

2017 No. 585

LAND DRAINAGE, ENGLAND AND WALES

The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

<i>Made</i>	- - - -	<i>24th April 2017</i>
<i>Laid before Parliament</i>		<i>24th April 2017</i>
<i>Laid before the National Assembly for Wales</i>		<i>24th April 2017</i>
<i>Coming into force</i>	- -	<i>16th May 2017</i>

For the purposes of section 2(2) of the European Communities Act 1972(a) (“the ECA 1972”)—

- (a) the Secretary of State has been designated(b) in relation to the environment; and
- (b) the Welsh Ministers have been designated(c) 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 so far as they concern improvement works within the meaning in regulation 2(1) of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(d).

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the ECA 1972—

- (a) the Welsh Ministers in relation to Wales, to the extent that they are designated to do so; and
- (b) the Secretary of State, in every other respect.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, “the 1999 Regulations” means the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999.

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(b) S.I. 2008/301.
(c) S.I. 2000/2812. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 28(1) of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
(d) S.I. 1999/1783, amended by S.I. 2005/1399, S.I. 2006/618, S.I. 2013/755 (W. 90).

Amendments to the 1999 Regulations

2. The 1999 Regulations are amended in accordance with regulations 3 to 21.

Amendments to regulation 2

- 3.—(1) Regulation 2 (interpretation) is amended as follows.

- (2) In paragraph (1)—

- (a) at the appropriate place in the alphabetical order insert—

““environmental impact assessment”, in respect of improvement works, means—

- (a) the preparation of an environmental statement by the drainage body;
- (b) the carrying out of consultations under regulations 10 and 12B(6);
- (c) the drainage body’s or the appropriate Authority’s consideration of the environmental statement and other information under regulation 12(1) or 12B(3);
- (d) the drainage body or the appropriate Authority reaching a conclusion about the likely significant environmental effects of the project under regulation 12(2) or 12B(4); and
- (e) the drainage body’s or the appropriate Authority’s consideration of that conclusion under regulation 12A(3) or 12C(2) in the determination of whether or not the improvement works should proceed;”;

““EU environmental assessment” means an assessment carried out—

- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than under the EIA Directive); or
- (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive,

of the effect of anything on the environment;”;

““the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(a) as last amended by Council Directive 2013/17/EU(b);”;

““UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;”;

““the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(c) as amended by Council Directive 2013/17/EU;”;

- (b) for the definition of “the appropriate Authority” substitute—

““the appropriate Authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;”;

- (c) in the definition of “consultation bodies”—

- (i) in paragraph (a)(d) for “English Nature, English Heritage and the Countryside Agency” substitute “Natural England”;
- (ii) in paragraph (b) for “National Assembly” substitute “Welsh Ministers”;

(a) OJ No L 206, 22.7.1992, p. 7.

(b) OJ No L 158, 10.6.2013, p. 193.

(c) OJ No L 20, 26.1.2010, p. 7.

(d) The words “English Nature” were substituted by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37). The words “English Heritage” were inserted by regulation 5(2)(a)(i) of S.I. 2005/1399.

- (iii) in paragraph (c), after “works”, in the second place it occurs, insert “by virtue of its environmental responsibilities or local or regional competences”;
- (d) for the definition of “the Directive” substitute—
 - “the EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(a), as amended by Directive 2014/52/EU of the European Parliament and of the Council(b);”;
- (e) omit the definition of “EEA State”;
- (f) for the definition of “environmental statement” substitute—
 - “environmental statement” has the meaning given by regulation 7(1);”;
- (g) for the definition of “improvement works” substitute—
 - “improvement works” means—
 - (a) in relation to England, works which are—
 - (i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and
 - (ii) permitted development by virtue of Class C or Class D of Part 13 (water and sewerage) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(c);
 - (b) in relation to Wales, works which are—
 - (i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and
 - (ii) permitted development by virtue of Part 14 or Part 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(d);”.
- (3) In paragraph (2) for “the Directive” in both places substitute “the EIA Directive”.
- (4) After paragraph (3) insert—
 - “(4) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of improvement works on the environment includes a reference to the effects of the improvement works on the environment once the improvement works are finished and in operation.
 - (5) In paragraph (4) each reference to the environment includes a reference to the matters referred to in regulation 12(2)(a) to (e).”.

Amendments to regulation 3

- 4.—(1) Regulation 3 (restriction on improvement works) is amended as follows.
- (2) In paragraph (1)—
 - (a) for “paragraph (2) below” substitute “regulations 3A and 3B”;
 - (b) in sub-paragraph (b) for “12(4)” substitute “12B(2)”.
- (3) Omit paragraphs (2) to (4)(e).

(a) OJ No L 26, 28.1.2012, p. 1.
 (b) OJ No L 124, 25.4.2014, p. 1.
 (c) S.I. 2015/596, to which there are amendments not relevant to these Regulations.
 (d) S.I. 1995/418. Parts 14 and 15 of Schedule 2 were amended by S.I. 2013/755.
 (e) Paragraphs (2) and (2A) were substituted by regulation 5(3) of S.I. 2005/1399.

New regulations 3A to 3C

5. After regulation 3 insert—

“Defence and civil emergencies

3A.—(1) The Secretary of State may direct that improvement works or a part of any improvement works are exempt where—

- (a) the improvement works have national defence as their sole purpose; and
- (b) the Secretary of State considers that an environmental impact assessment in respect of the improvement works or the part of the improvement works would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate Authority may direct that improvement works are exempt where—

- (a) the improvement works have the response to a civil emergency as their sole purpose; and
- (b) the appropriate Authority considers that an environmental impact assessment in respect of the improvement works would have an adverse effect on the fulfilment of that purpose.

(3) The effect of a direction under paragraph (1) or (2) that improvement works are exempt is that these Regulations, except for paragraphs (5) and (6), do not apply to the improvement works.

(4) The effect of a direction under paragraph (1) that a part of any improvement works are exempt is that the improvement works are treated under these Regulations as not including the part of the improvement works the subject of the direction.

(5) Following a direction under paragraph (1) or (2), the person who made the direction must send notice of the direction to the drainage body concerned.

(6) Following a direction under paragraph (1) in respect of improvement works in Wales, the Secretary of State must send notice of the direction to the Welsh Ministers.

Exceptional circumstances

3B.—(1) The appropriate Authority may direct that improvement works are exempt where the circumstances are exceptional and it considers that—

- (a) the application of these Regulations to the improvement works would have an adverse effect on the fulfilment of the improvement works’ purpose; and
- (b) the objectives of the EIA Directive will be met even though such an assessment is not carried out.

(2) The effect of a direction that improvement works are exempt under paragraph (1) is that these Regulations, except for paragraphs (3) and (4) do not apply to the improvement works.

(3) Where the appropriate Authority makes a direction that improvement works are exempt under paragraph (1) it must—

- (a) consider whether another form of assessment of the likely significant effects on the environment of the improvement works is appropriate;
- (b) send a copy of the direction to the drainage body concerned; and
- (c) publish in at least two newspapers local to the site of the improvement works a notice which briefly describes—
 - (i) the improvement works; and
 - (ii) the effect of the direction and the reasons for it.

(4) Where the appropriate Authority considers that another form of assessment is appropriate in accordance with paragraph (3)(a), it must make available to the public concerned the information obtained under that other assessment.

Coordination

3C. Where, in respect of improvement works, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under regulation 21 or 61 of the Conservation of Habitats and Species Regulations 2010(a), the appropriate Authority must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.”.

Substitution of regulation 4

6. For regulation 4 (determination of whether improvement works have significant effects on the environment) substitute—

“Determination of whether improvement works have significant effects on the environment

4.—(1) A drainage body proposing to carry out improvement works must determine whether the improvement works are likely to have significant effects on the environment, and in making that determination the drainage body must take into account—

- (a) the selection criteria in Schedule 2; and
- (b) the results of any relevant EU environmental assessment which are reasonably available to the drainage body.

(2) The determination in paragraph (1) must be made as soon as possible but, subject to paragraph (3), within the period of 45 days beginning with the date on which the proposal to carry out improvement works was made.

(3) In exceptional cases (including relating to the nature, complexity, location or size of the improvement works), the drainage body may extend the 45-day period referred to in paragraph (2).”.

Amendments to regulation 5

7.—(1) Regulation 5 (requirements where a drainage body consider improvement works are not likely to have significant effects on the environment) is amended as follows.

(2) After paragraph (1)(c) insert—

- “(ca) state the main reasons for not intending to prepare an environmental statement by reference to the selection criteria listed in Schedule 2;
- (cb) state any features of the improvement works or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment;”.

(3) In paragraph (1)(d) for “28” substitute “30”.

(4) In paragraph (5)(b) for the words from “all” to the end substitute “the information referred to in paragraph (5A).

(5) After paragraph (5) insert—

“(5A) The information is—

(a) S.I. 2010/490, to which there are amendments not relevant to these Regulations.

(b) Paragraph (5) was amended by regulation 4(3) of S.I. 2005/1399 and regulation 2(2) of S.I. 2006/618.

- (a) the information referred to in Schedule 2A, taking into account the results of any relevant UK environmental assessment which are reasonably available to the applicant; and
- (b) if the drainage body elects to provide it, a description of any measure proposed to be taken to avoid or prevent any likely significant adverse effects on the environment.”.

(6) For paragraph (7) substitute—

“(7) Where an application is made to the appropriate Authority under paragraph (5), the appropriate Authority shall determine whether the improvement works are likely to have significant effects on the environment, taking into account—

- (a) the information provided under paragraph (5);
- (b) the selection criteria in Schedule 2; and
- (c) the results of any relevant UK environmental assessment which are reasonably available to the applicant.

(8) Following the determination under paragraph (7), the appropriate Authority shall inform the drainage body in writing of the determination.

(9) The determination under paragraph (7) shall be made as soon as possible but, subject to paragraph (10), within the period of 45 days beginning with the date on which the drainage body has submitted all the information required under paragraph (5).

(10) In exceptional cases (including relating to the nature, complexity, location or size of the improvement works), the appropriate Authority may extend the 45-day period referred to in paragraph (9).

(11) Where the appropriate Authority extends the 45-day period under paragraph (10), it shall inform the drainage body in writing of the reasons justifying the extension and of the date on which its determination is expected.”.

Amendment to regulation 6

8.—(1) Regulation 6 (notification of determination that improvement works are likely to have significant effects on the environment) is amended as follows.

(2) For paragraph (2)(b)(a) substitute—

“(b) state that—

- (i) the works are likely to have significant effects on the environment;
- (ii) the main reasons for that conclusion by reference to the selection criteria listed in Schedule 2; and
- (iii) the drainage body intend to prepare an environmental statement in respect of them;”.

Substitution of regulation 7

9. For regulation 7 (preparation of environmental statement) substitute—

“Preparation of an environmental statement

7.—(1) A drainage body must ensure that in any case to which regulation 6 applies a written statement (an “environmental statement”) in respect of the improvement works is prepared by a competent person which—

- (a) includes the information specified in paragraph (2);
- (b) is based on the opinion given under regulation 8;

(a) Sub-paragraph (b) was amended by S.I. 2005/1399.

- (c) takes into account the results of any relevant EU environmental assessment which are reasonably available to the drainage body; and
 - (d) states the relevant expertise and qualifications of the competent person.
- (2) The specified information is—
- (a) a description of the improvement works comprising information on the site, design, size and other relevant features of the improvement works;
 - (b) a description of the likely significant effects of the improvement works on the environment;
 - (c) a description of any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the improvement works on the environment;
 - (d) a description of the reasonable alternatives studied by the drainage body, which are relevant to the improvement works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the improvement works on the environment;
 - (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
 - (f) any additional information specified in Schedule 1 relevant to the specific characteristics of particular improvement works or type of improvement works and to the environmental features likely to be affected.”.

Amendments to regulation 8

10.—(1) Regulation 8 (request as to the information to be included in an environmental statement) is amended as follows.

- (2) In paragraph (1) after “opinion as to the” insert “scope and level of detail of”.
- (3) After paragraph (3) insert—
 - “(3A) In reaching its opinion under paragraph (1), the appropriate Authority shall take into account the information provided by the drainage body including—
 - (a) the information about the specific characteristics of the improvement works (including their location and technical capacity); and
 - (b) the likely effects of the improvement works on the environment.”.
- (4) In paragraph (4)—
 - (a) for “requesting” substitute “requiring”;
 - (b) for “12(5)” insert “12B(5)”.

Amendment to regulation 10

11.—(1) Regulation 10 (publicity for environmental statements) is amended as follows.

- (2) For paragraph (1) substitute—
 - “(1) Where a drainage body has prepared an environmental statement in accordance with these Regulations, it shall—
 - (a) publish a notice in accordance with paragraphs (2) and (3); and
 - (b) place the notice and a copy of the environmental statement on a website maintained by the drainage body.”.
- (3) For paragraph (2)(a) substitute—
 - “(a) announce that the statement has been prepared and give details of—
 - (i) the website on which the copy of the environmental statement has been placed in accordance with paragraph (1)(b); and

- (ii) any other place at which a copy of the environmental statement can be seen and times when it may be inspected;”.
- (4) In paragraph (2)(b) for “28” substitute “30”.
- (5) In paragraph (2)(c) for “12(1) below” substitute “12(2)”.

Omission of regulation 11

- 12. Omit regulation 11 (information for another EEA State).

Substitution of regulation 12

- 13. For regulation 12(a) (determination of whether improvement works should proceed) substitute—

“Conclusion about environmental impact: drainage body

12.—(1) After the expiry of the period specified in the notice published under regulation 10(1), the drainage body must consider (ensuring that in doing so it has, or has access to, any expertise it considers necessary)—

- (a) the environmental statement and any representations made in accordance with regulation 10; and
- (b) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

(2) Following that consideration, the drainage body must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the improvement works to risks of major accidents or disasters) of the improvement works on—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

Determination of whether improvement works should proceed: drainage body

12A.—(1) This regulation applies where—

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

(2) The drainage body must consider—

- (a) the conclusion reached under regulation 12(2) in respect of the improvement works and the reasons for that conclusion;
- (b) whether it is appropriate for the drainage body to monitor the significant adverse effects of the improvement works on the environment, and if so—
 - (i) whether a determination to proceed with the improvement works should be made subject to conditions to ensure that the drainage body is under such a duty; and

(a) Regulation 12 was amended by S.I. 2005/1399.

- (ii) whether a determination to proceed with the improvement works should be made subject to conditions to require remedial action to be taken in circumstances described in the conditions;
 - (c) whether, having regard to the likely significant environmental effects of the improvement works, a determination to proceed should be made subject to any other conditions.
- (3) Following that consideration, the drainage body must determine that the improvement works—
 - (a) should proceed; or
 - (b) should not proceed.
- (4) The drainage body may make a determination under paragraph (3)(a) only if satisfied that the conclusion reached under paragraph 12(2) in respect of the improvement works and the reasons for it address the likely significant environmental effects of the improvement works.
- (5) Where a drainage body has determined—
 - (a) in accordance with paragraph (3)(a), that the drainage body should proceed with the improvement works or that the drainage body should proceed subject to conditions; or
 - (b) that the drainage body should not so proceed,
 the drainage body must promptly, subject to regulation 13B, take the steps set out in paragraph (6).
- (6) The steps are to inform the following of the information referred to in paragraph (7)—
 - (a) the public, by notice in at least two local newspapers, or by such other means as are reasonable in the circumstances; and
 - (b) the consultation bodies, by notice.
- (7) The information is —
 - (a) the determination under paragraph (2) and any conditions attached to it;
 - (b) the main reasons and considerations on which the determination is based; and
 - (c) a summary of the result of any consultation under regulation 10 and how that information has been taken into account.
- (8) The drainage body must make its determination under paragraph (3) within a reasonable period of time, taking into account the nature and complexity of the application and improvement works.

Conclusion about environmental impact: appropriate Authority

- 12B.**—(1) This regulation and regulation 12C apply where—
- (a) an objection in relation to the likely significant environmental effects of the improvement works has been made;
 - (b) the objection has not been withdrawn; and
 - (c) the drainage body has determined that the improvement works should proceed.
- (2) The drainage body must refer the proposal for improvement works together with the environmental statement and any representations on it to the appropriate Authority.
- (3) The appropriate Authority must consider (ensuring that in doing so it has or has access to any expertise it considers necessary)—
- (a) the environmental statement and any representations made in accordance with regulation 10; and
 - (b) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

(4) Following that consideration, the appropriate Authority must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the improvement works to risks of major accidents or disasters) of the improvement works on—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(5) Where the appropriate Authority considers that—

- (a) the information supplied in accordance with paragraph (2) does not provide sufficient information to enable it to reach a conclusion under paragraph (4); and
- (b) the drainage body may reasonably be required to compile further information relevant to that conclusion,

the appropriate Authority must notify the drainage body of the further information required.

(6) After a notification under paragraph (5), the drainage body must promptly—

- (a) send the further information to the appropriate Authority;
- (b) publish a notice in at least two local newspapers—
 - (i) announcing that the further information is available and giving details of the place and times where a copy may be inspected; and
 - (ii) stating that any person who wishes to make representations on the likely environmental effects of the improvement works to which the further information relates must make them in writing to the appropriate Authority at the address specified in the notice within 30 days of the date of the publication of the notice;
- (c) place that notice and the further information on the website referred to in regulation 10(1)(b);
- (d) on or before the date of publication of that notice, supply a copy of the notice and further information and notice to each of the consultation bodies; and
- (e) provide a copy of the further information to any other person who requests one.

Determination of whether improvement works should proceed: appropriate Authority

12C.—(1) The appropriate Authority must consider—

- (a) the conclusion reached under regulation 12B(4) in respect of the improvement works and the reasons for that conclusion;
- (b) whether it is appropriate for the drainage body to monitor the significant adverse effects of the improvement works on the environment, and if so—
 - (i) whether consent should be given subject to conditions to ensure that the drainage body is under such a duty; and
 - (ii) whether consent should be given subject to conditions to require remedial action to be taken in circumstances described in the conditions;
- (c) whether, having regard to the likely significant environmental effects of the improvement works, consent should be given subject to any other conditions.

(2) Following that consideration, the appropriate Authority must—

- (a) consent to the carrying out of the improvement works; or
- (b) refuse consent to the improvement works.

(3) The appropriate Authority may make a determination under paragraph (2)(a) only if satisfied that the conclusion reached under regulation 12B(4) in respect of the improvement works and the reasons for it address the likely significant environmental effects of the improvement works.

(4) A determination under paragraph (2)(a) may be made subject to conditions under regulation 12D.

(5) The appropriate Authority must make its decision under paragraph (2) within a reasonable period of time starting with the date on which it is given all the information it is required to consider under regulation 12B(3), taking into account the nature and complexity of the application and improvement works.

(6) The appropriate Authority must send to the drainage body a statement in writing of—

- (a) the appropriate Authority's determination under paragraph (2) and any conditions attached to it;
- (b) the main reasons and considerations upon which the determination is based, including information about the public participation process; and
- (c) any features of the improvement works or measures to avoid, prevent, reduce or offset the significant adverse effects of the improvement works on the environment.

(7) The drainage body must promptly inform—

- (a) the public, by notice in at least two local newspapers, or by such other means as are reasonable in the circumstances; and
- (b) the consultation bodies, by notice,

of the information in paragraph (8).

(8) The information is—

- (a) the appropriate Authority's determination under paragraph (2) and any conditions attached to it;
- (b) the main reasons and considerations on which the determination is based; and
- (c) a summary of the result of any consultations under regulation 10 and 12B(6) and how that information has been taken into account.

Determination that improvement works may proceed: conditions

12D.—(1) The relevant authority may make a determination under regulation 12A(3)(a) or 12C(2)(a) authorising improvement works to proceed subject to conditions.

(2) The relevant authority may impose a condition under paragraph (1) in relation to monitoring only if satisfied that—

- (a) existing monitoring arrangements in accordance with an obligation under the law of any part of the United Kingdom cannot be relied on;
- (b) the type of parameters to be monitored and the duration of monitoring are proportionate to the nature, location and size of the improvement works and the significance of their effect on the environment.

(3) In this regulation, the “relevant authority” means—

- (a) in respect of a determination under regulation 12A(3)(a), the drainage body;
- (b) in respect of a determination under regulation 12C(2)(a), the appropriate Authority.

Duty to maintain a record of information

12E.—(1) The drainage body must maintain a record of, and make available to the public on request, the information referred to in paragraph (2) in respect of any determination under regulation 12A(3) or 12C(2)—

(2) The information is—

- (a) the content of the determination and any conditions attached to it;
- (b) the main reasons and considerations on which the determination is based, including information about representations received in the course of the public participation process; and
- (c) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

Amendment to regulation 13

14.—(1) Regulation 13(1)(a) (charges) is amended as follows.

(2) In sub-paragraph (a) for “12(6)(b)” substitute “12B(6)(d)”.

(3) In sub-paragraph (b) for “12(6)(c)” substitute “12B(6)(e)”.

Amendments to regulation 13A

15.—(1) Paragraph (1)(b) of regulation 13A (public participation) is amended as follows.

(2) In sub-paragraph (b) for “12(7)” substitute “12C(2)”.

(3) In sub-paragraph (c) for “assessment under regulation 12(1)” substitute “conclusion reached under regulation 12(2)”.

Amendments to regulation 13B

16.—(1) Regulation 13B(c) (notices on the site of the proposed improvement works) is amended as follows.

(2) In paragraph (1) for “12(3), 12(6)(a) and 12(8)” substitute “12A(6), 12B(6) and 12C(7)”.

(3) In paragraph (2)(a)—

(a) for “12(6)(a)” substitute “12B(6)”;

(b) for “28” substitute “30”.

(4) In paragraph (3), in the words before sub-paragraph (a) for “12(3), 12(6)(a) or 12(8)” substitute “12A(6), 12B(6) or 12C(7)”.

Amendments to regulation 14

17. In paragraph (1)(b) of regulation 14 (enforcement)—

(a) for “12(7)” substitute “12C(2)”;

(b) for “12(4)” substitute “12B(2)”.

(a) Regulation 13(1) was amended by S.I. 2005/1399.

(b) Regulation 13A was inserted by regulation 3(6) of S.I. 2005/1399.

(c) Regulation 13B was inserted by regulation 4(6) of S.I. 2005/1399 and substituted by regulation 2(3) of S.I. 2006/618.

Substitution of Schedule 1

18. For Schedule 1 (information in environmental statement) substitute the Schedule at Schedule 1.

Substitution of Schedule 2

19. For Schedule 2(a) (improvement works having a significant effect on the environment: selection criteria) substitute the Schedule at Schedule 2.

New Schedule 2A

20. After Schedule 2 insert the Schedule at Schedule 3.

Omission of Schedules 3 and 4

21. Omit Schedule 3(b) (information for other EEA States) and Schedule 4 (environmental factors).

Transitional provisions

22. These Regulations do not apply in respect of—

- (a) proposed improvement works, where the drainage body concerned requested an opinion about the scope and level of detail of information to be included in an environmental statement under regulation 8(1) of the 1999 Regulations in respect of the improvement works before 16th May 2017; and
- (b) proposed improvement works, where the drainage body concerned published an environmental statement under regulation 10(1) of the 1999 Regulations in respect of the improvement works before 16th May 2017.

24th April 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

20th April 2017

Jane Hutt
One of the Welsh Ministers

SCHEDULE 1

Regulation 18

“SCHEDULE 1

Regulation 7(2)(f)

Information in environmental statement

1. A description of the improvement works, including in particular—
- (a) a description of the location of the improvement works;

(a) Schedule 2 was amended by article 6(2)(b) of S.I. 2011/1043.
(b) Schedule 3 was amended by regulation 5(4) of S.I. 2005/1399.

- (b) a description of the physical characteristics of the whole of the improvement works, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the improvement works (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the drainage body, which are relevant to the proposed improvement works and their specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the improvement works as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 12(2) likely to be significantly affected by the improvement works: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the improvement works on the environment resulting from, among other things—

- (a) the construction and existence of the improvement works, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved improvement works or projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the improvement works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the improvement works to climate change;
- (g) the technologies and the substances used.

6. The description referred to in paragraph 4 of the likely significant effects on the factors specified in regulation 12(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the improvement works. That description must

take into account the environmental protection objectives established at EU or member State level which are relevant to the improvement works.

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered in compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-works analysis). That description must explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the improvement works on the environment deriving from the vulnerability of the improvement works to risks of major accidents or disasters which are relevant to the improvement works. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC^(a) or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations^(b) or UK environmental assessments may be used for this purpose provided that the requirements of the EIA Directive are met. Where appropriate, the description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

11. A reference list detailing the sources used for the descriptions and assessments included in the statement.”

SCHEDULE 2

Regulation 19

“SCHEDULE 2

Regulations 4 to 6

Improvement works having a significant effect on the environment: selection criteria

Characteristics of improvement works

1. The characteristics of improvement works must be considered, with particular regard to—

- (a) the size and design of the whole improvement works;
- (b) cumulation with other existing or approved projects;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;

(a) OJ No L 197, 24.7.2012, p. 1.

(b) OJ No L 219, 25.7.2014, p. 42.

- (f) the risk of major accidents or disasters which are relevant to the improvement works, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

Location of improvement works

2. The environmental sensitivity of geographical areas likely to be affected by improvement works must be considered, with particular regard to—

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation and Natura 2000 areas designated by member States pursuant to the Habitats Directive and the Wild Birds Directive;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in EU legislation and relevant to the improvement works, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Type and characteristics of the potential impact

3. The likely significant effects of improvement works on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 of this Schedule, with regard to the impact of the improvement works on the factors specified in regulation 12(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing or approved projects;
- (h) the possibility of effectively reducing the impact.”

“SCHEDULE 2A

Regulation 5(5A)(a)

**Information to be taken into account in deciding whether
improvement works are likely to have significant effect on
environment**

1. A description of the improvement works, including in particular—
 - (a) a description of the physical characteristics of the whole improvement works and, where relevant, of demolition works;
 - (b) a description of the location of the improvement works, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
2. A description of the aspects of the environment likely to be significantly affected by the improvement works.
3. A description of any likely significant effects, to the extent that the information is available on such effects, of the improvement works on the environment resulting from—
 - (a) the expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
4. The criteria in Schedule 2 must be taken into account, where relevant, when compiling the information in accordance with paragraphs 1 to 3.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2014/52/EU (“Directive 2014/52”) of the European Parliament and of the Council amending Directive 2011/92/EU (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment in respect of land drainage works in England and Wales.

Regulations 3 to 21 make amendments to the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (“the 1999 Regulations”). In summary:

- (a) new regulations 3A and 3B (as inserted by regulation 5) make provision for a direction that the 1999 Regulations do not apply to specific improvement works;
- (b) new regulation 3C (as inserted by regulation 5) makes provision for the coordination of environmental assessments;
- (c) new regulation 7 (as substituted by regulation 9) makes provision with respect to the preparation of an environmental statement by a drainage body;
- (d) the amendments to regulation 10 (in regulation 11) make provision for any environmental statement and related information to be placed on a website;
- (e) the omission of regulation 11 and Schedule 3 (by regulations 12 and 21 respectively) relate to the fact that improvement works in England and Wales could not have any significant effects on the environment of another EEA State;
- (f) new regulations 12 and 12A (as substituted by regulation 13) restate, and make amendments to, provisions in the existing regulation 12 relating to the drainage body considering the environmental statement, reaching a conclusion about the likely significant effects on the environment of the improvement works and determining whether the improvement works should proceed;

- (g) new regulations 12B and 12C (as inserted by regulation 13) restate, and make amendments to provisions, in the existing regulation 12 relating to the appropriate Authority considering the environmental statement, reaching a conclusion about the likely significant effects on the environment of the improvement works and determining whether the improvement works should proceed;
- (h) new regulation 12D (as inserted by regulation 13) makes provision about attaching conditions to a determination that improvement works may proceed;
- (i) new Schedules 1 and 2 (as substituted by regulations 19 and 20 respectively) reflect amendments made by Directive 2014/52 to Annexes IV and III of the EIA Directive respectively;
- (j) new Schedule 2A (as inserted by regulation 20) reflects new Schedule II.A of Directive 2014/52;
- (k) the omission of Schedule 4 (by regulation 21) reflects the fact that the environmental factors referred to in Article 3(1) of the EIA Directive (which were amended by Directive 2014/52) are now stated in regulations 12(2) and 12A(3).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum and a transposition note are available with these Regulations on www.legislation.gov.uk. Copies have also been placed in the Libraries of both Houses of Parliament.

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