
DRAFT STATUTORY INSTRUMENTS

1998 No.

Water (Northern Ireland) Order 1998

PART II

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

Registers and other information

Exclusion from registers of certain confidential information

32.—(1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register maintained under Article 30, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of a specification under paragraph (10);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department, or, on appeal, by the Appeals Commission.

(2) Where information is furnished to the Department for the purpose of—

- (a) an application for a discharge consent or for the variation of such a consent,
- (b) complying with any condition of a discharge consent, or
- (c) complying with a direction under Article 28,

then, if the person furnishing it applies to the Department to have the information excluded from any register maintained under Article 30, on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) must be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any statutory provision might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register maintained under Article 30, unless excluded under this Article; and
- (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

(a) the information shall not be entered on the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned; and

(b) that person may appeal to the Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) If either party to an appeal under paragraph (5) so requests, the appeal shall be or continue in the form of a hearing which must be held in private.

(7) Paragraphs (3) to (6) of Article 8 of the Water and Sewerage Services (Northern Ireland) Order 1973 shall not apply in relation to any appeal under paragraph (5).

(8) The Appeals Commission shall notify the Department and the appellant of its decision on an appeal under paragraph (5).

(9) The decision of the Appeals Commission on an appeal under paragraph (5) shall be final, except on a point of law.

(10) The Department may specify information, or descriptions of information, which the public interest requires to be included in a register maintained under Article 30 notwithstanding that the information may be commercially confidential.

(11) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(12) Paragraphs (5) to (9) shall apply in relation to a determination under paragraph (11), as they apply in relation to a determination under paragraph (2) or (4).

(13) The Department may by regulations substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(14) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.