

1991 No. 376

DRAINAGE

**Drainage (Environmental Assessment) Regulations
(Northern Ireland) 1991**

Made 15th August 1991

Coming into operation 23rd September 1991

The Department of Agriculture, being a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred upon it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Drainage (Environmental Assessment) Regulations (Northern Ireland) 1991 and shall come into operation on 23rd September 1991.

Interpretation

2.—(1) In these Regulations —

“the Department” means the Department of Agriculture for Northern Ireland;

“drainage works” means any works for the purpose of draining land or of preventing or mitigating flooding or erosion to which land is subject, and includes the construction, cleansing, scouring, deepening, widening, straightening or diverting of any watercourse or outfall for water, the construction, installation or alteration of any pump, pump machinery or pump-house, the removal of any obstruction, natural or artificial, in any watercourse, and the construction, repair, raising, lowering, widening, straightening, altering or removal of any embankment, dam, barrier, sluice, weir, wall, culvert or groyne or of any structure or erection for the purposes of defence against water; and

(a) S.I. 1988/785.

(b) 1972 c. 68.

“the Drainage Order” means the Drainage (Northern Ireland) Order 1973(a).

(2) The definition of “environmental statement” in Article 2(2) of the Drainage Order shall apply for the purposes of Part II of these Regulations as it applies for the purposes of Part III of that Order as if for references to works specified in a drainage scheme in Schedule 2A to the Drainage Order there were substituted references to drainage works.

(3) In these Regulations “the Drainage Council”, “drainage scheme” and “watercourse” have the meanings respectively assigned to them by Article 2(2) of the Drainage Order.

(4) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Application

3.—(1) Part II shall not apply in relation to any drainage works—

- (a) commenced before the coming into operation of these Regulations;
- (b) carried out in pursuance of any scheme referred to in Article 30(1) of the Drainage Order which was prepared before the coming into operation of these Regulations;
- (c) carried out in pursuance of an agreement or arrangement with a person outside Northern Ireland which was entered into by the Department under Article 30(2) of that Order for the purposes of such a scheme before the coming into operation of these Regulations; or
- (d) carried out under a drainage scheme, whether prepared before or after the coming into operation of these Regulations, which was confirmed under Article 13 of the Drainage Order or treated by virtue of Articles 8(1) or 9(1) of that Order as if they had been so carried out.

(2) Part III shall not apply in relation to any drainage scheme prepared before the coming into operation of these Regulations.

PART II

DRAINAGE WORKS GENERALLY

Requirement for environmental statement

4.—(1) The Department shall not —

- (a) undertake any drainage works on any land;
- (b) co-operate, in pursuance of Article 30(1) of the Drainage Order, with any person outside Northern Ireland in preparing or carrying out schemes for such works on any land; or
- (c) enter into or carry into effect, in pursuance of Article 30(2) of the Drainage Order, an agreement or arrangement with such a person for the purposes of such a scheme,

(a) S.I. 1973/69 (N.I. 1).

(b) 1954 c. 33 (N.I.).

unless it has first completed the procedure prescribed by this Part.

(2) In paragraph (1)(b) "land" includes land situate partly inside and partly outside Northern Ireland.

Preparation of an environmental statement

5.—(1) The Department shall consider whether any proposed drainage works, by reason inter alia of their nature, size or location, are likely to have significant effects on the environment and ought, therefore, to be made subject to an environmental statement, and shall then by notice in the Belfast Gazette and at least two local newspapers—

- (a) announce that it is proposed that the works in question will be carried out;
- (b) describe briefly their nature, size and location;
- (c) state whether or not the Department proposes to make the works subject to an environmental statement; and
- (d) where it states it does not propose to make the works subject to such a statement, give notice that any person who wishes to do so may make representations to the Department in writing in relation to the likely environmental effects with regard to the proposed works at the address specified in the notice within 28 days of the date of the notice in the Belfast Gazette.

(2) Where the Department considers that any drainage works ought to be made subject to an environmental statement and has stated in pursuance of paragraph (1)(c) that it proposes so to make them, it shall proceed to prepare such a statement.

(3) The Department shall consider any representations made in accordance with paragraph (1)(d) and if, having done so, it decides that any drainage works ought to be made subject to an environmental statement, it shall so inform the persons who made those representations and proceed to prepare such a statement.

(4) Where the Department has stated in accordance with paragraph (1)(c) that it does not propose to make any drainage works subject to an environmental statement and where either—

- (a) no representations made in accordance with paragraph (1)(d) are received in relation to those works within the time limit therein specified; or
- (b) such representations are so received but the Department, after considering them, decides that the works ought not to be made subject to an environmental statement,

it may proceed to undertake those works or do anything else referred to in regulation 4(1) in relation to them, without preparing such a statement.

Publicity for an environmental statement

6. Where the Department has prepared an environmental statement in relation to any drainage works, it shall—

- (a) by notice in the Belfast Gazette and at least two local newspapers announce the preparation of the statement and state that any person wishing to make representations regarding the likely environmental effects of the works to which the statement relates should make them in writing to the Department at the address specified in the notice within a period so specified, being a period not less than 28 days from the date of the notice in the Belfast Gazette;
- (b) make available for inspection at all reasonable times at an office of the Department or at some other convenient place (such times and place to be stated in a notice referred to in paragraph (a)) for a period of at least 28 days following the date of the notice in the Belfast Gazette, the details of the proposed drainage works and the environmental statement relating thereto, and ensure that a reasonable number of copies of the statement are made available;
- (c) state in the notice referred to in paragraph (a) the address at which copies of the environmental statement may be obtained and, if a charge is to be made for a copy thereof under regulation 8, the amount of the charge; and
- (d) at the same time as the notice referred to in paragraph (a) is published, supply copies of the statement to—
 - (i) the Drainage Council;
 - (ii) the appropriate district council;
 - (iii) any other public authority, statutory or other body or organisation which appears to it to have an interest in the matter; and
 - (iv) on request, to any other interested persons.

Consultation with other bodies

7.—(1) Where in accordance with regulation 6(d)(i) to (iii) the Department sends to any body or organisation a copy of an environmental statement it shall consult with that body or organisation about the statement and the likely environmental effects of the drainage works to which it relates.

(2) Where under paragraph (1) the Department consults any body or organisation about an environmental statement, it shall give that body or organisation not less than 28 days notice that it proposes to consider the statement and shall not do so until after the expiration of such period of notice.

Charges

8. A reasonable charge reflecting printing and distribution costs may be made to any person for—

- (a) a copy of the whole or part of an environmental statement supplied to that person in accordance with regulation 6(d)(iv); or
- (b) any copy, in excess of one, of the whole or part of an environmental statement supplied to that person in accordance with regulation 6(d)(i) to (iii); or

(c)

(d)

Provision of information

9.—(1) Subject to paragraph (2), where the Department proposes to prepare an environmental statement as required by this Part it may enter into consultations with any body or organisation to determine whether that body or organisation has in its possession any information which the Department considers relevant to the preparation of the statement and that body or organisation shall make any such information which it has available to the Department.

(2) Nothing in paragraph (1) shall require the disclosure of confidential information.

(3) A reasonable charge reflecting the cost of making information available to the Department in accordance with paragraph (1) may be made to the Department by any body or organisation supplying it.

9A. → *Restrictions on carrying out of drainage works etc*

10. Where the Department has prepared an environmental statement in relation to any drainage works it shall not proceed to undertake those works or to do anything else referred to in regulation 4(1) in relation to those works unless it has first taken into consideration—

(a) the statement;

(b) any information relevant to it and obtained in pursuance of regulation 9(1);

(c) the drainage works; and

(d) any representations or comments made by any person, body or organisation in accordance with regulations 5(1)(d), 6 or 7, in relation to the likely environmental effects of the works and which are received within the time limits therein respectively specified.

PART III

DRAINAGE SCHEMES

Amendment of Drainage Order

11. The Drainage Order shall be amended as provided in regulations 12 to 15.

12. In Article 2(2) after the definition of “embankment” there shall be inserted the following definition—

“ “environmental statement” has the meaning assigned to it by Schedule 2A;”

13. For Articles 12 and 13 there shall be substituted—

“*Publicity for drainage schemes*

12.—(1) Where the Department has prepared a drainage scheme it shall—

- (a) consider whether, by reason inter alia of their nature, size or location, the works specified in the scheme are likely to have significant effects on the environment and ought, therefore, to be made subject to an environmental statement;
 - (b) publish in the Belfast Gazette and at least two local newspapers a notice which complies with the requirements of paragraphs (2) and (3); and
 - (c) send a copy of the scheme, together with an estimate of the cost of the scheme, to the district council of the district or, as the case may be, each district in which the watercourses, or the sea defences, proposed to be dealt with are situate.
- (2) The notice referred to in paragraph (1)(b) shall—
- (a) announce that the Department proposes to carry out the works specified in the scheme;
 - (b) describe briefly the nature, size and location of those works; and
 - (c) state whether or not the Department proposes to make those works subject to an environmental statement.
- (3) Every notice published in pursuance of this Article shall—
- (a) state the place or places at which, and the period, not being less than 28 days following the date of the notice in the Belfast Gazette, during which a copy of the scheme will be available for inspection;
 - (b) contain a statement that any person who considers that his interests will be prejudicially affected by the scheme may, at any time within 28 days after the date of the notice in the Belfast Gazette, send to the Department any observations in regard to the scheme which he wishes to make; and
 - (c) where the Department states it does not propose to make the works specified in the scheme subject to an environmental statement, give notice that any person who wishes to do so may make representations to the Department in writing in relation to the likely environmental effects with regard to those works at an address specified in the notice within 28 days of the date of the notice in the Belfast Gazette.
- (4) A district council to which a copy of a drainage scheme is sent by the Department in pursuance of paragraph (1)(c)—
- (a) shall cause such copy to be exhibited in its principal offices or other convenient place during the period specified in that behalf in the notice relating to the scheme published in pursuance of paragraph (1)(b) and shall permit such copy to be inspected during office hours by any person claiming to be interested therein;
 - (b) shall examine and consider the scheme; and
 - (c) may, at any time within 28 days after the date of the notice in the Belfast Gazette relating to such scheme, send to the Department any representations or observations in regard to the scheme which it wishes to make.

(5) Simultaneously with, or as soon as may be after, sending copies of a drainage scheme in pursuance of paragraph (1)(c), the Department shall serve on every authority (not being a district council to which a copy of the scheme has been so sent) which appears to it as likely to be affected by the execution of the scheme a notice informing the authority of the preparation of the scheme.

(6) For the purposes of paragraph (5), "authority" means any authority within the meaning of Article 15(5) and any conservancy, fishery or harbour authority.

Preparation of an environmental statement and consultations thereon

12A.—(1) Where the Department considers that works specified in a drainage scheme ought to be made subject to an environmental statement and has stated in pursuance of Article 12(2)(c) that it proposes so to make them, it shall proceed to prepare such a statement.

(2) The Department shall consider any representations made in accordance with Article 12(3)(c) and if, having done so, it decides that works specified in a drainage scheme ought to be made subject to an environmental statement, it shall so inform the persons who made those representations and proceed to prepare such a statement. 12(3)d

(3) Where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme, it shall—

- (a) by notice in the Belfast Gazette and at least two local newspapers announce the preparation of the statement and state that any persons wishing to make representations regarding the likely environmental effects of the works to which the statement relates should make them in writing to the Department at the address specified in the notice within a period so specified, being a period not less than 28 days from the date of the notice published in the Belfast Gazette;
- (b) make available for inspection by any persons at all reasonable times at an office of the Department or at some other convenient place (such times and place to be stated in the notice referred to in sub-paragraph (a)) for a period of at least 28 days following the date of the notice in the Belfast Gazette, the details of the drainage scheme and the environmental statement relating to the works therein specified, and ensure that a reasonable number of copies of the statement are made available;
- (c) state in the notice referred to in sub-paragraph (a), the address at which copies of the environmental statement may be obtained and if a charge is to be made for a copy under paragraph (8), the amount of the charge; and 12
- (d) at the same time as the notice referred to in sub-paragraph (a) is published supply copies of the statement to—
 - (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district council in which the watercourse or sea defences proposed to be dealt with are situate;

- (iii) any other public authority, statutory body or organisation which appears to it to have an interest in the matter; and
- (iv) on request, to any other interested person.

(4) Where in accordance with paragraph (3)(d)(i) to (iii) the Department sends to any body or organisation a copy of an environmental statement it shall consult with that body or organisation about the statement and the likely environmental effects of the works to which it relates.

(5) Where under paragraph (4) the Department consults with any body or organisation about an environmental statement, it shall give the body or organisation not less than 28 days notice that it proposes to consider the statement and shall not do so until after the expiration of such period of notice.

(6) Subject to paragraph (7) where the Department proposes to prepare an environmental statement as required by this Article it may enter into consultations with any body or organisation to determine whether that body or organisation has in its possession any information which the Department considers relevant to the preparation of the statement and that body or organisation shall make any such information which it has available to the Department.

(7) Nothing in paragraph (6) shall require the disclosure of confidential information.

(8) A reasonable charge reflecting printing and distribution costs may be made to any person for—

- (a) a copy of the whole or any part of an environmental statement supplied to that person in accordance with paragraph (3)(d)(iv); or
- (b) any copy, in excess of one, of the whole or part of an environmental statement supplied to that person in accordance with paragraph (3)(d)(i) to (iii).

(9) A reasonable charge reflecting the cost of making information available in accordance with paragraph (6) may be made to the Department by any body or organisation supplying it.

12A → Confirmation of drainage schemes

12(3)(c) 13.—(1) Where the Department has stated in accordance with Article 12(2)(c) that it does not propose to make the works specified in a drainage scheme subject to an environmental statement and where either—

- (a) no representations made in accordance with Article 12(3)(d) are received in relation to those works within the time limit therein specified; or
- (b) such representations are so received but the Department, after considering them, decides that the works ought not to be made subject to an environmental statement,

it may, after the expiration of 28 days from the expiration of the time limit referred to in sub-paragraph (a), after considering any observations sent to it under Article 12(3)(b) and after holding such inquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, and

either without modification or with such modifications (which may include variations, additions or exceptions) as the Department thinks fit.

(2) Subject to paragraph (3) where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme it may, after the expiration of 28 days from the expiration of the period of notice referred to in Article 12A(5), after holding such inquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, and either without modification or with such modifications (which may include variations, additions or exceptions) as the Department thinks fit.

(3) Where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme, it shall not, under paragraph (2), confirm the scheme unless it has first taken into consideration—

- (a) the statement;
- (b) any information relevant to it and obtained in pursuance of Article 12A(6);
- (c) the works specified in the drainage scheme; μ
- (d) any observations sent to it under Article 12(β)(b); and
- (e) any representations or comments made in accordance with Article 12(3)(c) or Article 12A(3) or (4) by any person, body or organisation in relation to the likely environmental effects of those works and which are received within the time limits therefor respectively specified.”.

14. For Article 16(1) there shall be substituted —

“16.—(1) Whenever, in the course of carrying out a drainage scheme, the Department considers that any provisions of that scheme ought to be substantially varied, it may, subject to paragraph (1A), after consultation with the Drainage Council and after giving notice to—

- (a) such authorities within the meaning of Article 12(6) and such other persons as the Department considers likely to be materially affected; and
- (b) any other person, body or organisation who made representations or comments under Article 12(3)(c) or Article 12A(3) or (4) regarding the likely environmental effects of the scheme,

direct that such variations be made therein as appears to be necessary.

(1A) The Department shall not direct that any variation be made in a drainage scheme unless it has first taken into consideration —

- (a) the environmental statement (if any) relating to the works specified in the scheme;
- (b) any information relevant to it and obtained in pursuance of Article 12A(6);
- (c) the works specified in the scheme as the Department proposes to vary it; and

(d) any representations or comments made in accordance with Article 12(3)(e) or Article 12A(3) or (4) in relation to the likely environmental effects of those works and received by the Department within the time limits therefor respectively specified.”.

15. After Schedule 2 there shall be inserted the Schedule set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 15th August 1991.

(L.S.)

N. E. Morrison

Assistant Secretary

Environmental Statement

1. An environmental statement comprises a document or series of documents providing, for the purpose of assessing the likely impact of the works specified in a drainage scheme (referred to in this Schedule as “the works”) on the environment, the information specified in paragraph 2 (referred to in this Schedule as “specified information”).

2. The specified information is—

- (a) a description of the works, including information about the site, the design and size or scale of the works;
- (b) the data necessary to identify and assess the main effects which the works may have on the environment;
- (c) a description of the likely significant effects, direct and indirect, of the works on the environment, explained by reference to the possible impact on—
 - (i) human beings;
 - (ii) flora;
 - (iii) fauna;
 - (iv) soil;
 - (v) water;
 - (vi) air;
 - (vii) climate;
 - (viii) landscape;
 - (ix) interaction between any of the foregoing;
 - (x) material assets; and
 - (xi) cultural heritage;
- (d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and
- (e) a summary in non-technical language of the information specified in sub-paragraphs (a) to (d).

3.—(1) An environmental statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters:

- (a) the physical characteristics of the works, the nature and quality of the materials to be used and the land use requirements during the construction and operational phases;
- (b) the estimated type and quality of expected residues and emissions (including pollutants of water, air or soil, noise, vibration, light, heat and radiation) resulting from the works when in operation;
- (c) an outline of the main alternatives (if any) to the works studied by the Department and an indication of the main reasons for choosing those works, taking into account the environmental effects;
- (d) the likely effects, direct and indirect, on the environment of the works which may result from:

- (i) the use of natural resources;
 - (ii) the emission of pollutants, the creation of nuisances and the elimination of waste;
 - (e) the forecasting methods used to assess the effects on the environment about which information is given under head (d); and
 - (f) any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any item of specified information.
- (2) In sub-paragraph (1)(d), "effects" includes secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects.
4. Where further information is included in an environmental statement pursuant to paragraph 3, a non-technical summary of that information shall also be provided."

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement for Northern Ireland the requirements of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.85, p. 40) in respect of—

- (a) work specified in drainage schemes prepared by the Department of Agriculture for Northern Ireland (“the Department”) under Article 11(1) of the Drainage (Northern Ireland) Order 1973 (“the Order”); and
- (b) other drainage works (as defined in Regulation 2(1)) carried out by the Department either on its own or, in relation to land situate partly inside and partly outside Northern Ireland, in co-operation with any person outside Northern Ireland.

To this end Part III of the Regulations (Regulations 11 to 15) amends the Order to establish a procedure for the provision of an environmental statement (containing the matters referred to in Schedule 2A to the Order) relating to works specified in a drainage scheme and for taking that statement into account before proceeding with those works. Part II (Regulations 4 to 10) sets out a similar procedure in relation to the other types of drainage works to which the Regulations apply.

Both procedures require the Department to consider whether the works in question, by reason inter alia of their nature, size or location, are likely to have significant effects on the environment and ought, therefore, to be made subject to an environmental statement. It is then required to give notice of those works in the Belfast Gazette and at least two local newspapers, stating inter alia whether or not it intends to prepare an environmental statement in respect of the works and inviting representations in relation thereto. Where the Department, after considering such representations (if any) as it has received, considers that the works in question ought to be made subject to an environmental statement it must then proceed to prepare one. Otherwise it may proceed in relation to the drainage works or to confirm the drainage scheme, as the case may be.

Where an environmental statement is prepared the Department must announce the fact in the Belfast Gazette and at least two local newspapers and supply copies to and consult with interested bodies. Having done so, it may only proceed with the works in question after it has taken those works, the environmental statement and any representation or comments made or information obtained during the whole procedure into account.