

LOCAL GOVERNMENT (WATER POLLUTION) (AMENDMENT) ACT 1990

LONG TITLE

AN ACT TO AMEND AND EXTEND THE LOCAL GOVERNMENT (WATER POLLUTION) ACT, 1977, AND (IN SO FAR AS IT RELATES TO WATER POLLUTION) THE FISHERIES (CONSOLIDATION) ACT, 1959, AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID.

[18th July, 1990]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

SECT 1

Interpretation.

1.—(1) In this Act—

"the Act of 1959" means the Fisheries (Consolidation) Act, 1959;

"the Principal Act" means the Local Government (Water Pollution) Act, 1977.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment (including this Act).

SECT 2

Amendment of section 1 of Principal Act.

2.—section 1 (1) of the Principal Act is hereby amended by the deletion of the definitions of "aquifer" and "sewer" and the insertion of the following definitions before the definition of "board of conservators";

"aquifer" means any stratum or combination of strata that stores or transmits groundwater;

'combined drain' means a drainage pipe, or a system of such pipes, that is not vested in or controlled by a sanitary authority and is used to convey trade effluent or other matter (other than storm water) from two or more premises to any waters or to a sewer;

'fisheries region' has the meaning assigned to it by the Fisheries Act, 1980, and includes the Foyle Area, within the meaning of the Foyle Fisheries Act, 1952;

'regional board' has the meaning assigned to it by the Fisheries Act, 1980, and includes the Foyle Fisheries Commission;

'sewer' means a sewer within the meaning of the Local Government (Sanitary Services) Acts, 1878 to 1964, that is vested in or controlled by a sanitary authority and includes a sewage treatment works, and a sewage disposal works, that is vested in or controlled by a sanitary authority;".

SECT 3

Amendment of section 3 of Principal Act.

3.—(1) section 3 of the Principal Act is hereby amended by—

(a) the substitution for subsection (3) of the following subsection—

"(3) It shall be a defence to a charge of committing an offence under this section for the accused to prove that he took all reasonable care to prevent the entry to waters to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that were suitable for the purpose of such prevention.", and

(b) the substitution for paragraph (a) of subsection (5) of the following paragraphs

"(a) (i) a discharge of a trade effluent or a sewage effluent which is made under and in accordance with a licence under section 4;

(ii) a discharge of a sewage effluent from a sewer: Provided that, where a standard applying to the effluent stands prescribed under section 26, the discharge complies with that standard;

(iii) a discharge of a trade effluent or sewage effluent to which regulations under section 4 (10) apply: Provided that, where a standard applying to the effluent stands prescribed under section 26, the discharge complies with that standard;

(aa) any entry authorised by or under an enactment specified in the Table to subsection (6);".

(2) (a) The Minister may, after consultation with any other Minister of the Government who, having regard to his functions, he considers ought to be consulted, by regulations, restrict, attach conditions to, or repeal all or any of the exemptions specified in subsection (5) or (6) of section 3 of the Principal Act.

(b) Where it is proposed to make regulations under this subsection, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

(3) A reference in any enactment specified in the Table to section 3 of the Principal Act to the Act of 1959 shall be construed as including a reference to subsection (1) of that section.

SECT 4

Amendment of section 6 of Principal Act.

4.—section 6 of the Principal Act is hereby amended by the insertion of the following subsections after subsection (2):

"(2A) Regulations under this section may make provision for—

(a) the payment to a local authority of a fee of such amount as may be specified in respect of an application to it for a licence under section 4, and

(b) the payment to An Bord Pleanála of a fee of such amount as may be specified in respect of an appeal to it under section 8,

and any such regulations may make provision for—

(i) the payment of fees of different amounts in respect of different classes of such applications and appeals as aforesaid,

(ii) exemption from the payment of fees provided for under paragraph (a) or (b) in such circumstances as may be specified,

(iii) the waiver, remission or refund (in whole or in part) of any such fees as aforesaid in such circumstances as may be specified, and

(iv) the manner in which such fees may be disposed of.

(2B) Where, pursuant to regulations under this section, a fee is payable to a local authority in respect of an application for a licence under section 4, the local authority shall not entertain the application unless the fee is received by the local authority.

(2C) Where, pursuant to regulations under this section, a fee is payable to An Bord Pleanála in respect of an appeal under section 8, the appeal shall not be entertained unless the fee is received by An Bord Pleanála before the expiration of the prescribed period referred to in subsection (1) of that section.

(2D) Where, pursuant to regulations under this section, a fee is payable to An Bord Pleanála in respect of an appeal under section 8 and the person by whom the fee is payable is neither the applicant for the licence to which the appeal relates nor the person or one of the persons who brought the appeal, An Bord Pleanála shall not entertain submissions or observations in relation to the appeal made by or on behalf of the person by whom the fee is payable unless the fee is received by An Bord Pleanála.

(2E) Where, pursuant to regulations under this section, a fee is payable to An Bord Pleanála in respect of a request for the oral hearing of an appeal, An Bord Pleanála shall not consider the

request unless the fee is received by An Bord Pleanála."

SECT 5

Amendment of section 7 of Principal Act.

5.—section 7 of the Principal Act is hereby amended by—

(a) the substitution for subsections (2) and (3) of the following subsections:

"(2) Notwithstanding any other provision of this Act or any condition in a licence under section 4, any such licence may be reviewed at any time by the local authority that granted it if—

(a) the local authority has reasonable grounds for believing that the discharge authorised by the licence is or is likely to be injurious to public health or renders or is likely to render the waters concerned unfit for use for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational uses,

(b) there has been a material change in the nature or volume of the discharge,

(c) there has been a material change in relation to the waters to which the discharge is made,

(d) further information has become available since the date of the granting of the licence relating to polluting matter present in the discharge concerned or relating to the effects of such matter, or

(e) the licensee applies to the local authority concerned to review the licence.

(2A) Notwithstanding any other provision of this Act or any condition in a licence under section 4, where regulations are in force under section 26 such a licence relating to an effluent or waters to which the regulations apply shall be reviewed by the local authority that granted it—

(a) in case it was. in force before the commencement of the regulations, as soon as may be after such commencement and thereafter at such intervals as may be specified in the regulations, and

(b) in any other case, at such intervals as may be specified in the regulations.

(3) Upon completion of a review under this section, a local authority may amend or delete any condition of the licence or attach conditions or additional conditions to the licence or revoke the licence; and if the local authority proposes to exercise a power aforesaid, it shall do so as soon as may be after the completion of the relevant review under this section."

(b) the insertion in subsection (4) after paragraph (b) of the following paragraph:

"(c) Without prejudice to the generality of paragraph (a), regulations under this subsection may also make provision in relation to any of the following matters:

(i) the payment to local authorities of fees of such amounts as may be specified in the regulations in relation to reviews of licences,

(ii) the payment of fees of different amounts in respect of different classes of such reviews as aforesaid,

(iii) exemption from the payment of such fees in such circumstances as may be specified,

(iv) the waiver, remission or refund (in whole or in part) of such fees in such circumstances as may be specified, and

(v) the manner in which such fees may be disposed of."

and

(c) the insertion after subsection (4) of the following subsection:

"(5) Where, pursuant to regulations under this section, a fee is payable to a local authority, the local authority shall not conduct the review in relation to which it is payable until the receipt thereof by the local authority."

SECT 6

Appeals in relation to sections 4 and 7 of Principal Act.

6.—(1) The following section shall be substituted for section 8 of the Principal Act:

"8. (1) (a) A person may, before the expiration of such period as may be prescribed, appeal to An Bord Pleanála in relation to—

(i) the grant, refusal to grant or revocation of a licence under section 4,

(ii) the attachment of conditions or additional conditions to such a licence, or

(iii) the amendment or deletion of any condition attached to such a licence,

(b) An act of a local authority referred to in paragraph (a) shall have effect—

(i) in case an appeal is not brought against it, upon the expiration of the period referred to in paragraph (a),

(ii) in case an appeal is brought against it and the final determination of the appeal does not set the act aside, in accordance with such final determination,

(iii) in case an appeal or appeals is or are brought against it and the appeal or appeals is or are withdrawn—

(I) if the period referred to in paragraph (a) has expired, upon such withdrawal, and

(II) if the period aforesaid has not expired, upon its expiry.

(2) An Bord Pleanála, after consideration of an appeal under this section, shall (as it thinks proper) allow or refuse the appeal and may give any direction consequent on its decision that it considers appropriate to the local authority concerned (including a direction that a specified condition be attached to the licence concerned or be amended or deleted) and a local authority shall comply with any such direction."

(2) Appeals brought under section 8 of the Principal Act and not finally determined upon the commencement of this section shall be continued and determined as if so brought after such commencement.

SECT 7

Powers of courts, local authorities and regional boards in relation to the mitigation and remedying of effects of pollution.

7.—The following section shall be substituted for section 10 of the local authorities Principal Act:

"10.—(1) (a) Where, on application by any person to the appropriate court, whether or not the person has an interest in the waters concerned, that court is satisfied that another person—

(i) is causing or permitting, or has caused or permitted, polluting matter to enter waters and the entry is or was not one to which section 3 (5) applies and is or was not under and in accordance with a licence under section 171 of the Act of 1959, or

(ii) is discharging or causing or permitting to be discharged, or has discharged or caused or permitted to be discharged, trade effluent or sewage effluent to waters and the discharge is or was not one to which subsection (2) of section 4 applies and is or was not under and in accordance with a licence under that section or the said section 171,

that court may make an order directing that other person to do one or more of the following, that is to say:

(I) to terminate the entry or discharge within such period as may be specified in the order, or

(II) to mitigate or remedy any effects of the entry or discharge

concerned in such manner and within such period as may be specified in the order, or

(III) to pay to the applicant or such other person as may be specified in the order a specified amount to defray all or part of any costs incurred by the applicant or that other person in investigating, mitigating or remedying the effects of the entry or discharge concerned.

(b) In this subsection 'appropriate court', in relation to an application under paragraph (a) means—

(i) in case the estimated cost of complying with the order to which the application relates does not exceed £2,500, the District Court,

(ii) in case the estimated cost aforesaid does not exceed £15,000, the Circuit Court, and

(iii) in any case, the High Court.

(c) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £2,500, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.

(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £15,000, it may, if it so thinks fit, by order transfer the application to the High Court.

(iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.

(d) An application under this section shall be brought in a summary manner.

(e) A court may, if it so thinks fit, make such interim or interlocutory order as it considers appropriate in proceedings under this section and, where an application is transferred under paragraph (c), the court to which it is transferred shall be deemed to have made any order made under this paragraph by the court from which it is so transferred in the proceedings in relation to the application.

(2) Without prejudice to any power of a court to enforce orders made by it, a person who does not comply with an order under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or imprisonment

for a term not exceeding 6 months or both.

(3) (a) An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.

(b) The court concerned may make such order as to the costs of the parties to or persons heard by the court in proceedings relating to an application for an order under this section as it considers appropriate.

(4) (a) Where a person does not comply with an order under subsection (1), the local authority, or the regional board, in whose functional area the waters concerned are situated, may take any steps specified in the order to mitigate or remedy the effects of the entry or discharge concerned.

(b) The amount of any expenditure incurred by a local authority or regional board in relation to steps taken by it under paragraph (a) shall be a simple contract debt owed by the person in respect of whom the order under subsection (1) was made to the authority or board, as the case may be, and may be recovered by it from the person as a simple contract debt in any court of competent jurisdiction.

(5) A local authority may serve on a person who is—

(a) causing or permitting polluting matter to enter waters and the entry is not one to which section 3 (5) applies and is not under and in accordance with a licence under section 171 of the Act of 1959, or

(b) causing or permitting trade effluent or sewage effluent to be discharged to waters and the discharge is not one to which section 4 (2) applies, and is not under and in accordance with a licence under that section or under the said section 171,

a notice in writing requiring the cesser of the entry or discharge concerned within such period as may be specified in the notice and requiring the mitigation or remedying of any effects of such entry or discharge in such manner and within such period as may be specified in the notice.

(6) Where a person does not comply with a notice under subsection (5), the local authority concerned may take any steps it considers necessary to terminate the entry or discharge concerned and to mitigate or remedy any effects thereof and the amount of any expenditure incurred by it in relation to any such steps shall be a simple contract debt owed by the person to it and may be recovered by it from the person as a simple contract debt in any court of competent jurisdiction.

(7) (a) An application under subsection (1) to the District Court shall be made to the justice of the District Court for the

District Court district in which the waters concerned or the land or other premises from which the entry or discharge concerned takes place, is situated.

(b) An application under subsection (1) to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the waters concerned or the land or other premises from which the entry or discharge concerned takes place, is situated.

(8) Without prejudice to the generality of subsections (1) and (5), an order under subsection (1) or a notice under subsection (5) may require—

(a) the replacement of fish stocks,

(b) the restoration of spawning grounds,

(c) the taking of measures to prevent the continuance of the entry or discharge to which the order or notice relates,

(d) the removal of polluting matter from waters,

(e) the treatment of affected waters so as to mitigate or remedy the effects of the entry or discharge concerned,

(f) the making of alternative arrangements for the supply of water for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational purposes or the payment of a specified amount to the sanitary authority or other person concerned to defray all or part of the costs of such arrangements,

(g) the making good of any damage to plant or equipment or to any water abstraction or treatment works and any consequential losses incurred by any person by reason of the entry of polluting matter into waters.

(9) An application may be made under subsection (1) and a notice may be served under subsection (5) notwithstanding that a prosecution under section 3 or 4 has not been brought in respect of the relevant entry or discharge referred to in subsection (1) or (5), as may be appropriate."

SECT 8

Amendment of section 11 of Principal Act.

8.—section 11 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1):

"(1) Where, on application by any person to the High Court, whether or not that person has an interest in the waters concerned, that Court is satisfied that—

(a) polluting matter is being, has been or is likely to be caused or permitted to enter waters and the entry is not one to which section 3 (5) applies or would apply and is not under and

in accordance with a licence under section 171 of the Act of 1959,

(b) trade effluent or sewage effluent is being, has been or is likely to be discharged or caused or permitted to be discharged to waters and the discharge is not one to which subsection (2) of section 4 applies or would apply and is not under and in accordance with a licence under that section or the said section 171, or

(c) polluting matter has escaped, is escaping or is likely to escape accidentally from premises to waters,

the High Court may by order—

(i) prohibit any person from causing or permitting or continuing to cause or permit the entry of polluting matter to the waters or the discharge aforesaid of trade effluent or sewage effluent to the waters,

(ii) require the carrying out of specified measures by any person having the custody or control of polluting matter or trade effluent or sewage effluent to prevent an entry or discharge referred to in subparagraph (i) or the continuance or recurrence of such an entry or discharge,

(iii) for the purpose of preventing, or preventing the continuance or recurrence of, such an entry or discharge as aforesaid, or of avoiding any risk that a person having custody or control of polluting matter or trade effluent or sewage effluent may cause or permit such an entry or discharge as aforesaid, require the person to do, refrain from or cease doing any specified act or to refrain from or cease making any specified omission,

(iv) for the purpose of preventing the escape aforesaid or the continuance or recurrence of such an escape, require the carrying out of specified measures by the occupier of the premises aforesaid and for the purpose of avoiding any risk of such an escape, require the occupier to do, refrain from or cease doing any specified act or to refrain from or cease making any specified omission, and

(v) make such other provision as that Court considers appropriate.

(1A) An application may be brought under subsection (1) notwithstanding that a prosecution under section 3 or 4 in respect of the relevant entry or discharge referred to in subsection (1) has not been brought."

SECT 9

Amendment of section 12 of Principal Act.

9.—section 12 of the Principal Act is hereby amended by—

(a) the insertion after subsection (2) of the following subsection:

"(2A) Notwithstanding subsection (2), a notice under this subsection may, either in addition to, or in lieu of complying with that subsection—

(a) regulate or restrict in such manner and to such extent and for such period as may be specified in the notice or make subject to specified conditions the carrying on of any activity, practice or use of premises that, in the opinion of the local authority concerned, could result in the entry of polluting matter to waters, and

(b) require the provision, re-location or alteration of facilities for the collection or storage of polluting matter.", and

(b) the substitution of the following subsection for subsection (3)—

"(3) A person on whom a notice under this section is served may, within such period as may be specified in the notice, make representations to the local authority concerned in writing regarding the terms of the notice and the authority, after consideration of any such representations, may amend a provision of the notice (including the provision relating to subsection (2) (c)) or may confirm or revoke the notice and shall inform the person of such amendment, confirmation or revocation."

SECT 10

Power of local authority to prevent and abate pollution.

10.—The following section shall be substituted for section 13 of the Principal Act:

"13. (1) Where it appears to a local authority or a sanitary authority that for the purpose of—

(a) preventing the entry of polluting matter to any waters or to any drain or sewer provided solely for the reception or disposal of storm water in its functional area,

(b) removing polluting matter from any such waters, drain or sewer,

(c) preventing polluting matter in waters outside its functional area from affecting such area or any seashore (within the meaning of the Foreshore Act, 1933) adjoining such area, or

(d) mitigating or remedying in relation to its functional area or any such seashore as aforesaid the effects of any polluting matter in any such waters, drain or sewer as aforesaid,

it is necessary to do so, it may take such measures (including the giving of assistance, whether financial or otherwise, to others and the procuring of the taking of measures by others) as it considers appropriate for those purposes and may dispose of any such polluting

matter in such manner as it thinks fit,

(2) To the extent (if any) that any measures taken by a local authority or a sanitary authority under this section were necessitated by the acts or omissions of a person (being acts or omissions that the person ought reasonably to have foreseen would or might necessitate the taking of the measures by the authority), the expenditure incurred by the authority in relation to the measures may be recovered by the authority from the person as a simple contract debt in any court of competent jurisdiction."

SECT 11

Amendment of section 15 of Principal Act.

11.—Section 15 of the Principal Act is hereby amended—

(a) by the substitution of the following subsections for subsection Principal Act. (3):

"(3) Two or more local authorities may jointly make a water quality management plan in relation to waters part of which are in or adjoin the functional area of each local authority.

(3A) A water quality management plan may be revised or replaced by the local authority or local authorities that made it.", and

(b) by the substitution of the following subsection for subsection (6):

"(6) As soon as practicable after the making, revision or replacement of a plan under this section, a copy of the plan as so made or revised or of the replacement plan shall be given by the local authority concerned to the Minister and the Minister for the Marine and to any local authority, sanitary authority or regional board whose functional area either adjoins the waters to which the plan relates or the performance of whose functions would be affected by or would affect the implementation of the plan."

SECT 12

Amendment of section 16 of Principal Act.

12.—section 16 of the Principal Act is hereby amended—

(a) by the substitution in subsection (4) of the following paragraph for paragraph (b):

"(b) provide for the payment by the holder of the licence to the sanitary authority concerned of such amount or amounts as may be determined by the sanitary authority having regard to the expenditure incurred or to be incurred by it in monitoring, treating and disposing of discharges of trade effluent, sewage effluent and other matter to sewers in its functional area or a specified part of its functional area.", and

(b) the insertion of the following subsection after subsection

(13):

"(13A) Where a notice under this section is not complied with, the person on whom it was served shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or both."

SECT 13

Amendment of Section 17 of the Principal Act .

13.—Section 17 of the Principal Act is hereby amended by—

(a) the substitution for subsections (2) and (3) of the following subsections:

"(2) Notwithstanding any other provision of this Act or any condition in a licence under section 16, any such licence may be reviewed at any time by the sanitary authority that granted it if

(a) the sanitary authority has reasonable grounds for believing that the discharge authorised by the licence is or is likely to be injurious to public health or is or is likely to render the waters to which the sewer concerned discharges unfit for use for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational uses,

(b) there has been a material change in the nature or volume of the discharge,

(c) there has been a material change in relation to the waters to which the sewer concerned discharges,

(d) further information has become available since the date of the granting of the licence relating to polluting matter present in the discharge concerned or relating to the effects of such matter, or

(e) the licensee applies to the sanitary authority concerned to review the licence.

(2A) Notwithstanding any other provision of this Act or any condition in a licence under section 16, where regulations are in force under section 26 relating to a trade effluent or sewage effluent from a sewer or to waters to which a sewer discharges, such a licence relating to the trade effluent or authorising the discharge of a trade effluent to the sewer shall be reviewed by the local authority that granted it—

(a) in case it was in force before the commencement of the regulations, as soon as may be after such commencement and thereafter at such intervals as may be specified in the regulations, and

(b) in any other case, at such intervals as may be specified in the regulations.

(3) Upon completion of a review under this section, a sanitary authority may amend or delete any condition of the licence or attach conditions or additional conditions to the licence or revoke the licence; and if a sanitary authority proposes to exercise a power aforesaid, it shall do so as soon as may be after the completion of the relevant review under this section.",

(b) the insertion in subsection (4) after paragraph (b) of the following paragraph:

"(c) Without prejudice to the generality of paragraph (a), regulations under this subsection may also make provision in relation to all or any of the following matters:

(i) the payment to sanitary authorities of fees of such amounts as may be specified in the regulations in relation to reviews of licences,

(ii) the payment of fees of different amounts in respect of different classes of such reviews as aforesaid,

(iii) exemption from the payment of such fees in such circumstances as may be specified,

(iv) the waiver, remission or refund (in whole or in part) of such fees in such circumstances as may be specified, or

(v) the manner in which fees may be disposed of.",

and

(c) the insertion after subsection (4) of the following subsection:

"(5) Where, pursuant to regulations under this section, a fee is payable to a sanitary authority, the sanitary authority shall not conduct the review in relation to which the fee is payable until the receipt thereof by the sanitary authority."

SECT 14

Amendment of section 19 of Principal Act.

14.—section 19 of the Principal Act is hereby amended by the insertion of the following subsections after subsection (2):

"(2A) Regulations under this section may make provision for—

(a) the payment to a sanitary authority of a fee of such amount as may be specified in respect of an application to it for a licence under section 16, and

(b) the payment to An Bord Pleanála of a fee of such amount as may be specified in respect of an appeal to it under section 20,

and any such regulations may make provision for—

- (i) the payment of fees of different amounts in respect of different classes of such applications and appeals as aforesaid,
- (ii) exemption from the payment of fees provided for under paragraph (a) or (b) in such circumstances as may be specified,
- (iii) the waiver, remission or refund (in whole or in part) of such fees in such circumstances as may be specified, and
- (iv) the manner in which such fees may be disposed of.

(2B) Where, pursuant to regulations under this section, a fee is payable to a sanitary authority in respect of an application for a licence under section 16, the sanitary authority shall not consider the application unless the fee is received by the sanitary authority.

(2C) Where, pursuant to regulations under this section, a fee is payable to An Bord Pleanála in respect of an appeal under section 20, the appeal shall not be entertained unless the fee is received by An Bord Pleanála before the expiration of the prescribed period referred to in subsection (1) of that section.

(2D) Where, pursuant to regulations under this section, a fee is payable to An Bord Pleanála in respect of a request for the oral hearing of an appeal, An Bord Pleanála shall not consider the request unless the fee is received by An Bord Pleanála."

SECT 15

Appeals in relation to sections 16 and 17 of Principal Act.

15.—(1) The following section shall be substituted for section 20 of the Principal Act:

"20.—(1) (a) The occupier of premises from which a discharge to which a licence under section 16 relates is made may, before the expiration of such period as may be prescribed, appeal to An Bord Pleanála in relation to—

- (i) the revocation of the licence,
- (ii) the attachment of conditions or additional conditions to the licence, or
- (iii) the amendment or deletion of any condition attached to the licence,

by a sanitary authority.

(b) A person whose application for a licence under section 16 has been refused by a sanitary authority may, before the expiration of such period as may be prescribed, appeal to An Bord Pleanála in

relation to the refusal.

(c) An act of a sanitary authority referred to in paragraph (a) or (b) shall have effect—

(i) in case an appeal is not brought against it, upon the expiration of the period referred to in paragraph (a) or (b), as the case may be,

(ii) in case an appeal is brought against it and the final determination of the appeal does not set the act aside, upon and in accordance with such final determination,

(iii) in case an appeal is brought against it and the appeal is withdrawn, upon the withdrawal of the appeal.

(2) An Bord Pleanála, after consideration of an appeal under this section, shall, as it thinks proper, allow or refuse the appeal and may give any direction consequent on its decision that it considers appropriate to the sanitary authority concerned (including a direction that a specified condition be attached to the licence concerned or be amended or deleted) and a sanitary authority shall comply with any such direction."

(2) Appeals brought under section 20 of the Principal Act and not finally determined upon the commencement of this section shall be continued and determined as if so brought after such commencement.

SECT 16

Provisions in relation to appeals under section 8 and 20 of Principal Act.

16.—(1) The following section shall be substituted for section 21 of the Principal Act:

"21.—(1) The Minister may by regulations provide for

(a) any procedural matter in relation to appeals under sections 8 and 20, and

(b) such incidental and supplementary matters (including the modification of any provision of the Local Government (Water Pollution) Acts, 1977 and 1990, and the Local Government (Planning and Development) Acts, 1963 to 1983) as appear to the Minister to be necessary or expedient for the purpose of such appeals.

(2) Sections 6 (2) (d), 19 (2) (d) and subsections (1) (a) and (9) of section 28 shall, as respects such appeals as aforesaid, have effect as if the references therein to the Minister were references to An Bord Pleanála."

(2) The Local Government (Water Pollution) Act, 1977 (Transfer of Appeals) Order, 1978 (other than Article 4) (which order was made under section 21 of the Principal Act) shall continue in force and may be amended or revoked by the Minister by order.

SECT 17

Information to local authorities and sanitary authorities.

17.—The following section shall be substituted for section 23 of the Principal Act:

"23. (1) A local authority may, for the purposes of its functions under this Act, by notice in writing given to or served on a person who—

(a) is abstracting water from any waters in the functional area of the authority,

(b) is discharging, or causing or permitting the discharge of, trade effluent or sewage effluent or other matter to any such waters,

(c) has custody or control of any polluting matter in its functional area,

(d) is engaged in activities or practices that, in the opinion of the local authority, may cause or permit polluting matter to enter waters,

require the person to give to the local authority in writing, within such period (being not less than 14 days) beginning on the date of the giving or serving of the notice as may be specified in the notice, such particulars as may be so specified in relation to any of the activities or practices aforesaid (including the custody or control of polluting matter) and such other information (if any) as it may consider necessary for the purposes of those functions.

(2) A sanitary authority may, for the purposes of its functions under this Act, by notice in writing given to or served on a person, require the person who is making, causing or permitting a discharge to a sewer to give to the sanitary authority in writing, within such period (being not less than 14 days) beginning with the date of the giving or serving of the notice as may be specified in the notice, such particulars as may be so specified in relation to the discharge and such other information (if any) as it may consider necessary for the purposes of those functions.

(3) Without prejudice to the generality of subsections (1) and (2), a notice under either of those subsections relating to trade effluent, sewage effluent or other polluting matter may require the person to or on whom it is given or served to give to the local authority or, as the case may be, the sanitary authority, concerned—

(a) maps, plans, drawings or photographs showing the location, nature, extent and condition of—

(i) any facilities for the collection, storage, treatment or disposal of the effluent or other polluting matter,

(ii) any other premises from which polluting matter may enter waters, or

(iii) any sewer,

and showing their relationship to any waters, and

(b) such other particulars as may be specified in the notice of the matters aforesaid, including particulars of the arrangements, systems and methods in use or proposed for the disposal of the effluent or other polluting matter, and of the times and rates at which such disposal is effected.

(4) A person who—

(a) fails or refuses to comply with a requirement in a notice under this section, or

(b) in purported compliance with such a requirement gives to a local authority or sanitary authority information that, to his knowledge, is false or is misleading in a material respect,

shall be guilty of an offence and shall be liable on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or both."

SECT 18

Amendment of section 26 of Principal Act.

18.—section 26 of the Principal Act is hereby amended by the insertion of the following subsection after subsection (3):

"(4) (a) Regulations under this section may require persons to take such steps as may be specified in the regulations to secure compliance with quality standards standing prescribed under subsection (1) and may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purpose of the regulations (including provisions modifying any provision of the Local Government (Water Pollution) Acts, 1977 and 1990).

(b) Where it is proposed to make regulations under this section modifying a provision of this Act, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft shall have been passed by each such House."

SECT 19

Amendment of section 28 of Principal Act.

19.—section 28 of the Principal Act is hereby amended by the insertion of the following subsection after subsection (3):

"(3A) (a) Where an authorised person who is on premises or a

vessel in pursuance of the powers conferred by this section reasonably believes that an offence under section 3 (1), 4 (1) or 16 (1) of this Act or section 21 (3) of the Local Government (Water Pollution) (Amendment) Act, 1990, is being or has been committed in relation to the premises or vessel, he may request from any person he finds on the premises or vessel his name and address and a description of his occupation and his functions and responsibilities as respects the premises or vessel, as the case may be, and any enterprise carried on at the premises or on the vessel and (in so far as they are known to him) the name and address of the occupier of the premises, the owner of the vessel and the person in charge of the premises or vessel.

(b) A person who fails or refuses to comply with a request under this subsection or, in pursuance of such a request, furnishes information to an authorised person that is false or misleading shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or both."

SECT 20

Civil liability for pollution.

20.—(1) Where trade effluent, sewage effluent or other polluting matters enters waters and causes injury, loss or damage to a person or to the property of a person, the person may, without prejudice to any other cause of action that he may have in respect of the injury, loss or damage, recover damages in any court of competent jurisdiction in respect of such injury, loss or damage—

(a) from the occupier of the premises from which the effluent or matter originated unless the entry to the waters was caused by an act of God or an act or omission of a third party over whose conduct such occupier had no control, being an act or omission that such occupier could not reasonably have foreseen and guarded against, or

(b) if the entry to the waters was occasioned by an act or omission of any person that, in the opinion of the court, constitutes a contravention by the person of a provision of The Principal Act or this Act, from that person.

(2) Subsection (1) does not apply to the entry of trade effluent, sewage effluent or other polluting matter to waters by virtue of anything specified in section 3 (5) of the Principal Act or under and in accordance with a licence under section 4 of the Principal Act or section 171 of the Act of 1959.

SECT 21

Regulation and prohibition of certain agricultural activities.

21.—(1) In this section "activity" means any one or more of following:

(a) the collection, storage, treatment and disposal of any

polluting matter used in connection with., or arising from any operation, activity, practice or use of land or other premises carried on for the purposes of agriculture, horticulture or forestry;

(b) any activity that involves the application to land or to growing crops, or the injection into land, of any silage effluent, animal slurry, manure, fertiliser, pesticide or other polluting matter;

(c) any other operation, activity, practice or use of land or other premises for the purposes of agriculture, horticulture or forestry.

(2) (a) Whenever a local authority considers that, for the purpose of preventing or eliminating the entry of polluting matter to waters, it is necessary to do so, it may make bye-laws prohibiting the carrying on of a specified activity in the whole or a specified part of its functional area or providing for the regulation of the carrying on of a specified activity in the whole or a specified part of its functional area.

(b) Whenever the Minister considers that, for the purpose of preventing or eliminating the entry of polluting matter to waters, it is necessary to do so, the Minister may direct a local authority to make bye-laws prohibiting the carrying on of a specified activity in the functional area of the authority or in a specified part of that area or providing for the regulation in such manner as the Minister may specify of the carrying on of a specified activity in the functional area of the authority or in a specified part of that functional area and the local authority shall comply with the direction.

(c) Without prejudice to the generality of paragraphs (a) and (b), bye-laws under this subsection may specify the manner in which, the conditions subject to which, the times at which and the circumstances in which an activity may be carried on and may impose restrictions, controls and requirements in relation to the carrying on of the activity and the bye-laws may make different provisions in relation to different areas, different parts of areas, different activities and different circumstances.

(d) Bye-laws under this subsection may make provision for such incidental, supplementary and consequential provisions as appear to the local authority making the bye laws to be necessary or expedient for the purposes of the bye-laws or the functions of the authority under this section.

(e) Bye-laws under this subsection shall be subject to the approval of the Minister.

(3) (a) A person who contravenes or fails to comply with bye-laws under subsection (2) shall be guilty of an offence.

(b) A person guilty of an offence under this subsection shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, or

(ii) if the offence is a contravention of or failure to comply with a bye-law prohibiting the carrying on of a specified activity or a bye-law relating to a matter referred to in subsection (2) (c), on conviction on indictment, to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 5 years or to both.

(4) Where a local authority proposes to make bye-laws under paragraph (a) or (b) of subsection (2)—

(a) it shall publish notice of the proposal, of the area to which the proposed bye-laws will apply and of the place where and period during which copies of the proposed bye-laws may be inspected and purchased in at least one newspaper circulating in that area,

(b) the notice published pursuant to paragraph (a) shall contain a statement to the effect that any person aggrieved by the proposed bye-laws may make representations in writing to the Minister in relation to them during the period specified in the notice,

(c) it shall deposit copies of the proposed bye-laws at its offices, and they shall be made available there for inspection and purchase by members of the public at all reasonable times during the period specified in the notice under paragraph (a),

(d) any person aggrieved by the proposed bye-laws may make representations in writing to the Minister in relation to them during such period as may be specified in the notice (not being less than 30 days from the latest date on which the notice is published pursuant to paragraph (a)),

(e) the Minister shall consider any representations duly made under paragraph (d) before deciding whether to give or refuse to give his approval to the proposed bye-laws,

(f) the Minister may direct the authority to make specified amendments to the proposed bye-laws and, if he does so, paragraphs (a) to (e) shall be deemed to have been complied with in relation to the bye-laws as amended in accordance with the direction,

(g) if, upon the expiration of the period of 6 months from the latest date upon which representations may be made to the Minister under paragraph (d) in relation to the proposed bye-laws, the Minister has not given a decision under paragraph (e) and has not given a direction in relation to them under paragraph (f), the Minister shall be deemed to have given his approval to the proposed bye-laws under paragraph (e),

(h) the bye-laws shall, as soon as may be after they are made, be published in Iris Oifigi il and notice of their making, of the area to which they apply and of the place where copies of them may be purchased or inspected shall be published in at least one

newspaper circulating in the area to which they relate.

(5) For the purposes of the application of section 28 of the Principal Act in relation to this section, the reference in subsection (1) (c) of that section to regulations under The Principal Act shall be construed as including a reference to bye-laws under this section.

SECT 22

Power to declare drains to be sewers for certain purposes.

22.—(1) A sanitary authority may declare by order that a specified combined drain shall become and be a sewer for the purposes of The Principal Act and this Act and, whenever it does so, the drain concerned shall, upon the commencement of the order concerned, become and be a sewer for those purposes.

(2) Whenever a sanitary authority proposes to make an order under subsection (1) in relation to a combined drain

(a) it shall, not less than 30 days before the date of the making of the order, give notice in writing of its intention to make the order to the owner of the drain and the occupier of each premises from which trade effluent or sewage effluent is being discharged to the drain, and

(b) the owner of the drain or an occupier such as aforesaid may within 30 days of the giving to him of the notice aforesaid make representations in writing to the sanitary authority in relation to the making of the order and the authority shall, before deciding whether to make the order, take into consideration any representations made by the owner or occupier.

(3) An order under subsection (1) shall come into operation on such date (not being less than 6 months after the date of its making) as may be specified therein.

(4) Copies of an order under subsection (1) shall, within 10 days after the date of its making, be deposited and made available for inspection and purchase at the offices of the sanitary authority by which it was made and a copy thereof shall, within the period aforesaid, be given or served on the owner of the drain concerned and each occupier such as aforesaid.

(5) Where an order is made by a sanitary authority under subsection (1)-

(a) the occupier of each premises from which trade effluent or sewage effluent is being discharged to the drain concerned immediately after the making of the order shall, within 6 months after such making apply to the authority for a licence under section 16 of the Principal Act in respect of the discharge,

(b) an occupier referred to in paragraph (a) who, in pursuance of that paragraph, duly applies for a licence under section 16 of

the Principal Act and furnishes any information duly required by the sanitary authority concerned in relation to the application shall be deemed not to have contravened section 16 (1) of the Principal Act during the period from the commencement of the order to the grant or, as the case may be, the expiration of one month after the refusal to grant, the licence, in respect of any discharge to the drain concerned that is similar in nature, composition, temperature and volume, and is made, during that period, at a rate similar to that of the discharge referred to in paragraph (a) during the corresponding period before such commencement; and in a prosecution for an offence under the said section 16, it shall be presumed until the contrary is shown that the discharge concerned is not one to which this paragraph applies,

(c) a licence under section 4 or 16 of The Principal Act in respect of the discharge of trade effluent or sewage effluent, from the drain to waters or a sewer, as the case may be, shall cease to have effect on the commencement of the order.

(6) A document purporting to be a copy of an order under subsection (1) and to be certified by an officer of the sanitary authority by which the order was made to be a true copy of the order shall be admissible in any proceedings as evidence of the order.

(7) A sanitary authority may by order amend or revoke an order made by it under this section.

(8) In this section "sewage effluent" does not include domestic sewage being discharged to a combined drain and from the combined drain to a sewer.

(9) An order under subsection (1) may relate to a specified part only of a specified combined drain and references in the preceding subsections of this section to a combined drain shall be construed accordingly.

SECT 23

Offences under Principal Act and this Act by directors, etc, of bodies corporate.

23.—(1) Where an offence under the Principal Act or this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in any such capacity, that person shall also be guilty of an offence and be liable to be proceeded against and punished as if he were guilty of the first mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body corporate.

SECT 24

Increase of certain penalties under Principal Act.

24.—(1) A person guilty of an offence under section 3, 4 or 16 of The Principal Act shall, in lieu of the penalty specified in the section concerned, be liable—

(a) on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £25,000 or imprisonment for a term not exceeding 5 years, or both.

(2) A person guilty of an offence under section 6, 12, 19, 27 or 28 (4) of The Principal Act shall, in lieu of the penalty specified in the section concerned, be liable on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or both.

(3) A person guilty of an offence under section 14 of the Principal Act shall, in lieu of the penalty specified in that section, be liable on summary conviction to a fine not exceeding £1,000.

(4) This section shall have effect as respects offences committed after the commencement of this section.

SECT 25

Provisions in relation to offences under sections 171 and 172 of Act of 1959.

25.—A person guilty of an offence under section 171 or 172 of the Act of 1959 committed after the commencement of this section shall, in lieu of the penalties specified in section 50 of the Fisheries Act, 1980, be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £25,000 or imprisonment for a term not exceeding 5 years, or both.

SECT 26

Payment of certain fines to local authorities, sanitary authorities and regional boards.

26.—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under The Principal Act or this Act, prosecuted by a local authority, a sanitary authority or a regional board, it shall, on the application of the authority or board concerned (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the authority or board, as the case may be, and such payment may be enforced by the authority or board, as the case may be, as if it were due to it on foot of a decree or order made

by the court in civil proceedings.

SECT 27

Prosecution of certain offences.

27.— (a) An offence under a section of The Principal Act mentioned in column (1) of Part I of the Table to this section may be prosecuted by any person mentioned in column (2) of the said Part I opposite the mention of the section in the said column (1).

(b) A summary offence under a section of The Principal Act mentioned in column (1) of Part II of the said Table may be prosecuted by any person mentioned in column (2) of the said Part II opposite the mention of the section in the said column (1).

(c) A summary offence under section 21 may be prosecuted by the local authority concerned.

(d) (i) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under The Principal Act, this Act or section 171 or 172 of the Act of 1959, may be commenced at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings comes to such person's knowledge:

Provided that no such proceedings shall be initiated later than 5 years from the date on which the offence concerned was committed.

(ii) For the purposes of this paragraph, a certificate signed by or on behalf of the person initiating the proceedings specifying the date or dates on which evidence relating to the offence concerned came to his knowledge shall be prima facie evidence of such date or dates and in any legal proceedings a document purporting to be a certificate under this paragraph and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

TABLE

PART I

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Section

(1) Person entitled to prosecute

(2) 6The local authority concerned. 10The person who applied to the court for the order to which the offence relates. 12The local authority concerned. 14A local authority in or adjoining whose functional area any of the waters concerned are situated or a sanitary authority in which the sewer concerned is vested or by which it is controlled. 19The sanitary authority concerned. 23The local authority concerned or the sanitary authority concerned. 27A local

authority in or adjoining whose functional area any of the waters concerned are situated.²⁸The person who appointed the authorised person concerned.

PART II

Section

(1) Person entitled to prosecute

(2)^{3,4A} local authority in or adjoining whose functional area any of the waters concerned are situated, a regional board in whose functional area any of the waters concerned are situated or any other person affected.^{16A} sanitary authority in which the sewer concerned is vested or by which it is controlled or in whose functional area it is situated.

SECT 28

Costs of prosecutions.

28.—Where a person is convicted of an offence under The Principal Act, this Act or sections 171 or 172 of the Act of 1959 committed after the commencement of this section, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to any local authority, sanitary authority or regional board concerned the costs and expenses, measured by the court, reasonably incurred by the authority or board in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

SECT 29

Consultation by Minister in relation to making of regulations.

29.—(1) Where the Minister considers that, having regard to the functions of any Minister of the Government, that Minister of the Government ought to be consulted in relation to the making of regulations under section 4 (10), 16 (10), 24, 25 (1), 26 (1) or 27 (1) 1 of The Principal Act, he shall not make the regulations without having consulted with that Minister of the Government.

(2) So much of the enactments aforesaid as provide for consultation with specified persons in relation to the making of regulations shall cease to have effect.

SECT 30

Repeals.

30.—Section 2, subsections (4) and (6) (other than the Table) of section 3 and sections 4 (9), 6 (5), 12 (6), 14 (3), 16 (9), 19 (5), 27 (4), 28 (8), 31 and 34 (c) of The Principal Act are hereby repealed.

SECT 31

Short title, construction, collective citation and commencement.

31.—(1) This Act may be cited as the Local Government (Water Pollution) (Amendment) Act, 1990.

(2) The Local Government (Water Pollution) Act, 1977, and this Act shall be construed together as one Act and may be cited together as the Local Government (Water Pollution) Acts, 1977 and 1990.

(3) The Fisheries Acts, 1959 to 1987, and sections 23, 25 and 28 (in so far as they relate to those Acts) shall be construed together as one Act and may be cited together as the Fisheries Acts, 1959 to 1990.

(4) Sections 4, 5, 6, 13, 14, 15 and 16 of this Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be fixed for different purposes and different provisions of those sections.