
CONTROL OF WATER POLLUTION (AMENDMENT) ORDINANCE 2009

An Ordinance to amend the Control of Water Pollution Ordinance 2005

J. H. GORDON
ADMINISTRATOR

1st April 2009.

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

1. Short Title

This Ordinance may be cited as the Control of Water Pollution (Amendment) Ordinance 2009.

2. Section 6 (concerning offences in relation to the pollution of water and soil) amended

In section 6(2) of the Control of Water Pollution Ordinance 2005(a) (“the principal Ordinance”) delete “£20,000” and replace with “€85,430.00”.

3. Section 7 (concerning protection from nitrate pollution) amended

After subsection 7(4) of the principal Ordinance, insert the following new subsection:

“(5) In particular and without prejudice to subsection (4), the Administrator may make regulations to prescribe the information to be provided to members of the public and the manner in which consultation of members of the public is to be carried out for the purpose of compliance with sections 7A to 7F.”.

4. New sections 7A to 7F inserted

After section 7 of the principal Ordinance, insert the following new sections:

“7A. Interpretation and scope of sections 7A-7F

(1) For the purposes of sections 7A to 7F,

“action programme” means the action programme referred to in section 7(2)(c);

“members of the public” means anyone who is affected by or likely to be affected by the proposed action programme and any association, group or legal entity which has a legitimate interest in the matters regulated by this Ordinance;

“website” means the official internet website of the Areas.

- (2) Sections 7B to 7F apply to the establishment of any action programme except -
 - (a) where the action programme is established in an emergency or for exclusively military purposes; or
 - (b) where public participation in the establishment of the action programme is already ensured in accordance with the Environmental Impact Assessment Ordinance 2003**(b)** or any other Ordinance which has as its aim the protection and management of water.

7B. Public participation in establishment of Action Programme

- (1) The Chief Officer must ensure that members of the public are given an effective opportunity to participate in the establishment, amendment or revision of an action programme.
- (2) For the purposes of subsection (1), the Chief Officer must, by public notice, in two newspapers having a circulation in the Areas and on the website:
 - (a) publicise details of each proposal regarding an action programme or any proposed amendment or revision of any action programme;
 - (b) arrange for all relevant information on the proposal to be available for inspection by members of the public during the working hours of the relevant Area Office; and
 - (c) provide that any person may submit comments to the Chief Officer on the proposal within 35 days of the date that notification of the proposal is published in accordance with this subsection.
- (3) The Chief Officer must cause to be published on the website any comments made to him regarding the proposal, or a summary of any such comments.

7C. Public hearing

- (1) The Administrator may, following a recommendation by the Chief Officer, convene a public hearing for the purpose of examining a proposal for an action programme or significant amendment or revision of an action programme before a final decision regarding that programme is reached.
- (2) The objectives of any public hearing, the procedure to be followed, the persons to be invited to give evidence and any other matters relevant to that hearing must be in accordance with any regulations made by the Administrator under section 7(5).
- (3) In deciding whether to make a recommendation to the Administrator regarding the convening of a public hearing, the Chief Officer may have regard to any written opinion of the Technical Committee on the matter.

7D. Taking of decisions

In reaching a decision as to the contents of an action programme the Chief Officer must have regard to any comments made to him in accordance with section 7B and to the outcome of any public hearing held in accordance with section 7C.

7E. Information

The Chief Officer must publish a notice in the Gazette, and in two newspapers having a circulation in the Areas and on the website, which must include the following information –

- (a) that he has established an action programme or has amended or revised an existing programme as appropriate;

- (b) a summary of the contents of that action programme or of any amendment or revision of an existing programme;
- (c) that a copy of the action programme is available for inspection at the relevant Area Office during the working hours of that Office together with the other information provided for in section 7F;
- (d) confirmation that any comments made to him under section 7B and the outcome of any public hearing held under section 7C were taken into consideration in the establishment of the action programme or of any amendment or revision of it;
- (e) a summary of the reasons which led to the establishment of the action programme or of any amendment or revision to it.

7F. Keeping of a Register

- (1) The Area Officer must keep a Register in which he must record –
 - (a) any proposal for the establishment of an action programme or for the amendment or revision of an existing action programme;
 - (b) any comments submitted to the Chief Officer under section 7B;
 - (c) the information referred to in section 7E;
- (2) The Register referred to in subsection (1) is to be available to the public for inspection during the working hours of the relevant Area Office.”.

5. Section 9 (concerning application for a discharge permit) amended

Section 9 of the principal Ordinance is amended by -

- (a) repealing paragraph (j) in subsection (2) and replacing it with the following paragraphs:
 - “(j) in relation to a Schedule I installation, any other measures undertaken by the operator of the installation to comply with requirements in Schedule I.
 - (k) in relation to a Schedule I installation, the main alternatives considered by the operator of the installation.
 - (l) in relation to a Schedule I installation, a non-technical summary of the information required under subsection (2).”.
- (b) repealing paragraph (c) of subsection (4) and replacing with the following paragraph:
 - “(c) that any interested person may submit representations on the application to be sent to an address specified in the public notice.”,
- (c) repealing “in the Gazette of a notice” in subsection (4) and replacing with “of a public notice.”, and
- (d) inserting after subsection (4) the following subsection:
 - “(4A) The Chief Officer must not grant a discharge permit unless he is satisfied that the requirements specified in subsections (1), (2) (3) and (4) have been complied with.”.

6. Section 12 (concerning revocation or amendment of discharge permit) amended

Section 12 of the principal Ordinance is amended by inserting after subsection (1) the following subsection:

- “(1A) In relation to a Schedule I installation:
 - (a) the discharge permit must include any conditions necessary for the protection of water and soil, and
 - (b) even where he is satisfied in relation to the protection of water and soil, the Chief Officer must not amend a discharge

permit unless he is satisfied, taking into account the natural characteristics of the discharge, the type of process, the type of waste and any licence granted under any legislation in force that controls atmospheric pollution, that the granting of the permit is not likely to cause atmospheric pollution.”.

7. New sections 17A, 17B and 17C inserted

After section 17 of the principal Ordinance, the following new sections are inserted:

“17A. Application of sections 17B and 17C

Sections 17B and 17C apply to installations in existence on the day the Control of Water Pollution (Amendment) Ordinance 2009 comes into force.

17B. Change in operation of a Schedule I installation

- (1) In this section, a “change in operation” means any change of the characteristics, operating methods or increase in the operation of a Schedule I installation that could affect the atmosphere, water or soil.
- (2) Subject to subsection (3), an operator of a Schedule I installation must not make a change in operation unless he has first applied for and been granted a new discharge permit.
- (3) An operator is not required to apply for a new discharge permit if he has applied for and received agreement in writing from the Chief Officer that a new discharge permit is not required.
- (4) The Chief Officer must consider any application made under subsection (2) as if it was an application made for the first time.
- (5) The Chief Officer may publish guidance for operators.

17C. Substantial change in operation of a Schedule I installation

- (1) In this section, a “substantial change in operation” means any change in the operation of a Schedule I installation that, in the opinion of the Chief Officer, could have significant adverse effects on human health or the environment.
- (2) An operator must not make a substantial change in operation unless he has first applied for and been granted a new discharge permit.
- (3) The Chief Officer must consider any application made under subsection (2) as if it was an application made for the first time.

8. Section 20 (concerning Register of Schedule I installations) amended

In section 20 of the principal Ordinance, subsection (3) is amended by repealing paragraph (e) and replacing it with the following paragraph:

“(e) the use of best available techniques, where there is a requirement concerning the use of such techniques under regulations made under this Ordinance applying to this type of installation.”.

9. Section 26 (concerning offences and penalties) amended

In section 26 of the principal Ordinance, repeal “£20,000” wherever it appears and replace with “€85,430”.

10. Section 28 (concerning compounding of certain offences) repealed

Section 28 of the principal Ordinance is repealed.

11. New sections 31A and 32B inserted

After section 31 of the principal Ordinance, the following new sections are inserted:

“31A. Pollution of waters to which this Ordinance does not apply

When the Chief Officer takes any measure under this Ordinance or under the Control of Water Pollution (Dangerous Substances) Regulations 2009(c), he must ensure that such measure does not pollute any waters to which those Regulations do not apply.

31B. Regulations in relation to discharge of waste into the sea

The Administrator may make regulations in relation to the discharge of waste into the sea through pipes.

31C. Delegation to the Republic

- (1) The duties imposed and powers conferred on the Chief Officer (or Chief Inspector or Inspectors as the case may be) by sections 8, 9 (except subsection (4)), 10, 11, 12, 13, 14, 15, 16, 17B, 17C, 19(except subsection (4)), and 20 (except subsection (2)), 21, 22, 23 (except subsection (2)) 24, 25(except subsection (2), 28, 30, 31, and 31A are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(d).”.

12. Schedule I (concerning categories of installations for which special provisions apply) amended

Schedule I is amended by repealing sub-paragraph 5(1) and inserting the following:

- “5(1) An installation for the disposal or recovery of hazardous waste (as defined in the Waste Management Ordinance 2007)(e) which is capable of treating over 10 tonnes of waste a day.”.

13. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Notes

- (a) Ordinance 1/05.
(b) Ordinance 11/03.
(c) P.I number 8/09.
(d) Ordinance 17/07.
(e) Ordinance 7/07.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This note relates to the Control of Water Pollution (Amendment) Ordinance 2009 (the Ordinance¹). The note has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. The Ordinance amends the Control of Water Pollution Ordinance 2005 (the “2005 Ordinance²”) by increasing the maximum fine for operating without a discharge permit or contravening a condition of a discharge permit from €34,172 to €85,430. The Ordinance also repeals provisions allowing certain offences to be compounded.
4. The Ordinance adds new sections 7A to 7F to the 2005 Ordinance, which provide for public participation in the process by which the Chief Officer establishes an action programme for the protection of zones vulnerable to nitrate pollution.
5. The Ordinance amends sections 9 and 12 of the 2005 Ordinance to make new provision for Schedule I installations. Section 9(4) is amended to take account of the fact that the function of granting discharge permits is delegated to the Republic under the Delegation of Functions to the Republic Ordinance 2007. So the notice in the Gazette must specify the address to which any representations should be made in that particular case. This will usually be an address in the Republic, but might on occasion be an address in the Areas.
6. The Ordinance adds new sections 17A, 17B and 17C to the 2005 Ordinance, which apply to changes in the operation of Schedule I installations. Where a substantial change is intended, section 17C provides that a new discharge permit is always required, in advance. Where the change is not substantial, a new discharge permit is required unless the Chief Officer has certified otherwise.
7. A new section 32C makes apparent on the face of the 2005 Ordinance that certain powers and duties have been delegated to the Republic of Cyprus under the Delegation of Functions to the Republic Ordinance 2007, so making it easy for users of the 2005 Ordinance to see exactly which functions have been delegated. It also provides for some of the new functions created by this Ordinance to be delegated.
8. Schedule I is amended to redefine “hazardous waste³”.