
STATUTORY RULES OF NORTHERN IRELAND

2001 No. 394

DRAINAGE

**Drainage (Environmental Impact Assessment)
Regulations (Northern Ireland) 2001**

Made - - - - - *29th October 2001*

Coming into operation *26th November 2001*

The Department of Agriculture and Rural Development, being a department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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 on 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 Impact Assessment) Regulations (Northern Ireland) 2001 and shall come into operation on 26th November 2001.

Interpretation

2.—(1) In these Regulations—

“another EEA State” means an EEA State other than the United Kingdom;

“canal scheme” has the same meaning as in Article 42 of the Water Order⁽³⁾;

“the Commission” means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973⁽⁴⁾;

“the Department” means—

(1) S.I.1988/785

(2) c. 68. Section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1994/2795 (N.I. 15)

(3) S.I. 1999/662 (N.I. 6)

(4) S.I. 1973/70 (N.I. 2)

(a) in relation to any canal schemes or marina works the Department of Culture, Arts and Leisure; and

(b) for all other purposes the Department of Agriculture and Rural Development;

“the Directive” means Council Directive [85/337/EEC](#)(5) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive [97/11/EC](#)(6);

“drainage” includes defences against water including sea water;

“drainage works” means any works carried out under the Drainage Order for the purpose of draining land or for 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, canalisation, 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 purpose of defence against, or relief from water;

“the Drainage Order” means the Drainage (Northern Ireland) Order 1973(7);

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

“environmental information” means information in the environmental statement and any other information provided in accordance with these Regulations in relation to an application or referral for a determination under regulation 6(5) or 14(4) relating to the likely environmental effects of the works which are the subject of the application or referral as the case may be;

“environmental statement” means a statement that includes—

(a) such of the information referred to in Part I of Schedule 2A to the Drainage Order as is reasonably required to assess the environmental effects of any proposed works and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but

(b) at least the information referred to in Part II of Schedule 2A to the Drainage Order;

“local newspaper” means a newspaper circulating in the immediate locality of any proposed works;

“marina works” means works carried out in relation to a marina under Part III of the Water Order;

“proposed works” shall be construed in accordance with regulation 5; and

“the Water Order” means the Water (Northern Ireland) Order 1999.

(2) 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.

(3) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in another EEA State.

(4) Expressions used in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) O.J. No. L175, 5.7.85, p. 40

(6) O.J. No. L73, 14.3.97, p. 5

(7) S.I. 1973/69 (N.I. 1) as amended by S.R. 1991 No. 376 and S.R. 1998 No. 446

(5) The Interpretation Act (Northern Ireland) 1954(8) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Application

3.—(1) Part II shall apply in relation to any drainage works other than works—

- (a) carried out in pursuance of or for the purposes of any scheme referred to in Article 30(1) of the Drainage Order;
- (b) carried out under a drainage scheme which was confirmed under Article 13 of the Drainage Order or treated by virtue of Article 8(1) or 9(1) of that Order as if they had been confirmed under Article 13 of that Order.

(2) Part II shall apply in relation to any marina works which were commenced after the coming into operation of these Regulations other than works carried out under a canal scheme.

(3) The amendments made to the Water Order by regulation 22 shall not have effect in relation to any canal scheme prepared before the coming into operation of these Regulations.

(4) Part II shall not apply in relation to any drainage works or marina works which the Department, in accordance with Article 2(3) of the Directive, directs are to be exempted from the said Part II.

(5) Part III shall not apply in relation to any drainage scheme or canal scheme which the Department, in accordance with Article 2(3) of the Directive, directs is to be exempted from the said Part III.

(6) No direction shall be made under paragraph (4) or (5) where the Department or any other Northern Ireland department is aware that the works or scheme in question would be likely to have significant effects on the environment of another EEA State.

(7) Where the Department makes a direction under paragraph (4) or (5) it shall publish in the Belfast Gazette and in at least two local newspapers a notice which briefly describes the proposed works, explains the effects of the direction and the reasons for it.

Part II

Drainage Works and Marina Works Generally

Restriction on proposed works

4. The Department shall not—

- (a) carry out any drainage works or marina works;
- (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 drainage works;
- (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; or
- (d) enter into any arrangement with another body or person in pursuance of Article 46 or Article 47(2) of the Water Order with a view to exercising any power to carry out marina works,

unless it has complied with the requirements of these Regulations in relation to the works in question and, in any case where a proposal relating to those works has been referred to the Commission under regulation 14(4)—

- (i) the Commission has consented to the carrying out of the works; and
- (ii) the works are carried out in accordance with any conditions to which the consent is subject.

Consideration whether proposed works have significant effects on the environment

5. The Department shall consider, taking into account the selection criteria in Schedule 2B to the Drainage Order, whether any proposed drainage works or marina works (in this Part referred to as 'the proposed works') are likely to have significant effects on the environment.

Determinations following consideration of works under regulation 5

6.—(1) Where, pursuant to regulation 5, the Department considers that the proposed works are not likely to have significant effects on the environment, it shall, by notice published in the Belfast Gazette and at least two local newspapers—

- (a) state that it proposes to carry out the works in question;
- (b) describe briefly the nature, size and location of the proposed works;
- (c) state that it does not propose to prepare an environmental statement in respect of the works; and
- (d) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed works at an address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette.

(2) Where the Department publishes a notice in accordance with paragraph (1) in relation to any proposed works it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the proposed works are situated; and
- (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(3) Where, within the period specified in paragraph (1)(d), no representations have been made to the effect that the proposed works are likely to have significant effects on the environment, the Department may proceed to carry out those works or do such other thing in relation to them as is mentioned in regulation 4.

(4) Where, following the period specified in paragraph (1)(d), the Department considers (whether in the light of any representations or otherwise) that the proposed works are likely to have significant effects on the environment, it shall make a determination accordingly.

(5) Where, within the period specified in paragraph (1)(d), any representations have been made to the effect that the proposed works are likely to have significant effects on the environment and, notwithstanding those representations, the Department considers that the works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the works are likely to have significant effects on the environment and shall provide the Commission with all the relevant information and copies of all relevant documents in its possession.

(6) Where the Commission considers that the information and the copy documents provided in accordance with paragraph (5) do not provide sufficient information to enable it to make a determination for the purposes of that paragraph, it shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as the Department may be able to provide on the matters raised.

(7) Where an application is made to the Commission under paragraph (5) in relation to any proposed works the Commission shall, taking into account the selection criteria in Schedule 2B to the Drainage Order, determine whether the proposed works are likely to have significant effects on the environment and shall inform the Department, and any person who made representations under paragraph (1)(d) in relation to the works, of its determination.

(8) Where an application is made to the Commission under paragraph (5) in relation to any proposed works, the Commission shall, prior to making a determination for the purposes of that paragraph, afford the Department and any person who made representations under paragraph (1)(d) in relation to the proposed works the opportunity of appearing before and being heard by the Commission.

Notification of determination that proposed works are likely to have significant effects on the environment

7.—(1) This regulation applies to any case where—

- (a) under regulation 6(4), the Department determines that any proposed works are likely to have significant effects on the environment; or
- (b) under regulation 6(7), the Commission determines that any proposed works are likely to have significant effects on the environment.

(2) In any case to which this regulation applies, the Department shall by notice published in the Belfast Gazette and at least two local newspapers—

- (a) describe briefly the nature, size and location of the proposed works in question;
- (b) state that the proposed works are likely to have significant effects on the environment and that the Department intends to prepare an environmental statement in respect of them;
- (c) indicate whether the proposed works are likely to have significant effects on the environment in another EEA State.

(3) Where the Department publishes a notice in accordance with paragraph (2) it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the proposed works are situate; and
- (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

Preparation of an environmental statement

8. The Department shall prepare an environmental statement in any case to which regulation 7 applies.

Request about the information to be included in an environmental statement

9.—(1) The Department may request the Commission to give an opinion as to the information to be contained in any environmental statement.

(2) Where the Department requests an opinion under paragraph (1) before a determination has been made under regulation 6(4) or (7), the Commission shall deal with the request on the assumption that the works will have significant effects on the environment.

(3) Before giving an opinion under paragraph (1) in relation to any proposed works the Commission shall consult—

- (i) the Department;

- (ii) the Drainage Council;
 - (iii) the district council of the district or, as the case may be, each district in which the proposed works are situate; and
 - (iv) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.
- (4) Giving an opinion under this regulation shall not preclude the Commission from requesting further information from the Department under regulation 14(5).

Assistance in preparation of environmental statements

10.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of regulation 8 it may consult with any person to determine whether that person has in his possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, he shall make that information available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed works and made that statement available in accordance with regulation 11(4), the Department, as the case may be, or the Commission acting in accordance with regulation 14(5), may determine that further information is relevant to any matter which is required to be, or may be, dealt with in the statement.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his possession any further information which the Department considers relevant to the environmental statement and if that person has any such information, he shall make that information available to the Department.

- (4) Where, pursuant to paragraph (3), the Department obtains any further information it shall—
- (a) by notice published in the Belfast Gazette and at least two local newspapers state that the further information is available, and give details of the places where and times at which a copy of that further information may be inspected or obtained and, if a charge is to be made for a copy thereof under regulation 12, the amount of the charge; and
 - (b) state that any person who wishes to make representations in relation to the further information should make such representations in writing to the Department at the address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette.

(5) At the same time as the notice referred to in paragraph (4)(a) is published, the Department shall—

- (a) send copies of the further information to:
 - (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district in which the proposed works are situate; and
 - (iii) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 28 days following the date of the publication of the notice in the Belfast Gazette, the further information, the details of the proposed works and the environmental statement relating to the works in question, and ensure that a reasonable number of copies of the information are made available.

(6) Nothing in paragraph (1) or (3) shall require the disclosure by any person of information which is capable of being treated as confidential or must be so treated under regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993⁽⁹⁾.

(7) Any person making information available to the Department in accordance with paragraph (1) or (3) may make a reasonable charge reflecting the cost thereof and the Department shall pay that charge.

Publicity for an environmental statement

11.—(1) Where the Department has prepared an environmental statement in relation to any proposed works, it shall publish a notice in accordance with paragraphs (2) and (3).

(2) The notice shall—

- (a) state that the statement has been prepared and give details of the places where and times at which copies, together with details of the proposed works to which the statement relates, may be inspected;
- (b) state that any person wishing to make representations in relation to the likely environmental effects of the proposed works to which the statement relates shall make them in writing to the Department at the address specified in the notice within 28 days of the publication of the notice; and
- (c) state that where no objection in relation to the likely environmental effects of the works is made and the Department, having undertaken the assessment specified in regulation 14 (1), considers that the works should proceed, it may so determine.

(3) The notice shall be published in the Belfast Gazette and at least two local newspapers.

(4) On or before the date of publication in the Belfast Gazette of the notice referred to in paragraph (1), the Department shall—

- (a) send a copy of the environmental statement and notice to—
 - (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district in which the proposed works to which the statement relates are situate; and
 - (iii) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State,

so that any such person has an opportunity to make representations on the likely environmental effects of the works to which the statement relates before the expiry of the period specified in the notice;

- (b) make available at an office of the Department or some other convenient place for a period of at least 28 days following the date of publication of the notice in the Belfast Gazette, the details of the proposed works and the environmental statement relating to the works and ensure that a reasonable number of copies of the statement are made available.

Charges

12. The Department may make a reasonable charge reflecting printing and distribution costs to any person for—

- (a) any copy, in excess of one, of the whole or any part of an environmental statement supplied to that person in accordance with regulation 11(4); or

⁽⁹⁾ S.R. 1993 No. 45 as amended by S.R. 1998 No. 238

- (b) any copy, in excess of one, of the whole or any part of any further information supplied to that person in accordance with regulation 10(5).

Proposed works likely to have significant effect on the environment in another EEA State

13.—(1) Where it appears to the Department that any proposed works are likely to have a significant effect on the environment in another EEA State or where another EEA State likely to be significantly affected so requests, the Department shall—

- (a) send to that State, as soon as possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 7(2)—
 - (i) a copy of the notice;
 - (ii) a description of the proposed works together with any available information on their possible significant effects on the environment in that EEA State; and
 - (iii) information on the nature of the determination which may be made;
 - (b) publish the information referred to in sub-paragraph (a)(iii) in a notice in the Belfast Gazette with an indication of the source from which additional information is available;
 - (c) give the EEA State not less than 28 days beginning the day on which the Department forwards a copy of the notice and other information under sub-paragraph (a) to indicate whether it wishes to be consulted further in accordance with paragraphs (2) to (5).
- (2) Where the EEA State indicates, under paragraph (1)(c), that it wishes to be consulted further the Department shall send to that EEA State—
- (a) details of the proposed works;
 - (b) a copy of the environmental statement in respect of the proposed works; and
 - (c) relevant information regarding the procedures under the Regulations, but only to the extent that such information has not been provided to that EEA State earlier under paragraph (1)(a).
- (3) The Department shall also—
- (a) arrange for the particulars and information referred to in paragraphs (1)(a) and (2) to be made available, within reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed works should proceed, to forward to the Department, within reasonable time their opinion on the information supplied.
- (4) The Department shall in accordance with Article 7(4) of the Directive—
- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the proposed works on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine, in agreement with the other EEA State, a reasonable period of time for the duration of the consultation period.
- (5) Where an EEA State has been consulted in relation to any proposed works in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the proposed works and shall forward to it a statement of—
- (a) the determination and conditions attached thereto;
 - (b) the main reasons and considerations on which the determination is based; and

- (c) a description, where necessary, of the main measures to avoid, reduce and if possible, offset the adverse effects of the proposed works.

Determination of whether proposed works should proceed

14.—(1) On expiry of the period specified in the notice published under regulation 11(1) the Department shall assess, in the light of the environmental statement, and any representations made in accordance with regulations 11 or 13, the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C to the Drainage Order.

(2) Where—

- (a) no objection in relation to the likely environmental effects of the proposed works has been made; or
- (b) any such objection has been withdrawn, and

the Department, having undertaken the assessment required by paragraph (1) considers that the works should proceed, it may so determine (or may so determine subject to conditions).

(3) Where the Department has determined—

- (a) in accordance with paragraph (2), that it should proceed with the works or that it should proceed subject to conditions, or
- (b) that it should not so proceed,

it shall by notice in the Belfast Gazette and at least two local newspapers—

- (A) inform the public of the determination, and
- (B) give details of the places where and the times at which the public may inspect a statement of—
 - (i) its determination and any conditions to which it is subject;
 - (ii) the main reasons and considerations upon which its determination was based; and
 - (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed works.

(4) Where the Department, having undertaken the assessment specified in paragraph (1), considers that the proposed works should proceed but objections to those works made in relation to their likely environmental effects have not been withdrawn, it shall send the proposal for works together with the environmental statement and any representations on it to the Commission for determination in accordance with paragraphs (5) to (8).

(5) Where the Commission considers that the proposal, environmental statement and representations sent to it in accordance with paragraph (4) do not provide sufficient information to enable a determination to be made in relation to any proposed works in pursuance of this regulation, the Commission shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as it may be able to provide on the matters raised.

(6) Where, in accordance with paragraph (5), the Commission requests further information from the Department in relation to any proposed works, the Department shall, no later than the time when it provides that information to the Commission—

- (a) by notice published in the Belfast Gazette and at least two local newspapers, at least 28 days before a determination as to whether the proposed works should proceed—
 - (i) announce that the further information is available in relation to the works and give details of the places where and times at which a copy may be inspected; and
 - (ii) state that any person who wishes to make representations on the likely environmental effects of the works to which the further information relates may make them in

- writing to the Commission at the address specified in the notice within 28 days of the date of the publication of the notice;
- (b) on or before the date of the publication of the notice supply a copy of the further information and notice to—
- (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district in which the proposed works are situate; and
 - (iii) any other persons who appears to it to have an interest in the matter, including, where appropriate, another EEA State,
- so that they have an opportunity to make representations to the Commission on the likely environmental effects of the proposed works to which the further information relates before the expiry of the period specified in the notice.
- (7) The Commission shall—
- (a) assess, in the light of the environmental statement, any further information provided in response to a request under paragraph (5) and any representations made in accordance with regulations 11, 13 or paragraph (6), the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C to the Drainage Order;
 - (b) afford the Department and any persons who made representations the opportunity of appearing before and being heard by the Commission;
 - (c) having regard to the assessment under sub-paragraph (a)—
 - (i) consent to the works unconditionally or subject to such conditions as the Commission considers appropriate, or
 - (ii) refuse to consent to the works; and
 - (d) send to the Department and any person who made representations under regulations 11, 13 or paragraph (6) a statement in writing of—
 - (i) the Commission’s determination under sub-paragraph (c) and any conditions attached to it;
 - (ii) the main reasons and considerations upon which it was based; and
 - (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed works.
- (8) The Department shall by notice in the Belfast Gazette and at least two local newspapers—
- (a) inform the public of the Commission’s determination under paragraph (7)(c); and
 - (b) give details of the places where and times at which the public may inspect a copy of the statement sent to it under paragraph (7)(d).

Part III

Drainage Schemes

Amendment of the Drainage Order

15. The Drainage Order shall be amended in accordance with regulations 16 to 21.

Drainage Order: Interpretation

- 16.—(1) In Article 2 (2)—

- (a) before the definition of “authorised” there shall be inserted the following definition—
““another EEA State” means an EEA State other than the United Kingdom;”;
 - (b) before the definition of “dam” there shall be inserted the following definition—
““the Commission” means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973(10);”;
 - (c) before the definition of “drainage” there shall be inserted the following definition—
““the Directive” means Council Directive 85/337/EEC(11) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC(12);”;
 - (d) before the definition of “embankment” there shall be inserted the following definition—
““EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;”;
 - (e) before the definition of “fish pass” there shall be inserted the following definition—
““environmental information” means information in an environmental statement and any other information provided in accordance with this Order in relation to an application or referral for a determination under Article 12A(7) or Article 12E(5) in relation to the likely environmental effects of the scheme which is the subject of the application;”;
 - (f) for the definition of “environmental statement” there shall be substituted—
““environmental statement” means a statement that includes—
 - (a) such of the information referred to in Part I of Schedule 2A as is reasonably required to assess the environmental effects of the drainage scheme and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
 - (b) at least the information referred to in Part II of Schedule 2A;”;
 - (g) before the definitions of “the Minister” and “the Ministry” there shall be inserted the following definition—
““local newspaper” means a newspaper circulating in the immediate locality of a proposed drainage scheme;”.
- (2) After Article 2(2) there shall be inserted—
“(2A) In this Order, any reference to significant effects on the environment shall include a reference to such effects on the environment in another EEA State.”.

Restrictions on drainage schemes

17. For Article 12 there shall be substituted—

“Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme unless—

- (a) it has complied with the requirements of Articles 12A to 12E in relation to the scheme; and

(10) S.I. 1973/70 (N.I. 2)

(11) O.J. No. L175, 5.7.85, p. 40

(12) O.J. No. L73, 14.3.97, p. 5

- (b) where a proposal for the scheme has been referred to the Commission under Article 12E(5)—
 - (i) the Commission has consented to the carrying out of the scheme; and
 - (ii) the scheme is carried out in accordance with any conditions to which the consent is subject.”

18. For Articles 12A and 12B there shall be substituted the following Articles—

“Consultations and determination of whether a drainage scheme has significant effects on the environment

- 12A.—**(1) Where the Department has prepared a drainage scheme it shall—
- (a) consider, taking into account the selection criteria in Schedule 2B, whether the works specified in the scheme are likely to have significant effects on the environment;
 - (b) 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 proposed works specified in the scheme are situate.
- (2) The district council to which a copy of a drainage scheme is sent by the Department pursuant to paragraph (1)(b)—
- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 28 days from the date of the publication in the Belfast Gazette of the notice relating to the scheme given under paragraph (3) or Article 12B(2) and shall permit the copy to be inspected by any person;
 - (b) shall examine and consider the scheme; and
 - (c) may, at any time within the period referred to in sub-paragraph (a), send to the Department any representations with regard to the scheme which it wishes to make.
- (3) Where, pursuant to paragraph (1)(a), the Department considers that the works specified in a scheme are not likely to have significant effects on the environment, it shall, by notice in the Belfast Gazette and at least two local newspapers—
- (a) announce that it proposes to carry out the works specified in the scheme;
 - (b) describe briefly the nature, size and location of those works;
 - (c) state that it does not intend to prepare an environmental statement in respect of the works specified in the scheme; and
 - (d) give notice that any person may make representations to the Department in writing in relation to the likely environmental effects of the works at the address specified in the notice within 28 days of the publication of the notice in the Gazette.
- (4) Every notice published pursuant to paragraph (3) shall—
- (a) state the place or places where and the period, not being less than 28 days following the date of the publication of the notice in the Belfast Gazette, during which a copy of the scheme will be available for inspection; and
 - (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 of the date of publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which he wishes to make.
- (5) Where, pursuant to paragraph (3), the Department publishes a notice, it shall send a copy of the notice to—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
- (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(6) Where, within the period specified in paragraph (3)(d), no representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to carry out the scheme.

(7) Where, within the period specified in paragraph (3)(d), any representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment and, notwithstanding those representations, the Department still considers that the works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the works specified in the scheme are likely to have significant effects on the environment and shall provide the Commission with all the relevant information and copies of all relevant documents in its possession.

(8) Where the Commission considers that the information and copy documents provided in accordance with paragraph (7) do not provide sufficient information to enable it to make a determination for the purposes of that paragraph, it shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as the Department may be able to provide on the matters raised.

(9) Where an application is made to the Commission under paragraph (7) in relation to any drainage scheme the Commission shall, taking into account the selection criteria in Schedule 2B, determine whether the works specified in the scheme are likely to have significant effects on the environment and shall inform the Department and any person who made representations under paragraph (3)(d), of its determination.

(10) Where an application is made to the Commission under paragraph (7) in relation to any drainage scheme the Commission shall, prior to making a determination for the purposes of that paragraph, afford to the Department and to any person who made representations under paragraph (3)(d) in relation to works specified in the scheme an opportunity of appearing before and being heard by the Commission.

Drainage schemes likely to have significant effects on the environment

12B.—(1) This Article applies where—

- (a) under Article 12A(1) the Department determines that the works specified in a scheme are likely to have significant effects on the environment; or
- (b) under paragraph 12A(9) the Commission determines that the works specified in a scheme are likely to have significant effects on the environment.

(2) In any case to which this Article applies the Department shall by notice published in the Belfast Gazette and at least two local newspapers—

- (a) describe briefly the nature, size and location of the works specified in the scheme;
- (b) state that the works specified in the scheme are likely to have significant effects on the environment and the Department intends to prepare an environmental statement in respect of the works;
- (c) where appropriate, indicate that the works specified in the scheme are likely to have significant effects on the environment in another EEA State; and

- (d) state that any person who considers that his interests will be prejudicially affected by the scheme may, at any time within 28 days of the date of the publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which he wishes to make.
- (3) Where the Department publishes a notice in accordance with paragraph (2) it shall on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to—
 - (a) the Drainage Council;
 - (b) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
 - (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

Preparation of an environmental statement and consultations thereon

12C.—(1) The Department shall prepare an environmental statement in any case to which Article 12B(1) applies.

(2) The Department may request the Commission to give an opinion as to the information to be contained in the environmental statement required for a particular drainage scheme.

(3) Where the Department requests an opinion under paragraph (2) before a determination has been made under Article 12A(1) or (9), the Commission shall deal with the request on the assumption that the works specified in the scheme will have significant effects on the environment.

(4) Before giving an opinion under paragraph (2) in relation to any drainage scheme the Commission shall consult the Department and—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the works specified in the scheme are situate; and
- (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(5) Giving an opinion under paragraph (2) shall not preclude the Commission from requesting further information from the Department under Article 12E(6).

(6) Subject to paragraph (7), where the Department is required to prepare an environmental statement in pursuance of paragraph (1), it may consult with any person to determine whether that person has in his possession any information which may be relevant to the preparation of the environmental statement and if that person has such information he shall make the information available to the Department.

(7) Paragraph (6) shall not require the disclosure of information which is capable of being treated as confidential or must be treated as confidential under Regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993(13).

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

- (a) by notice published in the Belfast Gazette and at least two local newspapers—
 - (i) announce the preparation of the statement and give details of the places where and times at which the statement may be inspected and, if a charge

is to be made for a copy of the statement under paragraph (16), the amount of the charge;

- (ii) state that any person wishing to make representations in relation to the likely environmental effects of the drainage works to which the statement relates should make them in writing to the Department at the address specified in the notice within 28 days of the publication of the notice in the Belfast Gazette;
 - (iii) state that where no objection in relation to the likely effects of the works specified in the scheme is made and the Department, having undertaken the assessment specified in Article 12E(1), considers that the scheme should proceed, it may proceed with the scheme;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 28 days following the date of the publication 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) at the same time as the notice referred to in sub-paragraph (a) is published send a copy of the statement to—
- (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
 - (iii) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(9) Where, in accordance with paragraph (8)(c), the Department sends any person a copy of the environmental statement it shall consult that person about the statement and the likely environmental effects of the proposed works to which it relates.

(10) Where under paragraph (9) the Department consults any person about an environmental statement it shall give that person not less than 28 days notice, beginning with the day on which it sends a copy of the environmental statement to him, that it proposes to consider the statement and shall not consider that statement until after the expiration of that period.

(11) Where the Department has prepared an environmental statement in relation to the works specified in the drainage scheme and has made the statement available in accordance with paragraph (8)(c) the Department may determine that further information is relevant to any matter which is required to be, or may be, dealt with in the statement.

(12) Where, in accordance with paragraph (11), the Department has determined that further information is relevant to any matter which is required to be, or may be, dealt with in a statement, it may, subject to paragraph (15), consult with any person to determine whether that person has in possession any such further information and where that person has such information he shall make it available to the Department.

(13) Where, pursuant to paragraph (12), the Department obtains any further information it shall—

- (a) by notice in the Belfast Gazette and at least two local newspapers state that the further information is available, and give details of the places where and times at which a copy of that further information may be inspected or obtained and, if a charge is to be made available for a copy thereof under paragraph (16), the amount of charge; and

- (b) state that any person who wishes to make representations in relation to that further information should make the representations in writing to the Department at an address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette.

(14) At the same time as the notice referred to in paragraph (13) is published, the Department shall send copies of the further information to—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
- (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(15) Nothing in paragraph (12) shall require the disclosure by any person of information which is capable of being treated as confidential, or must be treated as confidential, under regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993(14).

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

- (a) any copy, in excess of one, of the whole or any part of an environmental statement supplied to that person in accordance with paragraph (8)(c); or
- (b) any copy in excess of one, of the whole or any part of any further information supplied to that person in accordance with paragraph (14).

(17) Any person making information available to the Department in accordance with paragraph (6) or (12) may make a reasonable charge reflecting the cost of doing so and the Department shall pay that charge.

Drainage schemes likely to have significant effects on the environment in another EEA State

12D.—(1) Where it appears to the Department that the works specified in a proposed drainage scheme are likely to have significant effects on the environment in another EEA State, or where another EEA State likely to be significantly affected requests, the Department shall—

- (a) send to the EEA State, as soon as possible, and no later than the date of the publication in the Belfast Gazette of the notice referred to in Article 12C(8)—
 - (i) a copy of that notice;
 - (ii) the description of the proposed scheme, together with any available information on its possible significant effects on the environment in that EEA State; and
 - (iii) information as to the nature of the determination which may be made under Article 12A(1) or (9);
- (b) publish the information referred to in sub-paragraph (a)(iii) in a notice placed in the Belfast Gazette with an indication of where additional information is available;
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed drainage scheme in accordance with paragraphs (2) to (4) it must inform the Department of that fact within 28 days beginning with the day on

which the Department forwarded the copy of the notice or other information, as the case may be, to that State.

(2) Where an EEA State indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to that EEA State—

- (a) a copy of the proposal for the drainage scheme;
- (b) a copy of the environmental statement in respect of the scheme; and
- (c) relevant information regarding the procedure for consultation under this Part but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(a).

(3) The Department shall also—

- (a) arrange for any copy notice, description, proposal, statement or information referred to in paragraphs (1)(a) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public are given an opportunity, before a determination is made as to whether the drainage scheme should proceed, to forward to the Department within reasonable time, their opinion on the information supplied.

(4) The Department shall in accordance with Article 7(4) of the Directive—

- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the drainage scheme on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects, and
- (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(5) Where an EEA State has been consulted in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the drainage scheme in question and shall forward to it a statement of—

- (a) the determination and any conditions attached thereto;
- (b) the main reasons and considerations on which the determination is based; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the adverse effects of the scheme.

Determination of whether a drainage scheme should proceed

12E.—(1) On the expiry of the period specified in the notice published under Article 12C(8) the Department shall assess in the light of the environmental statement and representations made in accordance with Article 12C(8) and Article 12D the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C.

(2) Where—

- (a) no objections in relation to the likely environmental effects of the scheme have been made; or
- (b) any such objection has been withdrawn,

the Department, having undertaken the assessment required by paragraph (1) may determine, (unconditionally or subject to conditions) that the drainage scheme shall proceed.

(3) Where the Department has determined—

- (a) in accordance with paragraph (2) that it should proceed with a drainage scheme; or
- (b) that it should not so proceed,

it shall publish a notice in accordance with paragraph (4).

(4) The notice referred to in paragraph (3) shall be given in at least two local newspapers (or by such other means as are reasonable in the circumstances) and shall—

- (a) inform the public of the determination;
- (b) give details of the places where and times at which the public may inspect a statement of—
 - (i) the Department's determination and any conditions to which it is subject;
 - (ii) the main reasons and considerations upon which the determination was based; and
 - (iii) where necessary, a description of the main measures to avoid, reduce, and if possible, offset the adverse effects of the works specified in the scheme.

(5) Where the Department, having undertaken the assessment specified in paragraph (1), considers that the scheme in question should proceed but objections to the works specified in the scheme made in relation to their likely environmental effects have not been withdrawn, it shall refer the proposal for a scheme together with the environmental statement and any representations on it to the Commission for determination in accordance with paragraphs (6) to (10).

(6) Where the Commission considers that the information about a scheme supplied to it in accordance with paragraph (5) does not provide sufficient information to enable a determination to be made, the Commission shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as it may be able to provide on the matters raised.

(7) Where, in accordance with paragraph (6), the Commission requests further information from the Department, the Department shall—

- (a) no later than the time when it provides that information to the Commission, by notice in the Belfast Gazette and at least two local newspapers—
 - (i) state that the further information is available and give details of the places where and times at which a copy may be inspected; and
 - (ii) state that any person who wishes to make representations on the likely environmental effects of the drainage scheme to which the further information relates should make the representations in writing to the Commission at the address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette;
- (b) on or before the date of the publication of the notice, supply a copy of the further information and notice to—
 - (i) the Drainage Council;
 - (ii) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
 - (iii) any other person who appears to the Department to have an interest in the matter including, where appropriate, another EEA State,

so that they have an opportunity to make representations to the Commission on the likely environmental effects of the works specified in the scheme in question before the expiry of the period specified in the notice.

(8) The Commission shall—

- (a) assess, in the light of the environmental statement, any further information provided by the Department in response to a request under paragraph (6) and any representations made in accordance with Article 12C(8), Article 12D or paragraph (7), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
- (b) having regard to the assessment under sub-paragraph (a)—
 - (i) consent to the carrying out of the works specified in the scheme unconditionally or subject to such conditions as the Commission considers appropriate; or
 - (ii) refuse to consent to the works; and
- (c) send to the Department and to any other person who made representations under Article 12C(8), Article 12D or paragraph (7) a statement in writing of—
 - (i) the Commission’s determination under sub-paragraph (b) and any conditions to which the determination is subject;
 - (ii) the main reasons and considerations upon which the determination was based; and
 - (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the scheme.

(9) The Commission shall afford to the Department, and to any other person who made representations under Article 12 C(8), Article 12D or paragraph (7) the opportunity of appearing before and being heard by the Commission.

(10) The Department shall by notice in the Belfast Gazette, and in at least two local newspapers, or by such other means as are reasonable in the circumstances—

- (a) inform the public of the Commission’s determination under paragraph (8)(b); and
- (b) give details of the places where and times at which the public may inspect a copy of the statement sent to the Department under paragraph (8)(c).”.

19. For Article 13 there shall be substituted—

“Confirmation of drainage schemes

13.—(1) Where—

- (a) the Department has stated in accordance with Article 12A(3)(c) that it does not consider that the works specified in the proposed scheme are likely to have significant effects on the environment; and
- (b) no representations made in accordance with Article 12A(3)(d) are received in relation to those works within the time limit therein specified,

it may, within 28 days of the expiration of the time limit referred to in Article 12A(3)(d) and, after considering any representations sent to it under Article 12A(4)(b) and after holding such enquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, either without modification or with such modifications 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 12C(8)(a), and after holding such an enquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Department thinks fit.

(3) Where the Department has prepared an environmental statement in relation to the works specified in the 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 pursuant to Article 12C(6) or (12);
- (c) the works specified in the drainage scheme;
- (d) any representations sent to it under Article 12A(3)(d);
- (e) any representations made in accordance with Article 12C(8)(a) within the time limit specified that sub-paragraph;
- (f) any representations made by another EEA State during consultations under Article 12D in relation to the likely environment effects of those works and which are received within the time limits therein specified;
- (g) the environmental factors specified in Schedule 2C; and
- (h) the determination made by the Department under Article 12E(2) or, as the case may be, any consent given by the Commission under Article 12E(8)(b).

(4) Where having taken into consideration the matters specified in paragraph (3)(a) to (h), the Department decides to confirm a scheme in accordance with paragraph (2) it shall—

- (a) inform in writing any person or EEA State which made representations in accordance with Article 12A (3)(d), Article 12C(8)(a) or Article 12D of its decision and any reasons and considerations upon which it was based and that in making it the Department has taken into consideration the matters specified in paragraph (3)(a) to (h); and
- (b) by notice published in the Belfast Gazette and at least two local newspapers announce its decision and the considerations on which it was based and state that in making it the Department has taken into consideration the matters specified in paragraph (3)(a) to (h).

(5) In this Article, modification includes a variation, addition or exception.”.

Amendment of drainage schemes

20. For Article 16 there shall be substituted—

“Amendment of drainage schemes

16.—(1) Where, in the course of carrying out works specified in a drainage scheme, the Department considers that any provisions of that scheme ought to be substantially varied, it may, subject to paragraphs (2) and (3), after consultation with the Drainage Council and after giving notice to—

- (a) such person as the Department considers likely to be materially affected; and
- (b) any person or EEA State which made representations under Article 12A(3)(d) or Article 12C(8)(a)(ii) or Article 12D,

direct that such variations be made in the scheme as appear to be necessary.

(2) 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 the statement and obtained pursuant to Article 12C(6) or (12);

- (c) the works specified in the scheme as the Department proposes to vary it;
- (d) any representations made in accordance with Article 12A(3)(d) or Article 12C(8)(a)(ii) which are sent to Department within the time limits therein respectively specified;
- (e) any representations made by another EEA State in accordance with Article 12D in relation to the likely environmental effects of those works and which are received within the time limits specified by paragraph (3)(b) of that Article;
- (f) the environmental factors specified in Schedule 2C; and
- (g) any determination made by the Department under Article 12E(3), and any consent or refusal of consent given by the Commission under Article 12E(8)(b), and any conditions attached to such consent.

(3) Where, pursuant to paragraph (1), the Department gives notice of the variation of a drainage scheme which has been made subject to an environmental statement such notice shall be given in writing and shall indicate the reasons and considerations upon which the variation was based and that the Department has taken into consideration the matters specified in paragraph (2)(a) to (g).

(4) Where a direction given under this Article varies a drainage scheme, that scheme shall have effect, and be deemed always to have had effect, subject to that direction, and, accordingly, references in this Order to a drainage scheme shall, in relation to that scheme, be construed and have effect as referring to that scheme as varied by that direction.

(5) A direction given under this Article shall not have effect so as to authorise the Department to purchase land compulsorily for the purposes of the drainage scheme otherwise than in accordance with, and subject to, the provisions of Article 10(3) and (4) and Schedule 3.”.

Schedule 2A

21. For Schedule 2A there shall be substituted the Schedules set out in Schedule 1 to these Regulations.

Amendment of Water Order

22.—(1) The Water (Northern Ireland) Order 1999(15) shall be amended in accordance with this regulation.

(2) For Article 45(1) there shall be substituted—

“(1) The provisions of the Drainage Order specified in Part I of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to canal schemes in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.

(1A) The provisions of the Drainage Order specified in Part II of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to works under this Part (including works undertaken in pursuance of a canal scheme) in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions as so modified shall have effect as if they were provisions of this Part.”.

(3) For Schedule 5 there shall be substituted the Schedule set out in Schedule 2 to these Regulations.

Part IV

Final Provisions

Revocations and transitional provisions

23.—(1) Subject to paragraph (2) the Drainage (Environmental Assessment) Regulations (Northern Ireland) 1991⁽¹⁶⁾ and the Drainage (Environmental Assessment) (Amendment) Regulations (Northern Ireland) 1998⁽¹⁷⁾ are hereby revoked.

(2) Nothing in paragraph (1) shall affect the continued operation of the Regulations mentioned in that paragraph in relation to any—

- (a) drainage works commenced before the coming into operation of these Regulations; or
- (b) drainage scheme prepared before the coming into operation of these Regulations.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 29th October 2001.

L.S.

J. R. Hagan
Senior Officer of the
Department of Agriculture and Rural
Development

⁽¹⁶⁾ S.R. 1991 No. 376
⁽¹⁷⁾ S.R. 1998 No. 446

SCHEDULE 1

Regulation 21.

“SCHEDULE 2A

Article 2(2)

Part I

Information for inclusion in environmental statement

1. Description of the drainage works including in particular—
 - (a) a description of the physical characteristics of the drainage works and the land use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, the nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc.) resulting from the operation of the proposed drainage works.
2. An outline of the main alternatives studied by the Department and an indication of the main reasons for its choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed drainage works, including in particular, population, fauna, flora, soil, water, air, climatic factors, material assets including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed drainage works on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the drainage works, resulting from—
 - (a) the existence of the drainage works;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and the Department’s description of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 above.
7. An indication of any difficulties (technical difficulties or lack of know-how) encountered by the Department in compiling the required information.

Part II

1. A description of the drainage works comprising information on the site, design and size of the works.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the works are likely to have on the environment.

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4. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4.

SCHEDULE 2B

Articles 12A(1) and (9)

Selection criteria referred to in Article 4.3 of Directive 85/337/EEC(18) as amended by Directive 97/11/EC(19)

Characteristics of drainage works

1. The characteristics of drainage works must be considered having regard, in particular, to—
 - (a) the size of the works;
 - (b) their cumulative effects with other works;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of drainage works

2. The environmental sensitivity of geographical areas likely to be affected by drainage works must be considered, having regard in particular, to—
 - (a) the existing land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under member States' legislation; special protection areas designated by member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds(20), as amended and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(21), as amended;
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

(18)

O.J. No. L175, 5.7.85, p. 40

(19)

O.J. No. L73, 14.3.97, p. 5

(20) O.J. No. L103, 25.4.79, p. 1

(21) O.J. No. L206, 22.7.92, p. 7

Characteristics of the potential impact

3. The potential significant effects of drainage works must be considered in relation to the criteria set out under paragraphs 1 and 2 above, and having regard, in particular, to—
- (a) the extent of the impact of the works (geographical area and size of the affected population);
 - (b) the transfrontier nature of that impact;
 - (c) the magnitude and complexity of that impact;
 - (d) the probability of that impact; and
 - (e) the duration, frequency and reversibility of that impact.

SCHEDULE 2C

Article 13(3)(g)

Environmental factors to be taken into account

Account shall be taken in particular of the direct and indirect effects of the drainage works on the following factors—

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between the factors mentioned in heads (a) to (c).”

SCHEDULE 2

Regulation 22(3)

“SCHEDULE 5

Article 45(1), (1A)

PROVISIONS OF THE DRAINAGE ORDER APPLIED FOR THE PURPOSES OF ENVIRONMENTAL IMPACT ASSESSMENT OF CANAL SCHEMES

Part I

Provisions of the drainage order applied by Article 45(1)

1. The provisions of the Drainage Order applied by Article 45(1) of this Order are as follows—

<i>Provision</i>	<i>Subject Matter</i>
Part I	Introductory
<i>Article</i>	
12	Restrictions on drainage schemes.
12A	Consultations and determination of whether a drainage scheme has significant effects on the environment.
12B	Drainage schemes likely to have significant effects on the environment.

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<i>Provision</i>	<i>Subject Matter</i>
12C	Preparation of an environmental statement and consultations thereon.
12D	Drainage schemes likely to have significant effects on the environment in another EEA State.
12E	Determination of whether a drainage scheme should proceed.
13	Confirmation of drainage schemes.
14	The carrying out of drainage schemes.
15	Provisions in regard to roads, bridges, culverts and embankments.
16	Amendment of drainage schemes.
Schedule 2A	Information for inclusion in environmental statement.
Schedule 2B	Selection criteria referred to in Article 4.3 of Directive 85/337/EEC as amended by Directive 97/11/EC .
Schedule 2C	Environmental factors to be taken into account.

Part II

Provisions of the Drainage Order applied by Article 45(1A)

2. The provisions of the Drainage Order applied by Article 45(1A) of this Order are as follows—

<i>Provision</i>	<i>Subject Matter</i>
Part I	Introductory
<i>Article</i>	
17	Compensation for certain losses due to construction of drainage works.
18	Compensation for injury to canals, fisheries, etc.
19	Matters to be regarded in assessing compensation.
20	Disposal of surplus lands, etc.
31	Noxious weeds.
35	Provision as to recovery of expenses.
36	Miscellaneous offences.
38	Limitation of liability for flooding, etc.
39	Protection for officers of the Department.

<i>Provision</i>	<i>Subject Matter</i>
40	Protection of fisheries.

Part III

Modification of the provisions applied by Parts I and II

3. The provisions of the Drainage Order specified in Part I and Part II of this Schedule shall, in their application for the purposes of Part III of this Order have effect with the following modifications—

- (a) references therein to the Department of Agriculture and Rural Development shall be construed as references to the Department of Culture, Arts and Leisure;
- (b) references therein to a watercourse shall be construed as references to a waterway;
- (c) references therein to the Drainage Order shall be construed as references to Part III of this Order;
- (d) references therein to—
 - (i) a scheme or drainage scheme carried out under the Drainage Order, or any part thereof,
 - (ii) drainage works;
 - (iii) drainage purposes or purposes connected with drainage;
 - (iv) the Drainage Council;shall respectively be construed as references to—
 - (A) a canal scheme;
 - (B) works under any provision contained in Part III of this Order or any canal scheme;
 - (C) the purposes of any such provision or scheme; and
 - (D) the Water Council;
- (e) references therein to sea defences and sea defence works shall be omitted;
- (f) in Article 17—
 - (i) for paragraph (4) substitute—

“(4) Every claim for compensation under this Article—

 - (a) shall be made in writing to the Department within 3 years from the date of completion of the works from which, or from the operation of which, the claim arises, and such details of the claim as the Department may require shall be furnished in writing to the Department within such period as the Department may determine, and
 - (b) shall, in default of agreement, be heard and determined by the Lands Tribunal.”.
 - (ii) in paragraph (5), the words, “and may allow a sum in respect of the cost of the employment of any” shall be omitted; and
- (g) in Article 38, after paragraph (2) add—

“(3) Every claim duly made for compensation under this Article shall, in default of agreement, be heard and determined by the Lands Tribunal.”.”

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. The Drainage (Environmental Assessment) Regulations (Northern Ireland) 1991 as amended by the Drainage (Environmental Assessment) (Amendment) Regulations (Northern Ireland) 1998 provided for the implementation in relation to drainage schemes and drainage works carried out by the Department of Agriculture and Rural Development (“the Department”), of 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). The Drainage (Environmental Impact Assessment) Regulations 2001 (which revoke and re-enact with amendments the 1991 Regulations) implement the changes to Directive [85/337/EEC](#) made by Council Directive 97/11 EC (O.J. No. L73, 14.3.97, p. 5). They also implement the extension of both Directives to the Contracting Parties of the European Economic Area (EEA) under Article 74 and Annex XX paragraph 1.1 of the Agreement on the European Economic Area, as given in Decision No. 20/1999 of the EEA Joint Committee adopted on 26th February 1999.

2. The Regulations bind respectively the Department of Agriculture and Rural Development in the execution of drainage works and schemes under the Drainage (Northern Ireland) Order 1973, and the Department of Culture, Arts and Leisure in the execution of canal schemes and marina works under Part III of the Water (Northern Ireland) Order 1999.

Part II of the Regulations implements the Directive in relation to—

- (a) works carried out under the Drainage (Northern Ireland) Order 1973, other than drainage schemes; and
- (b) works to construct a marina carried out under Part III of the Water (Northern Ireland) Order 1999.

Part III of the Regulations further amends the Drainage Order in respect of drainage schemes and also amends the Water Order in respect of canal schemes.

The Regulations prohibit the responsible Department carrying out drainage works or marina works under Part III of the Water Order, drainage schemes or canal schemes unless specified conditions are met. Firstly the requirements of the Regulations must have been complied with, including the preparation of an “environmental statement” for the purposes of assessing proposed works or schemes which are likely to have significant effects on the environment. Secondly, in specified cases, the Water Appeals Commission must have given consent, and the works or scheme must be carried out in accordance with any conditions to which the consent is subject.

3. The principal requirements of the Regulations are as follows:—

- (a) the responsible Department must determine whether the proposed works or scheme are likely to have significant effects on the environment (regulations 5 and 18 and Schedule 2);
- (b) where the responsible Department considers that the works or scheme have such effects it must publicise its intention to carry out the works. If no representations are received to the effect that the environmental effects are likely to be significant, it may proceed. If the Department concludes that the works are likely to have significant effects on the environment, it must publicise its determination. If representations are received that the environmental effects are likely to be significant, but the Department still considers otherwise, it must apply to the Water Appeals Commission for a determination (regulations 6 and 18);

- (c) where the works or scheme are determined to be likely to have significant effects on the environment the responsible Department must publicise its intention to prepare an environmental statement, notify the specified consultation bodies and prepare the statement (regulations 7 and 18);
 - (d) at the request of the responsible Department the Water Appeals Commission must give an opinion on the contents of the environmental statement (regulation 9 and regulation 18) and other persons or authorities must make available any relevant information (regulations 10 and 18);
 - (e) the responsible Department must publicise the preparation of the environmental statement, and any further environmental information and make it available to the public and copy it to consultation bodies (regulation 11, 14 and 18);
 - (f) where the drainage works or scheme would be likely to have significant effects on the environment of another EEA State, the responsible Department must provide information to and consult that EEA State (regulations 13 and 18); and
 - (g) the environmental effects of the drainage works or scheme must be assessed in the light, in particular, of the environmental statement and representations. If there are no objections the responsible Department may determine that it will proceed with the works or scheme. If there are objections, the proposal must be referred to the Water Appeals Commission for a determination consenting or refusing consent to the works. Determinations must be publicised (regulations 14 and 18).
4. The Regulations also provide for reasonable charges for copy documents, revocations, savings and amendments (regulations 12, 18, 22 and 23).