lough Erne

4. The Ministry shall be the drainage authority for the purpose of reducing the flooding caused to land in Northern Ireland by the waters of Upper or Lower Lough Erne (in this Schedule referred to as “the Loughs”) and of the portion of the River Erne which is in Northern Ireland.

###### Works schemes

5.—(1) The Ministry may prepare a scheme or schemes for the purposes of the carrying out of works which the Ministry considers necessary—

- (a) for giving effect to any of the provisions of the principal agreement;
- (b) for reducing the flooding of land around the Loughs.

(2) A scheme prepared under this paragraph shall contain such particulars with regard to such matters and shall be in such form as the Ministry may consider fit and, in particular, and without prejudice to the generality of the foregoing provisions, shall contain such provisions as the Ministry may consider necessary for the implementation of [F21 Article 40(2) of the Water (Northern Ireland) Order 1999] and for the protection of rights or interests affected by the scheme.

(3) The authorised officers, agents and servants of the Ministry may, at all reasonable times, on production (if so required) of their authority, enter on any land and do there all such things as may appear to them to be reasonably necessary or expedient for the purposes of the preparation of a scheme.

(4) Every reference in this Schedule to a scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such scheme.

**F21** 1999 NI 6

**6.**—(1) After the preparation of a scheme, the Ministry shall—

- (a) send a copy of the scheme to such district councils as the Ministry may consider appropriate;
- (b) publish in the Belfast Gazette and such one or more newspapers as it shall consider appropriate a notice stating that the scheme has been prepared and also stating the place or places and times at which, and the period, not being less than twenty-eight days, during which, a copy of the scheme will be available for inspection;
- (c) serve on every person appearing to the Ministry to be the owner, lessee or occupier of any land proposed in the scheme to be acquired or otherwise directly interfered with, a copy of the public notice, together with a statement that the scheme proposes the acquisition of, or interference with, such land; and
- (d) serve on any person appearing to the Ministry to be an owner or lessee of any fishery proposed in the scheme to be interfered with a copy of the public notice, together with a statement informing that person of the proposed interference.

(2) Every notice published under this paragraph shall contain or be accompanied by a statement to the effect that any person who considers that his interests will be prejudicially affected by the scheme may, in the manner and within the time, not being less than twenty-eight days, specified in the statement or notice, send to the Ministry any observations in regard to the scheme which he wishes to make.

(3) A district council to which a copy of a scheme is sent by the Ministry in pursuance of this paragraph—

- (a) shall cause such copy to be exhibited in its principal offices or other convenient place during the period required to be specified in that behalf under sub-paragraph (2) with respect to the scheme, and shall permit such copy to be inspected during normal office hours by any person claiming to be interested therein;
- (b) shall examine and consider the scheme; and
- (c) may, at any time within twenty-eight days after the date of the publication in the Belfast Gazette pursuant to sub-paragraph (2) of the notice relating to such scheme, send to the Ministry any observations in regard to the scheme which it wishes to make.

**7.** After the expiration of twenty-eight days from the service of notices in pursuance of paragraph 6, the Ministry may, after considering any observations sent to it under that paragraph and after holding such inquiry (if any) as the Ministry considers necessary, by order confirm the scheme in whole or in part, and either without modifications or with such modifications (which may include variations, additions or exceptions) as the Ministry considers fit (and such scheme or part thereof as so confirmed is in this Schedule referred to as a “confirmed scheme”).

**8.** For the purposes of this Schedule, the provisions of this Order specified in Part II of this Schedule shall, with the modifications thereof specified in Part III of this Schedule, apply in relation to the Loughs and such portion of the River Erne as is in Northern Ireland in like manner as those provisions apply in relation to any other watercourse to which this Order applies, and those provisions, as so modified, shall have effect as if they were provisions of this Schedule.

**9.**—(1) Where, in carrying out works under this Schedule—



**Status:** Point in time view as at 01/04/2007.

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

- (a) any road, bridge, culvert or embankment has been improved as a means of communication or otherwise in consequence of the carrying out of those works, such proportion of the cost of such works as ought fairly to be borne by the authority liable to maintain such road, bridge, culvert or embankment, or any portion thereof, shall be borne by that authority;
- (b) any extra expenses are incurred by the Ministry by reason of the carrying out of additional works at the request or requirement of any authority pursuant to the principal agreement, such extra expenses shall be borne by the authority at whose request or requirement the additional works were carried out.

(2) Any dispute between the Ministry and an authority as to the amounts which, under the foregoing provisions of this paragraph, fall to be borne by that authority shall be referred to arbitration<sup>F22</sup> . . . .

(3) For the purposes of this paragraph, “authority” means any person entitled or liable to maintain any road, bridge, culvert or embankment, or any part thereof, whether under any public general, local or private statutory provision or under any order of court, scheme, deed or other instrument, or otherwise, and the provisions of any such statutory provision shall have effect subject to the foregoing provisions of this paragraph.

**F22** 1996 c.23

**10.**—(1) Where, in pursuance of the provisions of the principal agreement, such works have been carried out as will, in the opinion of the Ministry, enable the water levels of the Loughs and River Erne to be controlled and regulated in accordance with those provisions, the Ministry shall, by order made after consultation with the Board, prescribe the date on and from which those water levels shall be so controlled and regulated.

(2) For the purposes of this Schedule, the date of completion of any works carried out under any confirmed scheme shall be such date as may be certified by an order made by the Ministry in that behalf.

(3) Notice of the making of any order under this paragraph shall be published in the Belfast Gazette and any such one or more newspapers as the Ministry may consider appropriate.

#### Finance

**11.**—(1) For the purposes of the principal agreement, the account known as the Erne Development Account shall continue in being as such and shall continue to be administered and controlled by the Ministry.

(2) There shall be paid to the credit of the Erne Development Account—

- (a) all sums paid by the Board to the Ministry pursuant to the provisions of the principal agreement;
- (b) such sums as are paid by any authority to the Ministry pursuant to paragraph 9 in consequence of works carried out under, or for the purposes of giving effect to, the principal agreement; and
- (c) such other sums as the Ministry may determine.

(3) There shall be charged to and paid out of the Erne Development Account all expenses properly incurred by the Ministry pursuant to the provisions of the principal agreement, together with any other sums which the Ministry and the Board agree should be so charged and paid.



## Miscellaneous and general

*Paras. 12, 13, 13A rep. by 1999 NI 6*

**14.**—(1) An Arbitration Tribunal constituted in accordance with the provisions of the principal agreement may determine, in accordance with those provisions, any dispute or difference between the Ministry and the Board arising out of the principal agreement.

(2) Subject to sub-paragraph (4), the Ministry shall, on the request of a Tribunal constituted as aforesaid, cause to be produced for inspection by the Tribunal such documents, books, records or accounts in its possession as are relevant to the matter at issue before the Tribunal.

(3) Subject to sub-paragraph (4), a Tribunal constituted as aforesaid may, for the purpose of determining any such dispute or difference, by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents or articles in his custody or under his control which relate to any matter pending before the Tribunal, and may hear, receive and examine evidence on oath, and for that purpose may administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined.

(4) Nothing in sub-paragraph (2) or (3) shall authorise a Tribunal constituted as aforesaid to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or answer if the Tribunal were a proceeding in a court of law.

(5) Any person who—

- (a) refuses or wilfully neglects to attend when required to do so by any Tribunal constituted as aforesaid or to give evidence in the manner required by the Tribunal; or
- (b) who wilfully gives false evidence before the Tribunal or wilfully alters, suppresses, cancels, destroys or refuses to produce any document or article which he may be required by the Tribunal to produce;

shall, without prejudice to any of the provisions of the [<sup>F23</sup> Perjury (Northern Ireland) Order 1979], be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 100, or to both.

(6) Counsel of the Bar of Ireland or any solicitor entitled to practise in the Republic of Ireland may, notwithstanding any other statutory provision, practise in connection with any hearing in Northern Ireland of any Arbitration Tribunal constituted as aforesaid, and may appear and represent the Board at such hearing.

(7) Any award of a Tribunal constituted as aforesaid may, by leave of the High Court, be entered as a judgment in terms of the Award, and shall thereupon have the same force and effect as a judgment or order of the High Court.

**F23** 1979 NI 19

**15.** Notwithstanding anything to the contrary in any statutory provision, stamp duty shall not be chargeable in respect of any agreement entered into, pursuant to this Schedule, by the Ministry with the Board, or of any agreement entered into by the Ministry with any person other than the Board for the purpose of carrying the principal agreement into effect.

**16.** In this Schedule—

“the Board” has the meaning assigned to it by paragraph 1;

“confirmed scheme” has the meaning assigned to it by paragraph 7;

**Status:** Point in time view as at 01/04/2007.  
**Changes to legislation:** There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973. (See end of Document for details)

“the Loughs” has the meaning assigned to it by paragraph 4;

“the principal agreement” has the meaning assigned to it by paragraph 1.

## PART II

### PROVISIONS OF THE ORDER APPLIED FOR THE PURPOSES OF THIS SCHEDULE

17. The provisions of this Order applied by paragraph 8 of this Schedule are as follows—

<i>Provision</i>	<i>Subject Matter</i>
<b>Part I</b>	<b>Introductory.</b>
<i>Article</i>	
7	General powers of Ministry with respect to the carrying out of works.
10	Powers of the Ministry in relation to the acquisition and disposal of land.
14	Carrying out of drainage schemes.
17	Compensation for certain losses due to construction of drainage works.
18	Compensation for consequential injury to canals, fisheries, etc.
19	Matters to be regarded in assessing compensation.
20	Disposal of surplus lands, etc.
21	Powers of maintenance in relation to designated watercourses, etc.
25	Power of Ministry to carry out works on behalf of other persons.
26	Power of Ministry to contribute to cost of works.
31	Noxious weeds.
34	Power of Ministry to carry out experimental work, etc.
35	Provision as to recovery of expenses.
36	Miscellaneous offences.
37	Entry and inspection of land, etc.
40	Protection of fisheries.
Schedule 2	Description of drainage works, etc.
Schedule 3	Modification of Schedule 6 to the Local Government Act (Northern Ireland) 1972.

### PART III

#### MODIFICATIONS OF THE PROVISIONS APPLIED BY PART II

**18.** The provisions of this Order specified in Part II shall, in their application for the purposes of this Schedule, have effect with the following modifications—

- (a) references therein to a watercourse shall be construed as including references to the Loughs and to such portion of the River Erne as is in Northern Ireland;
- (b) references therein to this Order shall be construed as references to this Schedule;
- (c) references therein to—
  - (i) a scheme or a drainage scheme carried out under this Order, or any part thereof;
  - (ii) drainage works;
  - (iii) drainage purposes or to purposes connected with drainage;shall respectively be construed as references to—
  - (A) a scheme or schemes confirmed under this Schedule;
  - (B) works carried out under any provision contained in this Schedule or any confirmed scheme made thereunder; and
  - (C) the purposes of any such provision or scheme;
- (d) references therein to sea defences and sea defence works shall be omitted;
- (e) in Article 7, the words “Without prejudice to the generality of the provisions of Article 6,” shall be omitted;
- (f) in Article 17—
  - (i) for paragraph (1) there shall be substituted the following—
    - “(1) Where any person—
      - (a) suffers any permanent loss or damage by reason of—
        - (i) the entry by the Ministry on any land owned or occupied by him; or
        - (ii) by the construction of works thereon carried out under any provision of Schedule 7 or any confirmed scheme made thereunder; or
        - (iii) by direct interference with any land belonging to him; or
      - (b) satisfies the Ministry that he has suffered, or is likely to suffer, permanent loss or damage by reason of the control or regulation of the water levels of the Loughs and River Erne in accordance with the provisions of the principal agreement referred to in that Schedule;the Ministry shall, subject to and in accordance with the provisions of that Schedule, pay to him reasonable compensation in respect of such loss or damage.” ; and
    - (ii) the word “forthwith” in paragraph (4) shall be omitted, and after the word “Ministry”, where it occurs for the first time in that paragraph, there shall be inserted the words “ within three years from the date of completion of the work from which, or from the operation of which, the claim arises ”;
- (g) in Article 18(1), the words “or to any water power or other water right” shall be omitted;
- (h) in Schedule 2, paragraph 3 shall be omitted.

**Status:** Point in time view as at 01/04/2007.  
**Changes to legislation:** There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973. (See end of Document for details)

PROSPECTIVE

*Schedule 8—Amendments*

## SCHEDULE 9

Article 44.

## TRANSITIONAL AND SAVING PROVISIONS

## Savings for Secretary of State

**Transitional provisions relating to interest payable on certain compensation**

1. An order by the Ministry of Finance under sub-paragraph (2) of paragraph 18 of Schedule 6 to the Local Government Act (Northern Ireland) 1972 prescribing the rate of interest payable under that paragraph shall apply to the rate of interest payable upon any outstanding compensation under the Drainage Act (Northern Ireland) 1947 (including that Act as applied by any other statutory provision) as if the interest were payable under the said paragraph 18.

## Savings for Secretary of State

2. The administrative powers conferred by this Order on the Ministry shall not be taken to authorise any matter or thing to be done without the consent of the Secretary of State or of the Board of Trade and, if the case so requires, of the Crown Estate Commissioners, where that consent is required to be obtained under section 9(2) of the Northern Ireland (Miscellaneous Provisions) Act 1932 .

[<sup>F24</sup>3.—(1) Subject to the provisions of this paragraph, nothing in this Order or any scheme made there under shall affect any rights conferred by or in accordance with the [<sup>F25</sup> electronic communications code] on the operator of [<sup>F25</sup> an electronic communications code network] or authorise the Department to interfere with any [<sup>F25</sup> electronic communications apparatus] kept installed for the purposes of [<sup>F25</sup> any such network] .

(2) Where for the purposes of carrying out any scheme, the Department diverts or closes any public road, or any part of a public road, under, in, on, over, along or across which there is any [<sup>F25</sup> electronic communications apparatus] kept installed for the purposes of [<sup>F25</sup> an electronic communications code network], the operator of [<sup>F25</sup> that network] shall have the same powers in respect of that apparatus as if such road or part had not been diverted or closed; but the Department or any person in whom the site of that road, or part of a road, is vested shall be entitled to require the alteration of the apparatus.

(3) Paragraph 23 of the [<sup>F25</sup> electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [<sup>F25</sup> electronic communications apparatus] ) shall apply to the Department for the purposes of the carrying out of any drainage scheme or of a confirmed scheme under Schedule 7.

(4) Paragraph 1(2) of the<sup>F24</sup> electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this paragraph as it applies for the purposes of the code.

(5) Paragraph 21 of the<sup>F25</sup> electronic communications code] (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this paragraph to require the alteration, moving or replacement of any<sup>F25</sup> electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.]

**F24** 1984 c.12

**F25** 2003 c. 21

Saving for powers under other statutory provisions and powers of certain trustees, etc.

**4.** Nothing in this Order shall, except when otherwise expressly provided, affect the provisions of any other statutory provision or the powers of 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.

**5.** Notwithstanding the repeal of any statutory provision by this Order—

- (a) any loan repayable under any such provision shall continue to be repayable as if this Order had not been made; and
- (b) any money recoverable under any such provision shall be recoverable under this Order.

**6.** Nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

#### *Schedule 10—Repeals*

**Status:**

Point in time view as at 01/04/2007.

**Changes to legislation:**

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