



**AN BILLE RIALTAIS ÁITIÚIL (TRUAILLIÚ UISCE) (LEASÚ),  
1989**

**LOCAL GOVERNMENT (WATER POLLUTION)  
(AMENDMENT) BILL, 1989**

**EXPLANATORY AND FINANCIAL MEMORANDUM**

The object of the Bill is to modify and extend the present arrangements for control of water pollution with a view to ensuring that the quality of water resources is maintained at a high level. For this purpose, the Bill amends and extends the Local Government (Water Pollution) Act, 1977 and (in so far as it relates to water pollution) the Fisheries (Consolidation) Act, 1959. In particular, it provides for:

- (a) an amendment to the "good defence" provision in section 3 (3) of the 1977 Act to put a greater onus on the person charged to prove that he could not reasonably have foreseen that his act or omission might cause pollution of waters (*section 3*);
- (b) the charging by local and sanitary authorities and An Bord Pleanála of fees for licence applications, reviews and appeals (*sections 4, 5, 13 and 14*);
- (c) the review by local and sanitary authorities of discharge licences at any time where there are reasonable grounds for believing that any of the beneficial uses of the receiving waters is or is likely to be threatened (*sections 5 and 13*);
- (d) the extension to any person of the right to apply to the courts for an order seeking the mitigation or remedying of the effects of pollution, and the making of explicit provision for remedial measures such as the replacement of fish stocks and the making good of consequential losses incurred by any person as a result of the pollution (*section 7*);
- (e) extending the grounds on which a High Court order may be sought to cover situations involving a risk of water pollution (*section 8*);
- (f) clarification of a local authority's power to serve notices regulating practices (such as silage making and slurry spreading) which, in its opinion, could result in water pollution (*section 9*);
- (g) direct intervention by local and sanitary authorities to prevent or deal with any water pollution incidents (*section 10*);
- (h) conferring on local and sanitary authorities power to obtain information on water abstractions, discharges to waters and activities or practices which are relevant to their pollution prevention functions (*section 17*);



(i) imposition of a civil liability on polluters for injury, loss or damage suffered by any other person (*section 20*);

(j) new powers for local authorities to make bye-laws regulating or prohibiting specified agricultural activities in their functional areas, or any part thereof, where they consider it necessary to do so in order to eliminate or prevent water pollution; the bye-laws may be appealed to the Minister, who may confirm or annul them or direct that they be amended in a specified manner (*section 21*);

(k) an increase to £1,000 in the maximum fine on summary conviction under the Local Government (Water Pollution) Act, 1977 (from £250) and the Fisheries (Consolidation) Act, 1959 (from £500) and to £25,000 (from £5,000) and/or imprisonment for a period of up to 5 years (from 2 years) on conviction on indictment under the 1977 Act; indictable offences with the same penalties will be available under the Fisheries Act and provision is being made for a "good defence" in respect of prosecutions taken under section 171 of that Act (*sections 24 and 25*);

(l) the payment of fines arising from prosecutions taken by local and sanitary authorities to the authority concerned (*section 26*);

(m) court orders requiring pollution offenders to recoup costs and expenses incurred on the investigation, detection and prosecution of offences (*section 28*); and

(n) the repeal of the provisions of the 1977 Act which provide for the establishment, appointment and functions of the Water Pollution Advisory Council and other appropriate repeals (*section 30*).

*Section 1* is a standard interpretation provision.

*Section 2* provides for the insertion of additional definitions in section 1 of the 1977 Act.

*Section 3* provides for the amendment of section 3 of the 1977 Act which imposes a general prohibition on causing or permitting any polluting matter to enter waters. *Subsection (1)* amends the present good defence provision so as to place a greater onus on the person charged to prove that he could not reasonably have foreseen that his act or omission might cause or permit polluting matter to enter waters. *Subsection (1)* also replaces section 3 (5) (a) of the 1977 Act by a provision clarifying the effluents to which the general prohibition does not apply. *Subsection (2)* empowers the Minister to restrict or repeal, by regulations, the exemptions set out in sections 3 (5) and 3 (6) of the 1977 Act; any such regulations must be laid in draft before both Houses of the Oireachtas.

*Section 4* provides for the amendment of section 6 of the 1977 Act which empowers the Minister to make regulations concerning the licensing of effluent discharges to waters and related appeals to An Bord Pleanála. Under the amendment, such regulations may require payment of fees to local authorities for licence applications and to An Bord Pleanála for appeals against licensing decisions. The regulations may also provide for exemptions from fees and waivers, remissions or refunds in certain circumstances.

*Section 5* amends section 7 of the 1977 Act which allows for reviews of effluent discharge licences at intervals of not less than 3 years, or at any time with the consent of the discharger, or on public health



grounds where the condition of the receiving waters has changed, or where regulations setting quality standards for the effluent or the receiving waters are made. The new provisions extend the grounds on which reviews may be conducted so as to safeguard all beneficial uses of waters and to take account of up to date information about the effects of pollutants. In addition, the existing powers which allow a local authority to amend a licence upon completion of a review are being extended to provide for the revocation of a licence, where appropriate. Provision is also made for the charging of fees for reviews of licences.

*Section 6* substitutes a new section for section 8 of the 1977 Act and sets out the circumstances in which appeals may be made to An Bord Pleanála against decisions concerning licences under section 4 of the Act. It provides also that An Bord Pleanála may allow or refuse an appeal and may give to the local authority concerned any direction consequent on its decision that it considers appropriate.

*Section 7* substitutes a new section for section 10 of the 1977 Act. This will extend to any person the right to seek a court order requiring the person responsible for causing water pollution to mitigate or remedy any effects of the pollution in the manner, and within the period, specified by the court. The court may also order the polluter to pay the costs incurred by the applicant in investigating, mitigating or remedying the effects of the pollution.

The "appropriate court" for dealing with an application for an order under the new section 10 will be the District Court or the Circuit Court depending on the estimated cost of complying with the order, or in any case, the High Court. Matters which may be covered by a court order to mitigate or remedy the effects of pollution are detailed in the new section 10 (8) of the 1977 Act. These include the replacement of fish stocks, the restoration of spawning grounds, the removal of polluting matter from waters, the treatment of affected waters, making alternative arrangements (or contributing towards the cost of such arrangements) for the supply of water for domestic, commercial, industrial, fishery, agricultural or recreational purposes and making good any damage to plant or equipment or any consequential losses incurred by any person. A court order may not be made unless the person to whom it is to be directed has been given an opportunity of being heard by the court.

Apart from any steps the Court may take to enforce its order, failure to comply with a court order will constitute an offence involving a fine not exceeding £1,000 and/or imprisonment for a term not exceeding 6 months on summary conviction. In addition, local authorities or regional fisheries boards may directly intervene and take any steps specified in an order which has not been complied with.

The provision in section 10 of the 1977 Act allowing a local authority to serve on a person responsible for pollution a notice requiring specified steps to be taken to end, mitigate or remedy the pollution and its effects and to take such steps itself where the notice is not complied with, is restated.

*Section 8* amends section 11 of the 1977 Act by extending the circumstances in which a person may apply for a High Court order to potential pollution situations. A High Court order may require specified measures to be taken to prevent pollution or to deal with pollution incidents.

*Section 9* amends section 12 of the 1977 Act so as to clarify the powers of local authorities to regulate or restrict practices on premises (including land) which could result in the pollution of waters. Provision is also made to enable a local authority to confirm, amend or



revoke a notice served under section 12 on consideration of any representations made to it within a specified period.

*Section 10* substitutes a new section for section 13 of the 1977 Act so as to confer on sanitary authorities and local authorities wider powers to intervene directly to prevent or deal with water pollution incidents. Where measures taken were necessitated by the acts or omissions of another person, the expenditure incurred may be recovered as a simple contract debt in any court of competent jurisdiction from the person concerned.

*Section 11* amends section 15 of the 1977 Act so as to provide expressly that a water quality management plan may be made jointly by two or more local authorities and that a plan may be amended or revoked by the local authority or authorities that made it.

*Section 12* amends section 16 of the 1977 Act so as to allow for a more flexible system for calculating charges for monitoring, treating and disposing of trade effluent discharges to sewers. An offence provision is also being included for failure to comply with a notice served under the section by a sanitary authority in respect of unauthorised discharges to sewers or surface water drains.

*Section 13* amends section 17 of the 1977 Act which allows for reviews of licences for discharges to sewers at intervals of not less than 3 years, or at any time with the consent of the discharger, or on public health grounds, or where the condition of the receiving waters has changed or where regulations setting quality standards for the effluent or the discharge from the sewer are made. The new provisions extend the grounds on which reviews may be conducted so as to safeguard all beneficial uses of waters and to take account of up to date information about the effects of pollutants. In addition, the existing powers which allow a sanitary authority to amend a licence upon completion of a review are being extended to provide for the revocation of a licence, where appropriate. Provision is also made for the charging of fees for reviews of licences.

*Section 14* amends section 19 of the 1977 Act which empowers the Minister to make regulations concerning the licensing of effluent discharges to sewers and related appeals to An Bord Pleanála. Under the amendment, such regulations may require payment of fees to sanitary authorities for licence applications and to An Bord Pleanála for appeals against licensing decisions. The regulations may also provide for exemptions from fees and waivers, remissions or refunds in certain circumstances.

*Section 15* substitutes a new section for section 20 of the 1977 Act and sets out the circumstances in which appeals may be made to An Bord Pleanála against decisions concerning licences under section 16 of the Act. It provides also that An Bord Pleanála may allow or refuse an appeal and may give to the sanitary authority concerned any direction consequent on its decision that it considers appropriate.

*Section 16* substitutes a new section for section 21 of the 1977 Act so as to provide expressly that appeals under the Act are to be made to, and determined by An Bord Pleanála. The appeals function was assigned to the Minister by the 1977 Act but was transferred to the Board under the Local Government (Water Pollution) Act, 1977 (Transfer of Appeals) Order, 1978. The Minister will retain the power to make regulations concerning procedural matters in relation to appeals.

*Section 17* substitutes a new section for section 23 of the 1977 Act which enables local and sanitary authorities to require the submission



to them of specified particulars of abstractions from, or discharges to, waters or sewers as the case may be. The new section extends the powers of local and sanitary authorities by allowing them to seek relevant information from persons who have control of polluting matter or are engaged in activities likely to cause pollution. Failure to furnish the information sought, or the supply of false information, will be an offence carrying a fine not exceeding £1,000 and/or imprisonment for up to 6 months on summary conviction.

*Section 18* amends section 26 of the 1977 Act so that regulations setting standards for waters, trade effluents and sewage effluents may contain such incidental, supplementary and consequential provisions as are necessary to secure compliance with the standards. It also provides that regulations which modify the provisions of the 1977 Act must be approved in draft by both Houses of the Oireachtas.

*Section 19* amends section 28 of the 1977 Act so as to enable an authorised person on a premises or vessel for any purpose in connection with his functions under the Act to request the name, address and occupation of any person he finds there, or details of the ownership, control, etc., of the premises or vessel. A person who fails or refuses to comply with such a request, or gives false information, will be liable on summary conviction to a fine not exceeding £1,000 and/or imprisonment for a term not exceeding 6 months.

*Section 20* makes express provision for civil liability of persons responsible for the pollution of waters where injury, damage or loss is caused to another person or to his property. The provision does not apply to pollution caused by an act of God or of a third party over whose conduct the occupier of the premises concerned had no control, nor does it apply to discharges to waters which are authorised e.g. licensed under the 1977 Act or the Fisheries (Consolidation) Act, 1959.

*Section 21* allows a local authority to make bye-laws relating to all or a particular part of its functional area prohibiting or regulating specified activities carried on for the purposes of agriculture, horticulture or forestry where the authority considers it necessary to do so in order to prevent or eliminate the pollution of waters. The Minister may require a local authority to make such bye-laws where he believes them to be necessary. Bye-laws under the section may be made in respect of activities such as the collection, storage and disposal of agricultural wastes, and the use of manure, fertilisers and pesticides. Bye-laws may prohibit certain activities in particular areas, or regulate the manner in which they are conducted by subjecting them to conditions.

The section sets out in full the procedure to be followed in relation to the making of bye-laws. These must be published in *Iris Oifigiúil* and notice of their making must be published in one or more newspapers circulating in the area to which they relate. Copies of the bye-laws must also be available for inspection and purchase at the offices of the local authority concerned. There is provision for appeals against the bye-laws to the Minister, who may confirm or annul them, or require the local authority to amend them in a specified manner. Contravention of bye-laws will be an offence, carrying a fine not exceeding £1,000 and/or imprisonment for up to 6 months on summary conviction, and, in certain cases, a fine not exceeding £25,000 and/or imprisonment for up to 5 years on conviction on indictment.

*Section 22* gives discretionary powers to a sanitary authority to make an order declaring a combined drain to be a sewer for the purposes of the 1977 Act. (A combined drain is a drain serving two or more premises but which is not part of the system of public sewers).



Under the 1977 Act, trade and sewage effluent discharges to waters are licensable under section 4 while discharges to sewers require a licence under section 16. Accordingly, where effluents are discharged to a combined drain, they are not amenable to individual control under the existing provisions—a licence may be issued only in respect of the eventual discharge of the combined effluent from the drain to waters or to the public sewers. In such circumstances, difficulties may arise in identifying the person responsible for breaches of conditions attached to the licence issued in respect of the combined effluent discharge from the drain. Where a combined drain is declared to be a sewer, trade and sewage effluent discharges will be subject to individual licensing under section 16 of the 1977 Act, with conditions appropriate to the type of effluent involved.

The procedure to be followed when a sanitary authority intends to make an order declaring a combined drain to be a sewer is set out in the section. There is provision for notification of the owner of the drain and those discharging to it, and for representations. An order will not come into effect until at least 6 months after it is made so as to allow those concerned to apply to the sanitary authority for effluent discharge licences under section 16. Where such applications are made, effluent similar in nature, temperature, composition and volume to that discharged before the order was made may continue to be discharged until such time as individual licences are granted or refused. Decisions in relation to licensing will be subject to the standard appeal and review provisions applicable to licences issued under section 16 of the 1977 Act.

*Section 23* provides that where an offence is committed by a corporate body and it is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body, the person concerned, in addition to the corporate body, will be guilty of the offence.

*Section 24* increases the penalties for offences under sections 3, 4 and 16 of the 1977 Act from £250 to £1,000 on summary conviction and from £5,000 and/or up to 2 years imprisonment to £25,000 and/or up to 5 years imprisonment on conviction on indictment. Summary convictions only may be obtained for offences under sections 6, 12, 14, 19, 27 and 28 and in these cases, the monetary penalty is also being increased from £250 to £1,000.

*Section 25* increases the penalties for water pollution offences under sections 171 and 172 of the Fisheries (Consolidation) Act, 1959 from £500 to £1,000 on summary conviction and provides for the first time for indictable offences under those sections with a fine not exceeding £25,000 or imprisonment for up to 5 years or both. A "good defence" provision similar to the new provision to be inserted in section 3 of the 1977 Act is introduced in respect of prosecutions taken under section 171 of the 1959 Act.

*Section 26* provides for the payment of fines under the 1977 Act and the Bill to the local authority or sanitary authority which prosecuted the offence concerned.

*Section 27* restates the provisions of the 1977 Act dealing with the prosecution of offences. The relevant provisions of the 1977 Act are being repealed by *section 30* of the Bill.

*Section 28* provides for the recovery of all costs and expenses reasonably incurred in prosecuting an offence under the Bill, the 1977 Act or section 171 or 172 of the Fisheries (Consolidation) Act, 1959. The court is required to make an order regarding payment of costs and expenses unless it is satisfied that there are special and substantial reasons for not doing so.



*Section 29* sets out a simplified procedure in relation to consultation by the Minister before making regulations under the 1977 Act.

*Section 30* provides for the repeal of certain provisions of the 1977 Act. Sections 3 (4), 4 (9), 6 (5), 12 (6), 14 (3), 16 (9), 19 (5), 27 (4), 28 (8) and 31 are being repealed as a consequence of *section 27* of the Bill. *Section 2*, which is also being repealed, concerns the appointment, composition and functions of the Water Pollution Advisory Council. *Section 34 (c)*, which provided for the repeal of sections 171 and 172 of the Fisheries (Consolidation) Act, 1959, was never brought into operation and the sections have continued to be used by regional fisheries boards when taking prosecutions for water pollution offences. The repeal of *section 34 (c)* will ensure that sections 171 and 172 may continue to be used by fisheries boards. A consequential change arising from the retention of these sections involves the repeal of *section 3 (6)* (apart from the Table).

*Section 31* provides for short title, collective citation and construction, and provides for the coming into operation of different provisions of the Bill on such day or days as may be fixed by the Minister, by order.

The Bill does not give rise to any additional financial or staffing costs.

*An Roinn Comhshaoil,*  
*Eanáir, 1989.*



Section 29 sets out a simplified procedure in relation to consultation under the 1977 Act.

Under the 1977 Act, section 4 provides for the Minister to make an order declaring a combined drain to be a sewer for the purposes of the 1977 Act. Section 30 provides for the repeal of certain provisions of the 1977 Act, sections 3 (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (62), (63), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88), (89), (90), (91), (92), (93), (94), (95), (96), (97), (98), (99), (100), (101), (102), (103), (104), (105), (106), (107), (108), (109), (110), (111), (112), (113), (114), (115), (116), (117), (118), (119), (120), (121), (122), (123), (124), (125), (126), (127), (128), (129), (130), (131), (132), (133), (134), (135), (136), (137), (138), (139), (140), (141), (142), (143), (144), (145), (146), (147), (148), 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Section 23 provides that where an offence is committed by a corporate body and it is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body, the person concerned, in addition to the corporate body, will be guilty of the offence.

Section 24 increases the penalties for offences under sections 3, 4 and 16 of the 1977 Act from £250 to £1,000 on summary conviction and from £5,000 and/or up to 2 years imprisonment to £25,000 and/or up to 5 years imprisonment on conviction on indictment. Summary convictions only may be obtained for offences under sections 6, 12, 14, 19, 27 and 28 and in these cases, the monetary penalty is also being increased from £250 to £1,000.

Section 25 increases the penalties for water pollution offences under sections 171 and 172 of the Fisheries (Consolidation) Act, 1959 from £500 to £1,000 on summary conviction and provides for the first time for indictable offences under those sections with a fine not exceeding £25,000 or imprisonment for up to 5 years or both. A "good defence" provision similar to the new provision to be inserted in section 3 of the 1977 Act is introduced in respect of prosecutions taken under section 171 of the 1959 Act.

Section 26 provides for the payment of fines under the 1977 Act and the Bill to the local authority or sanitary authority which prosecuted the offence concerned.

Section 27 restates the provisions of the 1977 Act dealing with the prosecution of offences. The relevant provisions of the 1977 Act are being repealed by section 30 of the Bill.

Section 28 provides for the recovery of all costs and expenses reasonably incurred in prosecuting an offence under the Bill, the 1977 Act or section 171 or 172 of the Fisheries (Consolidation) Act, 1959. The court is required to make an order regarding payment of costs and expenses unless it is satisfied that it is not in the interests of justice to do so.