

2017 No. 88

DRAINAGE

**The Drainage (Environmental Impact Assessment) Regulations
(Northern Ireland) 2017**

Made - - - - - *16th May 2017*

Coming into operation - *16th May 2017*

The Department for Infrastructure (**a**), being a department designated (**b**) for the purposes of section 2(2) of the European Communities Act 1972 (**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 exercise of the powers conferred on it by the said section 2(2), hereby makes the following Regulations:

PART 1

INTRODUCTORY AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and shall come into operation on 16 May 2017.

Interpretation

2.—(1) In these Regulations—

“additional information” in any case where an environmental statement has been prepared in respect of proposed drainage works means any information relating to the statement which is not contained in it;

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

“the Commission” means the Water Appeals Commission as described in Articles 292 and 293 of the Water and Sewerage Services (Northern Ireland) Order 2006(**d**);

“the consultation bodies” shall be construed in accordance with regulation 8(2);

“the Department” means the Department for Infrastructure;

(a) Formerly the Department for Regional Development; see section 1(6) and Schedule 1 of the Departments Act (Northern Ireland) 2016 (c.5)

(b) S.I. 1988 No.785

(c) S.I. 1972 c.28

(d) S.I. 2006 No. 3336 (N.I. 21)

“the Directive” means Directive 2011/92/EU(a) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU(b) of the European Parliament and of the Council;

“drainage” includes defences against water including seawater;

“drainage works” means—

(a) 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; or

(b) any changes made to or extension of such works;

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

“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 the 17th March 1993;

“environmental statement” means a statement that includes such of the information referred to in Schedule 2A to the Drainage Order, as is reasonably required to assess the environmental effects of any proposed drainage works and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;

“general advertisement” means publication of a notice—

(a) in the Belfast Gazette; and

(b) on the website maintained by the Department;

“local advertisement” means a notice in one or more newspapers, circulating in the immediate locality of any proposed works;

“public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures of the Department. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest; and

“Union legislation” means any enactment in the domestic law of Northern Ireland giving effect to an EU obligation.

(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, unless otherwise provided for.

(a) 2011/92/EU (OJ L 26, 28.1.2012, p. 1–21)

(b) 2014/52/EU (OJ L 124, 25.4.2014, p. 1–18)

(c) 1973 No.69 (N.I. 1)

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

Application

3.—(1) Subject to the following provisions and regulation 25, Part 2 shall apply in relation to any drainage works other than works—

- (a) commenced before the coming into operation of these Regulations;
- (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 it had been confirmed under Article 13 of that Order.

(2) The amendments made to the Drainage Order by these Regulations shall not have effect in relation to any drainage scheme prepared before the coming into operation of these Regulations.

Directions

4.—(1) The Department may direct that—

- (a) in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive) specific drainage works are exempt from these Regulations if it considers that the application of these Regulations would have an adverse effect on the fulfilment of the drainage works' purpose, provided the objectives of the Directive are met; or
- (b) these Regulations do not apply in relation to particular proposed drainage works if the sole purpose of the proposed drainage works is to respond to a civil emergency and the Department considers the application of the Regulations would have an adverse effect on the fulfilment of that purpose.

(2) The Department shall only make a direction under paragraph (1)(a) in an exceptional case and where it does so it shall—

- (a) make available to the public by general and local advertisement, the information considered in making the direction, the reasons for making the direction, briefly describe the proposed drainage works and the effect of the direction;
- (b) consider whether, in that case, another form of assessment of the environmental effects of the proposed drainage works would be appropriate; and
- (c) make available to the public any information obtained under that other form of assessment.

(3) No direction shall be made under paragraph (1)(a) or (b) where the Department or any other Northern Ireland department is aware that the proposed drainage works would be likely to have significant effects on the environment of another EEA State.

Coordination of assessments

5.—(1) In addition to the requirement for an assessment of the environmental effects to be carried out in accordance with these Regulations, if there is also a requirement to carry out a Habitats Regulation Assessment, the Department must, where appropriate, ensure that the Habitats Regulation Assessment and the assessment of the environmental effects are coordinated.

(2) In these Regulations, a “Habitats Regulation Assessment” means an assessment under regulation 43 of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995^(b).

(a) 1954 c.33 (N.I.)
(b) S.R. 1995 No. 380

PART 2

DRAINAGE WORKS

Restriction on proposed works

6. Subject to regulation 4, the Department shall not carry out any drainage works unless—
- (a) it has complied with the requirements of these Regulations in relation to the drainage works; and
 - (b) where a proposal relating to those drainage works has been referred to the Commission under regulation 16(8)—
 - (i) the Commission has consented to the carrying out of the drainage works; and
 - (ii) the drainage works are carried out in accordance with any conditions to which the consent is subject.

Consideration whether proposed drainage works have significant effects on the environment

7.—(1) The Department shall provide the following information on proposed drainage works of the type listed in Annex II to the Directive—

- (a) a description of the works, including in particular—
 - (i) a description of the physical characteristics of the whole project and, where relevant, of demolition works; and
 - (ii) a description of the location of the works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (b) a description of the aspects of the environment likely to be significantly affected by the works;
- (c) a description of any likely significant effects, to the extent of the information available on such effects, of the works on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity,

the criteria of Schedule 2B to the Drainage Order shall be taken into account, where relevant, when compiling the information in accordance with sub-paragraphs (a) to (c).

(2) The Department shall determine within 90 days of receiving the information in paragraph (1), taking into account the selection criteria in Schedule 2B to the Drainage Order, whether or not the proposed drainage works in paragraph (1) are likely to have significant effects on the environment.

(3) Where the Department is bringing forward the proposed drainage works in paragraph (1) and will also be making the determination in paragraph (2), the Department must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these regulations, between the persons bringing forward a proposal for drainage works and the persons responsible for making the determination.

Determinations following consideration of drainage works under regulation 7

8.—(1) Where, pursuant to regulation 7, the Department having taken into account, so far as relevant, the criteria set out in Schedule 2B to the Drainage Order and the available results of other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), determines that the proposed drainage works are not likely to have significant effects on the environment, it shall, by general and local advertisement—

- (a) state that it proposes to carry out the drainage works in question;
- (b) describe briefly the nature, size and location of the proposed drainage works;

- (c) state that it does not propose to prepare an environmental statement in respect of the drainage works, and the main reasons why with reference to the relevant criteria in Schedule 2B to the Drainage Order;
- (d) state any features of the project and/or measures envisaged to avoid or prevent any significant adverse effects on the environment;
- (e) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed drainage works at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette; and
- (f) describe what other information relating to the environmental effects of the proposed drainage works is available and give details of where it can be obtained.

(2) Where the Department publishes a notice in accordance with paragraph (1) in relation to any proposed drainage 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 each of the consultation bodies, that is to say—

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the proposed drainage works are situated;
- (c) any other public authority, statutory body or organisation which exercises statutory functions, or is otherwise designated by any statutory provision as having responsibilities, relating to the environment; and
- (d) 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)(e), no representations have been made to the effect that the proposed drainage works are likely to have significant effects on the environment, the Department may proceed to carry out those drainage works.

(4) Where, following the period specified in paragraph (1)(e), the Department considers (whether in the light of any representations or otherwise) that the proposed drainage works are likely to have significant effects on the environment, it shall make a determination accordingly, within a period, not exceeding 90 days.

(5) Where, within the period specified in paragraph (1)(e), any representations have been made to the effect that the proposed drainage works are likely to have significant effects on the environment and, notwithstanding those representations, the Department considers that the drainage works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the drainage 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 drainage works the Commission shall, taking into account the selection criteria in Schedule 2B to the Drainage Order, and the available results of preliminary verifications and assessments of the effects on the environment carried out pursuant to Union legislation (other than legislation implementing the requirements of the Directive), determine within a reasonable time, whether the proposed drainage works are likely to have significant effects on the environment and shall inform the Department, and any person who made representations under paragraph (1)(e) in relation to the drainage works, of its determination.

(8) Where an application is made to the Commission under paragraph (5) in relation to any proposed drainage 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)(e) in relation to the proposed drainage works, the opportunity of appearing before and being heard by the Commission.

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

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

- (a) under regulation 8(4), the Department determines that any proposed drainage works are likely to have significant effects on the environment; or
- (b) under regulation 8(7), the Commission determines that any proposed drainage works are likely to have significant effects on the environment.

(2) In any case to which this regulation applies, the Department shall by general and local advertisement—

- (a) describe briefly the nature, size and location of the proposed drainage works in question;
- (b) state that the proposed drainage works are likely to have significant effects on the environment, state the main reasons for requiring an assessment with reference to the relevant criteria listed in Schedule 2B to the Drainage Order, and that the Department intends to prepare an environmental statement in respect of them;
- (c) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the proposed drainage works at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette;
- (d) indicate the nature of the information in question and the times where and means by which it will be made available;
- (e) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision; and
- (f) indicate whether the proposed drainage works are likely to have significant effects on the environment in another EEA State.

(3) Where the Department publishes an advertisement 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 each of the consultation bodies.

(4) The Department shall make available to the public concerned any additional information which is relevant to a case to which this regulation applies but which only becomes available after the publication of the advertisements under paragraph (2).

Preparation of an environmental statement

10.—(1) The Department shall prepare an environmental statement in any case to which regulation 9 applies.

(2) The environmental statement referred to in paragraph (1) must—

- (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the statement;
- (b) contain a statement by the Department setting out how the requirement of paragraph (2)(a) has been complied with;
- (c) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and
- (d) where an opinion is issued in accordance with regulation 11, be based on that opinion.

(3) The Department shall carry out consultations as referred to in regulation 12 and, where relevant, regulation 16.

Request about the information to be included in an environmental statement

11.—(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 8(4) or (7), the Commission shall deal with the request on the assumption that the drainage works will have significant effects on the environment.

(3) Before giving an opinion under paragraph (1) in relation to any proposed drainage works the Commission shall consult the Department and each of the consultation bodies.

(4) Giving an opinion under this regulation shall not preclude the Commission from requesting further information from the Department or the Drainage Council under regulation 16(9).

Publicity for an environmental statement

12.—(1) Where the Department has prepared an environmental statement in relation to any proposed drainage works, it shall by general and local advertisement give notice in accordance with paragraphs (2) and (3).

(2) The advertisement shall state—

- (a) that the environmental statement has been prepared and give details of the places where and times at which copies, together with details of the proposed drainage works to which the environmental statement relates, may be inspected;
- (b) that any person wishing to make representations in relation to the likely environmental effects of the proposed drainage works to which the statement relates shall make them in writing to the Department at the address specified in the advertisement within 30 days of the publication of the notice in the Belfast Gazette; and
- (c) that where no objection in relation to the likely environmental effects of the drainage works is made and the Drainage Council, having undertaken the examination specified in regulation 16(1), considers that the drainage works should be approved, it may so determine.

(3) On or before the date of publication in the Belfast Gazette of the notice under paragraph (1), the Department shall—

- (a) send a copy of the environmental statement and notice to each of the consultation bodies so that any such body has an opportunity to make representations on the likely environmental effects of the drainage works to which the statement relates before the expiry of the period specified in the notice;
- (b) make available for inspection at an office of the Department or some other convenient place for a period of at least 30 days following the date of publication of the notice in the Belfast Gazette, the details of the proposed drainage works and the environmental statement relating to the drainage works;
- (c) ensure that a reasonable number of copies of the statement are made available and, if a charge is to be made for any such copy under regulation 14, the amount of the charge; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(4) Where, in accordance with paragraph (3)(a), the Department sends any person a copy of the environmental statement it shall consult that person about the assessment and the likely environmental effects of the proposed drainage works to which it relates.

Assistance in the preparation of environmental statements

13.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of regulation 10 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 drainage works, and complied with the requirements of regulation 12(3), the Department, the Drainage Council, or as the case may be, the Commission acting in accordance with regulation 16(9), may determine that further information is required.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his possession any additional information 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 additional information it shall—

- (a) by general and local advertisement, state that the additional information is available, and give details of the places where and times at which a copy of that additional information may be inspected or obtained and, if a charge is to be made for any such copy under regulation 14, the amount of the charge; and
- (b) state that any person who wishes to make representations in relation to the additional information should make such representations in writing to the Department at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette.

(5) At the same time as the notice in the Belfast Gazette is published under paragraph (4)(a), the Department shall—

- (a) send copies of the additional information to each consultation body; and
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed works in question and the environmental statement relating to the drainage works, 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 under regulation 12(1), or must be so treated under regulation 13(1) of the Environmental Information Regulations 2004(a).

(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.

Charges

14. The Department may make a reasonable charge reflecting printing and distribution costs to any person for any copy, in excess of one, of the whole or any part of an environmental statement, or any further information supplied to that person in accordance with regulations 12(3), 13(4) and (5) or 18.

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

15.—(1) Where it appears to the Department that any proposed drainage 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 9(2)—
 - (i) a copy of the notice; and

(a) S.I. 2004 No. 3391

- (ii) any available information on the possible significant effects of the proposed drainage works on the environment in that EEA State;
- (b) make available to the State any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication; and
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed drainage works in accordance with paragraphs (2) to (4) it must inform the Department of that fact within a period determined in agreement with that State but which shall not be less than 30 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, 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 works;
- (b) a copy of the environmental statement in respect of the proposed drainage works;
- (c) all the information required to be given to any person under regulation 9; and
- (d) 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).

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1) 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 these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed drainage 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 drainage 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 which shall not be less than 30 days beginning with the day on which the Department forwarded the information to that State in pursuance of paragraph 2.

(5) Where an EEA State has been consulted in relation to any proposed drainage works in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the proposed drainage 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 drainage works.

Determination of whether proposed drainage works should be approved

16.—(1) On expiry of the period referred to in regulation 12(2)(b), the Department shall provide to the Drainage Council, the information set out in sub-paragraph (a) and within a reasonable timeframe, the Drainage Council shall—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with regulation 12 and any relevant information received through the consultations under regulations 12 and 15, to assess the

direct and indirect effects of the proposed drainage works on the environmental factors specified in Schedule 2C to the Drainage Order;

- (b) reach a reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether the proposed drainage works are to be approved or not to be approved.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be still valid at the time that the decision is taken as to whether approval for the proposed drainage works is or is not to be granted.

(3) The Drainage Council must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

(4) Where—

- (a) the Drainage Council is satisfied that the reasoned conclusion, or any decisions made on the proposed drainage works are still valid; and
- (b) no objection in relation to the likely environmental effects of the proposed drainage works has been made; or
- (c) any such objection has been withdrawn,

and the Drainage Council having undertaken the assessment required by paragraph (1) considers that the drainage works should proceed (unconditionally or subject to conditions) or should not proceed, it may so determine.

(5) Where the Drainage Council has determined—

- (a) in accordance with paragraph (4), that the proposed drainage works should be approved or that the drainage works should be approved subject to conditions, or
- (b) that the works should not be approved,

it shall provide the Department with its determination and the Department shall determine if the drainage works will or will not proceed and the Department shall publish a general and local advertisement, in accordance with paragraph (6).

(6) Each of the advertisements referred to in paragraph (5) shall—

- (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) the reasoned conclusion of the Drainage Council on the significant effects of the proposed drainage works on the environment, taking into account the results of the examination referred to in paragraph (1);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed drainage works on the environment;
 - (iii) a description of any features of the proposed drainage works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Drainage Council.

(7) At the same time as the notice in the Belfast Gazette is published under paragraph (5), the Department shall send a copy of the Drainage Council's determination along with the details referred to in paragraph (6)(b)(i) to (v) to each consultation body and any person who made representations under regulations 12 or 13, to proposed drainage works.

(8) Where the Drainage Council, having considered the examination specified in paragraph (1), considers that the proposed drainage works should be approved but objections to these works made in relation to their likely environmental effects have not been withdrawn, it shall send the

proposal for the drainage works together with the environmental statement, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (9) to (12).

(9) Where the Commission considers that the proposal, environmental statement, additional information and representations sent to it in accordance with paragraph (8) do not provide sufficient information to enable a determination to be made in relation to any proposed drainage works in pursuance of this regulation, the Commission shall notify the Department, and the Drainage Council, in writing, of the matters on which further information is required and may make a written request to the Department and the Drainage Council for such information as it may be able to provide on the matters raised within a specified timeframe.

(10) Where, in accordance with paragraph (9), the Commission requests further information in relation to any proposed drainage works, the Department shall co-ordinate the information from the Drainage Council, and no later than the time when it provides that information to the Commission, it shall—

(a) by general and local advertisement—

- (i) state 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 drainage works to which the further information relates may make them in writing to the Commission at the address specified in the advertisement within 30 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 in the Belfast Gazette supply a copy of the further information and notice to each of the consultation bodies so that they have an opportunity to make representations to the Commission on the likely environmental effects of the proposed drainage works to which the further information relates before the expiry of the period specified in the notice.

(11) The Commission shall—

(a) assess, in the light of the environmental statement, any further information provided in response to a request under paragraph (9) and any representations referred to in regulations 12, 15, or paragraph (10), the direct and indirect effects of the proposed drainage works on the environmental factors specified in Schedule 2C to the Drainage Order;

(b) afford the Department, the Drainage Council, 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) and the representations made under sub-paragraph (b) and having examined the concerns and opinions expressed by the public and the main reasons and considerations upon which the determination under consideration was based, including information about the public participation process—

- (i) consent to the drainage works in question unconditionally or subject to such conditions as the Commission considers appropriate; or
- (ii) refuse to consent to the drainage works; and

(d) send to the Department, the Drainage Council, and any person who made representations under regulations 12, 15 or paragraph (10) a statement in writing of—

- (i) the reasoned conclusion of the Commission on the significant effects of the proposed drainage works on the environment, taking into account the results of the examination referred to in this paragraph;
- (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed drainage works on the environment;
- (iii) a description of any features of the proposed drainage works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;

- (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Commission.
- (12) The Department shall by general and local advertisement—
- (a) inform the public of the Commission’s determination under paragraph (11)(c) within 30 days of receipt of such determination; 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 (11)(d).
- (13) In relation to any determination made by the Drainage Council or by the Commission under this regulation or regulation 8, the Department shall maintain a record of, and make available to the public on request, the information referred to in paragraph (11)(d).

Monitoring

17.—(1) Where an environmental statement is determined by the Drainage Council or as the case may be, the Commission, and the decision is to approve the drainage works, the Drainage Council, or the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed drainage works (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring conditions, the Drainage Council, or as the case may be the Commission must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment having regard in particular to the types of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the Department, or as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.

Public participation

18. The Department shall, in relation to any proposed drainage works, make available to the public—

- (a) at the time that the notice in the Belfast Gazette relating to those drainage works is published under regulation 8(1), all information that is relevant to them;
- (b) any other information which is relevant to a determination under regulation 16 and which only becomes available after the time that the public was given notice in accordance with regulation 8(1)(f) whether as a result of a request from the Commission under regulation 8(6) or otherwise; and
- (c) any further information which is relevant to the assessment under regulation 16 and which only became available after the time that the notice in the Belfast Gazette relating to those drainage works was published under regulation 9(2).

PART 3

DRAINAGE SCHEMES

Amendment of the Drainage Order

19. The Drainage Order shall be amended in accordance with regulations 20 to 24.

Drainage Order: Interpretation

20.—(1) In Article 2(2)—

(a) for the definition of “the Directive” substitute—

““the Directive” means Directive 2011/92/EU(a) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU(b) of the European Parliament and of the Council;”;

(b) for the definition of “environmental statement” substitute—

““environmental statement” means a statement that includes such of the information referred to in 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;”;

(c) after the definition “protection” insert—

““public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures of the Department. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;”;

(d) after the definition of “tree” insert—

““Union legislation” means any enactment in the domestic law of Northern Ireland giving effect to an EU obligation.”.

In Article 2(2B) after “purposes of the Directive” insert “unless otherwise provided for”.

Restrictions on drainage schemes

21. For Articles 12 to 12H substitute—

“Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme, 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 or enter into or carry into effect, in pursuance of Article 30(2) of the Drainage Order, and agreement or arrangement with such person for the purposes of such a scheme unless—

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

(b) where a proposal for the scheme has been referred to the Commission under Article 12H(7)—

(i) the Commission has consented to the carrying out of the scheme; and

(a) 2011/92/EU (OJ L 26, 28.1.2012, p. 1–21)

(b) 2014/52/EU (OJ L 124, 25.4.2014, p. 1–18)

- (ii) the scheme is carried out in accordance with any conditions to which the consent is subject,
but this is subject to Article 12ZA.

Direction that Articles do not apply

12ZA.—(1) The Department may direct that—

- (a) in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive) a specific drainage scheme is exempt from the requirements of Articles 12A to 12I and 13A if it considers that the application of those Articles would have an adverse effect on the fulfilment of the drainage scheme's purpose, provided the objectives of the Directive are met; or
- (b) those Articles do not apply in relation to a particular proposed drainage scheme if the sole purpose of the proposed drainage scheme is to respond to a civil emergency and the Department considers the application of the Articles would have an adverse effect on the fulfilment of that purpose.

(2) The Department shall only make a direction under paragraph (1)(a) in an exceptional case and where it does so it shall—

- (a) make available to the public by general and local advertisement, the information considered in making the direction, the reasons for making the direction, briefly describe the proposed drainage scheme and the effect of the direction;
- (b) consider whether, in that case, another form of assessment of the environmental effects of the proposed drainage scheme would be appropriate; and
- (c) make available to the public any information obtained under that other form of assessment.

(3) No direction shall be made under paragraph (1)(a) or (b) where the Department or any other Northern Ireland department is aware that the proposed drainage scheme would be likely to have significant effects on the environment of another EEA State.

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

12A.—(1) The Department shall provide the following information on proposed drainage schemes of the type listed in Annex II to the Directive—

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

(2) Where the Department has prepared a drainage scheme, under paragraph (1) it shall—

- (a) consider, taking into account the selection criteria in Schedule 2B and the available results of other environmental assessments required under Union legislation (other

than legislation implementing the requirements of the Directive), 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 situated; and
- (c) make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under this Order, between the persons bringing forward a proposal for a drainage scheme and the persons responsible for considering the proposals and making any determination.

(3) The district council to which a copy of a drainage scheme is sent by the Department pursuant to paragraph (2)(b)—

- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 30 days from the date of the publication in the Belfast Gazette of the notice relating to the scheme given under paragraph (4) 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.

(4) Where, pursuant to paragraph (2)(a), the Department considers that the works specified in the drainage scheme are not likely to have significant effects on the environment, it shall so determine, within 90 days of receiving the information specified in paragraph (1) and by general and local advertisement—

- (a) state 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 the main reasons why with reference to the relevant criteria in Schedule 2B;
- (d) state any features of the project or measures envisaged to avoid or prevent any significant adverse effects on the environment;
- (e) state 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 30 days of the publication of the notice in the Belfast Gazette;
- (f) describe what other information relating to the environmental effects of the works is available;
- (g) state the place or places where and the period, not being less than 30 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
- (h) state that any person who considers that his or her interests will be prejudicially affected by the scheme may, at any time within 30 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 the person wishes to make.

(5) Where, pursuant to paragraph (4), the Department publishes a notice, it shall send a copy of the notice to each of the consultation bodies, that is to say—

- (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 situated;
- (c) any other public authority, statutory body or organisation which exercises statutory functions, or is otherwise designated by any statutory authority as having responsibilities relating to the environment; and

(d) 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 (4)(e), no representations have been made to the effects that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to confirm the drainage scheme in accordance with Article 13(2).

(7) Where, following the period specified in paragraph (4)(e), the Department considers (whether in the light of any representations or otherwise) that the works specified in a drainage scheme are likely to have significant effects on the environment, it shall within a period of 90 days beginning on the expiry of the period specified in paragraph 4(e), make a determination accordingly.

(8) Where, within the period specified in paragraph (4)(e), 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.

(9) Where the Commission considers that the information and copy documents provided in accordance with paragraph (8) 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.

(10) Where an application is made to the Commission under paragraph (8) in relation to any drainage scheme the Commission shall, taking into account the selection criteria in Schedule 2B, and the available results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation (other than legislation implementing the requirements of this Directive), 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 (4)(e), of its determination.

(11) Where an application is made to the Commission under paragraph (8) 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 (4)(e) 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(7) the Department determines that the works specified in a scheme are likely to have significant effects on the environment; or
- (b) under Article 12A(10) the Commission determines that the works specified in a scheme are likely to have significant effects on the environment; or
- (c) the drainage scheme is of a type listed in Annex 1 to the Directive.

(2) In any case to which this Article applies the Department shall by general and local advertisement—

- (a) describe briefly the nature, size and location of the works specified in the scheme;
- (b) state—
 - (i) that the works specified in the scheme are likely to have significant effects on the environment;

- (ii) the main reasons for requiring an assessment, with reference to the relevant criteria listed in Schedule 2B; and
- (iii) that the Department intends to prepare an environmental statement in respect of the scheme;
- (c) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the works specified in the drainage scheme at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette;
- (d) indicate the nature of the information in question and the times where and the means by which it will be made available;
- (e) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision;
- (f) indicate whether the works specified in the scheme are likely to have significant effects on the environment in another EEA State; and
- (g) state that any person who considers that his or her interests will be prejudicially affected by the scheme may, at any time within 30 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 that person wishes to make.

(3) Where the Department publishes an advertisement 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 each of the consultation bodies.

(4) The Department shall make available to the public concerned any further information which is relevant to a case to which this Article applies but which only becomes available after the publication of the advertisement under paragraph (2).

Preparation of an environmental statement

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

(2) The environmental statement referred to in paragraph (1) must—

- (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the statement;
- (b) contain a statement by the Department setting out how the requirements of paragraph (2)(a) have been complied with;
- (c) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and
- (d) where an opinion is issued in accordance with paragraph (3), be based on the most recent opinion issued.

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

(4) Where the Department requests an opinion under paragraph (3) before a determination has been made under Article 12A(7) or (10), the Commission shall deal with the request on the assumption that the works specified in the drainage scheme will have significant effects on the environment.

(5) Before giving an opinion under paragraph (3) in relation to any drainage scheme the Commission shall consult the Department and each of the consultation bodies.

(6) Giving an opinion under paragraph (3) shall not preclude the Commission from requesting further information from the Department under Article 12H(8).

Publicity for an environmental statement

12D.—(1) Where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme, it shall by general and local advertisement give notice in accordance with paragraphs (2) and (3).

(2) The advertisement shall state —

- (a) that the environmental statement has been prepared and give details of the places where and times at which the statement may be inspected;
- (b) that any person wishing to make representations in relation to the likely environmental effects of the drainage scheme to which the statement relates should make them in writing to the Department, at the address specified in the advertisement within 30 days of the publication of the notice in the Belfast Gazette; and
- (c) that where no objection in relation to the likely effects of the works specified in the scheme is made and the Drainage Council, having undertaken the examination specified in Article 12H(2), considers that the scheme should be approved, it may so determine.

(3) On or before the date of publication in the Belfast Gazette of the notice under paragraph (1), the Department shall—

- (a) send a copy of the environmental statement and notice to each of the consultation bodies so that any such body has an opportunity to make representations as to the likely environmental effect of the works to which the statement relates before the expiry of the period specified in the notice;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 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 scheme;
- (c) ensure that a reasonable number of copies of the statement are made available and, if a charge is to be made for any such copy under Article 12F, the amount of the charge; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(4) Where, in accordance with paragraph (3)(a), the Department sends any person a copy of an environmental statement it shall consult that person about the statement and the likely environmental effects of the proposed works to which it relates.

Assistance in the preparation of an environmental statement

12E.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of Article 12C(1), it may consult with any person to determine whether that person has in his or her possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, that person shall make it available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed drainage scheme and made that statement available in accordance with Article 12D(3), the Department or, as the case may be, the Commission acting in accordance with Article 12H(8) may determine that further information is required.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his or her possession any additional information and if that person has any such information, that person shall make it available to the Department.

(4) Where, pursuant to paragraph (3), the Department obtains any additional information, it shall—

- (a) by general and local advertisement, state that the additional information is available and give details of the places where and the times at which a copy of the additional information may be inspected or obtained and, if a charge is to be made for any such copy under Article 12F, the amount of the charge; and
 - (b) state that any person who wishes to make representations in relation to the additional information should make such representations in writing to the Department at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette.
- (5) At the same time as the notice in the Belfast Gazette is published under paragraph (4)(a), the Department shall—
- (a) send copies of the additional information to each of the consultation bodies; and
 - (b) make available for inspection at an office of the Department or at some other convenient place for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed drainage scheme in question and the environmental statement relating to the scheme 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 of information which is capable of being treated as confidential under regulation 12(1) or must be so treated under regulation (13(1) of the Environmental Information Regulations 2004(a).
- (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 the charge.

Charges

12F. The Department may make a reasonable charge reflecting printing and distribution costs to any person for any copy, in excess of one, of the whole or any part of an environmental statement, or any further information supplied to that person in accordance with Article 12D(3), 12E(5) or 13A.

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

12G.—(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 so requests, the Department shall—

- (a) send to the 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 12B(2)—
 - (i) a copy of that notice; and
 - (ii) any available information on the possible significant effects of the proposed scheme on the environment in that EEA State;
- (b) make available to the State any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication;
- (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 a period determined in agreement with that State but which shall not be less than 30 days beginning with the day on which

the Department forwarded the copy of the notice or other information, whichever is the later, 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;
- (c) all the information required to be given to any person under Article 12B; and
- (d) 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).

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1) 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 a 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 which shall not be less than 30 days beginning with the day on which the Department forwarded the information to that State in pursuance of paragraph (2).

(5) Where an EEA State has been consulted in relation to any proposed drainage scheme 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 the 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 be approved

12H.—(1) On expiry of the period referred to in Article 12D(2)(b), the Department shall provide to the Drainage Council the information set out in sub-paragraph (2)(a).

(2) The Drainage Council must ensure that it has or has access as necessary to sufficient expertise to examine the environmental statement and on the expiry of the period referred to in Article 12D(2)(b) it shall, within 90 days—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with Article 12E and any relevant information received through the consultations under Articles 12D and 12G, to assess, the direct and indirect effects of the proposed drainage scheme on the environmental factors specified in Schedule 2C;
- (b) reach a reasoned conclusion on the significant effects of the drainage scheme on the environment, taking into account the results of the examination referred to in

sub-paragraph (a) (and where appropriate, its own supplementary examination);
and

- (c) include that reasoned conclusion in the decision as to whether the proposed drainage scheme is to be approved or not to be approved.

(3) Where—

- (a) the Drainage Council is satisfied that the reasoned conclusion, or any decisions made on the proposed scheme are still valid; and
- (b) no objections in relation to the likely environmental effects of the scheme have been made; or
- (c) any such objection has been withdrawn,

the Drainage Council, having considered the examination required by paragraph (1), may determine, (unconditionally or subject to conditions) that the drainage scheme should be approved, or should not be approved.

(4) Where the Drainage Council has determined—

- (a) in accordance with paragraph (3) that the drainage scheme should be approved or should be approved subject to conditions; or
- (b) that the scheme should not be approved,

it shall provide the Department with the determination and the Department shall determine that the scheme will proceed or will not proceed, and the Department will publish a general and local advertisement, in accordance with paragraph (5).

(5) Each advertisement referred to in paragraph (4) 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 reasoned conclusion of the Drainage Council on the significant effects of the proposed scheme on the environment, taking into account the results of the examination referred to in paragraph 2(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Drainage Council.

(6) At the same time as the notice in the Belfast Gazette is published under paragraph (4), the Department shall send a copy of the Drainage Council's determination along with the details referred to in paragraph (5)(b)(i) to (v) to each consultation body and to any person who made representations under Article 12D or 12G, to the proposed works.

(7) Where the Drainage Council, having considered the examination specified in paragraph (2) considers that the scheme in question should be approved 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, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (8) to (11).

(8) Where the Commission considers that the information about a scheme supplied to it in accordance with paragraph (7) does not provide sufficient information to enable a determination to be made in relation to the works specified therein, the Commission shall notify the Department and the Drainage Council in writing of the matters on which further

information is required and may make a written request to the Department and the Drainage Council for such information as it may be able to provide on the matters raised.

(9) Where, in accordance with paragraph (8), the Commission requests further information, the Department shall co-ordinate the information from the Drainage Council and—

- (a) no later than the time when it provides that information to the Commission, state by general and local advertisement—
 - (i) that the further information is available and give details of the places where and times at which a copy may be inspected; and
 - (ii) 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 30 days of the date of the publication of the notice in the Belfast Gazette; and
- (b) on or before the date of the publication of the notice in the Belfast Gazette, supply a copy of the further information and notice to each of the consultation bodies 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.

(10) 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 (8) and any representations referred to in Article 12D, Article 12G or paragraph (9), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
- (b) afford the Department, the Drainage Council, and any person who made the representations the opportunity of appearing before and being heard by the Commission;
- (c) having regard to the assessment under sub-paragraph (a) and the representations made under sub-paragraph (b) and having examined the concerns and opinions expressed by the public and the main reasons and considerations upon which the determination under consideration was based, including information about the public participation process—
 - (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
- (d) send to the Department, the Drainage Council, and to any other person who made representations under Article 12D, Article 12G or paragraph (9) a statement in writing of—
 - (i) the reasoned conclusion of the Commission on the significant effects of the proposed works on the environment, taking into account the results of the examination referred to in paragraph (10)(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Commission.

(11) The Department shall by general and local advertisement—

- (a) inform the public of the Commission’s decision under paragraph (10)(c);
- (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 (10)(d); and
place the notice and a copy of the environmental statement on a website maintained by the Department.

(12) In relation to any determination made by the Drainage Council or by the Commission under this Article or Article 12A, the Department shall maintain a record of, and make available to the public on request the information referred to in paragraph (10)(d).

Monitoring

12I.—(1) Where an environmental statement is considered by the Drainage Council or, as the case may be, the Commission, and the decision is to approve the scheme, the Drainage Council or, as the case may be, the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed scheme (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring conditions, the Drainage Council, or as the case may be the Commission, must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed scheme and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the Department or, as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.”.

Confirmation of drainage schemes

22. For Articles 13 and 13A substitute—

“Confirmation of drainage schemes

13.—(1) Where the Department has made a direction under Article 12ZA, it may, after the expiration of 30 days from the publication of the matters mentioned in Article 12ZA(2) and, after considering any observations on the proposed drainage scheme that have been sent to it, and after holding such enquiry (if any) as the Department considers necessary, by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Department thinks fits.

(2) Where—

- (a) the Department has determined in accordance with Article 12A(4) that the works specified in the proposed scheme are not likely to have significant effects on the environment; and
- (b) no representations made in accordance with Article 12A(4)(e) are received in relation to those works within the time limit therein specified,

it may, within 30 days of the expiration of the time limit referred to in Article 12A(4)(e) and, after considering any representations sent to it under Article 12A(4)(h) and after

holding such inquiry, 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) Subject to paragraph (4), where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme it may, after the expiration of 30 days from the expiration of the period of notice referred to in Article 12D(2)(b) and after holding such an inquiry, if any, as it considers necessary, the Department may by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Drainage Council thinks fit.

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

- (a) the environmental statement and any additional information;
- (b) the works specified in the drainage scheme;
- (c) any representations sent to it under Article 12A(3)(c), 12A(4)(e) and (h), Article 12B(2)(c) and (g) or Article 12D or made by an EEA State in pursuance of Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and
- (e) the determination made by the Drainage Council under Article 12H(3) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(10)(c) and any conditions attached to such consent.

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

- (a) inform in writing any person who, or EEA State which, made representations in accordance with Article 12A(3)(c), 12A(4)(e) and (h), Article 12B(2)(c) and (g), Article 12D or Article 12G 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 (4); and
- (b) by general and local advertisement, 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 (4).

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

Public Participation

13A. The Department shall, in relation to any works specified in a drainage scheme, make available to the public—

- (a) at the time that the notice in the Belfast Gazette relating to those works is published under Article 12A(4), all information that is relevant to them;
- (b) any other information which is relevant to a decision under Article 13 and which only becomes available after the time that the public was given notice in accordance with Article 12A(4), whether as a result of a request from the Commission under Article 12A(9) or otherwise; and
- (c) any further information which is relevant to the assessment under Article 12H(2) and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under Article 12B(2).”.

Amendment of Drainage Schemes

23. For Article 16 substitute—

“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 approval by the Drainage Council and after giving notice to—

- (a) such person as the Department considers likely to be materially affected; and
- (b) any person who, or EEA State which, made representations under Article 12A(4)(e) or Article 12D or Article 12G,

direct that such variations be made in the scheme as appears 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 and any additional information;
- (b) the works specified in the scheme as the Department proposes to vary it;
- (c) any representations made in accordance with Article 12A(4)(e) or Article 12D or Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and
- (e) any determination made by the Drainage Council under Article 12H(3) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(10)(c) 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).

(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.”.

Schedules 2A to 2C

24. For Schedules 2A to 2C substitute the Schedules set out in the Schedule to these Regulations.

PART 4

FINAL PROVISIONS

Revocations and transitional provisions

25.—(1) Subject to paragraph (2), the following provisions of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006^(a) are hereby revoked—

- (a) regulations 4 to 15, so far as they relate to drainage works;

(a) S.R. 2006 No.34

(b) regulations 18 to 21.

(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 for Infrastructure on 16 May 2017.



Linda MacHugh
A senior officer of the
Department for Infrastructure

“SCHEDULE 2A

Article 2(2)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL
STATEMENT

1. Description of the drainage works or drainage scheme (“the works”), including in particular—

- (a) a description of the location of the works;
- (b) a description of the physical characteristics of the whole 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 works (in particular any production processes), 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 etc.) resulting from the operation of the proposed works.

2. A description of the reasonable alternatives (for example in terms of design, technology, location, size and scale) studied by the Department, which are relevant to the proposed works and its 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 and an outline of the likely evolution thereof without implementation of the works as far as natural changes from the current state 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 Article 3(1) of the Directive likely to be significantly affected by the development: 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 works on the environment resulting from, inter alia—

- (a) the construction and existence of the 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 accumulation of effects with other existing or approved works, 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 works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the works to climate change;
- (g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in Article 3(1) of the Directive should cover the direct effects and any indirect, secondary, cumulative, transboundary, short, medium and long-term, permanent and temporary, positive and negative effects of the works. This description should take into account the environmental protection objectives established at EU or member State level which are relevant to the works, including in particular those established under Council Directive 92/43/EEC(a) and Directive 2009/147/EC(b) of the European Parliament and of the Council.

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

8. A description of the measures envisaged to avoid, prevent, reduce and where possible, 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 should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the works on the environment deriving from the vulnerability of the works to risks of major accidents or disasters which are relevant to the works concerned. 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 or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should 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 environmental statement.

(a) 92/43/EEC (OJ L 206, 22.7.1992, p. 7–50)
(b) 2009/147/EC (OJ L 20, 26.1.2010, p. 7–25)

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3) OF THE DIRECTIVE

Characteristics of drainage works or drainage schemes “the works”

1. The characteristics of drainage works or drainage schemes must be considered having regard, in particular, to—

- (a) the size and design of the whole works;
- (b) their cumulative effects with other existing or approved works;
- (c) the use of natural resources, in particular land soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents or disasters which are relevant to the works concerned, including those caused by climate change, in accordance with scientific knowledge, having regard in particular to substances or technologies used;
- (g) the risks to human health (for example due to water contamination or air pollution).

Location of drainage works or drainage schemes

2. The environmental sensitivity of geographical areas likely to be affected by the works must be considered, having regard in particular, 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 then 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 EEA States’ legislation, Natura 2000 areas designated by EEA States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, 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 on the environment must be considered in relation to the criteria set out under paragraphs 1 and 2 with regard to the impact of the works on the factors specified in Article 3(1) of the Directive, and having regard, in particular, to—

- (a) the magnitude and spatial extent of the impact of the works (for example the 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 accumulation of the impact with the impact of other existing and/or approved projects;
- (h) the possibility of effectively reducing the impact.”.

SCHEDULE 2C Articles 12H(1), (9), 13(4) and 16(2)

ENVIRONMENTAL FACTORS TO BE TAKEN INTO ACCOUNT

1. The environmental statement shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effect of the drainage works or drainage scheme on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EEC;
- (c) land, soil, water, air, climate;
- (d) material assets, cultural heritage; and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

2. The effects referred to in paragraph 1 on the factors set out in that paragraph shall include the expected effects deriving from the vulnerability of the drainage works or drainage scheme to risks of major accidents or disasters that are relevant to the drainage works or drainage scheme concerned.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, for Northern Ireland, Council Directive 2011/92/EU (as amended by Council Directive 2014/52/EU) on the assessment of the effects of certain public and private projects on the environment, in respect of drainage schemes and drainage works.

Council Directive 2011/92/EU consolidates Council Directives 85/337/EEC and Council Directive 97/11/EEC

These Regulations revoke and re-enact, with amendments, the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006. The Regulations require the Department for Infrastructure, in the execution of certain drainage works and drainage schemes, to produce an environmental statement and, on the basis of that statement, to decide whether or not to proceed with the drainage works or drainage schemes in question.

Part 2 of the Regulations implements the Directive in relation to drainage works carried out under the Drainage (Northern Ireland) Order 1973, other than in drainage schemes.

Part 3 of the Regulations amends the Drainage Order in respect of drainage schemes.

The principal requirements of the Regulations are as follows:

1. Regulation 4 provides the Department may direct that specific drainage schemes or drainage works are exempt from the Regulations if it considers:

- (a) the application of the Regulations would have an adverse effect on the purpose of those schemes or works provided the objectives of the Directive are met; or
- (b) the proposed drainage scheme or drainage works have the response to a civil emergency as their sole purpose and the application of the Regulations would have an adverse effect on the fulfilment of that purpose.

If the Department makes a direction under paragraph (a) it shall inform the public and consider if another assessment would be appropriate.

No direction can be made where there are likely to be significant effects on the environment of another EEA state.

2. Regulation 5 provides for the need to coordinate assessments should any drainage works or drainage scheme require an environmental impact assessment under these Regulations and a Habitats Regulation assessment.

3. Regulation 6 provides restriction on carrying out drainage works, including those extending outside Northern Ireland, unless the requirements of these Regulations have been complied with and, if appropriate, the Commission has consented to the works. The works or scheme must be carried out in accordance with any conditions to which the consent is subject.

4. Regulation 7 states that the Department must provide specified information on proposed drainage works of the type listed in Annex II to the Directive and consider the selection criteria in Schedule 2B to the Drainage Order when deciding if there are any likely effects of the drainage works on the environment. It requires the Department to perform its duties under the Directive in an objective manner and does not find itself in a situation giving rise to a conflict of interest. The Department must ensure that a suitable separation between conflicting functions is put in place.

5. Regulation 8 provides the detail of how the public should be informed and consulted on decisions where the Department considers that the drainage works are not likely to have any significant effects on the environment. Where following the consultation period of 30 days the Department considers that the works are likely to have significant effects on the environment it must make this determination within 90 days. If the Department receives representations that the works are likely to have significant impacts and it still considers that they are not, then the

Department must apply to the Commission for a determination. The Commission may request further information and allow the Department, and any person making representations, the opportunity of being heard by the Commission before making its determination.

6. Regulation 9 provides the detail on how the public should be informed and consulted, on decisions where the Department considers that the works are likely to have significant effects on the environment.

7. Regulation 10 states that the Department must prepare an environmental statement where there are likely to be any significant effects on the environment and describes how the environmental statement should be prepared.

8. Regulation 11 deals with circumstances where the Department requests an opinion from the Commission before a determination can be made and that the Commission will consult with the Department and the consultation bodies and if necessary request further information, before giving an opinion.

9. Regulation 12 details how the environmental statement must be advertised and details made available to the public, and that representations may be made. Where no representations are made, and the Drainage Council having considered the environmental statement, considers that the works may be approved, it may so determine.

10. Regulation 13 describes the process for obtaining further information to assist in the preparation of an environmental statement and the need to advertise publically any additional information obtained.

11. Regulation 14 states that charges may be made by the Department for providing copies of information.

12. Regulation 15 sets out the process for proposed drainage works which are likely to have significant effects on the environment in another EEA State. It details the information to be provided to the EEA State and the consultation to take place. It also requires that where an EEA State has been consulted the Department must inform them of the determination and issue a statement which includes any conditions attached, the main reasons and considerations on which the determination was made and, where necessary, any measures to avoid adverse effects.

13. Regulation 16 states that the Drainage Council must examine the environmental statement, and any other relevant information, reach a reasoned conclusion which must be currently valid at the time that the approval decision is taken, and have necessary access to sufficient expertise to examine the environmental statement. Once a determination has been made, the Department must publish the determination and make the reasoned conclusion, any conditions imposed, mitigation measures and the results of the consultation available to the public. Where the Drainage Council considers that the drainage works are approved but objections have not been withdrawn, it must seek a determination from the Commission. The Commission will assess the environmental statement, and any further information available, and make a decision as to whether the works should be approved. The Department must then publish this decision, any conditions attached to it, any mitigating measures, the results of the consultations and any monitoring measures.

14. Regulation 17 and Regulation 21 (Article 12I of the Drainage Order) set out how the Drainage Council, or the Commission, may impose monitoring conditions as part of their decision to approve the works and the nature of any such monitoring conditions. The Department must ensure that those conditions are implemented.

15. Regulation 18 describes the information to be provided to the public.

16. Regulation 19 provides the power to amend the Drainage Order in accordance with regulations 20 to 24.

17. Regulation 20 updates the Interpretation in the Drainage Order to include a definition of “environmental statement”.

18. Regulation 21 amends Articles 12 to 12E of the Drainage Order in relation to drainage schemes.

19. Regulation 22 amends Article 13 of the Drainage Order in relation to confirmation of drainage schemes.

20. Regulation 23 amends Article 16 of the Drainage Order in relation to variations to schemes.

21. Regulation 24 substitutes the Schedules.

22. Regulation 25 provides the revocations and transitional arrangements.

23. The Schedule substitutes Schedule 2A, 2B, and 2C into the Drainage Order.

24. Schedule 2A details the information to be included in the environmental statement.

25. Schedules 2B and 2C detail the selection criteria that must be considered in deciding if drainage works or drainage schemes should be made subject to an environmental impact assessment and the environmental factors to be taken into account.

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