



## **AN BILLE RIALTAIS AITIUIL (TRUAILLIU UISCE), 1976 LOCAL GOVERNMENT (WATER POLLUTION) BILL, 1976**

### **EXPLANATORY MEMORANDUM**

#### **General**

1. The object of this Bill is to make more effective arrangements for control of water pollution with a view to ensuring that the quality of water resources is maintained to a satisfactory standard consistent with their various beneficial uses. This control will extend to inland waters, tidal waters and the sea but will not apply to discharges to tidal waters or the sea from vessels or marine structures.

2. The proposals in the Bill are based on the recommendations made by an inter-departmental working group in a "Report on Water Pollution" which was published without commitment in March 1973 (Prl. 2939). The Bill was prepared following consideration by the Government of that report and of the comments thereon received from interested bodies.

3. While the Bill deals only with the qualitative aspect of water management, the proposed arrangements will facilitate a co-ordinated approach to overall management of water resources by the various interests involved. The main control functions under the Bill will be performed by local authorities (county and county borough councils in the case of discharges to waters and sanitary authorities\* in the case of discharges to sewers). These local authorities are also responsible for other important aspects of water management in their areas, i.e. provision of water supplies and sewage disposal. The Bill also provides for appropriate involvement of other interests, including fishery interests. Co-ordinated action on a river catchment basis can be secured by consultation and co-operation assisted, where necessary, by the making of water quality management plans. The Bill will, however, enable water quality control authorities to be established if the need should arise.

4. The Bill will facilitate compliance with international obligations concerning control of water pollution from land-based sources, including obligations arising under the EEC Environment Programme.

5. The Bill proposes to

- control, by means of a flexible licensing system to be operated by county and county borough councils, the discharge of trade and certain sewage effluents from land or premises to waters, including inland waters, tidal waters and the sea;
- prohibit the entry to such waters of other poisonous, noxious or polluting matter;
- control, by means of a licensing system to be operated by sanitary authorities, the discharge to sewers of trade effluent or matter other than domestic sewage and storm water;

\* The sanitary authorities comprise the county and county borough councils and the borough and urban district councils. Sanitary authorities are also planning authorities.



- provide for appeal to the Minister against decisions of county and county borough councils and of sanitary authorities on applications for licences;
- enable county and county borough councils and sanitary authorities, the Minister for Agriculture and Fisheries and boards of conservators to take appropriate enforcement action;
- empower county and county borough councils to prepare water quality management plans; to require measures to be taken to prevent water pollution; to take action in cases of urgency; to contribute to surveys or research in relation to water pollution and to require any person abstracting water or making a discharge to give particulars of the abstraction or discharge;
- empower the Minister to require county and county borough councils, sanitary authorities and boards of conservators to consult with each other or with other bodies, as necessary, in relation to performance of functions under the Bill; to prescribe quality standards; to appoint a Water Pollution Advisory Council; to make regulations restricting the use of certain vessels and to establish water quality control authorities;
- provide for monitoring of waters and discharges by county and county borough councils and sanitary authorities;
- require the person responsible for any accidental discharge of polluting matter to notify the appropriate local authority or sanitary authority in the case of a sewer;
- give power of entry, inspection etc., for the purpose of performing functions under the Bill; and
- prescribe appropriate penalties for offences.

6. *Section 1* defines terms which are of general application throughout the Bill. The following are some of the more important definitions:—

“the Minister” means the Minister for Local Government;

“local authority” means (except in *section 24 (5) (b)*), in the case of an administrative county other than a county borough, the council of the county and, in the case of a county borough, the corporation of the county borough, and, where the context permits, includes a water quality control authority established under *section 24*, and references to the functional area of a local authority shall be construed accordingly;

“waters” includes any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse or other inland waters (whether natural or artificial), tidal waters, and, where the context permits, any beach, river bank, salt marsh or other contiguous area as well as the channel or bed of a river, stream, etc. which is for the time being dry;

“aquifer” means any stratum or combination of strata that stores or transmits sufficient water to serve as a source of water supply;

“tidal waters” includes the sea and any estuary up to high water mark medium tide and any enclosed dock adjoining tidal waters;

“polluting matter” is defined so as to incorporate the definition of “deleterious matter” in the Fisheries Acts;

“sewage effluent” means effluent from any works, apparatus, plant or drainage pipe used for the disposal to waters of sewage, whether treated or untreated;

“trade effluent” means effluent from any works, apparatus, plant or drainage pipe used for the disposal to waters or to a sewer of any liquid (whether treated or untreated), either with



or without particles of matter in suspension therein, which is discharged from premises used for carrying on any trade or industry (including mining), but does not include domestic sewage or storm water;

“trade” includes agriculture, aquaculture, horticulture and any scientific research or experiment;

“agriculture” includes the breeding, keeping and sale of livestock (including pigs and poultry) and the making and storage of silage.

7. Section 2 enables the Minister after consultation with other interested Ministers to establish a Water Pollution Advisory Council to advise him on water pollution matters generally. The Council, either of its own volition or at the Minister's request, may advise the Minister on any matter relating to his functions and responsibilities concerning water pollution control.

8. Section 3 imposes a general prohibition on the entry of poisonous, noxious or polluting matter to waters. Prosecutions for offences under this section may be brought by local authorities, boards of fishery conservators or the Minister for Agriculture and Fisheries. It will be a good defence to a prosecution to prove to the satisfaction of the court that the person charged took all reasonable care to prevent the entry in question.

9. The prohibition will not apply to trade or sewage effluents, which are subject to specific controls under other provisions of the Bill; the entry of matter from vessels or marine structures to tidal waters (the control of which is appropriate to a separate code of legislation) or to discharges or deposits which are authorised under various enactments. Certain existing exemptions under the Fisheries Acts are preserved.

10. Sections 4 to 8 introduce a system of licensing of discharges of trade and sewage effluents to waters. The following are notes on some of the more important aspects of the system :—

(a) The licensing system will apply to effluent from any works, apparatus, plant or drainage pipe used for the disposal to waters of liquid waste discharged from premises used for any trade or industry. It will not apply to discharges to tidal waters from vessels or marine structures.

(b) Licences will be issued by the local authority in whose functional area the discharge takes place. In a case where the discharge is to waters, such as the sea, outside the area of any local authority the licence will be issued by a local authority in whose area a premises, works, apparatus, plant or drainage pipe from which the effluent is discharged is situated.

(c) A local authority will be empowered to grant a licence, subject to or without conditions, or to refuse to grant a licence. Conditions which may be attached to a licence may relate to such matters as the nature, composition, temperature, volume, rate, and location of a discharge, the method of treatment, the effect on receiving waters, the periods during which the discharge may be made and the design and construction of outlets. Conditions regarding monitoring, the keeping of records, prevention of a discharge in the event of a breakdown in plant and the payment of a contribution towards any monitoring expenses incurred by the local authority may also be imposed.

(d) In considering whether or not to grant a licence, a local authority must have regard to the objectives in any relevant water quality management plan under section 15 and may not grant a licence for a discharge which would not comply with any quality standard prescribed under section 25.



(e) While licences will not be required for discharges from public sewers, the Minister will be empowered, under *section 25*, to prescribe standards for such discharges and the sanitary authority concerned will be duty bound to comply with any such standard. The Minister will be empowered, following consultation with the Minister for Agriculture and Fisheries, to exempt certain discharges from the licensing requirement.

(f) Licences will be subject to review at intervals of not less than three years (*section 7*). A licence may, however, be reviewed at any time with the consent of the person making the discharge or where the local authority has reasonable grounds for believing that the discharge is a significant threat to public health or where an unforeseen material change has taken place in receiving waters. A licence must be reviewed where regulations made under *section 25* are relevant. Following a review of a licence a local authority may amend any condition attached to it or attach new conditions. Provision is made for the making of regulations by the Minister regarding such matters as the giving of notice of intention to review a licence.

(g) The licensing system will apply to existing discharges but it is proposed (*section 5*) that where application is made, before a date to be fixed by order, in respect of such a discharge, the discharge may continue to be made without a licence until such time as the local authority decides to grant or refuse a licence. This will enable a flexible approach to be adopted in the case of existing discharges.

(h) Any person may appeal to the Minister against the grant or refusal of a licence, the terms of a licence or a decision on review of a licence (*section 8*). It is intended to consider an appropriate amendment to this Bill at a suitable stage to enable such appeals to be determined by An Bórd Pleanála if and when the Local Government (Planning and Development) Bill, 1973, which is at present before the Oireachtas and which provides for the establishment of An Bórd Pleanála to deal with planning appeals, is enacted.

(i) The detailed procedure governing applications for and review of licences, including the form of licence, publication of notices, etc., will be prescribed by regulations (*section 6*). The regulations may also prescribe charges or the method of calculating charges for effluents or classes of effluents. Where such regulations are made the payment of a charge may be included as a condition of a licence.

(j) Provision is made (*section 4 (7)*) for the cesser of effect of a licence where no discharge is made during the first three years of its existence or where the discharge has ceased for a period of three years. While authorisation by licence under the section will be a good defence to a prosecution under any other enactment, a licence of itself will not entitle any person to discharge trade or sewage effluent.

(k) A prosecution in respect of an unlicensed discharge or a discharge which contravenes the terms of a licence may be brought by a local authority, a board of conservators or the Minister for Agriculture and Fisheries.

11. *Section 9* requires the keeping of registers of licences for the discharge of trade and sewage effluents (*section 4*), of licences for the discharge of matter to sewers (*section 16*) and of abstractions from waters. The registers will be kept at the offices of the local or sanitary authority and will be available for inspection at all reasonable times. Regulations under the section may exempt certain classes of abstractions from the registration requirement. A copy of any entry in the register may be obtained on payment of the prescribed fee.



12. *Section 10* empowers a local authority, the Minister for Agriculture and Fisheries or a board of conservators to apply to the District Court for an order directing such person as may be named in the order to mitigate or remedy any effects of a contravention of *section 3* or *section 4*. Penalties may be imposed for non-compliance. It also empowers a local authority to serve a notice on a person responsible for contravention of *section 3* or *section 4* requiring him to cease the contravention and to mitigate or remedy its effects within a specified period. If such a notice is not complied with the local authority may take steps to prevent the discharge or mitigate or remedy the effects of the pollution and recover the cost from such person as it satisfies the court is responsible for the contravention. The local authority may take similar action where a District Court order is not complied with.

13. *Section 11* provides that a local authority or any other person may apply to the High Court for an order prohibiting the continuance of a contravention of the general prohibition in *section 3* or the licensing requirements of *section 4*.

14. *Section 12* provides safeguards against potential pollution from storage of poisonous, noxious or polluting matter. A local authority may serve on any person having custody of such matter a notice specifying the measures which appear to the local authority to be necessary in order to prevent such matter from entering waters and directing that such measures be taken within a specified period.

15. The person on whom the notice is served may make representations to the local authority in regard to the terms of the notice and the local authority may amend the notice. In default of compliance with a notice the local authority may take such steps as it considers necessary to safeguard against pollution and may recover the cost of such steps as a simple contract debt.

16. *Section 13* provides for action in cases of urgency. It enables a local authority to take any steps necessary to prevent the entry to waters of polluting matter and to remove or assist in the removal of such matter from waters in its functional area. The power extends to operations outside the functional area of a local authority where any part of the local authority's own area is at risk. Provision is made for recovery of costs.

17. *Section 14* imposes an obligation on a person responsible for an accidental spillage to notify as soon as possible the local authority in whose area the spillage occurs. The sanitary authority must be notified where the accidental discharge is to a sewer.

18. *Section 15* deals with the making by local authorities of water quality management plans. Such plans may cover any waters in or adjoining the functional area of the local authority but may include the sea only to such extent as the Minister may approve following consultation with the Minister for Agriculture and Fisheries. Plans, which may be revised or replaced periodically, must contain such objectives for the prevention and abatement of pollution and such other provisions as appear to the local authority to be necessary. A plan may not contain any provision inconsistent with regulations under *section 25*. Copies of plans, the making, revision or replacement of which will be a reserved function, must be furnished to the Minister, to the Minister for Agriculture and Fisheries, to local authorities whose functional areas are adjoining and to sanitary authorities and boards of conservators in the functional area of the local authority. The Minister may require a local authority to revise a plan and may require two or more local authorities to co-ordinate their plans or to prepare a joint plan. The section also provides for the making of regulations in relation to public notice of the making or revision of plans and consideration by local authorities of representations in relation to such plans.

19. *Sections 16 to 20* introduce a system of licensing of discharges of trade effluent or other matter, other than domestic sewage or



storm water, to sewers on the same general lines as the licensing system for discharges of trade and sewage effluent to waters. Such a licence will be granted by the sanitary authority in which the sewer is vested. It will also be an offence to discharge any poisonous, noxious or polluting matter to any drain or sewer provided solely for the reception or disposal of storm water.

20. Section 21 requires local authorities and sanitary authorities to carry out or to arrange for such monitoring and analysis of discharges and receiving waters, and empowers them to collect such information, as may be necessary for performance of their functions or as may be directed by the Minister.

21. Section 22 enables local authorities to require the submission of specified particulars of abstractions from or discharges to waters. Similar powers are given to sanitary authorities in relation to discharges to sewers.

22. Section 23 empowers the Minister, following consultation with the Minister for Agriculture and Fisheries, the Minister for Industry and Commerce and any other interested Minister, to make regulations requiring local authorities, sanitary authorities and boards of conservators to consult one another and other interested parties in relation to the exercise of functions under the Bill.

23. Section 24 enables the Minister by order, following consultation with the Minister for the Public Service, to establish water quality control authorities for such areas as may be specified in the order. This is intended as a reserve power which could be used, if the need arises, to set up water quality control authorities in respect of catchments or groups of catchments or other waters which due to their size or configuration give rise to special control problems. A water quality control authority set up under this section will be a local authority for the purposes of various Acts, including the Local Government Acts, and the County Management Acts will apply to it. The establishment of a water quality control authority will require the prior approval of both Houses of the Oireachtas.

24. Section 25 empowers the Minister following consultation with the Minister for Agriculture and Fisheries, the Minister for Industry and Commerce and any other interested Minister to make regulations, of either general or particular application, prescribing (1) quality standards for waters and for trade and sewage effluents and (2) standards for methods of treatment of such effluents. The effect of regulations made under this section would be to prevent the issue by local authorities of licences under sections 4 or 16 in respect of any discharge which would not comply with the prescribed standard or which would result in contravention of the regulations. The effect of any regulations made in respect of sewage effluent from a public sewer, or in respect of waters into which such effluent discharges, would be to place a statutory duty on the sanitary authority concerned to take steps as soon as practicable to ensure that the sewage effluent does not result in a contravention of the regulations.

25. Section 26 empowers the Minister to make regulations, following consultation with the Minister for Transport and Power and the Commissioners of Public Works, to enable local authorities to exercise control over the keeping or use in inland waters, other than tidal waters, of boats, such as pleasure craft, which discharge their wastes from sanitary appliances directly to the water. The section empowers sanitary authorities to provide suitable facilities at marinas, etc. for reception and disposal of wastes and to impose charges for the use of such facilities.

26. Section 27 contains the necessary powers of entry and inspection for the purpose of performing functions under the Bill and



also provides for the making of regulations governing the taking of samples, carrying out of tests etc.

27. *Section 28* empowers local authorities to contribute to the cost of surveys or research in relation to water pollution.

28. *Section 29* enables the Minister to make regulations with respect to matters referred to in the Bill as prescribed or to be prescribed or as being the subject of regulations and provides for the laying of such regulations before each House of the Oireachtas.

29. *Section 30* empowers a local authority to prosecute for offences occurring outside its functional area.

30. *Section 31* makes provision for the service of notices.

31. *Section 32* provides for the coming into operation of different provisions of the Bill on such day or days as may be fixed by the Minister.

32. *Section 33* provides for the repeal of the Rivers Pollution Prevention Acts 1876 and 1893 and of sections 171 and 172 of the Fisheries (Consolidation) Act, 1959. Generally the provisions repealed relate to controls which are being replaced by the control provisions of the Bill.

33. *Section 34* is the usual provision in relation to expenses incurred by the Minister in the administration of the Bill.

34. *Section 35* sets out the short title.

35. *Summary of Penalties provided for in the Bill.*

The penalties shown are either a fine or a term of imprisonment and are in all cases maximum penalties.

Penalties		Nature of Offence	Section of Bill
Summary Conviction	Conviction on Indictment		
£250 (and £100 for each day for continuing offence) or 6 months or both.	£5,000 (and £500 for each day for continuing offence) or 2 years or both.	Causing or permitting poisonous, noxious or polluting matter to enter waters.	Section 3
		Discharging or causing or permitting the discharge of trade effluent or sewage effluent to any waters except in accordance with a licence.	Section 4
		Discharging trade effluent or any matter, other than domestic sewage or storm water, to a sewer except in accordance with a licence.	Section 16
		Permitting or causing the entry of any poisonous, noxious or polluting matter, including sewage, to any drain or sewer provided solely for reception or disposal of storm water.	Section 16
£250 (and £100 for each day for continuing offence) or 6 months or both.	—	Failure to comply with an order of the District Court requiring the mitigation or remedying of any effects of a contravention of <i>section 3</i> or <i>section 4</i> .	Section 10
£250 and £100 for each day for continuing offence.	—	Failure to comply with the terms of a notice served by a local authority on a person having the custody or control of any poisonous, noxious or polluting matter on premises.	Section 12
		Contravention of regulations prohibiting, restricting or regulating the keeping or use of vessels with sanitary appliances which discharge to waters.	Section 26



Penalties		Nature of Offence	Section of Bill
Summary Conviction	Conviction on Indictment		
£250 or 6 months or both.	—	Obstructing an authorised person in the performance of his duties.	Section 27
£250	—	Failure to notify a local authority of an accidental discharge, spillage or deposit of any poisonous, noxious or polluting matter.	Section 14
£100	—	Furnishing false or misleading information in connection with applications for licences under sections 4 and 16 or appeals under sections 8 and 20.	Section 6
			Section 19
		Failure to comply with a notice of a local authority or sanitary authority requiring particulars of an abstraction or discharge or giving of false information.	Section 22

*An Roinn Rialais Áitiúil,  
Feabhra, 1976.*

Penalties		Nature of Offence	Section of Bill
Summary Conviction	Conviction on Indictment		
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Causing or permitting poisonous, noxious or polluting matter to be discharged into any water.	Section 24
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Discharging or causing or permitting the discharge of trade effluent or sewage effluent to any water except in accordance with a licence.	Section 25
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Discharging into any water, other than domestic sewage or storm water, to a sewer except in accordance with a licence.	Section 26
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Permitting or causing the entry of any poisonous, noxious or polluting matter, other than domestic sewage, into any drain or sewer provided for reception or disposal of domestic sewage.	Section 27
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Failure to comply with an order of the District Court requiring the abatement of a nuisance.	Section 28
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Failure to comply with the terms of a notice served by a local authority or sanitary authority on a person having the custody or control of any premises, noxious or polluting matter, or any other matter.	Section 29
£250 (and £100 for each day for continuing offence)	£2,000 (and £200 for each day for continuing offence)	Contravention of regulations prohibiting, restricting or regulating the keeping or use of vessels.	Section 30