



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1367 of 11th February 2005
LEGISLATION

THE CONTROL OF WATER POLLUTION
ORDINANCE 2005

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SCHEDULE I.

SCHEDULE II.

**AN ORDINANCE
TO CONSOLIDATE AND AMEND THE CONTROL
OF WATER POLLUTION ORDINANCE 1998 AND
TO PROVIDE FOR THE BETTER PROTECTION OF
THE NATURAL WATER RESOURCES AND SOIL
OF THE AREAS, AND FOR THE PROTECTION AND
IMPROVEMENT OF THE ENVIRONMENT AND THE
FAUNA AND FLORA OF SUCH WATERS**

**P. T. C. Pearson CBE
ADMINISTRATOR**

11th February 2005.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART I – PRELIMINARY PROVISIONS

1. This Ordinance may be cited as the Control of Water Pollution Ordinance 2005. Short title.

2. In this Ordinance, unless the context otherwise requires – Interpretation.
“best available techniques” means the best available techniques prescribed as such in regulations made in accordance with section 19(4) and, in this context—

- (a) “available” means techniques developed on a scale which allow for implementation of such techniques in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the Areas, provided they are reasonably accessible to the operator;
- (b) “best” means the most effective technique for achieving a high general level of protection of the environment as a whole;

(c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained and operated and the process to be followed in the event the installation ceases to operate;

“Chief Inspector” and “Inspector” mean the persons appointed or authorised to act as such in accordance with section 21;

“Commission” means the Commission of the European Union;

“Community Council” means a Council established in accordance with the Communities Law of the Republic, the Akrotiri Community Ordinance or the Overlapping Communities Ordinance;

“discharge” means the direct or indirect release or deposit of any waste, vibration, heat or noise into the waters or soil from one or more sources in the installation and related expressions shall be construed accordingly;

“discharge limit values” means the mass, expressed in terms of certain specific parameters, concentration or level of a discharge, which shall not be exceeded during any specified period;

“discharge permit” means a permit issued under section 9;

“Environmental Impact Assessment” and “Preliminary Environmental Impact Assessment” have the meaning assigned to such terms by the Environmental Impact Assessment Ordinance 2003;

“installation” means a movable or immovable technical unit, (including any unit of the type set out in Schedule I) at which any industrial activity is carried out and includes any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on the level of discharges and on pollution;

“operator”, in relation to an installation, means any person who operates or controls the installation or to whom responsibility for the technical functioning of the installation has been delegated;

“pollution” means the direct or indirect release or deposit into the water or soil, as a result of human activity, of any waste, vibration, heat or noise which may damage human health or the environment, be detrimental to or obstruct any amenities and other legitimate uses of the environment, damage living organisms in the waters or soil, harm the aquatic or ground ecosystem or destroy any biological resources and “pollute” shall be construed accordingly;

“public sewer” means a sewer under the control of a Sewerage Board, a Community Council or any other public authority;

“quality standard” means any requirement which must be fulfilled at a given time in relation to a particular part of the waters in accordance with any legislation of the Areas;

“Schedule I installation” means an installation of the kind specified in that Schedule;

“soil” includes subsoil;

Law No. 86(I)
1999 of the
Republic;
Ordinance 23/01
as amended by
Ordinance 24/01;
Ordinance 27/01.

Ordinance 11/03.

Schedule 1.

Schedule 1.

“stream” means any flow of water on the surface of the ground, whether natural or artificial, but does not include any drain owned by a Community Council or other public authority;

“substance” means any chemical element and its compounds, except for any radio-active substances and genetically modified organisms and micro-organisms;

“surface water” means all inland water including any river, stream, lake, conservation storage reservoir or water reservoir (whether natural or artificial), freshwater, brackish or salt water and any reference to surface water shall include reference to a channel or to the bed of surface water which is dry from time to time;

“Technical Committee” means the Committee established in accordance with Part I of Schedule 1 of the Control of Water Pollution Law of the Republic, No. 106(I) of 2002 as amended from time to time;

“underground waters” means all waters which are below the surface of the ground in the saturation zone and in direct contact with the soil;

“waste” means any substance, matter or object which is discharged by the person in possession of such substance, matter or object;

“waters” includes the territorial waters and all surface and underground waters of the Areas, but does not include –

- (a) waters in any private drain or sewer or in any sewage treatment plant; and
- (b) waters in any privately owned chamber, tank, pool or other container.

3.—(1) The Chief Officer shall be the competent authority for the purposes of this Ordinance and it shall be his duty to take such measures as may be necessary to ensure the effective application and enforcement of it.

Responsibilities of Chief Officer.

(2) Without prejudice to the Quality of Water Intended for Human Consumption Ordinance 2002, the Chief Officer shall—

Ordinance 22/02.

- (a) provide for the effective control of the quality of the waters through regular inspections of the waters and soil; and
- (b) ensure the quality of such waters complies with the quality standards prescribed in accordance with section 5(1)(a).

4. Nothing in this Ordinance shall give any powers in relation to pollution arising from ionising radiation.

Ionising Radiation.

5.—(1) For the purposes of protecting the waters and soil from pollution, the Chief Officer may by order to be published in the Gazette prescribe –

Orders of Chief Officer.

- (a) quality standards in relation to any category of waters;
- (b) the categories of waters and soil which require special protection from pollution;
- (c) the methods to be used for taking samples and for determining the quality of -

- (i) any category of water or soil;
- (ii) any waste discharged with or without a discharge permit;
- (d) specified areas in relation to which either no discharge permit may be issued or where such permit may only be issued with special conditions attached either as a result of the particular conditions existing in that area or where such area has been identified as requiring special protection in accordance with subparagraph (b) above;
- (e) the general conditions applicable to all discharge permits and any additional conditions applicable to discharge permits granted in relation to specified categories of installations; and
- (f) the measures to be taken during any specified period of time for maintaining the quality of swimming waters in areas particularly designed for this purpose.

(2) In determining any of the matters referred to in subsection (1), the Chief Officer may have regard to any written opinion of the Technical Committee and to any relevant standards specified in Community legislation.

(3) The Administrator may make regulations for the better application of this section.

(4) Where any regulations which are made by the Administrator in accordance with subsection (3) prescribe an offence, the penalty to be imposed for such offence shall not exceed the maximum penalty provided for by this Ordinance.

PART II – GENERAL PROTECTION OF WATERS

6.—(1) Subject to subsections (3) to (6) below, a person commits an offence if he—

- (a) causes or permits the discharge, deposit or release of any waste into any stream, the dry bed of any such stream or into any other waters where such waste pollutes or may tend to pollute such waters;
- (b) causes or permits the discharge, deposit or release into or onto the soil of any waste which pollutes or may tend to pollute any waters;
- (c) causes or permits the discharge or deposit of any waste in a place from which it might fall or be carried into any stream or the dry bed of any such stream or any other waters so that it may pollute or tend to pollute such waters;
- (d) causes or permits the discharge of any waste or sludge into or onto the soil;
- (e) causes or permits the discharge of any waste, including any liquid containing volatile matter, into any waters; or
- (f) discharges or deposits or causes or permits the discharge or deposit into the coastal waters of sludge or any other object, substance or matter deriving from waste treatment.

Offences in relation to the pollution of water and soil.

(2) A person who commits an offence in contravention of subsection (1) shall, on conviction, be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three years or to both such penalties.

(3) A person shall not be guilty of any offence prescribed by subsection (1) above if the discharge was carried out –

- (a) in accordance with a discharge permit granted by the Chief Officer under this Ordinance; or
- (b) in accordance with a discharge permit which has effect in accordance with section 14; or
- (c) as provided for by section 15.

(4) A person shall not be guilty of any offence prescribed by subsection (1) if the discharge of the waste was into a public sewer and was carried out with the permission of the authority responsible for the sewer.

(5) It shall constitute a defence in proceedings for an offence under paragraphs (b) or (c) of subsection (1) if the person charged proves that the discharge, deposit or release was made in accordance with good agricultural practice as approved under the provisions of this or any other Ordinance.

(6) It shall constitute a defence in proceedings for an offence under paragraphs (a) or (b) of subsection (1) if the person charged proves that the discharge, deposit or release was due to some cause beyond his control, that he used all due care and diligence to forestall or prevent the commission of the offence and that as soon as he was aware of his failure to do so, he took all practicable steps to remedy the default without unreasonable delay.

7.—(1) The Chief Officer shall take such measures as may be necessary to ensure the protection of the waters from any pollution caused by the discharge of animal waste or by the excessive use of fertilizers (“nitrate pollution”).

Protection from nitrate pollution.

(2) The Chief Officer may, for the more effective application of subsection (1) above, by order to be published in the Gazette –

- (a) designate any area as a vulnerable zone as a result of existing or likely nitrate pollution;
- (b) prescribe any category of water which has been affected by or is likely to be affected by nitrate pollution;
- (c) establish an action programme for the protection of zones vulnerable to nitrate pollution;
- (d) establish a programme for the monitoring of any action programme established in accordance with subparagraph (c) above;
- (e) provide for a code of good agricultural practice and a programme for the effective application of such code.

(3) The Chief Officer shall, in drawing up a code of good agricultural practice in accordance with subsection (2)(e) above, ensure that any measure contained in such code does not have a negative effect on the environment generally, or on the property or amenities of any person.

(4) The Administrator may make regulations for the better application of this section including for the purpose of establishing the criteria according to which the Chief Officer may issue any order referred to in subsection (2) above.

PART III – DISCHARGE PERMITS

Prohibition against operating without discharge permit.

8. Subject to the provisions of sections 14 and 15, an installation which causes or is likely to cause pollution in the waters or in the soil shall not operate unless there is in force in relation to that installation a discharge permit issued by the Chief Officer in accordance with the provisions of this Ordinance.

Application for a discharge permit.

9.—(1) An application for the issue of a permit to discharge waste from an installation into the waters or soil shall be submitted to the Chief Officer in such form as may be prescribed by an order to be published in the Gazette.

(2) An application for a discharge permit shall contain information as to the following—

- (a) a description of the installation and of the nature and extent of the activities carried on by it;
- (b) the raw materials, substances, products and the type of energy used in or produced by the installation;
- (c) the sources of discharges from the installation;
- (d) the condition of the site of the installation;
- (e) the nature and quantity of any waste to be discharged from an installation into any water or soil and an evaluation of the likely effect of such discharge on the environment;
- (f) the technical specifications for any plant, equipment or structure which will be used in the installation to ensure that the level of discharge of any waste is the lowest possible;
- (g) the measures undertaken by the installation for the monitoring of any discharge into any waters and soil;
- (h) whether the activities undertaken by the installation are subject to the control of the Control of Atmospheric Pollution Ordinance 1998 or to any other Ordinance which has as its aim the control of any waste or pollution or which regulates the storage and use of any object, substance or matter used or processed by the installation;
- (i) whether the installation causes the emission of pollutants in the atmosphere;
- (j) any other measures undertaken by the installation in order to comply with any requirement of this Ordinance relevant to that installation.

Ordinance 6/98 as amended by Ordinance 10/99.

(3) An application for a discharge permit shall also include a non-technical summary of the details provided in accordance with subsection (2) above.

(4) On receipt of an application for a discharge permit the Chief Officer shall, without delay, provide for the publication in the Gazette of a notice stating—

- (a) the date the application was received;
- (b) the place where such application shall be open to the public for inspection during working hours;
- (c) that any interested person may submit representations to the Chief Officer on the application.

(5) The Chief Officer may seek the advice of the Technical Committee on any application received by him for a discharge permit.

(6) Part IV of this Ordinance makes further provision in relation to an application for a discharge permit by the operator of a Schedule I installation.

Schedule I.

10.—(1) Subject to the provisions of section 11, the Chief Officer, on the issue of a discharge permit, may in addition to any general conditions applicable to that permit as prescribed by any order made under section 5(1)(e), impose conditions in relation to the following—

Conditions attached to a discharge permit.

- (a) the place and manner in which the waste can be discharged;
- (b) the rate of such discharge and the total quantity of waste permitted to be discharged in any specified period;
- (c) the total quantity of any substance which may be discharged;
- (d) the nature, composition and any natural characteristics of the discharge;
- (e) the maximum concentration of any constituent of the discharge;
- (f) the temperature and acidity (pH value) of any discharge or deposit;
- (g) the technical specifications of any plant, equipment or structure to be used by the operator of the installation for the purposes of compliance with any conditions imposed in accordance with subparagraphs (d), (e) and (f) above;
- (h) the use and maintenance of the plant, equipment or structure referred to in subparagraph (g) above;
- (i) the obligation to inform the Chief Officer of any change in the manufacturing process;
- (j) the plant, equipment or structure to be used in order to prevent the escape of any waste into any waters;
- (k) the installation, operation and maintenance of equipment, at the expense of the operator, for the continuous or regular measurement of –
 - (i) the rate of flow of the waste discharged;
 - (ii) the concentration of any specific constituent in the discharge;
 - (iii) the temperature of the discharge;
 - (iv) the acidity (in pH value) of the discharge;

- (v) the presence of any specific substance in the discharge;
- (l) the obligation to submit to the Chief Officer a report of the statistics collected in accordance with subparagraph (k);
- (m) permitting access to the Chief Inspector and any other Inspector to the source of the discharge for the purposes of taking samples of the waste discharged and measuring its rate of flow and for the collection of any other particulars deemed necessary for the purpose of ensuring compliance with the conditions attached to the discharge permit;
- (n) the frequency with which the composition of the waste to be discharged is to be sampled by the operator of the installation;
- (o) the obligation to submit an annual report on compliance with the conditions of a discharge permit;
- (p) the obligation to inform the Chief Officer immediately in the event of any waste discharged as a result of an accident; and
- (q) the obligation to establish a programme to monitor the quality of waters and the soil at the discharge sources and the submission of an annual report on the same to the Chief Officer.

(2) The Chief Officer may, in determining whether to impose any conditions in accordance with subsection (1), take into account the following considerations –

- (a) any written opinion of the Technical Committee as to the desirability of any particular condition;
- (b) the nature, composition and quantity of waste to be discharged;
- (c) the nature and quality of the soil at the source of discharge;
- (d) the proximity of any waters to the source of the discharge and the use to which such waters are put, if any;
- (e) any relevant public health or safety considerations or any particulars relevant to the general protection of the environment.

Extent of
discharge permit.

11.—(1) A discharge permit issued by the Chief Officer may apply to the entire installation or a part of it, or apply to one or more departments of such installation provided that each such department is operated by the same operator.

(2) A discharge permit shall state, in addition to any conditions imposed in accordance with section 10 or further to an order made under section 5(1)(e) –

- (a) the period within which any conditions specified in the discharge permit must be complied with;
- (b) the period during which it shall be valid, which may not exceed four years from the issue of such permit.

12.—(1) The Chief Officer may where he deems it necessary having regard to public safety or public health considerations or the general protection of the environment—

Revocation or amendment of discharge permit.

- (a) revoke a discharge permit;
- (b) reduce the period during which it is valid;
- (c) add additional conditions in accordance with section 10; or
- (d) amend any of the conditions imposed.

(2) The Chief Officer may revoke a discharge permit or prohibit the further discharge of any waste where an operator of an installation fails or refuses to comply with any condition included in that permit.

(3) In considering whether to amend or revoke a permit in accordance with this section, the Chief Officer may have regard to any written opinion of the Technical Committee.

13. A discharge permit holder shall—

Obligations of discharge permit holder.

- (a) strictly comply with all the conditions of such permit;
- (b) immediately inform the Chief Officer of any accident which occurs in or near the installation to which the permit relates and which affects or seems likely to affect any waters, soil, atmosphere or any person within the area surrounding the installation;
- (c) if he wishes to apply for the renewal of his permit, submit an application in the prescribed form to the Chief Officer at least six months before its expiry.

14.—(1) Any holder of a permit granted in accordance with the Control of Water Pollution Ordinance 1998 may continue to lawfully discharge waste from the installation referred to in that permit in accordance with the terms of that permit, until its expiry, unless the Chief Officer gives notice to such holder in accordance with subsection (2) below.

Existing permit holders.
Ordinance 7/98 as amended by Ordinance 11/99.

(2) If, in the opinion of the Chief Officer, any discharge of waste from an installation which is the subject of a permit granted under the Control of Water Pollution Ordinance 1998 is, or is likely to cause, a risk to public health or of damage to the quality of any waters or soil, then the Chief Officer may serve a written notice on the holder of such permit –

- (a) of any new conditions or any amendment to the existing conditions with which he must comply;
- (b) requiring any discharge which takes place in accordance with that permit to cease;
- (c) requiring the removal of such component from the waste as may be defined in the notice and for its disposal in accordance with the notice;
- (d) the reduction of the level of any specified component to the degree specified in the notice prior to its discharge.

Existing installations lawfully operating without a permit.

15.—(1) An operator of an installation who, prior to the entry into force of this Ordinance, is engaged in the lawful discharge of waste in accordance with the Control of Water Pollution Ordinance 1998 but without a permit granted under that Ordinance shall, where he intends to continue to discharge such waste, submit an application for a discharge permit in accordance with section 9 not later than twelve months from the entry into force of this Ordinance.

(2) The Chief Officer may give notice in writing to the operator requiring him to submit an application within such earlier time limit as may be specified in the notice.

(3) The operator of such an installation may continue to lawfully discharge waste until the expiry of the time period specified in accordance with subsection (1) or (2) as appropriate.

Changes in the nature or operation of the establishment.

16.—(1) The holder of a discharge permit shall give notice in writing to the Chief Officer of any proposed change in the nature or the operation of the installation or of any proposed extension to the installation which may have an impact on water or soil.

(2) On receipt of a notice in accordance with subsection (1) the Chief Officer may, where he deems it necessary for the purpose of protecting the waters and soil, add new conditions or amend any of the existing conditions of the permit in accordance with section 10.

(3) In considering whether to take any action in accordance with subsection (2), the Chief Officer may have regard to any written opinion of the Technical Committee.

(4) Where the proposed alteration referred to in subsection (1) is a substantial alteration, the operator shall submit an application for approval of the same to the Chief Officer stating –

- (a) the parts of the installation which are intended to be altered; and
- (b) the effect that such alteration is likely to have on the information previously provided in accordance with section 9.

(5) An application submitted in accordance with subsection (4) shall be examined by the Chief Officer as if it were a new application for a discharge permit and accordingly, the provisions of section 9 shall apply.

(6) For the purposes of this section –

“change in the nature or the operation of the installation” means a change in the method of operation or an extension to an installation which may have an effect on the environment; and

“substantial alteration” means a change in the method of operation of an installation which, in the opinion of the Chief Officer, may pose a substantial hazard to any person or to the environment.

PART IV – ADDITIONAL PROVISIONS RELEVANT TO

SCHEDULE I INSTALLATIONS

17. The provisions of this Part apply to Schedule I installations and are in addition to the requirements generally applicable to any installation to which this Ordinance applies.

Application of this Part.

18. Where a Schedule I installation is engaged in a Schedule 1 or Schedule 2 Project within the meaning of the Environmental Impact Assessment Ordinance 2003, then any application for a discharge permit shall be accompanied by an Environmental Impact Assessment or a Preliminary Environmental Impact Assessment as appropriate.

Submission of additional particulars by Schedule I installations.

Ordinance 11/03.

19.—(1) Before issuing a discharge permit to a Schedule I installation, the Chief Officer shall consider whether the nature of the installation is such that the processes it performs are subject to the provisions of the Control of Atmospheric Pollution Ordinance 1998 or any other Ordinance relevant to the protection of the environment. In that event the Chief Officer, in considering the nature of any conditions to be attached to the discharge permit in accordance with section 10, shall—

Installations subject to other pollution controls.

- (a) have regard to the need to prevent any form of pollution that an installation may cause to the waters, soil and atmosphere;
- (b) ensure that any conditions imposed in accordance with this Ordinance are consistent with any measures applicable under the Control of Atmospheric Pollution Ordinance 1998 or any other Ordinance relevant to the protection of the environment.

(2) In addition to any condition imposed in accordance with subsection (1), the Chief Officer shall, where the installation is of the kind mentioned in that subsection, additionally require the operator of such installation to –

- (a) take all necessary measures to prevent any pollution, in particular by applying the best available techniques;
- (b) ensure that no significant pollution is caused through any discharge from the installation;
- (c) avoid the production of solid wastes or, where that is not possible, to dispose of such waste in a manner which ensures that any adverse effect on the environment is avoided or limited;
- (d) ensure the effective use of energy and any natural resources;
- (e) take all necessary measures for the prevention of accidents and the limitation of their consequences;
- (f) take all necessary measures on the closure of the installation to avoid any future risk of pollution;
- (g) provide any information requested by the Chief Officer to enable the effective control by him of any conditions attached to the permit.

(3) In considering any conditions to be imposed in accordance with subsections (1) and (2), the Chief Officer may have regard to any written opinion of the Technical Committee.

(4) The Administrator may make regulations for the more effective application of subsections (1) and (2) above and in particular but without prejudice to the generality of the foregoing, may make regulations for all or any of the following purposes –

- (a) for prescribing any measure to be taken by a Schedule I installation for the purpose of preventing, reducing or eliminating pollution;
- (b) for permitting the production or discharge of any specified pollutants or polluting substances;
- (c) for prescribing any matters relating to the identification, adoption or application of the best available techniques having regard to the potential costs and benefits which may be incurred or arise as a result of the application of any such technique, and to the following factors –
 - (i) the use of techniques which produce a limited quantity of waste;
 - (ii) the use of less dangerous substances in the manufacturing process;
 - (iii) the promotion of recycling any substances produced and where possible of recycling the waste;
 - (iv) any processes, methods of operation or use of equipment which have proved successful in relevant industrial tests;
 - (v) any technological progress and changes in terms of scientific knowledge and opinions;
 - (vi) the nature, volume and likely effects of the waste to be discharged;
 - (vii) the period during which the installation has been in operation;
 - (viii) the time it will take an installation to introduce the best available technique;
 - (ix) the consumption and nature of any raw materials (including water) used in the process and their energy capacity;
 - (x) the need to prevent or reduce to the minimum possible any risks to the environment caused by any discharge;
 - (xi) the need to prevent accidental discharges;
 - (xii) any information on best available techniques published by the Commission and any relevant international organisation.

20.—(1) The Chief Officer shall compile a register of all Schedule I installations in relation to which a discharge permit is in force.

(2) The Chief Officer shall publish the register compiled in accordance with subsection (1) in the Gazette every three years commencing with the coming into force of this Ordinance.

(3) The register compiled in accordance with subsection (1) shall include information as to –

- (a) the type and volume of waste discharged by each such installation;
- (b) the source from which such waste is discharged;
- (c) the measures taken by each such installation for the elimination or reduction of any pollution caused by the discharge;
- (d) any applicable discharge limit values; and
- (e) where applicable the best available techniques in use at the installation.

(4) The register compiled in accordance with subsection (1) shall be formulated in such a way as to be comprehensible by persons who are not specialists in matters of water and soil pollution.

PART V – REGULATORY PROVISIONS

21.—(1) The Chief Officer may appoint a Chief Inspector and such other Inspectors as he may deem appropriate for the purpose of applying the provisions of this Ordinance.

Appointment of Chief Inspector and other Inspectors.

(2) The Chief Officer may authorise suitably qualified persons to exercise such powers and perform such duties of an Inspector as may be specified by the authorisation. Any such person shall be under the supervision of and subject to the directions of the Chief Inspector.

(3) Any Inspector or other person appointed or authorised under this section shall be provided with an appropriate means of identification which they shall display during the performance of any duty or exercise of any power in accordance with this Ordinance.

22.—(1) For the purposes of performing his duties or exercising his powers, an Inspector may —

Powers and duties of Inspectors.

- (a) enter any installation in which he has reasonable cause to believe that any activity or process of a kind which may lead to a contravention of any provision of this Ordinance is being carried on. Such entry may be made at any time while the activity or process is in progress or at any other time provided that he has reasonable cause to believe that the conducting of such activity or process presents an imminent risk of serious harm to any person;
- (b) carry out such tests and measurements as he deems necessary;
- (c) inspect, examine and supervise the operation of any plant or equipment in the installation and carry out such measurements and film or take such photographs as he deems necessary;

- (d) require the production for inspection of any books or documents which he has reasonable cause to believe may contain information relating to his investigation;
- (e) seize and remove any article or take a sample of any substance which may be required for the purpose of any additional investigation or for evidence in a criminal proceeding;
- (f) request the operator of an installation or the person in occupation of the installation or any agent or employee of his who is present –
 - (i) to provide him with safe access to any part of the installation;
 - (ii) to supply him with any reasonably available means for carrying out any tests, measurements, inspections or examinations which he deems necessary for his investigation;
 - (iii) to supply any information which he may be in possession of or to which he has access and which is relevant to the Inspector's investigation;
- (g) require that any installation or any part of it, or any plant, equipment or waste found in such premises is kept in the state that it is in at the time of the inspection for any period he considers reasonably necessary, for the purposes of any test, measurement, inspection or examination, provided that compliance with such requirement shall not entail the stoppage or interruption of any essential parts of the process or activity;
- (h) require any person whom he has reasonable cause to believe was either employed in any part of the installation or was engaged in any activity or process carried on there within the last three months, to produce to him any information he may be in possession of or to which he has access and which is relevant to the Inspector's investigation.

(2) If an Inspector has reasonable cause to believe that an installation is operating or is about to operate in a way that may cause a risk of pollution to the environment as a result of the risk of a fire, explosion or discharge of any waste (other than in accordance with the terms of a discharge permit or in accordance with sections 14 or 15), then he shall serve on the operator or any person who appears to be in charge of the operation, or the installation generally, a notice which shall –

- (a) state the basis on which he believes the risk to exist;
- (b) give directions for the taking of specific measures to eliminate or limit the risk;
- (c) set the period of time within which such measures shall be taken; and
- (d) direct that if the installation fails to comply with the terms of the notice within the time period specified and the perceived risk still exists, it shall cease the relevant operation.

(3) If an Inspector has reasonable cause to believe that the risk referred to in subsection (2) is imminent and requires action to be taken immediately, he may serve a notice requiring the installation to cease the relevant operation immediately and not to restart it until any directions specified in the notice have been complied with.

(4) An Inspector may, where he considers it necessary, be accompanied by a police officer or by any other person authorised by the Inspector or the Chief Inspector and the operator of the installation shall permit any such person to enter his premises.

23.—(1) Where an Inspector takes a sample with the intention of submitting such sample for analysis, he shall notify the operator of his intention to have such sample analysed and shall then divide it into three parts, and shall label and seal or secure such part as its nature will permit and shall—

Taking of samples.

- (a) deliver one part to the operator of the installation concerned or to his legal representative;
 - (b) submit one part to a competent laboratory for analysis; and
 - (c) retain one part for comparison purposes for a period of at least six months.
- (2) The Administrator may, by regulations, prescribe –
- (a) any additional conditions for the taking of samples;
 - (b) the quantities of samples which may be taken;
 - (c) the sampling points from where such samples may be taken;
 - (d) the type of matter which may be taken for analysis;
 - (e) the frequency with which such samples may be taken;
 - (f) the times at which such samples may be taken;
 - (g) the method by which an operator can challenge the analysis of any sample taken from his installation.

(3) For the purposes of this section “competent laboratory” means the General Laboratory of the Ministry of Health of the Republic or any other chemical laboratory which the Chief Officer shall designate as competent for the purpose of performing any analysis for the purposes of this Ordinance.

(4) If a sample of water is taken for the purpose of determining whether the water complies with any applicable quality standards, then such sample shall be taken at the nearest point to the point of waste discharge and shall be taken at such frequency, having regard to any natural fluctuations of the aquatic conditions, that any alteration in the aquatic environment may be detected.

24.—(1) An applicant for a discharge permit shall pay such fee as the Chief Officer shall determine as adequate to cover any expenses he incurs in the consideration of such application.

Fees.

(2) The holder of a discharge permit shall, for the duration of the permit, pay an annual fee of such amount as shall, subject to subsection (3), be determined by the Chief Officer.

(3) The fee determined in accordance with subsection (2) shall not exceed the amount of expenses to be incurred by the Chief Officer in monitoring compliance with the conditions of the permit and the exercise of any other responsibilities as may be imposed on him in relation to the permit.

(4) Where the holder of a discharge permit installs in his installation any appropriate equipment, either of his own volition or in accordance with any condition specified in his permit, for the purpose of continuous measurement and recording of information in relation to any discharge from his installation, the Chief Officer may return to him such amount of the annual fee as he deems reasonable.

Keeping of Register.

25.—(1) The Chief Officer shall keep a register in which the following matters shall be recorded—

- (a) any applications received for discharge permits;
- (b) any discharge permit issued in accordance with this Ordinance and any subsequent variation made to it;
- (c) the results of any tests or measurements carried out in accordance with any conditions of a permit;
- (d) any quality standards determined for any part of the waters;
- (e) the frequency of sampling and the results of the analysis;
- (f) any steps taken or to be taken for the restoration of the quality of the waters where such quality levels are below the required quality standards;
- (g) where sub-paragraph (f) applies, the date on which the quality standards of the waters have again been achieved;
- (h) any offence committed in contravention of this Ordinance and any penalty imposed.

(2) The Administrator may by regulations prescribe further conditions relating to any additional information to be recorded in the register.

(3) The Chief Officer shall maintain a website on the Internet on which shall be displayed the details of any discharge permit he has issued, including –

- (a) the name of the installation;
- (b) the nature and type of that installation;
- (c) the site where that installation operates;
- (d) the date on which the permit was issued, and
- (e) the expiry date of that permit.

Offences and Penalties.

26.—(1) Any person who contravenes the provisions of section 8 shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding £20,000 or to both such penalties.

(2) Any person who contravenes any condition of a discharge permit shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding £20,000 or to both such penalties.

(3) Any person who –

- (a) obstructs an Inspector in the performance of his duties or exercise of his powers;
- (b) obstructs any police officer or other person who entered an installation with an Inspector in accordance with section 22(4); or
- (c) fails to comply with an instruction lawfully given to him by an Inspector in accordance with section 22(1)(d), (f), (g) or (h),

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

(4) Any person who contravenes any other provision of this Ordinance or of any Regulations made under it, for which no relevant penalty is provided, shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding £1,000.

(5) Where a person is convicted of any offence prescribed by subsections (1) or (2) above, the court trying that case may, in addition to any other penalty to be imposed, order the sale or in any other way disposition of the movable or immovable property of the installation which is the subject of the proceedings.

27. In the course of any proceedings for an offence prescribed by this Ordinance which is alleged to have been committed by the operator of an installation, the Court may, at any stage of the proceedings, issue an order requiring—

Court Orders.

- (a) the cessation of any operation or process carried on at that installation; or
- (b) the operator, or the Chief Officer at the expense of such operator, to take any specified measure for the purpose of restoring the quality of the environment.

28.—(1) Where an Inspector has reasonable cause to believe that a person has committed an offence prescribed by sections 6, 26(1) or 26(2), he shall have power to compound such offence in accordance with this section.

Compounding of certain offences.

(2) The amount payable by any person to compound an offence of the kind referred to in subsection (1) shall be of such amount as may be determined by the Inspector having regard to the seriousness of the offence but shall not exceed £100.

(3) The power to compound an offence shall be exercisable only where such offence is committed for the first time.

(4) No prosecution may be brought against a person in respect of an offence in relation to which he has been served with a notice in accordance with subsection (5) –

- (a) before the expiry of 30 days from the date of such notice; or
- (d) if payment is made in accordance with the notice.

(5) If an Inspector considers that a person has committed an offence of the kind mentioned in subsection (1), he may serve on that person a notice in writing which shall –

- (a) specify the provision which it is alleged has been contravened by the person concerned;
- (b) include sufficient particulars of the alleged offence as to enable that person to know the grounds for the allegation;
- (c) state that no proceedings will be instituted for the offence before the expiry of a period of 30 days from the date of the notice;
- (d) state the amount required to compound the offence;
- (e) state the person to whom and the address to which payment is to be made.

(6) Any amount paid to compound any offence in accordance with this section shall be treated as if it were a fine imposed following a conviction for the offence concerned.

(7) An Inspector shall, upon receipt of the amount specified in the notice, issue a receipt to the person who made such payment stating –

- (a) the name of the person who is alleged to have committed the offence that has been compounded;
- (b) a brief report of such alleged offence;
- (c) the place and date of committing such alleged offence; and
- (d) the amount paid.

(8) A person who compounds an offence under this section shall not be regarded as having been convicted of that offence but the fact of the compounding may be taken into account by a Court if the person concerned is subsequently convicted of an offence under this Ordinance.

PART VI - MISCELLANEOUS PROVISIONS

Regulations.

29.—(1) The Administrator may make regulations in respect of any matter which under this Ordinance requires to be prescribed and generally for any of the following matters-

Schedule II.

- (a) to prescribe any discharge limit value and regulate any matter in relation to the discharge of any substance referred to in Schedule II;
- (b) to regulate any matter in relation to the discharge of any waste;
- (c) the taking of any measures for the protection of the waters and soil.

(2) In particular but without prejudice to the generality of subsection (1) above, regulations may provide for any of the following matters –

- (a) any areas of soil or waters where a discharge may take place and the design and construction of any outlets for such discharge;

- (b) the nature, origin, composition, temperature, volume and frequency of any discharges permitted and the time periods within which such discharge may take place;
- (c) any measures to be taken before or after any discharge, or during the treatment of any substance which might affect the composition of the matter to be discharged, or during any other process performed with a view to limiting any negative impact on the waters as a result of the discharge;
- (d) control of the use of sludge derived from waste treatment plants for agricultural purposes;
- (e) the provision of facilities for the taking of samples of any discharge and in particular, the maintenance and use of any special appliances intended for the purpose of taking such samples;
- (f) the recording and retention of information, in the format prescribed, in relation to the origin, composition, temperature, volume and frequency of any discharge including any information stored on any recording device which a discharge permit holder is required to possess in accordance with the conditions of his permit;
- (g) the submission of any information to the Chief Officer in accordance with a request by him in relation to the nature, origin, composition, temperature, volume and frequency of any discharge;
- (h) the minimum standards to be applied on any inspection of an installation;
- (i) the penalty to be imposed for a contravention of any provision of any regulations made under this section.

30.—(1) Subject to section 27, where any person is convicted of an offence under this Ordinance as a result of which any waters or soil have been polluted, the Chief Officer may order that person to eliminate or limit that pollution by taking such measures as the Chief Officer may direct.

Measures to eliminate pollution.

(2) If any person fails to comply with an order issued in accordance with subsection (1) the Chief Officer shall ensure that such measures are undertaken and any expenses he incurs as a result shall be paid by the person who failed to take the required measure.

31. Notwithstanding any other provision of this Ordinance, the taking of any measure required by this Ordinance for the protection of any waters shall not be so required where the Chief Officer has reasonable cause to believe that the taking of such measure may directly or indirectly cause the pollution of other waters.

Prohibition of certain measures.

32.—(1) The Control of Water Pollution Ordinance 1998 is repealed.

Repeal and provisos.

(2) Any public instrument made under the repealed Ordinance shall continue to apply to the extent that it is not contrary to the provisions of this Ordinance, until it is revoked or replaced by any public instrument made under this Ordinance.

33. (1) Subject to the provisions of this section, this Ordinance and any regulations made under it shall bind the Crown.

Application to the crown.

(2) Sections 6, 26, 27, 28 and 30 shall not bind the Crown.

(3) Notwithstanding subsection (2), this Ordinance and any regulations made under it shall apply to persons in the service of the Crown as they apply to other persons.

(4) Where an offence committed under this Ordinance by any person in the service of the Crown is proved to have been committed on the instruction, or with the consent or the connivance of or to have been attributable to any neglect on the part of that person's Head of Department or any other person in the service of the Crown who is in a position of authority over him, the Head of Department or that other person, as the case may be, as well as the individual who committed the offence, shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(5) For the purposes of this section, "the Crown" means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas.

Commencement.

34. This Ordinance shall come into force on the date of its publication in the Gazette.

SCHEDULE I

(Section 17)

Categories of installations for which special provisions apply**Preliminary**

1. This Schedule does not apply to any installation or part of an installation used for research purposes or for the development and trial of new products and industrial methods.

2. Limit values refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities shall be added together.

Energy industries

1.—(1) Combustion installations with a rated thermal input exceeding 50 MW.

- (2) Mineral oil and gas refineries.
- (3) Coke ovens.
- (4) Coal gasification and liquefaction plants.

Production and processing of metals

2.—(1) Metal ore (including sulphide ore) roasting or sintering installations.

(2) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.

(3) Installations for the processing of ferrous metals –

- (a) hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour,
- (b) smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW,
- (c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.

(4) Ferrous metal foundries with a production capacity exceeding 20 tonnes per day.

(5) Installations –

- (a) for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes,
- (b) for the smelting, including the alloy age, of non-ferrous metals, including recovered products, (refining, foundry casting etc.) with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.

(6) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

Mineral industry

3.—(1) Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day.

(2) Installations for the production of asbestos and the manufacture of asbestos-based products.

(3) Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day.

(4) Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day.

(5) Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m³ and with a setting density per kiln exceeding 300 kg/m³.

Chemical industry

4.—(1) For the purposes of this paragraph, “production” means the production on an industrial scale by chemical processing of substances or groups of substances listed in categories (2) to (6) below.

(2) Chemical installations for the production of basic organic chemicals, such as—

- (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic),
- (b) oxygen-containing hydrocarbons such as alcohol, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins,
- (c) sulphurous hydrocarbons,
- (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates,
- (e) phosphorus-containing hydrocarbons,
- (f) halogenic hydrocarbons,
- (g) organometallic compounds,
- (h) basic plastic materials (polymers synthetic fibres and cellulose-based fibres),
- (i) synthetic rubbers,
- (j) dyes and pigments,
- (k) surface-active agents and surfactants.

(3) Chemical installations for the production of basic inorganic chemicals, such as:

- (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur

compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride,

- (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids,
- (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide,
- (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate,
- (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.

(4) A chemical installation for the production of phosphorous, nitrogen or potassium based fertilizers (simple or compound fertilizers).

(5) A chemical installation for the production of basic plant health products and of biocides.

(6) An installation using a chemical or biological process for the production of basic pharmaceutical products.

(7) A chemical installation for the production of explosives.

Waste management

5.—(1) An installation for the disposal or recovery of hazardous waste (as defined by paragraph 34 of Schedule I to the Environmental Impact Assessment Ordinance 2003) or of used mineral oils (that is of any used liquid or semi-liquid product which is partly or wholly composed of a mineral or synthetic mineral oil, including petroleum residues of tanks, water and oil mixtures and emulsifiers) as listed in Schedule I of the same Ordinance, or any installation at which any processes may result in the recovery of wastes without any risk to human health and without the use of any processes which might harm the environment and which concern the recovery or regeneration of solvents, the regeneration of acids or bases, the recovery of products used to commit any pollutants, the regeneration or other re-use of oils and the main use of wastes as fuels or as other means of productive energy with a capacity exceeding 10 tonnes per day.

(2) An installation for the incineration of municipal waste (that is, which uses any technical equipment for the incineration of municipal waste, with or without recovery of the combustion heat, but excluding any equipment used specifically for the incineration of sewage sludge, chemical, toxic and dangerous waste, medical waste from hospitals or other types of special wastes, on land or at sea, even if these plants may burn municipal wastes as well). This sub-paragraph applies to the entire installation comprising the incinerator, its waste, fuel and air supply systems and the devices and systems for checking incineration operations and continuously recording and monitoring incineration conditions with a capacity exceeding 3 tonnes per hour.

(3) Installations for the disposal of non-hazardous waste (as defined by Schedule I of the Environmental Impact Assessment Ordinance) with a capacity exceeding 50 tonnes per day.

(4) Landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25, 000 tonnes, excluding landfills of inert waste.

Other activities

6.—(1) Industrial plants for the production of—

- (a) pulp from timber or other fibrous materials,
- (b) paper and board with a production capacity exceeding 20 tonnes per day.

(2) Plants for the pre-treatment (operations such as washing, bleaching or mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day.

(3) Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.

(4) Slaughterhouses with a production capacity exceeding 50 tonnes of carcasses per day.

(5) A plant for the processing and manufacturing for use in the production of foodstuffs from -

- (a) animal raw materials (other than milk) with a production capacity exceeding 75 tonnes per day,
- (b) vegetable raw materials with a production capacity of finished products exceeding 300 tonnes per day (average value on a quarterly basis),

(6) A plant for the processing and manufacturing of milk when the quantity of milk received exceeds 200 tonnes per day (average value on an annual basis).

(7) An installation for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day.

(8) An installation for the intensive rearing of poultry or pigs with more than—

- (a) 40,000 places for poultry,
- (b) 2,000 places for production pigs (over 30 kg), or,
- (c) 750 places for sows.

(9) An installation for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year.

(10) An installation for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.

SCHEDULE II

(Section 29 (1))

Prescribed substances

1. Carbon tetrachloride (CCl_4).
2. DDT (The sum of the isomers 1,1,1, - trichloro - 2,2- bis (p-chlorophenyl) ethane - trichloro - 2 - (o-chlorophenyl) - 2 - (p-chlorophenyl) ethane 1.1. dichloro - 2.2 - bis (p-chlorophenyl) ethylene and 1,1 dichloro - 2,2. - bis (p-chlorophenyl) ethane).
3. Pentachlorophenol (PCP) (2,3,4,5,6 - pentachloro - 1 hydroxybenzene and its salts).
4. Aldrin, dieldrin, endrin, isodrin (Aldrin: 1,2,3,4,10,10 - hexachloro - 1,4,4a,5,8,8a - hexahydro - 1,4 - endo - 5,8 - exo - dimethanonaphthalene. Dieldrin: 1,2,3,4,10,10 - hexachloro - 6,7 - hepoxy - 1,4,4a,5,6,7,8,8a - octahydro - 1,4 - endo - 5,8 - exodimethane - naphthalene. Endrin: 1,2,3,4,10,10 - hexachloro - 6,7 hepoxy - 1,4,4a,5,6,7,8,8a - octahydro - 1,4 - endo - 5,8 - endo - dimethane - naphthalene. Isodrin: 1,2,3,4,10,10 - hexachloro - 1,4,4a,5,8,8a - hexahydro - 1,4 endo - 5,8 endo - dimethane - naphthalene).
5. Hexachlorobenzene (HCB - C_6Cl_6).
6. Hexachlorobutadiene (HCBd - C_4Cl_6).
7. Chloroform (CHCl_3).
8. 1,2 - dichloroethane (TRI).
9. Trichloroethane (TRI).
10. Tetrachloroethylene (PER).
11. Trichlorobenzene (TCB).
12. Cadmium (Cd, as isolated element also in the form of a chemical compound).
13. Mercury (Hg, as isolated element also in the form of a chemical compound).
14. Hexachlorocyclohexane (HCH, 1,2,3,4,5,6 - hexachlorocyclohexane).

11th February 2005

(128/69)

J. E. Stainton,

Acting Chief Officer.

