
DRAFT STATUTORY INSTRUMENTS

1999 No.

Water (Northern Ireland) Order 1999

PART II

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

Abstraction and impounding

Abstraction and impounding of water

20.—(1) Subject to paragraph (2), the Department may by regulations make such provision as appears to it to be expedient for the purpose of—

- (a) controlling, restricting or prohibiting the abstraction of water from underground strata or waterways;
- (b) controlling, restricting or prohibiting the construction or alteration of any impounding works.

(2) Regulations under paragraph (1) shall not apply to a person who—

- (a) holds a licence under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (licences to supply electricity, etc.); and
- (b) is acting in accordance with an authorisation obtained from the Department under paragraph 2 of Schedule 5 to that Order (abstraction, diversion and use of water for hydro-electric generating stations).

(3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provisions—

- (a) prohibiting the abstraction of water except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;
- (b) prohibiting the construction or alteration of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence;
- (c) for the issue, variation, transfer or revocation by the Department of any such licence as is mentioned in sub-paragraph (a) or (b);
- (d) as to the manner in which applications for the issue, revocation or variation of any such licence as is mentioned in sub-paragraph (a) or (b) are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications;
- (e) for the holding of public local inquiries in such circumstances as may be prescribed;
- (f) for the payment, in such circumstances as may be prescribed, of compensation where any such licence as is mentioned in sub-paragraph (a) or (b) is revoked or varied;
- (g) for an appeal to lie to the Appeals Commission against any decision of the Department to issue, vary or revoke any such licence as is mentioned in sub-paragraph (a) or (b);

(h) making persons guilty of an offence where there is a contravention of the regulations and for the imposition of fines on summary conviction of such an offence.

(4) Regulations made by the Department under paragraph (1) shall contain such provisions as the Department may consider necessary for the protection of rights or interests affected by the regulations.

(5) Where regulations made under this Article include provisions prohibiting the construction or alteration of impounding works except in pursuance of a licence granted by the Department and in accordance with the provisions of that licence, the Department shall consult the Department of Agriculture before issuing such a licence.

(6) References in this Article to a waterway shall not include references to the sea or to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

(7) Any reference in this Article to the doing of anything in pursuance of such a licence as is mentioned in paragraph (3)(a) or (b) is a reference to its being done—

(a) by the holder of such a licence; or

(b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by regulations made under this Article.

(8) In this Article and in Article 21, “impounding works” means either of the following, that is to say—

(a) any dam, weir or other works in any waterway by which water may be impounded;

(b) any works for diverting the flow of any waterway in connection with the construction or alteration of any dam, weir or other works falling within sub-paragraph (a).

Power to make scheme of charges in connection with water resources

21.—(1) Where regulations made under Article 20 include provisions prohibiting the abstraction of water or, as the case may be, the construction or alteration of impounding works except in pursuance of a licence granted by the Department and—

(a) an application is made for any licence under those regulations or for the variation or transfer of any such licence;

(b) a licence under those regulations to abstract water is granted to any person or there is a variation of any such licence or of the conditions of any such licence; or

(c) a licence under those regulations to abstract water is in force,

the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this Article.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this Article shall be—

(a) in the case of a charge by virtue of paragraph (1)(a), the person who makes the application;

(b) in the case of a charge by virtue of paragraph (1)(b) or (c), the person to whom the licence is granted or, as the case may be, the person holding the licence which is varied or is in force.

(3) Provision made by a scheme for the purposes of paragraph (1)(c) may impose a single charge in respect of the whole period for which a licence is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) A scheme under this Article may—

- (a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme; and
- (b) contain supplemental, consequential and transitional provision for the purposes of the scheme.

(5) The Department, in framing a scheme under this Article, shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the expenditure incurred by the Department in exercising its functions under regulations made under Article 20.

(6) Where the Department proposes to make a scheme under this Article the Department shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—

- (a) setting out its proposals and specifying the period within which representations with respect to the proposals may be made; and
- (b) consider any representations which are duly made and not withdrawn;

and, if the Department decides, after considering any such representations, to make a scheme under this Article, the Department may do so either in accordance with the proposals contained in the notice or in accordance with those proposals as modified in such manner as the Department considers appropriate.

(7) The Department shall take such steps as it considers appropriate for bringing the provisions of any scheme made under this Article which is for the time being in operation to the attention of persons likely to be affected by them.

Orders as to charges for abstractions of water or discharges

22.—(1) Without prejudice to Article 21, the Department may, for the purpose of defraying any expenses incurred by it under this Part in the execution of works for the purpose of ensuring the better use of water, by order make such provision as appears to it to be expedient with respect to the levying of charges on—

- (a) persons who abstract water from waterways or underground strata;
- (b) persons who discharge any matter into waterways or underground strata;

being in each case persons who receive a measurable benefit by reason of the execution of the works.

- (2) An order under paragraph (1) shall be subject to affirmative resolution.