

BREACH OF PROHIBITION NOTICE

Water (NI) Order 1999

8. - (1) Where it appears to the Department that a contravention of Article 7(1) (whether a new contravention or a repetition or continuation of one already occurred or occurring) is likely to occur-
- (a) by reason of any use or proposed use of a waterway or of any land for the disposal of any matter;
 - (b) by reason of any use or proposed use of any land for the storage of any matter; or
 - (c) by reason of any use or proposed use of a vessel or vehicle from which poisonous, noxious or polluting matter may enter a waterway or water contained in any underground strata;
- the Department may serve a notice on the owner of the land or the person so using or proposing so to use the waterway, land, vessel or vehicle-
- (i) prohibiting the use complained of; or
 - (ii) permitting it only subject to conditions designed to remove the grounds of complaint; or
 - (iii) requiring it to be stopped within such period as may be specified in the notice.
- ...
- (5) It is an offence for any person to contravene any prohibition, condition or requirement imposed by a notice served on that person under paragraph (1) which has taken effect ...

Maximum Sentence:

Water (NI) Order 1999, Art. 8(9)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 3 months imprisonment and/or the statutory maximum fine (£5,000)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	£1,000 Fine + Compensation Order	£750 Fine to 2 months Custody + Compensation Order
Offence committed on commercial basis	2 months Custody + Compensation Order	£3,000 Fine to 3 months Custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. Quantity and type of pollutant involved
2. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation)
3. Extensive clean-up, site restoration or animal rehabilitation operations required. The offending activity occurred near housing, children's play areas or schools, livestock, fishing area or environmentally sensitive sites
4. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive
5. Other lawful activities were prevented or significantly interfered with

Examples of Possible Mitigating Factor of Offence

1. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence

Relevant Cases:

NI Cases:

N/A

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
 R v Cemex Cement Ltd [2007] EWCA Crim 1759
 R v Anglian Water Services Ltd [2003] EWCA Crim 2243
 R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423
 R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
 R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
 R v Garrett [1997] 1 Cr App R(S) 109

Notes: