



Number 2 of 2012

WATER SERVICES (AMENDMENT) ACT 2012

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 5 of Principal Act.
 3. Amendment of section 22 of Principal Act.
 4. Domestic waste water treatment systems.
 5. Short title, collective citation and commencement.
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[No. 2.] *Water Services (Amendment) Act 2012.* [2012.]

ACT REFERRED TO

Water Services Act 2007

2007, No. 30



Number 2 of 2012

WATER SERVICES (AMENDMENT) ACT 2012

AN ACT TO AMEND THE WATER SERVICES ACT 2007; AND
TO PROVIDE FOR RELATED MATTERS.

[2nd February, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Water Services Act 2007. Definition.

2.—Section 5 of the Principal Act is amended—

Amendment of
section 5 of
Principal Act.

(a) by substituting the following paragraph for paragraph (j):

“(j) Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community¹,”

and

(b) by inserting the following paragraph:

“(k) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives².”.

3.—Section 22 of the Principal Act is amended in paragraph (b) of subsection (8) by inserting “or an inspector appointed by the Agency in accordance with section 70E” after “or a member of the Garda Síochána”. Amendment of
section 22 of
Principal Act.

4.—The Principal Act is amended by inserting the following new Part after Part 4: Domestic waste
water treatment
systems.

¹OJ No. L 129/23, 18.05.1976

²OJ No. L 312/3, 22.11.2008

“PART 4A

DOMESTIC WASTE WATER TREATMENT SYSTEMS

Definitions. 70A.—In this Part—

‘advisory notice’ has the meaning assigned to it by section 70H;

‘certificate of registration’ means a certificate of registration issued under section 70B;

‘domestic waste water treatment system’ means a system involving physical, chemical, biological or thermal processes, or a combination of such processes, utilised for the treatment or disposal of domestic waste water, or the sludge derived from domestic waste water, and includes—

- (a) all septic tanks and waste water tanks and systems receiving, storing, treating or disposing of domestic waste water and all drains associated with such tanks or systems, and
- (b) all drains associated with the discharge of domestic waste water, whether or not they discharge to a septic tank or waste water tank;

‘inspector’ means a person appointed by the Agency in accordance with section 70E;

‘national inspection plan’ has the meaning assigned to it by section 70K;

‘prescribed date’ means the date prescribed by regulations made by the Minister under section 70B;

‘register of domestic waste water treatment systems’ has the meaning assigned to it by section 70B.

Register of domestic waste water treatment systems.

70B.—(1) Each water services authority shall establish and maintain a register of domestic waste water treatment systems situated within its functional area (in this Part referred to as a ‘register of domestic waste water treatment systems’).

(2) The owner of a premises connected to a domestic waste water treatment system shall, on or before the prescribed date and in accordance with this section, apply to the water services authority in whose functional area the treatment system is situated, to have the treatment system entered in the register of domestic waste water treatment systems maintained by the water services authority concerned.

(3) An application under this section shall—

- (a) be made in writing or by electronic means,

- (b) specify the name of the applicant and the address at which he or she normally resides,
- (c) specify the address at which the domestic waste water treatment system is situated,
- (d) contain such other information as may be prescribed, and
- (e) in the case of an application under subsection (2), be accompanied by the prescribed fee.

(4) On receipt of an application under this section, a water services authority shall—

- (a) enter the domestic waste water treatment system concerned in the register of domestic waste water treatment systems for the functional area of the water services authority concerned, and
- (b) issue a certificate of registration to the applicant.

(5) A certificate of registration shall be valid for a period of 5 years from the date on which it was issued.

(6) On or before the date on which a certificate of registration is due to expire, the owner of a premises connected to a domestic waste water treatment system in respect of which a certificate of registration has issued shall, in accordance with this section, apply to the water services authority in whose functional area the treatment system is situated, to renew the certificate of registration.

(7) On receipt of an application under subsection (6), a water services authority shall—

- (a) update the entry on the register of domestic waste water treatment systems, and
- (b) issue a certificate of registration to the applicant.

(8) A water services authority shall, from time to time, review each entry in the register of domestic waste water treatment systems maintained by it and, if the water services authority becomes aware that any particular in the register is incorrect or has ceased to be correct, the water services authority shall make such alteration to the register as it considers necessary and shall notify any person it considers appropriate of such alteration.

(9) A register of domestic waste water treatment systems shall be maintained by a water services authority in such form (including electronic form) as the Agency may direct and shall contain—

- (a) details of domestic waste water treatment systems which have been entered on the register by the water services authority concerned, including the date on which each system was entered on the register and the date on which each certificate of registration is due to expire,
- (b) details of domestic waste water treatment systems in the functional area of the water services authority concerned which have been inspected under section 70H,
- (c) details of advisory notices issued by the water services authority concerned,
- (d) details of applications made under subsection (7) of section 70H,
- (e) details of appeals made under subsection (9) of section 70H,
- (f) details of notices of compliance made by the water services authority concerned under section 70H(17), and
- (g) such other information as may be determined by the Agency from time to time.

(10) A water services authority shall publish in such manner as it thinks fit, including by electronic means, and make available for inspection at all reasonable times by members of the public, the register of domestic waste water treatment systems maintained by it under this section.

(11) An authorised person appointed by a water services authority may request the owner of a premises connected to a domestic waste water treatment system to produce a valid certificate of registration in respect of the system.

(12) A person who fails to comply with a request under subsection (11) within 20 working days, commits an offence.

(13) The Minister may, following consultation with the Agency, make regulations for the purposes of this section and, without prejudice to the generality of the foregoing, regulations under this section may prescribe:

- (a) the form and manner, including by electronic means, in which an application,

under subsection (2) or (6) shall be made;

- (b) the fee payable to the water services authority, which shall not exceed €50, which shall accompany an application under subsection (2);
- (c) the date for the purposes of subsection (2); and
- (d) such consequential or ancillary matters as the Minister considers appropriate.

Duties of owners of premises connected to domestic waste water treatment systems.

70C.—(1) The owner of a premises connected to a domestic waste water treatment system shall—

- (a) comply with regulations made under section 70L,
 - (b) ensure that the system does not constitute, and is not likely to constitute, a risk to human health or the environment, and, in particular does not—
 - (i) create a risk to water, air or soil, or to plants and animals,
 - (ii) create a nuisance through noise or odours, or
 - (iii) adversely affect the countryside or places of special interest,
- and
- (c) ensure that the system is entered on a register of domestic waste water treatment systems in accordance with section 70B.

(2) A person who contravenes paragraph (a), (b) or (c) of subsection (1) commits an offence.

Sale of premises connected to domestic waste water treatment systems.

70D.—(1) A person who, on or after the prescribed date, sells a premises connected to a domestic waste water treatment system, shall on the completion of the sale, furnish a valid certificate of registration in respect of the treatment system concerned to the purchaser of the premises.

(2) A purchaser of a premises connected to a domestic waste water treatment system shall, after the completion of the sale, notify the relevant water services authority of the change in ownership and the water services authority concerned shall update the register of domestic waste water treatment systems accordingly.

Appointment
of inspectors.

70E.—(1) Subject to subsection (2), the Agency shall appoint such persons as it considers appropriate to carry out inspections of domestic waste water treatment systems for the purposes of this Part.

(2) The Agency shall not appoint a person to be an inspector for the purposes of this Part unless that person—

- (a) has made an application to the Agency in the prescribed form accompanied by the prescribed fee,
- (b) is the holder of a prescribed professional or technical qualification,
- (c) has satisfactorily completed a prescribed training course,
- (d) is the holder of the prescribed professional indemnity insurance, and
- (e) has complied with any other prescribed requirements.

(3) An appointment under subsection (1) shall cease if—

- (a) the Agency revokes the appointment, or
- (b) the appointment is for a fixed period, on the expiration of that period.

(4) Where the Agency—

- (a) refuses to appoint or renew the appointment of an inspector under this section, or
- (b) revokes the appointment of an inspector under paragraph (a) of subsection (3),

the Agency shall notify the person in writing of the refusal or revocation together with the reasons for the refusal or revocation and the person may appeal the refusal or revocation in the prescribed manner.

(5) The Agency may, with the consent of the Minister, appoint one or more persons who, in the opinion of the Agency, have the relevant knowledge and experience in relation to domestic waste water treatment systems and the procedures in relation to carrying out an inspection to be an appeals officer for the purposes of this section (in this section referred to as an ‘appeals officer’).

(6) An appeals officer shall be independent in the performance of his or her functions under this section.

(7) An appeals officer shall consider an appeal under subsection (4) and shall, in accordance with prescribed procedures, allow or refuse the appeal.

(8) An inspector shall be furnished with a certificate of his or her appointment by the Agency.

(9) When exercising a power conferred on him or her by this Part, an inspector shall, if requested by a person affected, produce the certificate of his or her appointment or a copy of it and a form of personal identification to that person.

(10) A person who acts as an inspector for the purposes of this Part—

- (a) without having been duly appointed under subsection (1),
- (b) after his or her appointment has been revoked under paragraph (a) of subsection (3), or
- (c) after the expiration of his or her term of appointment,

commits an offence.

(11) The Minister may, following consultation with the Agency, make regulations for the purposes of this section and, without prejudice to the generality of the foregoing, regulations under this section may provide for—

- (a) application procedures in relation to the appointment, and renewal of appointment, of inspectors,
- (b) criteria for appointment of inspectors, including specification of the relevant:
 - (i) class or classes of professional or technical qualifications to be held by a person appointed as an inspector,
 - (ii) class or classes of training course which a person appointed as an inspector shall have satisfactorily completed, and
 - (iii) professional indemnity insurance to be held by a person appointed as an inspector,
- (c) an application form for appointment as an inspector (including an application form to renew such an appointment),
- (d) the fee payable to the Agency, which shall not exceed €1,000, which shall

accompany an application for appointment or renewal of appointment as an inspector,

- (e) the period for which an appointment as an inspector shall have effect,
- (f) the circumstances in which the appointment of an inspector may be revoked,
- (g) procedural matters in relation to the hearing and determination of appeals under subsection (4),
- (h) any consequential or ancillary matters.

Register of inspectors.

70F.—(1) The Agency shall establish and maintain a register of inspectors for the purposes of this Part (in this section referred to as the ‘register of inspectors’).

(2) The register of inspectors shall be maintained in such form (including electronic form) as the Agency considers appropriate.

(3) The register of inspectors shall contain the name and contact details of each inspector and such other information as may be determined from time to time by the Agency.

(4) The register of inspectors shall be kept at the offices of the Agency, and shall be made available to each water services authority.

Powers of inspectors.

70G.—(1) For the purposes of carrying out an inspection under section 70H, an inspector may—

- (a) enter and inspect any premises connected to a domestic waste water treatment system,
- (b) inspect, examine or test the course or condition of a domestic waste water treatment system, including any fixture, fitting, appliance, plant, drain, service or process associated with the treatment system,
- (c) monitor any domestic waste water which is contained in or discharged from a premises or domestic waste water treatment system,
- (d) take samples of any substance or thing associated with or discharged to or from, a domestic waste water treatment system,
- (e) take photographs,
- (f) carry out surveys, take levels and measurements, make excavations, take

samples and carry out examinations of the depth and nature of subsoil,

- (g) require information regarding the maintenance, servicing or operation of a domestic waste water treatment system from an owner or occupier of the premises or any person employed on the premises or any other person present on the premises,
- (h) require the production of, or inspect, records or other documents (including records or documents stored in non-legible form) relevant to the maintenance, servicing or operation of a domestic waste water treatment system, or take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,
- (i) require that the premises or any part of the premises or anything in the premises shall be left undisturbed for such period of time as may be necessary for carrying out the inspection.

(2) An inspector shall not, other than with the consent of the occupier, enter into a private dwelling under this section.

(3) The Agency or a water services authority may authorise any other person as it considers appropriate to accompany an inspector in the performance of his or her functions.

(4) Any certificate or other evidence given, or to be given, by an inspector in respect of any test, examination or analysis of any sample shall, in relation to that sample, be evidence, without further proof, of the result of the test, examination or analysis unless the contrary is shown.

(5) Any person who, following notification of an inspection by a water services authority—

- (a) refuses to allow an inspector to enter any premises or to bring any person or equipment with him or her in the exercise of his or her powers,
- (b) obstructs or impedes an inspector in the exercise of any of his or her powers,
- (c) gives either to an inspector, a relevant water services authority or the Agency, information which is to his or her knowledge false or misleading in a material respect, or

- (d) fails or refuses to comply with any reasonable request or requirement of an inspector,

commits an offence.

Inspection of domestic waste water treatment systems.

70H.—(1) (a) An inspector shall inspect such domestic waste water treatment systems as he or she is directed by the Agency, or a water services authority, to inspect.

- (b) The Agency or a water services authority shall notify in writing the owner of a premises connected to a domestic waste water treatment system of a proposed inspection at least 10 working days before such inspection.

(2) When directing an inspector to carry out an inspection under subsection (1), the Agency or a water services authority shall have regard to the national inspection plan.

(3) Where, following an inspection under subsection (1), an inspector is of the opinion that—

- (a) the owner of a premises connected to a domestic waste water treatment system has not contravened regulations made under section 70L, and
- (b) the domestic waste water treatment system does not constitute, and is not likely to constitute, a risk to human health or the environment, and, in particular does not—
- (i) create a risk to water, air or soil, or to plants and animals,
- (ii) create a nuisance through noise or odours, or
- (iii) adversely affect the countryside or places of special interest,

the inspector shall, within 21 days of the inspection, notify the owner of the premises to which the treatment system concerned is connected and the water services authority concerned.

(4) Where, following an inspection under subsection (1), an inspector is of the opinion that—

- (a) the owner of a premises connected to a domestic waste water treatment system has contravened regulations made under section 70L, or

- (b) the domestic waste water treatment system constitutes, or is likely to constitute, a risk to human health or the environment, and, in particular—
 - (i) creates a risk to water, air or soil, or to plants and animals,
 - (ii) creates a nuisance through noise or odours, or
 - (iii) adversely affects the countryside or places of special interest,

the inspector shall immediately notify the owner of the premises to which the treatment system concerned is connected and shall, within 21 days of the inspection, notify the water services authority concerned, in each case stating the reasons for his or her opinion.

(5) A water services authority notified by an inspector under subsection (4) shall, within 21 days of that notification, issue a notice (in this Part referred to as an ‘advisory notice’) to the owner of the premises to which the treatment system concerned is connected.

(6) An advisory notice shall—

- (a) state that the water services authority is of the opinion that—
 - (i) the owner of the premises connected to the domestic waste water treatment system has contravened regulations made under section 70L, or
 - (ii) the domestic waste water treatment system constitutes, or is likely to constitute, a risk to human health or the environment, and, in particular—
 - (I) creates a risk to water, air or soil, or to plants and animals,
 - (II) creates a nuisance through noise or odours, or
 - (III) adversely affects the countryside or places of special interest,
- (b) state the reasons for that opinion,
- (c) direct the owner of the premises to remedy the matters specified in the advisory notice by a date specified in the notice, and the notice may specify measures to be taken to remedy any

- contravention or matter to which the notice relates,
- (d) include information regarding the making of an application under subsection (7),
 - (e) be signed and dated by an officer of the water services authority, and
 - (f) include any other requirement that the water services authority considers appropriate.
- (7) (a) A person aggrieved by an advisory notice may, within 21 days of the date of such notice, apply to the water services authority concerned to have the domestic waste water treatment system inspected by an authorised person appointed by the water services authority.
- (b) On receipt of an application under paragraph (a) in the prescribed form, accompanied by the prescribed fee, which shall not exceed €20, a water services authority shall arrange for an inspection of the domestic waste water treatment system by an authorised person appointed by the water services authority.
- (c) An authorised person who carries out an inspection for the purposes of this subsection shall, within 10 days of the inspection by notice in writing to the person who made the application—
- (i) confirm the advisory notice,
 - (ii) confirm the advisory notice subject to such modifications, alterations or additions as the authorised person considers appropriate, or
 - (iii) cancel the advisory notice.
- (d) Where an advisory notice is confirmed under subparagraph (i) or (ii) of paragraph (c), the notice under paragraph (c) shall include information regarding the making of an appeal under subsection (9).
- (e) Where an advisory notice is cancelled under paragraph (c) the water services authority concerned shall refund the application fee to the person who made the application.

(8) Where there is no application under subsection (7), the advisory notice shall take effect on the later of—

- (a) the end of the period for making the application, or
- (b) the day specified in the notice.

(9) A person aggrieved by an advisory notice confirmed under subparagraph (i) or (ii) of subsection (7)(c) may, within 14 days beginning on the day on which the notice is served on him or her, appeal against the notice to a judge of the District Court in the district court district in which the domestic waste water treatment system the subject of the notice is situated, on the following grounds:

- (a) that the appellant is not the person on whom the notice should have been served; or
- (b) any substantive or procedural illegality.

(10) In determining an appeal under subsection (9) the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(11) A person who appeals under subsection (9) shall at the same time notify the relevant water services authority of the appeal and the grounds for the appeal and that water services authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(12) Where an appeal under subsection (9) is taken, and the advisory notice is not cancelled, the notice shall take effect on the later of—

- (a) 21 days after the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, or
- (b) the day specified in the notice.

(13) Where an application has been made under subsection (7) and the advisory notice has not been cancelled and there is no appeal under subsection (9), the advisory notice shall take effect on the later of—

- (a) the end of the period for making an appeal, or
- (b) the day specified in the notice.

(14) A water services authority may, where no application under subsection (7) or no appeal under subsection (9) is made or pending, extend the period specified under subsection (6)(c).

(15) A person on whom an advisory notice has been served, who is of the opinion that the matters specified in the advisory notice have been remedied, shall within 10 days of completion of the remedial works, confirm in writing to the water services authority concerned that the matters specified in the advisory notice have been remedied.

(16) A water services authority shall, for the purposes of satisfying itself that the matters specified in an advisory notice have been remedied, carry out such further inspections of the system the subject of the advisory notice concerned, as the water services authority considers appropriate.

(17) Where a water services authority is satisfied that the matters specified in the advisory notice have been remedied, the water services authority shall notify the person on whom the advisory notice was served of such compliance.

(18) A person who contravenes a requirement of an advisory notice commits an offence.

Supervision of
water services
authorities.

70I.—(1) The Agency shall supervise a water services authority in the performance of such of its functions as the Agency considers appropriate.

(2) Where the Agency is of the opinion that a water services authority has failed to perform all or any of its functions, the Agency shall issue a direction to the water services authority concerned.

(3) The Agency may direct a water services authority to keep such records in relation to the performance of its functions and to submit to it, in such manner and at such times as the Agency may direct, such information as it may specify, and, in particular details in relation to—

- (a) the registration of domestic waste water treatment systems within the functional area of the water services authority concerned,
- (b) the inspection of domestic waste water treatment systems within the functional area of the water services authority concerned,
- (c) advisory notices issued by the water services authority concerned, including details in relation to the confirmation, modification or cancellation of an advisory notice,
- (d) notices of compliance made by the water services authority concerned under section 70H(17),

- (e) appeals to the District Court under section 70H,
- (f) prosecutions taken by the water services authority concerned under this Part, and
- (g) such other matters as the Agency considers appropriate.

(4) The Agency shall keep and maintain or cause to be kept and maintained, such records of any supervision carried out under subsection (1) and such directions issued under subsection (2) as the Agency considers appropriate.

(5) A water services authority shall comply with a direction under this section.

(6) A water services authority that fails to comply with a direction under this section commits an offence.

(7) In this section, 'functions' means functions of a water services authority under this Part.

Directions to inspectors.

70J.—(1) The Agency may, from time to time, issue directions to inspectors with regard to—

- (a) the manner in which an inspection under section 70H is to be carried out,
- (b) the period or periods to be specified in an advisory notice during which remedial works are to be carried out,
- (c) the manner, including by electronic means, in which an inspector is to notify a water services authority in relation to an inspection,
- (d) the details in respect of an inspection which are to be notified by an inspector to a water services authority, and
- (e) any other matters the Agency considers relevant for the purposes of this Part.

(2) An inspector shall comply with a direction issued under subsection (1).

National inspection plan.

70K.—(1) The Agency shall, as soon as may be after the commencement of this section, but not later than such date as may be prescribed, make a national plan (in this Part referred to as 'the national inspection plan') with regard to the inspection and monitoring of domestic waste water treatment systems.

(2) When making the national inspection plan, the Agency shall have regard to—

- (a) relevant risks or potential risks to human health or the environment, and, in particular—
 - (i) risks to water, air or soil, or to plants and animals,
 - (ii) nuisances through noise or odours, and
 - (iii) risks to the countryside or places of special interest,
- (b) relevant available information in relation to specific types and locations of domestic waste water treatment systems,
- (c) appropriate and specific qualitative and quantitative criteria, targets and indicators for inspections, and
- (d) any incidental or ancillary matters or such matters as may be prescribed by the Minister.

(3) The Agency shall from time to time as it thinks appropriate, and at least once in each period of 5 years after the date of making of the national inspection plan, review the plan and make such revisions thereto as it thinks fit and references in this Part to such a plan shall, unless the context otherwise requires, be construed as including references to such a plan as so revised.

(4) The Agency shall furnish a copy of the national inspection plan to the Minister, each water services authority and such other person as may be prescribed.

(5) It shall be a function of each water services authority to take necessary measures to implement or otherwise give effect to the national inspection plan, including arranging for inspections under section 70H to be carried out within its functional area, as provided for in the plan.

Regulations.

70L.—(1) The Minister may, following consultation with the Agency, make regulations for the purposes of this Part, and without prejudice to the generality of the foregoing, the regulations may make provision for—

- (a) maintenance plans for domestic waste water treatment systems,
- (b) performance standards for domestic waste water treatment systems,
- (c) standards and procedures to apply in relation to emptying a domestic waste

water treatment system and the disposal of the waste water and sludge derived therefrom,

(d) such consequential or ancillary matters as the Minister considers appropriate.

(2) A person who contravenes a regulation made under this section commits an offence.

Offences and penalties.

70M.—(1) A person guilty of an offence under section 70B(12), 70C(2), 70E(10), 70G(5), 70H(18), or 70L(2) is liable, on summary conviction, to a class A fine.

(2) A water services authority guilty of an offence under section 70I(6) is liable on conviction on indictment, to a fine not exceeding €50,000.”.

5.—(1) This Act may be cited as the Water Services (Amendment) Act 2012.

Short title, collective citation and commencement.

(2) The Water Services Act 2007 and this Act may be cited together as the Water Services Acts 2007 and 2012.

(3) This Act shall come into operation on such day or days as the Minister for the Environment, Community and Local Government may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.