STATUTORY INSTRUMENTS

1973 No. 69 (NI 1)

Drainage (Northern Ireland) Order 1973

- - - - - - *[19th January 1973]*

Modifications etc. (not altering text)

C1 Order: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Drainage (Northern Ireland) Order 1973 … *Commencement …*
Paras.(2)(3)—Commencement

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of Article 1 and the following provisions of this Order as it applies to an Act of the Parliament of Northern Ireland.

(2) In this Order—

[F1]…

[[F2]"additional information" in any case where an environmental statement has been prepared in respect of a drainage scheme means any information relating to the statement which is not contained in it;

[F3]…**]**

"authorised" means authorised by the Ministry;

"bank" means any bank, wall or embankment adjoining or confining, or constructed for the purposes of or in connection with, any watercourse, or for the protection of any land from flooding;

[[F4]"the Commission" means the Water Appeals Commission **[**[F5]for Northern Ireland**]**;

"consultation bodies" shall be construed in accordance with Article 12A(5);**]**

"dam" includes a lock, weir or other structure whatsoever which is likely to affect the flow of water in any watercourse;

"designated sea defences" means sea defences designated by the Drainage Council under this Order;

"designated watercourse" means a watercourse designated by the Drainage Council under this Order;

[[F6]"the Directive" means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council;**]**

"drainage" includes protection;

"the Drainage Council" has the meaning assigned to it by Article 3(1);

"drainage scheme" means a scheme prepared under Article 11(1);

[F7]…

"embankment" includes an embankment which is part of any sea defence works;

[[F8]"environmental information" means information in an environmental statement and any additional information provided in accordance with this Order in relation to an application or referral for a determination under Article 12A(8) or Article 12H(5) in relation to the likely environmental effects of the scheme which is the subject of the application;**]**

[[F9]"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;**]**

"fish pass" means a channel for the free run or migration of fish in, over or in connection with an obstruction in a watercourse, and includes a fish ladder or any contrivance which facilitates the passage of fish;

[[F10]"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 a proposed drainage scheme;**]**

[[F11]"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as last amended by Council Directive 2013/17/EU;**]**

"the Minister" and "the Ministry" mean respectively the Minister and the Ministry of Agriculture;

"occupier", in relation to any land, includes an agent or other person entrusted by any owner, occupier or person having an estate therein with the management thereof;

"protection" means protection against flooding but not erosion by the sea;

[[F12]"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;**]**

"sea defences" means any works designed for the protection against flooding by the sea of land and existing at the commencement of this Order;

"sea defence works" means any works of construction, reconstruction, alteration, improvement, repair, maintenance, demolition or removal for the purpose of the protection

against flooding by the sea of any land, and includes the sowing or planting of vegetation for that purpose;

"sluice" includes any appliance capable of regulating the flow of water and all structures and apparatus connected with that appliance;

[[F13]"species and habitats" means—

(a) species of naturally occurring birds in the wild state as specified in Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds;

(b) natural habitat types listed in Annex 1 to the Habitats Directive;

(c) animal and plant species listed in Annex 2 or Annex 4 to the Habitats Directive;**]**

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

"transferred provision" has the meaning assigned to it by section 1(*g*) of the said Act of 1954;

"tree" includes bush and shrub;

[F14]...

"watercourse" means any channel or passage of whatever kind, whether natural or artificial, through which water flows and, without prejudice to the generality of the foregoing, includes any river, stream, canal, ditch, drain, cut, culvert, dyke, sluice, valve, sewer, overland carrier, millrace or layde, but does not include any drain or sewer **[**[F15]vested in a sewerage undertaker**]**, or any water main or service pipe **[**[F16]vested in a water undertaker**]**.

[[F17](2A) In this Order, any reference to significant effects on the environment shall include a reference to such effects on the environment in **[**[F18]an EEA State**]** .

(2B) Expressions used in this Order and in the Directive have the same meaning for the purposes of this Order as they have for the purposes of the Directive **[**[F19]unless otherwise provided for**]** .**]**
Para.(3) rep. by SLR 1976

F1 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 In art. 2(2) definitions of "additional information" and "another EEA State" substituted (20.3.2006) for definition of "another EEA State" by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(a)**

F3 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 SR 2001/394

F5 Art. 2(2): words in definition of "the Commission" substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3 Sch. 2)

F6 Words in art. 2(2) substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(a)**

F7 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 Art. 2(2): "for the definition of "environmental information" there shall be inserted" definition of "environmental information" (20.3.2006) by virtue of Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(e)**

F9 Words in art. 2(2) substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(b)**

F10 Art. 2(2): "for the definition of "local newspaper" there shall be inserted" the definitions of "general advertisement" and "local advertisement" (20.3.2006) by virtue of Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(f)**

F11 Words in art. 2(2) inserted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(iv)**; 2020 c. 1, Sch. 5 para. 1(1)

F12 Words in art. 2(2) inserted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(c)**

F13 Words in art. 2(2) inserted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(v)**; 2020 c. 1, Sch. 5 para. 1(1)

F14 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(vi)**; 2020 c. 1, Sch. 5 para. 1(1)

F15 Art. 2(2): words in definition of "watercourse" inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(2)(a)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F16 Art. 2(2): words in definition of "watercourse" substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(2)(b)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**. Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F17 Art. 2(2A)(2B) substituted (20.3.2006) for "art. 2(2A) where it appears twice" by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(2)**

F18 Words in art. 2(2A) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F19 Words in art. 2(2B) inserted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)**

PART II

FUNCTIONS OF DRAINAGE COUNCIL AND MINISTRY

Functions of Drainage Council

3.—(1) The Council known as the Drainage Council for Northern Ireland (in this Order referred to as "the Drainage Council") shall, subject to paragraph (2), continue in being as such, and the provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Drainage Council.

Paras.(2)(3) rep. by SLR 1980

(4) The Drainage Council shall—

(a) after considering such particulars of any watercourses in Northern Ireland as may be submitted to it by the Ministry or by any other person, determine which of such watercourses, or portions thereof, are to be treated or, as the case may be, are not to continue to be treated as designated watercourses for the purposes of this Order;

(b) after considering such particulars of any sea defences in Northern Ireland as may be submitted to it by the Ministry determine which of such sea defences, or portions thereof, are to be or, as the case may be, are not to continue to be treated as designated sea defences for the purposes of this Order;

(c) consider the proposals of the Ministry in respect of drainage schemes, and substantial variations suggested by the Ministry in relation to drainage schemes;

(d) consider all bye-laws proposed to be made by the Ministry under Article 22 in respect of the maintenance and efficient operation of drainage works;

(e) consider drainage proposals affecting roads, bridges, culverts and embankments;

(f) consider such matters affecting or affected by drainage questions as may be referred to it by the Ministry or, after consultation with the Ministry, by any other government department.

(5) The Drainage Council, in determining matters coming before it in pursuance of this Article, shall have regard to the uniform treatment of drainage throughout Northern Ireland, and shall consider all such matters and schemes in their relation to any interest which may appear to the Drainage Council to be affected.

(6) The Ministry shall consult the Drainage Council with regard to the general drainage programmes from time to time proposed by the Ministry, shall cause an annual summary of the work of the Ministry in relation to drainage to be made available to the Council and shall, if requested, supply the Council with full information as to the progress of any drainage works being undertaken by or on behalf of the Ministry.

(7) The expenses of the Drainage Council, to such amount as may be approved by the Ministry of Finance, shall be paid by the Ministry.

Submission of particulars with respect to designated watercourses

4. The Ministry or any other person may at any time submit to the Drainage Council such particulars as the Council may consider necessary to enable it to determine with respect to any watercourse whether that watercourse is to be treated or is not to continue to be treated as a designated watercourse for the purposes of this Order.

Right to apply for review of determination of Drainage Council

5.—(1) Any person aggrieved by a determination made by the Drainage Council under Article 3(4)(*a*) or 8(3) in relation to any watercourse or part of a watercourse affecting land owned or occupied by him may, within twenty-eight days from the date on which he is notified by the Council of such determination and on giving notice to the Council and to the Ministry referring to the determination and specifying the land, apply to the Lands Tribunal for a review of that determination.

(2) On an application under paragraph (1) the Lands Tribunal may review the determination to which the application relates, and any decision of the Lands Tribunal on such review shall have effect as if it were a decision of the Drainage Council.

(3) On a review under this Article, the person applying for the review and the Ministry shall be entitled to appear, be heard and adduce evidence before the Lands Tribunal, and for that purpose may appear by counsel or solicitor.

Ministry to be drainage authority

6. Save as otherwise provided by this Order, the Ministry shall be the authority for the exercise of all functions conferred on or transferred to it under this Order or under any other statutory provision (whether passed before or after the commencement of this Order) in relation to the drainage of land, and for that purpose the Ministry may, subject to the provisions of this Order, exercise all such functions as are conferred on or transferred to it under this Order.

General powers of the Ministry

7. Without prejudice to the generality of the provisions of Article 6, the Ministry may—

(a) undertake, construct and maintain all such drainage works and do all such things as are mentioned in Schedule 2;

(b) cause such surveys, reports and plans to be made as may be necessary for the purposes of this Order;

(c) reconstruct any works interfered with under the powers of a drainage scheme, or construct new works in lieu thereof either in the same or a different place or position; and

(d) execute such works and do all such other things as may be necessary for the purpose of the Ministry's functions under this Order.

Emergency works: watercourses

8.—(1) Where the Ministry is satisfied that any works are required, as a matter of urgency, to be exercised in relation to any watercourse, or the banks thereof, then, notwithstanding anything contained in this Order, the Ministry may,[F20]. . . forthwith exercise, in relation to that watercourse, or those banks, all or any of the powers conferred on the Ministry by Article 14 as if a scheme, in respect of that watercourse or those banks, had been confirmed under Article 13.

[[F20](1A) The Department shall not incur expenditure exceeding £25,000 in relation to any watercourse or the banks thereof under paragraph (1) without the approval of the Department of Finance and Personnel.**]**

(2) Where the Ministry proposes to exercise its powers under paragraph (1), it shall as soon as may be furnish to the Drainage Council full particulars of the circumstances requiring the exercise of those powers and of the works which have been executed or which are required to be executed.

(3) If the watercourse in relation to which, or the banks of which, the particulars are furnished is an undesignated watercourse, the Drainage Council shall, on receipt of the particulars, determine whether or not the watercourse is to be treated as a designated watercourse.

(4) Where the Drainage Council determines, in pursuance of paragraph (3), that the watercourse is not to be treated as a designated watercourse, the Ministry may recover from any occupier of land who is, by virtue of Schedule 5, under a liability in respect of any portion of the watercourse the whole, or such proportion (if any) as the Ministry considers equitable, of the cost of the works executed under paragraph (1) in relation to that portion.

F20 1991 NI 6

Emergency works: sea defences

9.—(1) Where at any time prior to—

(a) the submission to the Drainage Council of particulars of any sea defences under Article 3(4)(*b*); or

(b) a determination by the Drainage Council on any such submission;

the Ministry is satisfied that those sea defences are in imminent danger of being breached by the sea or otherwise rendered ineffective, the Ministry may forthwith exercise in relation to those sea defences all or any of the powers conferred on it by Article 14 as if a scheme in respect of those sea defences had been confirmed under Article 13.

(2) Where the Ministry proposes to exercise any power by virtue of paragraph (1), it shall as soon as may be furnish to the Drainage Council full particulars of the danger apprehended and of the works necessary to avert it.

Powers of Ministry in relation to land

10.—(1) For the purpose of carrying this Order into effect (including the settlement of claims for compensation arising under this Order), the Ministry may, with the approval of the Ministry of Finance and subject to the provisions of this Order—

(a) acquire (either by agreement or compulsorily in accordance with the following provisions of this Article), or take on lease, any land;

(b) dispose of any land for the time being vested in it;

(c) carry out works on any land;

(d) restrict, terminate or otherwise interfere with easements, fisheries, water rights, inland navigation rights and other rights.

(2) Where the Ministry desires to acquire otherwise than by agreement any land which it considers necessary for the purpose aforesaid, it may make an order (in this Order referred to as a "vesting order") vesting such land in the Ministry.

(3 [F21] Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications thereof specified in Schedule 3 to this Order, apply for the purposes of the acquisition of land by means of a vesting order under this Article in the same manner as it applies to the acquisition of land by means of a vesting order under that Act.

(4 [F21] The power to make a vesting order in respect of land—

(a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or

(b) which is declared by or under any transferred provision to be inalienable;

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal to make the vesting order has been approved by a resolution of each House of Parliament.

F21 1948 c.25 (NI); 1950 c.11 (NI); 1954 c.1 (NI); 1955 c.15 (NI); 1965 c.9 (NI)

PART III

DRAINAGE SCHEMES

Preparation of drainage schemes

11.—(1) If the Ministry is of opinion that the carrying out—

(a) of drainage works on a designated watercourse; or

(b) of works on any designated sea defences;

is expedient for the drainage of any land, the Ministry may prepare a scheme for the carrying out of those works, and for that purpose may make such surveys as shall appear to the Ministry to be necessary or expedient.

(2) Every drainage scheme prepared by the Ministry shall contain such provisions as the Ministry may consider necessary for the protection of rights (including rights to water cattle or other animals) or interests affected by the scheme, and shall show, either in the body of the scheme or by means of appropriate maps, drawings, plans, sections and schedules annexed thereto, the following matters—

(a) the watercourses, or the sea defences, proposed to be dealt with;

(b) the land which will be drained or otherwise improved by the carrying out of the scheme;

(c) the details of the drainage works proposed to be carried out in pursuance of the scheme, together with a description of the works to roads, bridges or culverts which will be necessary to enable the scheme to be carried out or to be effective for drainage purposes;

(d) the manner in which it is proposed to implement**[**[F22] Article 40(2) of the Water (Northern Ireland) Order 1999**]**.

(3) Without prejudice to Article 37, the officers, agents and servants of the Ministry may, at all reasonable times, on production (if so required) of their authority, enter on any land and do there all such things as may appear to them to be reasonably necessary or expedient for the purposes of the preparation of a drainage scheme.

(4) Every reference in this Order to a drainage scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such drainage scheme.

F22 1999 NI 6

[[F23]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

(ii) the scheme is carried out in accordance with any conditions to which the consent is subject,

but this is subject to Article 12ZA.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[[F23]Direction that Articles do not apply

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

(a) [F24]... 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[F25]...; 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 **[**[F26]an EEA State**]** .**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

F24 Words in art. 12ZA(1)(a) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(3)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F25 Words in art. 12ZA(1)(a) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(3)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F26 Words in art. 12ZA(3) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F23]**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 **[**[F27]**[**[F28]assimilated**]** law**]** (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 situate;

(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, **[**[F29]an 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, not withstanding 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 **[**[F30]**[**[F28]assimilated**]** law**]** (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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

F27 Words in art. 12A(2)(a) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F28 Word in art. 12A substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 8(2)(a)**

F29 Words in art. 12A(5)(d) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F30 Words in art. 12A(10) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F23]**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 **[**[F31]an 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).**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

F31 Words in art. 12B(2)(f) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(5)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F23]**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).**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[[F23]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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[F23 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.

(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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[[F23]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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[[F23]Drainage schemes likely to have significant effects on the environment in [[F32]an 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 **[**[F33]an EEA State**]** , or where **[**[F33]an 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 **[**[F34]which the EEA State has designated to be consulted about the proposed drainage scheme and to the public concerned in that State; 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 [F35]...—

(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 **[**[F36]that 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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

F32 Words in art. 12G heading substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F33 Words in art. 12G(1) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F34 Words in art. 12G(3)(a) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F35 Words in art. 12G(4) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(6)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F36 Words in art. 12G(4)(b) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(6)(c)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F23]**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).**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

[F23Monitoring

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 **[F37[F38**assimilated**]** law**]** 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.**]**

F23 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **21**

F37 Words in art. 12I(2)(b) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(7)**; 2020 c. 1, Sch. 5 para. 1(1)

F38 Word in art. 12I substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 8(2)(a)**

[F39Confirmation 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), Article12D 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.**]**

F39 Arts. 13, 13A substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **22**

[[F39]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 Article12A(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).**]**

F39 Arts. 13, 13A substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **22**

The carrying out of drainage schemes

14. When the Ministry has made an order confirming a drainage scheme, then, unless the order is revoked, the Ministry shall proceed to carry out the scheme, and, without prejudice to any other provision of this Order, for that purpose the order shall operate to confer on the Ministry power—

(a) to construct, execute and complete the drainage works or sea defence works specified in the scheme, with such additions, omissions, variations and deviations as shall be found expedient in the course of the work;

(b) to enter on any land and do there all such acts and things as shall be reasonably necessary for, or incidental to, the construction, carrying out or completion of those drainage works or sea defence works, with such additions, omissions, variations and deviations as aforesaid;

(c) to do all such other acts and things as may be necessary for the purposes of the scheme;

(d) for the purpose of the due carrying out of the scheme, to do all or any of the following things—

(i) take from any land any earth, sods or other material required for that purpose;

(ii) deposit on any land all spoil or other material obtained in the course of such carrying out; and

(iii) utilise or dispose of any earth, sods, gravel, stone, rock or other material removed in the course of such carrying out.

Provisions in regard to roads, bridges, culverts and embankments

15.—(1) Where any works under a drainage scheme affect any road, bridge, culvert or embankment which is maintainable by any authority, the Ministry may either—

(a) itself design and carry out the works, subject to compliance with any requirement of the authority reasonably necessary for the purposes of traffic or other user; or

(b) agree in writing with the authority for the designing and, subject to consultation with the Ministry of Development[F40], the carrying out of the works by the authority, and for the payment by the Ministry to the authority of the whole or a proportion of the cost thereof.

(2) Where, in the carrying out of any works by the Ministry under paragraph (1)—

(a) any road, bridge, culvert or embankment has been improved as a means of communication or otherwise in consequence of the carrying out of those works, the authority shall bear such proportion of the expenses of the works as ought fairly to be borne by it;

(b) any extra expenses are incurred by the Ministry by reason of the carrying out of additional works at the request of any authority, such extra expenses shall be borne by the authority at whose request the additional works were carried out.

(3) Where an authority refuses, neglects or fails to give due effect to any such agreement as is referred to in paragraph (1) within the time provided by the agreement, the Ministry may do anything which ought to have been done by the authority, and the authority shall pay to the Ministry such proportion of the expenses incurred by the Ministry as would, but for such refusal, neglect or failure, have been properly borne by the authority.

(4) Any dispute between the Ministry and an authority arising under the foregoing provisions of this Article shall be referred to arbitration[F41]. . . .

(5) For the purposes of this Article, "authority" means any person entitled or liable to maintain any road, bridge, culvert or embankment, or any part thereof, whether under any public general, local or private statutory provision or under any order of court, scheme, deed or other instrument, or otherwise, and the provisions of any such statutory provision or instrument shall have effect subject to the foregoing provisions of this Article.

F40 Now D/Env., SRO (NI) 1973/504
F41 1996 c.23

[[F42]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.**]**

F42 Art. 16 substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **23**

Compensation for certain losses due to construction of drainage works

17.—(1) Where any person suffers any loss by reason of the entry by the Ministry on any land owned or occupied by him, or by the construction of drainage works or sea defence works thereon, or by direct interference with any land belonging to him, the Ministry shall, subject to the provisions of this Order, pay to him reasonable compensation in respect of such loss, such compensation to be calculated in accordance with the following provisions of this Order.

(2) The Ministry may, before the carrying out of any drainage works or sea defence works, enter into an agreement with any person likely to suffer loss by reason of the carrying out of the works, whereby, in consideration of the carrying out of the works, the Ministry will be either wholly or partially exonerated from liability for payment of compensation in respect thereof, and the provisions of any such agreement shall bind that person and all the estate of that person, and any person deriving title under him in, to or over any land specified in the agreement.

(3) In lieu of awarding compensation, the Ministry may by agreement construct works or provide facilities to replace works or facilities which have been removed or impaired in the carrying out of drainage works or sea defence works; but, in the event of such construction or provision affording any additional or improved advantages, facilities or rights as compared with those existing prior to the carrying out of the drainage works or sea defence works, the Ministry may enter into an agreement with any person whereby a fair proportion of the cost incurred by the Ministry in connection with such construction or provision shall be borne by that person, and any sums so required to be borne shall be recoverable by the Ministry.

(4) Every claim for compensation under this Article—

(a) shall be made forthwith in writing to the Ministry, and such details of the claim as the Ministry may require shall be furnished in writing to the Ministry within such period as the Ministry may determine; and

(b) shall, in default of agreement, be heard and determined by the Lands Tribunal.

(5) In computing the amount of reasonable compensation, the Ministry may allow a sum in respect of the cost of the employment of any solicitor, and may allow a sum in respect of the cost of the employment of any engineer, surveyor or valuer, where the Ministry is satisfied that such employment has been necessarily and properly incurred in connection with the preparation of a claim for compensation, but, save as aforesaid, costs shall not be payable by the Ministry in respect of claims for compensation.

Compensation for injury to canals, fisheries, etc.

18.—(1) Where any person suffers any loss or damage by reason of an injury to any canal or other navigable inland waterway, to any water-power or other water right or to any fishery or fishing right, the Ministry shall, subject to the provisions of this Article and of Articles 19 and 40(6), pay him compensation in respect of injury where, but only where, such injury is caused by the operation of the drainage works or sea defence works, or by any particular mode or course of operation of such works, and would, apart from this Order, give rise to a right of action for damages against any person causing the injury.

(2) Every claim for compensation under this Article shall be made in writing to the Ministry and shall be made, in the case of an injury to a fishery or fishing right, within ten years or, in any other case, within one year after the completion of the drainage works or sea defence works in relation to which the claim arises.

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

(4) Paragraph (5) of Article 17 shall have effect for the purposes of this Article as it has for the purposes of that Article.

Matters to be regarded in assessing compensation

19. When assessing compensation in pursuance of Articles 17 and 18, regard shall be had in every case to any benefit to any property (whether such property is or is not the property in respect of which such compensation is claimed) of the person claiming such compensation which is occasioned by, or may reasonably be expected to arise from the carrying out of, the drainage scheme in relation to which the compensation is claimed, and, in particular, regard shall be had—

(a) in the case of a claim in respect of a canal or other navigable waterway, to any permanent benefit to the navigation of such waterway occasioned by, or which may reasonably be expected to arise from, the carrying out of the drainage scheme, and to the extent to which that canal or waterway was used for purposes of navigation during the ten years immediately preceding the date of confirmation of the drainage scheme;

(b) in the case of a claim in respect of water rights, to any alternative water supply provided by the Ministry; and

(c) in the case of a claim in respect of interference with water or a watercourse providing power for a mill or other industrial concern or for domestic purposes, to the extent to which the power so provided was used during the ten years immediately preceding the date of the confirmation of the drainage scheme by the Ministry, and to any alternative source of power provided by the Ministry or otherwise available to the claimant.

Disposal of surplus lands, etc.

20.—(1) As soon as conveniently may be after the completion of any drainage works or sea defence works, the Ministry shall determine whether any, and if so, what land acquired by it under this Order for the purposes of the relevant drainage scheme is unnecessary, and not required, for the proper working and maintenance of any such works.

(2) Any land determined by the Ministry in pursuance of paragraph (1) to be unnecessary and not required as mentioned in that paragraph shall, subject to paragraph (3), be disposed of by the Ministry in such manner as the Ministry, with the approval of the Ministry of Finance, considers fit.

(3) The person from whom any such land was acquired by the Ministry, or such other person as appears to the Ministry to be the successor in title of such first-mentioned person in relation to that land, may, if, within three months from the completion of the works, he so requests the Ministry in

writing, re-purchase such land at a price comparable with the price paid by the Ministry in respect of the acquisition thereof by the Ministry.

PART IV

MAINTENANCE OF WATERCOURSES AND SEA DEFENCES

Powers of maintenance in relation to designated watercourses and sea defences

21.—(1) Subject to paragraph (2), the Ministry may, in relation to any designated watercourse or to any designated sea defences, carry out such works of repair and maintenance as the Ministry may consider fit, and, for that purpose, the Ministry may exercise any of the powers mentioned in paragraph (3) and any other powers which may be reasonably necessary for, or incidental to, the carrrying out of such works.

(2) Where any injury is caused to the property of any person by reason of the carrying out by the Ministry of any such works of repair or maintenance, he shall, subject to the provisions of this Order, be entitled to receive from the Ministry the like compensation in respect of such injury as would be payable under this Order if such injury had been caused in the carrying out by the Ministry of a drainage scheme under Part III.

(3) For the purposes of repairing or maintaining any designated watercourse or any designated sea defences, the Ministry may—

(a) maintain existing works, that is to say, cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work, or sea defence works;

(b) improve any existing works, that is to say, deepen, widen, straighten or otherwise improve any existing watercourse, or remove or alter dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any drainage work or sea defence works;

(c) construct new works which may be required for the purpose of repairing or improving the watercourse or sea defences;

(d) repair, strengthen, alter, replace or renew any existing embankment and, for that purpose, use any shingle, sand, clay, gravel, stone, rock or other material removed in the carrying out of any drainage work or sea defence works, and deposit any material so removed on any adjacent land.

Bye-laws

22.—(1) The Ministry may, after consultation with the Drainage Council, make bye-laws for ensuring the efficient drainage of land and, in particular and without prejudice to the generality of the foregoing provisions, may make bye-laws for any of the following purposes—

(a) regulating the use and preventing the improper use of any watercourse, banks or works constructed or maintainable by the Ministry, or for preserving any such watercourse, banks or works from damage or destruction;

(b) regulating the opening of locks, sluices and floodgates in connection with any of those works;

(c) compelling the occupier of any land on or through which any watercourse to which this Article applies runs, or of which such watercourse forms a boundary, to cut vegetable growth in or on the banks of the watercourse and, when cut, to remove the same therefrom;

(d) providing that, on the default or failure of any person to fulfil any obligation imposed on him under bye-laws made by the Ministry under this Article, the Ministry may enter on

any land and do any act or thing necessary to fulfil that obligation, and that the amount of any expenses thereby incurred by the Ministry shall be paid to it by such person and may, without prejudice to any other remedy, be recoverable summarily from him as a debt to the Ministry.

(2) Schedule 4 shall have effect with respect to the making of bye-laws under this Article.

(3) Bye-laws made by the Ministry under this Article may provide for offences against them to be punishable on summary conviction by a fine not exceeding**[**[F43] level 3 on the standard scale**]** and in the case of a continuing offence, an additional fine not exceeding £5 for each day during which the offence continues after written notice of the offence has been given.

(4) The prosecution or conviction of any person for an offence against any bye-law under this Article shall not prejudice or affect any civil or other liability of that person which may arise by reason of any act or omission constituting that offence, and shall not prejudice or affect any liability of that person arising under any other statutory provision by reason of such act or omission.

F43 1984 NI 3

Liability of occupiers of land protected by sea defences

23.—(1) This Article shall have effect in relation to land (in this Article referred to as "protected land") protected by designated sea defences, but without prejudice to the provisions of Schedule 5.

(2) The Ministry may formulate a scheme providing for the carrying out on any protected land of such ancillary works, including the installation, operation and maintenance of such pumps or other plant as appear to the Ministry to be necessary to secure the efficient drainage of that land.

(3) The Ministry may serve on any occupier of any protected land a notice in writing requiring him, within such period as may be specified in the notice, to comply with the scheme or so much thereof as may be so specified.

(4) The provisions of paragraphs 6 to 8 of Schedule 5 shall have effect for the purposes of this Article as if in terms made applicable thereto.

(5) Nothing in this Article shall render an occupier of protected land liable for the reconstruction, repair or maintenance of any embankment forming part of sea defence works, nor of valves or other works forming part of such works.

(6) Articles 11 to 14 shall not have effect in relation to a scheme formulated under this Article.

Duty of occupiers with respect to undesignated watercourses

24. The provisions of Schedule 5 shall have effect in relation to the duties of occupiers of land with respect to undesignated watercourses, and to the other matters specified in that Schedule.

PART V

EXECUTION AND FINANCING OF CERTAIN WORKS

Power of Ministry to carry out works on behalf of other persons

25.—(1) Without prejudice to the provisions of Article 15 or of section 8 of the Agriculture Act (Northern Ireland) 1949, the Ministry may, by agreement with any person, carry out with respect to any watercourse and at the expense of that person any works which that person is required under any statutory provision, or is entitled, to carry out, and that person shall, subject to Article 26, pay the cost of any such work to the Ministry.

(2) The provisions of Article 40(8) shall have effect with respect to an agreement made under this Article, but, subject thereto, nothing in this Order shall diminish in any respect any responsibility of any person for any act or thing done in pursuance of any such agreement by or on behalf of that person.

Power of Ministry to contribute to cost of works

26. Where the Ministry considers that the carrying out of any works, whether by the Ministry under Article 25 or by any other person, is conducive to the better maintenance or the improvement of any designated watercourse or of any fishery in respect of which the Ministry is liable to provide protection under Article 40, the Ministry may contribute towards the cost of those works such amount as is, in the opinion of the Ministry, commensurate with any benefit derived from the carrying out of those works.

Agreements with occupiers of land for contributions towards cost of certain works

27.—(1) Where the occupier of any land requests the Ministry to carry out drainage works on a designated watercourse and the Ministry is satisfied that, in the circumstances of the case, the whole cost of the works should not fall to be paid out of public funds, the Ministry may enter into an agreement with the occupier whereby the Ministry shall carry out the drainage works in consideration of the occupier reimbursing to the Ministry such proportion of the cost thereof as may be specified in the agreement.

(2) Any money required to be reimbursed pursuant to any agreement under paragraph (1) shall be recoverable by the Ministry.

Agreements for contributions towards cost of sea defence works

28.—(1) Without prejudice to the provisions of Article 15, where, before submitting to the Drainage Council, under Article 3(4)(*b*), particulars of any sea defences or, as the case may be, before exercising the power conferred by Article 9, the Ministry is satisfied that the carrying out of drainage work, or, as the case may be, of anything authorised by Article 9, will extinguish or substantially diminish the liability of any public body or other authority in respect of the reconstruction, repair or maintenance of the sea defences concerned, or otherwise enure for the benefit of such body or authority, the Ministry may, before proceeding under either Article 3(4) or 9, enter into an agreement with the body or authority concerned whereby, in the event of those sea defences being determined by the Drainage Council to be designated sea defences, that body or authority will become liable to pay to the Ministry such sum or sums as may be agreed on by way of contribution towards the expenses that may be incurred by the Ministry in respect of those sea defences.

(2) Any money required to be paid pursuant to any agreement under paragraph (1) shall be recoverable by the Ministry.

PART VI

MISCELLANEOUS AND GENERAL

Transfer, etc., of drainage trusts and funds to the Ministry

29.—(1) Any trustee or other person (including a government department) holding any property on trust for the purpose of draining, or maintaining or improving the drainage of, any land may, notwithstanding anything in any statutory provision or in any scheme, order of court, deed or other instrument constituting the trust, and without the concurrence of any other person or authority, by

agreement, transfer to the Ministry all or any of the property, powers, rights, duties, assets and liabilities of the trust on such terms and conditions as may be agreed with the Ministry, and the Ministry may accept any property so transferred.

(2) The Ministry may apply, for any drainage purpose connected with the land for the benefit of which the trust was constituted, any property accepted under paragraph (1), and any statutory provision or instrument mentioned in that paragraph shall have effect subject to the provisions of this Article.

(3) A transfer made under this Article shall effectively release and discharge the transferor from all duties, claims and liabilities in respect of the trust property thereby transferred to the Ministry, other than a claim or liability in respect of any antecedent breach of trust on the part of the transferor.

(4) Any power conferred by paragraph (1) on a trustee in relation to any trust may be exercised on his behalf by any court having jurisdiction to administer that trust, and any scheme or order made by such court may provide for the appointment, on such terms and subject to such conditions as the court may consider just, of the Ministry as a trustee for the purposes of that trust in any case where the Ministry is willing to act as such.

(5) Paragraphs (2) and (3) shall apply to any property held by the Ministry on trust for any of the purposes mentioned in paragraph (1) as they apply to any property transferred to the Ministry under that paragraph.

[[F44][F45]Dissolution of drainage trusts

29A.—(1) The Department may by order dissolve a trust to which this Article applies.

(2) This Article applies to—

(a) any trust constituted by a scheme under section 27(2) of the Northern Ireland Land Act 1925 (c. 34) (trusts for the maintenance of watercourses or other works);

(b) any trust in relation to which there has been a transfer under Article 29;

(c) any other trust constituted—

(i) for the purpose of draining any land; or

(ii) for the purpose of maintaining or improving the drainage of any land,

of which the Department is a trustee.

(3) Before making an order under paragraph (1), the Department shall publish—

(a) in the Belfast Gazette; and

(b) in at least two newspapers circulating in the area to which the trust relates,

a notice of intention to dissolve the trust.

(4) The notice of intention to dissolve the trust shall—

(a) identify the trust;

(b) give details of any provision proposed to be included by virtue of paragraph (6)(a) in the order dissolving the trust;

(c) give notice that any person, who considers that the proposed dissolution of the trust would subject him to a significant detriment, may object to the Department in writing in relation to that dissolution, at the address specified in the notice, within 28 days of the publication of the notice in the Gazette.

(5) After considering any objections received in accordance with paragraph(4)(c), the Department may make an order under paragraph (1) unless it is satisfied that the dissolution of the trust in accordance with the order would subject any person to a significant detriment.

(6) An order under paragraph (1)—

(a) shall provide for the application of any property forming part of the trust;

(b) shall provide for all rights, duties, obligations and liabilities arising under the trust to be extinguished; and

(c) may contain such other incidental or supplementary provisions as the Department thinks necessary or expedient in connection with the dissolution of the trust.

(7) An order under paragraph (1) has effect in relation to a trust notwithstanding anything in any statutory provision or in any scheme, court order, deed or other instrument constituting the trust.

(8) An order made under paragraph (1) shall be subject to negative resolution.**]]**

F44 2005 NI 8
F45 2005 NI 8

Drainage schemes extending outside Northern Ireland

30.—(1) The Ministry may co-operate with any persons outside Northern Ireland (in this Article referred to as an "external authority") in the preparation and carrying out of schemes for the drainage of any land which is situate partly inside and partly outside Northern Ireland, or for the improvement or alteration of any watercourse so situate, and for the use, control or maintenance of works which are provided in pursuance of any such scheme, or which enable drainage to be controlled or improved.

(2) For the purposes of any such scheme, the Ministry, with the approval of the Ministry of Finance, may enter into and carry into effect any arrangement or agreement with an external authority—

(a) for the carrying out of any work or the doing of any act or thing specified in the arrangement or agreement, or for the settlement of claims for compensation for loss or injury arising therefrom (including the investigation of such claims and, where necessary, the assessment and payment of compensation, the carrying out of remedial works in settlement or partial settlement and the securing in advance of releases from claims)—

(i) by the Ministry or by the external authority, or by the Ministry and the external authority acting jointly;

(ii) by the external authority as agent for and on behalf of the Ministry;

(iii) by the Ministry as agent for and on behalf of the external authority;

(b) for making any resources (including plant, machinery, equipment, accommodation and [[F46], with the approval of the Department of the Civil Service,] services of staff) of one party to the arrangement or agreement available to the other;

but nothing in the arrangement or agreement shall diminish in any respect any responsibility of any party for any act or thing done by it or on its behalf.

(3) A scheme under paragraph (1) shall specify—

(a) the extent of the works to be carried out; and

(b) the manner in which, and the persons by whom and in what proportion, the cost of carrying out the scheme and of maintaining or operating anything constructed thereunder are to be borne.

(4) For the purposes of carrying into effect in Northern Ireland any scheme under paragraph (1), the Ministry or any agent authorised by it to act on its behalf may carry out any such works as are referred to in Article 21(3)(*a*) to (*d*), and the Ministry may, without prejudice to any other provision of this Article, exercise any power exercisable by it under any other provision of this Order.

(5) Nothing in this Article or in any scheme, arrangement or agreement made thereunder shall—

(a) prejudice the application of any provision of this Order in relation to any watercourse, or part of a watercourse, which is in Northern Ireland; or

(b) prevent the Ministry from preparing and carrying into effect any drainage scheme under this Order, or exercising any other function under this Order, in relation to so much of any watercourse as is in Northern Ireland;

and so much of any scheme under this Article as relates to a part of any watercourse in Northern Ireland may be treated as a separate scheme for the purposes of any provision of this Order, and Article 42(1) shall apply to any expenses incurred by the Ministry in respect thereof.

F46 SR 1976/281

Noxious weeds

31. Notwithstanding any statutory provision or rule of law to the contrary, the deposit by the Ministry on any land, not the property of the Ministry, of spoil or other material excavated in the course of the carrying out of drainage works or sea defence works shall not render the Ministry subject to any civil or criminal liability in respect of any noxious weeds which may grow on such deposit or on any such land from which material has been excavated.

Protection of watercourses

32. The provisions of Schedule 6 shall have effect in relation to the protection of watercourses and to the other matters specified in that Schedule.

Control of dams and sluices

33.—(1) Subject to paragraphs (2) and (3), where the Ministry considers that it is necessary or expedient to do so for the purpose of preventing or arresting injury to land, it may, by notice in writing served on the person in control of any dam, require him, during such times and in such manner as may be specified in the notice, to regulate or keep open or closed any sluice forming part of the dam, or otherwise to control the quantity of water in the dam.

(2) In exercising its powers under this Article in relation to any dam or sluice, the Ministry shall have regard to any purpose for which the person in control of the dam, or any other person interested in the water, uses or desires to use the water so controlled, and shall so exercise those powers as to interfere as little as may be practicable with such user.

(3) The Ministry shall not exercise the powers conferred by this Article in relation to any dam or sluice which is vested in or controlled by any other government department, any harbour authority, any district council or**[**[F47] any licence holder within the meaning of Part II of the Electricity (Northern Ireland) Order 1992**]**.

(4) If any notice served by the Ministry as aforesaid with respect to any dam or sluice is not complied with—

(a) the person on whom it is served shall be guilty of an offence;

(b) without prejudice to any prosecution for such an offence, the Ministry may, after giving notice in writing to that person, take control of the dam or sluice on such date and for such period as may be specified in the last-mentioned notice; and

(c) if, during that period, any person controls the dam or operates the sluice without the authority of the Ministry, he shall be guilty of an offence.

(5) Any person guilty of an offence under paragraph (4) shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding**[**[F48] level 3 on the standard scale**]**, or to both.

(6) In addition to the duties imposed upon persons in control of dams or sluices by the foregoing provisions of this Article, any such person shall control any dam, or operate any sluice forming part of a dam, over which he has control so that as little damage or injury as is practicable, having regard to the purpose for which the dam was constructed, shall be caused to land through flooding, and, in the event of any such person failing so to control any dam or operate any sluice, compensation for damage or injury suffered by any person by reason of such failure shall, without prejudice to any other remedy, be recoverable summarily by the person so damaged or injured.

F47 1992 NI 1
F48 1984 NI 3

Power of Ministry to execute experimental, etc., work

34. Where the Ministry considers it appropriate, it may—

(a) carry out any experimental, research or development work either in relation to drainage generally or in relation to any particular problem relating to drainage;

(b) enter into a contract or arrangement with any person for the carrying out of any such work;

(c) make grants by way of contribution towards the cost of any such work undertaken by any person.

[[F44]**[**[F49]**Power of Department to charge for exercise of functions**

34A.—(1) The Department may by regulations make provision for the payment of charges to the Department in respect of the exercise of its functions under this Order.

(2) Regulations made under paragraph (1) may—

(a) prescribe the functions in respect of which charges are payable;

(b) prescribe the persons liable to pay such charges;

(c) prescribe the amount of the charges or the manner in which charges are to be determined;

(d) prescribe the times at which, and method by which, charges are payable;

(e) make provision for the review by the Lands Tribunal of any charge which the Department proposes to make under the regulations, including provision for the powers of the Lands Tribunal on any such review;

(f) provide for the remission or reduction of charges in prescribed circumstances;

(g) provide for the recovery by the Department of charges due to it;

(h) provide for the payment of interest if charges are not paid on time;

(i) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.

(3) Any regulations made by the Department under this Article shall be subject to negative resolution.**]]**

F44 2005 NI 8
F49 2005 NI 8

Provisions as to recovery of expenses

35.—(1) Where, by virtue of any provision of this Order, the Ministry is authorised to recover, or any person is required to pay to the Ministry, the cost of any work or any sum of money—

(a) the Ministry may, by certificate under the hand of the secretary or of an assistant secretary of the Ministry, certify the amount of such cost or that sum; and

(b) the amount so certified shall be recoverable by the Ministry summarily as a debt due to it.

[[F50](1A) Paragraph (1) shall not apply to any sum of money which the Department is authorised to recover by virtue of Article 34A.**]**

(2) A certificate under paragraph (1) shall be *prima facie* evidence of the amount stated therein.

F50 2005 NI 8

Miscellaneous offences

36.—(1) Any person who—

(a) wilfully obstructs any officer or servant of the Ministry in the exercise of any functions of the Ministry under this Order, or any person engaged in the construction of any works in pursuance thereof; or

[[F51](b) removes any works (whether constructed or in course of construction) which are vested in the Department for the purposes of this Order; or**]**

(c) removes, …[F52] any pegs, poles or marks placed or made by any authorised person for the purpose of, or in connection with, the construction of any such works; or

(d) places any solid matter in, or causes or permits any solid matter to fall or pass into, any watercourse in respect of which any works are about to be, or are in course of being, constructed by the Ministry[F51]. . . so as to cause any obstruction, hindrance or delay to such construction; or

(e) obstructs the flow of water to, through or from any works**[**[F51] vested in the Department for the purposes of this Order**]** in such manner as to prevent or hinder the efficient operation of those works, or to cause flooding of such works or any land drained thereby;

shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding**[**[F53] level 3 on the standard scale**]**, or to both, and, in the case of a continuing offence, to an additional fine not exceeding £5 for every day during which the offence continues.

F51 1984 NI 2
F52 1977 NI 4
F53 1984 NI 3

Entry on and inspection of land, etc.

37. For the purposes of enabling the Ministry to exercise any function conferred on it by this Order, or otherwise for the purpose of carrying the provisions of this Order into effect, any person authorised in that behalf by the Ministry may, on production (if so required) of his authority, enter on and inspect any land and make any survey in connection therewith.

Limitation of liability for flooding, etc.

38.—(1) Subject to paragraph (2), nothing contained in this Order shall be construed so as to render the Ministry liable for any damage which may happen to any land or other property through or by the accidental overflowing of any watercourse or through or by the breaking, collapse or failure of any bank, embankment, dam, sluice or other work which has been constructed, maintained, repaired or regulated by the Ministry under the provisions of this Order.

(2) Where any damage mentioned in paragraph (1) has been caused by the negligent construction or repair of any embankment, dam or sluice so mentioned, any person who suffers loss from that damage may obtain reasonable compensation therefor from the Ministry, and, in assessing compensation under this paragraph, regard shall be had to any remedial works which the Ministry may have carried out, or agreed to carry out, in order to make good the damage.

Protection for officers of Ministry

39. An action shall not lie at law or in equity against the Ministry or any of its officers or servants in respect of any act, matter or thing in respect of which compensation is payable, or protection is provided, by virtue of any provision of this Order.

Protection of fisheries

40.—(1) Subject to paragraph (8), where the Ministry, in the exercise of its powers under this Order, carries out any work in relation to a watercourse, the Ministry shall provide such protection for any fishery that may be affected by the carrying out of the work or operations incidental thereto as may be agreed on between the Ministry and the owner of the fishery, or in default of agreement as may be determined by an arbitrator to be agreed on by the parties, or, in default of such agreement, to be appointed by the Lord Chief Justice, by all or any of the following means—

(a) the construction and maintenance in the watercourse of a fish pass for the free and uninterrupted passage of fish both up and down the watercourse;

(b) the provision of a hatchery, pool or weir;

(c) the provision of groynes;

(d) the replacement of stones and gravel;

(e) the replanting of trees;

(f) defraying any reasonable additional expenses incurred by the owner of the fishery by reason of the carrying out of any such work or operations.

(2) The Ministry may pay such sum as may be agreed on to defray the expenses which may be incurred by the owner of any fishery in providing any protection for such fishery which the Ministry may be required to make under paragraph (1).

(3) In lieu of proceeding under the foregoing provisions of this Article, the Ministry and the owner of any fishery to which those provisions are applicable may enter into and carry into effect an agreement for the purchase or taking on lease by the Ministry of such fishery, or any fishing rights therein, at such price or rent as may, in default of agreement, be determined by an arbitrator to be agreed on or appointed in like manner as for the purposes of paragraph (1).
Para. (4) rep. by 1996 c. 23

(5) Where the Ministry, in exercise of its powers under this Order, widens or diverts any part of a watercourse of which the bed and soil is vested in the owner or owners of a several fishery in the watercourse, the bed and soil of the watercourse, as so widened or diverted, shall vest by virtue of this Order in that owner or those owners in like manner and for the same purposes as the bed and soil first-mentioned were vested in that owner or those owners.

(6) In assessing the amount of any compensation payable by the Ministry under Article 17 or 18 with respect to a fishery, regard shall be had to any protection provided for the fishery or any sums paid by the Ministry under this Article.

(7) In this Article, "owner" includes any lessee or fishery conservators, or any body charged by any statutory provision with the conservation, protection or improvement of any fishery, or the management of any property in connection with such fishery.

(8) This Article shall not apply to any work carried out by the Ministry in pursuance of an agreement under Article 25.

[[F54]Protection for water and sewerage undertakers

40A.—(1) Nothing in this Order shall confer power on any person, except with the consent of a water or sewerage undertaker, to do anything which, whether directly or indirectly, so interferes or will so interfere—

(a) with works or property vested in or under the control of that undertaker; or

(b) with the use of any such works or property,

as to affect injuriously those works or that property or the carrying out of the functions of that undertaker.

(2) A consent for the purposes of sub-paragraph (1) may be given subject to reasonable conditions but shall not be unreasonably withheld.

(3) Any dispute—

(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1);

(b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or

(c) as to whether any condition subject to which any such consent has been given was reasonable,

may be referred by either party to the dispute to the Commission.**]**

F54 Art. 40A inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Special provisions relating to Erne drainage and navigation

41. The provisions of Schedule 7 shall have effect in relation to—

(a) the drainage of Upper and Lower Lough Erne and of the portion of the River Erne which is in Northern Ireland;

(b) the dredging and maintenance of channels in those loughs and that river, and the tributaries thereof;

(c) the use by vessels of those loughs and that river, and the tributaries thereof; and

(d) the other matters specified in that Schedule.

Financial provisions

42.—(1) Any expenses incurred by the Ministry under this Order, and any contributions or grants paid by the Ministry under this Order, not being expenses or sums chargeable or charged to the Erne

Development Account under paragraph 11(3) of Schedule 7, may be defrayed out of money hereafter appropriated for the purpose of meeting such expenditure.

(2) Any sum received by the Ministry under Article 17(3), 25, 27**[**[F55], 28 or 34A**]**, or under paragraph 7 of Schedule 5 or paragraph 5, 6 or 8 of Schedule 6[F56]. . . , shall be appropriated in aid of the expenses incurred by the Ministry under this Order or in the payment of any contributions or grants under this Order.

F55 2005 NI 8
F56 1999 NI 6

Art.43, with Schedule 8, effects amendments

Transitional and saving provisions

44. The transitional and saving provisions specified in Schedule 9 shall have effect for the purposes of this Order.

Art.45, with Schedule 10, effects repeals

SCHEDULES

SCHEDULE 1

Article 3(1) to (3).

CONSTITUTION AND PROCEEDINGS OF THE DRAINAGE COUNCIL

1. The Drainage Council shall consist of eighteen persons appointed by the Minister of whom—

(a) ten shall be appointed in accordance with paragraph 2 and shall represent district councils;

(b) one shall be an officer of the Ministry, who shall represent drainage and navigational interests;

[F57](c) one shall be an officer of the Ministry of Finance nominated by the Minister of Finance;

(d) one shall represent agricultural interests;

(e) one shall represent fishery interests;

(f) two shall be appointed after consultation with the Minister of Commerce, one to represent industrial interests and one to represent tourist interests;

(g) one shall be appointed after consultation with the Minister of Development[F58] and shall represent conservation interests;

(h) one shall be specially qualified to advise on drainage matters.

F57 functions transf. by 1982 NI 6
F58 Now Head of D/Env., SRO (NI) 1973/504; 1976 NI 6

Modifications etc. (not altering text)
C2 Sch. 1 para. 1(c): transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

2. Where a body which the Minister is satisfied represents the interests of district councils comes into being, the persons to be appointed under paragraph 1(*a*) shall be appointed after consultation with that body and, until then, those persons shall be appointed after consultation with persons who, in his opinion, are representative of district councils.

3.—(1) The members of the Council shall be appointed in **[**[F59]the year 2011**]** and in every fourth year thereafter and shall be appointed as soon as possible after the date on which a local general election is held in that year under section 11(2) of the Electoral Law Act (Northern Ireland) 1962, and—

(a) persons appointed to the Council shall become members of the Council from such date as shall be specified in their appointment;

(b) subject to sub-paragraph (2), the appointments shall cease to have effect after the day preceding that from which the next subsequent appointments made under this paragraph are effective.

(2) Where a person appointed under paragraph 1(*a*) is a member of a district council at the date of his appointment to the Drainage Council, he shall, if he ceases to be a member of the district council, cease to be a member of the Drainage Council, but no such cessation shall take effect until that person's successor is appointed.

(3) A member whose term of office has expired may be re-appointed.

F59 Words in Sch. 1 para. 3(1) substituted (12.2.2009) by Postponement of Local Elections (Northern Ireland) Order 2009 (S.I. 2009/225), arts. 1(1), **4(2)**

Modifications etc. (not altering text)

C3 Sch. 1 para. 3(1) applied (with modifications) (12.12.2013) by The Local Elections (Northern Ireland) Order 2013 (S.I. 2013/3156), arts. 1(1), **7**

4. The chairman of the Drainage Council shall be such one of the members thereof as the Council may elect.

5. A casual vacancy occurring in the membership of the Drainage Council shall be filled by a person appointed by the Minister, being a person of the category and appointed in the manner specified in such one of sub-paragraph (*a*) to (*h*) of paragraph 1 to which the member being replaced belonged, and that person shall hold office for the residue of the term of office of that member.

6. A member of the Drainage Council may resign his membership by giving notice in writing to the Minister.

7. The quorum of the Drainage Council shall be five and, subject thereto, the Council may, with the approval of the Ministry, make rules regulating the procedure of the Council.

8. The Ministry, after consultation with the Ministry of Finance[F60], shall appoint a fit and proper person to be secretary of the Drainage Council and may assign for service under the Council such officers, clerks and servants as the Ministry, with the approval of the Ministry of Finance[F60], may consider necessary.

F60 Now D/CS, SR 1976/281

SCHEDULE 2

Article 7(*a*).

DESCRIPTION OF DRAINAGE WORKS, ETC.

1. Clearing of watercourses, whether natural or artificial, including—

(a) the removal of obstructions, including fallen or ingrowing trees, refuse or other material;

(b) the removal of shoals and cesses;

(c) the shaping, trimming and revetting of banks.

2. Works in connection with watercourses, whether natural or artificial, and their feeders, including—

(a) the cleansing, widening, deepening, covering or otherwise improving of existing watercourses;

(b) the cutting of new drains where required;

(c) the raising and repairing of existing embankments, and the construction of new embankments;

(d) the sinking of pumping sumps;

(e) the construction and repairing of sluices or valves;

(f) the removal and disposal of old spoil banks.

3. Works in connection with agricultural land, that is to say—

(a) the draining of farm roads and tracks;

(b) the clearing of watercourses on agricultural land in cases where, after the service of a notice under Schedule 5, the owner or occupier of the land fails or neglects to scour out and cleanse a watercourse.

4. New construction, including—

(a) the diversion of watercourses, whether natural or artificial, and their feeders;

(b) the cutting through of "U" or "S" bends so as to straighten and shorten the channel;

(c) the construction of new watercourses, and of new outfall channels to existing main drains and their feeders;

(d) the reconstruction and improvement of bridges, locks, overflows, weirs, hatches and outfalls necessitating structural alterations;

(e) the reconstruction of damaged or inadequate bridges and culverts, and the substitution of new bridges and culverts therefor;

(f) the building of embankments and walls for the prevention of flooding or erosion;

(g) the formation of cattle water-places, sheep-dipping and other conveniences, the provision of which is calculated to minimise the risk of future damage to improved watercourses.

5. Removal or alteration of artificial objects such as weirs, sluices, dams, sea defence works, etc.

6. Sea defence works.

7. Such other works or classes of works as may be considered by the Ministry to be analogous or ancillary to any classes of works described in this Schedule.

[F61SCHEDULE 2A

Article 2(2)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENT

F61 Schs. 2A-2C substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), reg. 1, **Sch.**

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 **[**[F62]paragraph 1 of Schedule 2C**]** 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.

F62 Words in Sch. 2A para. 4 substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(8)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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 **[**[F63]set out in paragraph 4**]** 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 **[**[F64]contained in **[**[F65]assimilated**]** law or any statutory provision which are relevant to the works, including in particular those objectives contained in any **[**[F65]assimilated**]** law or statutory provision which implemented the Habitats Directive and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds.**]**

F63 Words in Sch. 2A para. 6 substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(8)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F64 Words in Sch. 2A para. 6 substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(8)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F65 Word in Sch. 2A substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 8(2)(b)**

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. **[**[F66]Relevant information available and obtained through risk assessments carried out pursuant to **[**[F65]assimilated**]** law or relevant assessments carried out pursuant to any statutory provision may be used for this purpose provided that the requirements of any **[**[F65]assimilated**]** law or statutory provision that implemented the Directive are met**]**

F65 Word in Sch. 2A substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 8(2)(b)**

F66 Words in Sch. 2A para. 9 substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(8)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

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.

SCHEDULE 2B

Article 12A

SELECTION CRITERIA [F67]...

F67 Words in Sch. 2B heading omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(9)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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 **[**[F68]**[**[F69]assimilated**]** law or under any statutory provision; Natura 2000 (as defined in regulation 2(2) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995);**]**

(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in **[**[F70]**[**[F69]assimilated**]** law**]** 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.

F68 Words in Sch. 2B para. 2(c)(v) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(9)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F69 Word in Sch. 2B substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 8(2)(b)**

F70 Words in Sch. 2B para. 2(c)(vi) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(9)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

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 **[**[F71]set out in paragraph 1 of Schedule 2C**]** , 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.”.

F71 Words in Sch. 2B para. 3 substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(9)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

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 [F72]...;

(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).

F72 Words in Sch. 2C para. 1(b) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(10)**; 2020 c. 1, Sch. 5 para. 1(1)

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.**]**

SCHEDULE 3 [F73]

Articles 10(3) and 16(3).

MODIFICATION OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 10

F73 1948 c.25 (NI); 1950 c.11 (NI); 1954 c.1 (NI); 1955 c.15 (NI); 1965 c.9 (NI)

1. References to the Ministry or to the Council shall be construed as references to the Ministry within the meaning of this Order.

2. References to the said Schedule 6 shall be construed as references to that Schedule as modified by this Schedule.

3. Paragraph 1 shall be omitted.

4. In paragraph (2)—

(a) for the words from the beginning to "directs," there shall be substituted the words " Where the Ministry proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so, and such notice "; and

(b) in sub-paragraph (*c*), for the words "as may be prescribed" there shall be substituted the words " as the Ministry considers fit ".

5. In paragraph 3(1)(ii), for the word "refuse" there shall be substituted the words " decide not ".

6. In paragraph 4, the words from "and may provide" to the end of the paragraph shall be omitted.

7. In paragraph 5—

(a) in sub-paragraph (1)(*a*), the words "in the prescribed form and manner" shall be omitted;

(b) in sub-paragraph (1)(*b*), the two references to the said Act of 1972 shall be construed as references to this Order;

(c) in sub-paragraph 1(*d*), the words "in the prescribed form" shall be omitted; and

(d) in sub-paragraph (2), for the words "as may be prescribed" there shall be substituted the words " as the Ministry considers fit ".

8. In paragraph 6(2), for the words "fund out of which the expenses of the council in acquiring the land are to be defrayed" there shall be substituted the words " Consolidated Fund " and for the words "out of the Compensation Fund" there shall be substituted the words " made by the Ministry ".

9. In paragraph 11(3), the words "in the prescribed form" shall be omitted.

10. In paragraph 12—

(a) in sub-paragraph (1), the words "such" and "as may be prescribed" shall be omitted;

(b) in sub-paragraph (2), for the words from "clerk" to "directs" there shall be substituted the words " Ministry as correct, and shall publish ".

11. In paragraph 14(1), the words "in the prescribed form" shall be omitted.

12. In paragraph 15(1), for the words "in the prescribed form" there shall be substituted the words " in such form as the Ministry may approve ".

13. Paragraph 19 shall be omitted.

14. In paragraph 20, sub-paragraph (2) shall be omitted.

SCHEDULE 4

Article 22(2) and paragraph 13(2) of Schedule 7.

PROCEDURE FOR MAKING BYE-LAWS

1. Before making any bye-laws under Article 22, the Ministry shall prepare a draft of the bye-laws and publish in the Belfast Gazette, and at least once in two successive weeks in one or more newspapers, a notice—

(a) stating the general effect of the bye-laws;

(b) specifying a place where a copy of the draft bye-laws may be inspected free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice in a newspaper;

(c) stating that any person may, within that period, by notice in writing to the Ministry, object to the making of the bye-laws.

2. The Ministry shall, at the request of any person, furnish him with a copy of the draft bye-laws on payment of such reasonable sum as it may determine.

3. The Ministry may make the bye-laws in the terms of the draft or in those terms altered in such manner as it considers fit; but, where the Ministry considers that any persons may be adversely affected by any significant alterations, the Ministry shall publish such notices as appear to it to be necessary for informing those persons of the effect of the alterations.

4. If, before the end of the period of twenty-eight days mentioned in paragraph 1 or, where the Ministry has published a notice under paragraph 3, within such further time as the Ministry may consider reasonable, notice in writing of an objection is received by the Ministry from any person appearing to it to be a person who may be adversely affected by the bye-laws as prepared in draft or as proposed to be altered, the Ministry, before making the bye-laws, shall, unless the objections are met or withdrawn or it is satisfied that they are solely of a frivolous or vexatious nature, either—

(a) cause an independent inquiry to be held; or

(b) afford to the objector an opportunity of appearing before, and being heard by an independent person appointed by the Ministry for the purpose.

SCHEDULE 5

Articles 8(4), 23(1) and (4) and 24.

DUTIES OF OCCUPIERS WITH RESPECT TO UNDESIGNATED WATERCOURSES, ETC.

1. Subject to paragraphs 2 and 3, the occupier of any land on or through which an undesignated watercourse runs, or of which such a watercourse forms a boundary, shall so scour out and cleanse and maintain the portion of the watercourse running on or through, or bounding, the land occupied by him that the efficiency of the watercourse, for the due discharge of any water that may flow into it, is not impaired by reason of any act or omission of his or of anyone acting under his authority.

2.—(1) Where an undesignated watercourse forms a boundary between land in the occupation of different persons, the liability of each person under paragraph 1 shall extend only so far as the middle line of the watercourse.

(2) Sub-paragraph (1) shall apply whether the bed and soil of the watercourse is owned by one only of the persons mentioned in that sub-paragraph, or partly by the one and partly by the other, or by some other person, or partly by that other person and partly by one or both of the persons mentioned in that sub-paragraph.

3. This Schedule shall not be construed as imposing any obligation on an occupier of land in respect of an undesignated watercourse that does not perform any function connected with the drainage of that land, but where—

(a) any other person is—

(i) required by paragraph 2 to scour out, cleanse and maintain any part of a watercourse mentioned in that paragraph; or

(ii) prejudicially affected by the inefficiency of such a watercourse; and

(b) the Ministry, by notice in writing served on that occupier, requires him to permit that other person to enter on the land and to carry out, in relation to the watercourse, such works as may be specified in the notice;

the occupier shall comply with the requirement; and an occupier may, after such compliance, recover from the person concerned the amount of any damage suffered as a result of his compliance.

4. The Ministry may at any time, by a notice in writing served on the occupier of any land, require him to scour out and cleanse, or, for the purpose of maintenance, to carry out any work specified in the notice in relation to, so much of an undesignated watercourse as runs on or through, or bounds, land occupied by him; and, subject to the provisions of this Schedule, the occupier shall, within such time as may be specified in the notice, comply with the requirements of the notice.

5. Any notice under paragraph 4 shall—

(a) specify in reasonable detail the works that the Ministry considers necessary for the purpose of complying with the requirements of the notice; and

(b) state the right of the person on whom the notice is served to send to the Ministry an objection to the notice.

6. When a notice under paragraph 4 has been served on a person, the following provisions shall have effect—

(a) that person (in this paragraph referred to as "the objector") may, within twenty-one days after the service of the notice on him, send to the Ministry an objection in writing to the notice;

(b) every objection shall contain a full statement of the grounds on which the objection is based;

(c) the Ministry shall consider every such objection, and shall either—

(i) notify the objector that the Ministry has withdrawn the notice; or

(ii) serve upon him a further notice—

(A) setting out the grounds for the rejection, in whole or in part, of the objection;

(B) requiring him to carry out the works specified therein (being either the works required by the notice under paragraph 4 or such variation of those works as the Ministry considers fit, having regard to the objection) within such time as may be specified in the notice; and

(C) stating his right of appeal under sub-paragraph (*d*);

(d) if an objector on whom a notice has been served under sub-paragraph (*c*)(ii) gives to the Ministry, within twenty-one days of that service, a written statement of his intention to appeal and specifies in that statement the ground on which the appeal is to be brought, the objector may appeal to the county court [F74]..., on any ground specified in the objection mentioned in sub-paragraph (*a*), and the court, on the hearing of the appeal, may confirm or annul the notice, or vary any requirement thereof.

F74 Words in Sch. 5 para. 6(d) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 68** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)

7. If, within the specified time, an occupier of land has failed to comply with a notice under paragraph 4 or 6(*c*)(ii)—

(a) the Ministry may take such action and execute all such work as the Ministry considers necessary for carrying out anything required by the notice, and, for the purposes of this paragraph, may do anything that it is empowered to do by Article 14 or 21 to do in the carrying out of a drainage scheme or by way of repair and maintenance of a designated watercourse; and

(b) the Ministry shall recover from the occupier the expenses incurred by it in carrying out the work mentioned in sub-paragraph (*a*).

8. In paragraphs 7 and 9, "specified time" means—

(a) in relation to a notice under paragraph 4, where objections are not sent under paragraph 6(*a*), such time as is specified in the notice;

(b) in relation to a notice under paragraph 6(*c*)(ii), where the person on whom it is served does not appeal to the county court against the notice or where, having so appealed, he does not proceed to have his appeal duly heard and determined by the court, such time as is specified in the notice, or such longer time as the Ministry may specify in writing;

(c) in relation to a notice as respects which an appeal has been duly heard and determined by the county court, such time after the confirmation or variation of the notice as the court directs.

9. If a person on whom a notice has been served under this Schedule fails to comply with the notice, then—

(a) in the case of a notice under paragraph 3, on the expiration of any time stated in the notice; or

(b) in the case of a notice under paragraph 4 or 6(*c*)(ii), on the expiration of the specified time;

unless, before any such expiration, the notice has been withdrawn by the Ministry, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding**[**[F75] level 3 on the standard scale**]** and to an additional fine not exceeding £5 for every day during which the offence continues.

F75 1984 NI 3

10. Nothing in this Schedule shall affect the right of every person to recover under the terms of any covenant, lease, trust or contract the amount of any expenses incurred by him under the foregoing provisions of this Schedule, or recovered from him by the Ministry.

11. Where a person has, in order to comply with the requirements of this Schedule, scoured out and cleansed any watercourse, it shall, in any proceedings taken against him under any statutory provision relating to fisheries in respect of any injury or disturbance thereby caused to any spawn, smolts or fry of any kind of fish, or to any spawning bed, bank or shallow, be a good defence to him to prove—

(a) if the watercourse was scoured out and cleansed in accordance with a notice under paragraph 4 or 6(*c*)(ii) and the notice included directions for the purpose of avoiding such injury or disturbance, that those directions were complied with; or

(b) in any other case, that such injury or disturbance was unavoidable.

12. In this Schedule—

"construction" includes any embankment, wall, valve or sluice connected with a watercourse, and also includes any fencing or other erection or thing interfering, or likely to interfere, with the free flow of the watercourse;

"scour out and cleanse" includes the cutting, topping or removal of any tree, the removal of any obstruction, construction, accretion, silt, deposit or fall, where such removal is necessary to restore the normal depth or width of a watercourse, and the repair and protection of any bank or construction;

"undesignated watercourse" means a watercourse that is not a designated watercourse;

"watercourse" includes a drain or sewer (not being a drain or sewer vested in **[**[F76]a sewerage undertaker**]**), where the Ministry is satisfied that the source of contamination has been eliminated from the drain or sewer, but, save as aforesaid, has the meaning assigned to it by Article 2(2).

F76 Words in Sch. 5 para. 12 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

SCHEDULE 6

Article 32.

PROTECTION OF WATERCOURSES

1. A person shall not—

(a) place any solid matter in any watercourse or, save as permitted by any other statutory provision, cause, allow or suffer the discharge, flow or fall into any watercourse of any matter, whether solid or liquid, likely to render that watercourse, or any other watercourse, less effective for drainage purposes; or

(b) do any act likely to impair the efficiency of any sea defences or sea defence works; or

(c) subject to paragraphs 2 to 4, construct or reconstruct a bridge in or over any watercourse, or alter the waterway of any such bridge, except with the consent of the Ministry; or

(d) so use any vehicle, machinery or implement as to break down or damage the bank or embankment of any watercourse or sea defences; or

(e) subject to paragraphs 3 and 4, erect or place any structure in, over or under any watercourse, or carry out any work of alteration or repair on any structure in, over or under any watercourse, if the work is likely to—

(i) affect the flow of water in the watercourse; or

(ii) impede any drainage work; or

(iii) prevent or impede the passage of fish; or

(iv) interfere with, or in any way hinder, the maintenance of the watercourse;

except with the consent in writing of the Ministry and, in any case where the Ministry so directs, in accordance with plans, sections and specifications approved by the Ministry; or

(f) erect or alter any structure designed to contain or divert the waters of**[**[F77] any designated watercourse**]**, except**[**[F78] in accordance with regulations under Article 20 of the Water (Northern Ireland) Order 1999 or**]** with the approval in writing of, and in accordance with plans, sections and specifications approved by, the Ministry; or

(g) suffer any structure which is or has been erected, placed, raised, altered or repaired in contravention of any provision of sub-paragraph (*c*), (*e*) or (*f*), or of section 30(1)(*a*) or 31(1) of the Drainage Act (Northern Ireland) 1947 or section 10(1) or (2) of the Drainage Act (Northern Ireland) 1964, to remain, unless the Ministry is satisfied that, if an application for the Ministry's consent or approval with respect to the structure had been made under the provision in question, such consent or approval would have been forthcoming, and gives its consent in writing to the structure remaining.

F77 1984 NI 2
F78 1999 NI 6

2. The construction, reconstruction or alteration of a bridge by an authority, within the meaning of Article 15(5), in accordance with plans, sections and specifications approved by the Ministry of

Development[F79] shall, for the purposes of paragraph 1(*c*), be deemed to have been done with the consent of the Ministry.

F79 Now D/Env., SRO (NI) 1973/504

3. A consent or approval required under paragraph 1 shall not be unreasonably withheld, and—

(a) any such consent may be given subject to any reasonable condition as to the time at which, and the manner in which, the work is to be carried out; and

(b) any such consent or approval shall, if neither given nor refused within three months after the application therefor is made, be deemed to have been given.

4. If any question arises under this Schedule as to whether the consent of the Ministry is unreasonably withheld or whether any condition imposed under paragraph 3(*a*) is reasonable, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

5. If any person contravenes paragraph 1, then, without prejudice to the following provisions of this Schedule—

(a) that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding**[**[F80] level 3 on the standard scale**]** and, in the case of a continuing offence, to an additional fine not exceeding £5 for every day during which the offence continues; and

(b) the Ministry may remove, alter or pull down any work in relation to which any contravention is or has been committed, and may recover from that person the expenses incurred in doing so.

F80 1984 NI 3

6. If, in contravention of paragraph 1—

(a) any solid matter is placed; or

(b) the discharge, flow or fall of any matter, whether solid or liquid, is caused, allowed or suffered; or

(c) any structure is erected, placed, altered, repaired or suffered to remain;

it shall be deemed to be a nuisance and, without prejudice to any other remedy, shall be liable to be dealt with summarily in the manner provided by the following provisions—

(i) the Ministry may serve on that person a notice requiring him to abate the nuisance within a time to be specified in the notice, and, if he makes default in doing so, the Ministry may cause a complaint relating to the nuisance to be made before a justice of the peace, and the justice shall thereupon issue a summons requiring that person to appear before a court of summary jurisdiction;

(ii) if the court is satisfied that, with respect to that solid matter, discharge or structure, that person has contravened paragraph 1, the court shall make an order requiring him to abate the nuisance within a time specified in the order, and may by order—

(A) impose on him a penalty**[**[F81] not exceeding £1,000 or such other sum as the Department may specify by order subject to affirmative resolution**]**; and

(B) give directions as to the payment of all costs incurred up to the time of the making of the order;

(iii) if any person does not obey an order under this paragraph to abate a nuisance, he shall, unless he satisfies the court that he used all due diligence to carry out the order, be liable to a penalty not exceeding 5 for every day during which his default continues, and the Ministry may—

(A) abate the nuisance; and

(B) recover from that person the expenses incurred in doing so.

F81 1999 NI 6

7. A person shall not be liable to both a fine under paragraph 5 and a penalty under paragraph 6 in respect of the same contravention.

8.—(1) Without prejudice to paragraphs 5 to 7, the Ministry may, where it is satisfied that the free flow of any water is obstructed or diminished, or the passage of fish is prevented or impeded, by any work done by any person in contravention of paragraph 1(*c*)—

(a) alter or remove any such work; and

(b) recover from that person the expenses incurred in doing so.

(2) Where the banks of any watercourse are damaged from any cause, the Ministry may, without prejudice to any other remedy, repair the banks and may recover the cost thereof from any person responsible for the damage.

9.—(1) The occupier of any land in the vicinity of any watercourse or sea defences shall ensure that the banks or embankments thereof are not broken down or damaged by cattle or other animals grazing or being on that land.

(2) Where, by reason of a contravention of sub-paragraph (1) by any such occupier, any watercourse is, or sea defences are, rendered, or likely to be rendered, less effective for drainage purposes, that occupier shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding**[**[F82] level 2 on the standard scale**]**.

F82 1984 NI 3

10.—(1) The Ministry may, if it considers that any tree or structure in the vicinity of any watercourse is in danger of collapsing in such a way as to obstruct the free flow of water in, or injure the banks of, the watercourse, serve a notice in writing on the occupier of the land on which the tree or structure is requiring him, at his own expense and within the time specified in the notice—

(a) in the case of a tree, to remove it; or

(b) in the case of a structure, either to remove it or to carry out such repairs to it as are necessary to remove the danger of its collapsing.

(2) If the requirements of the notice mentioned in sub-paragraph (1) are not complied with, the Ministry may enter on the land and remove the tree or structure, and the cost of such removal, and compensation for any damage or injury suffered by any person (including the Ministry) by reason of the collapse of the tree or structure, may, without prejudice to any other remedy, be recovered from the occupier respectively by the Ministry and by any person so damaged or injured.

11. The giving of any consent or approval, or the approval of any plan, section or specification, by the Ministry under paragraph 1 shall not affect the liability of any person to comply with the provisions of any statutory provision applicable to any works proposed to be carried out in pursuance of that consent or approval, or in accordance with any such plan, section or specification.

12. Nothing in this Schedule shall—

(a) operate in derogation of any provision having the force of law by which the consent of any government department is required for the erection of a bridge over any watercourse, or by virtue of which any powers are exercisable by any government department in relation to such a bridge; or

(b) impose any liability on the Ministry in respect of the erection, placing, alteration or repairing of any structure; or

(c) apply to any works under the control of a harbour authority or conservancy authority, or maintained under any statutory provision;

but, where any work under the control of any authority mentioned in paragraph (*c*), or of any person exercising powers under any statutory provision, is likely to interfere in any way with the proper functioning or maintenance of, or of the carrying out of any works on, a watercourse, or with the passage of fish, that authority or person shall consult with the Ministry for the purpose of ensuring that, so far as possible, any such interference is avoided.

13. In this Schedule—

"bridge" includes a culvert or other like structure in or over a watercourse;

"structure" (without prejudice to the generality of its meaning) includes any building, embankment, wall, bridge, dam, valve, sluice or pipe.

SCHEDULE 7 Article 41.

ERNE DRAINAGE AND NAVIGATION

PART I

GENERAL PROVISIONS

The principal agreement

1. In this Schedule, "the principal agreement" means the agreement made on the 4th September 1950 between the Ministry of Finance and the Electricity Supply Board, Dublin (in this Schedule referred to as "the Board"), but, where any agreement has been made pursuant to paragraph 2, it means the said agreement made on the 4th September 1950 as supplemented or modified by the agreement made pursuant to paragraph 2.

2.—(1) Subject to the provisions of this paragraph, the Ministry may at any time enter into further agreements with the Board (in this paragraph referred to as "supplemental agreements") for supplementing or modifying the principal agreement.

(2) A supplemental agreement shall not be entered into until it has been laid before each House of Parliament for the statutory period, but, if, during that period, a resolution is passed by either House declaring that the supplemental agreement so laid ought not to be entered into by the Ministry, the Ministry shall not enter into the agreement, but without prejudice to the power to make a new supplemental agreement.

3. For the purposes of carrying the principal agreement into effect, the Ministry may exercise the powers conferred on it under any of the following provisions of this Schedule and all such other powers as may be necessary for, or incidental to, the due performance by the Ministry of its obligations under the principal agreement.

Drainage of Upper and Lower Lough Erne

4. The Ministry shall be the drainage authority for the purpose of reducing the flooding caused to land in Northern Ireland by the waters of Upper or Lower Lough Erne (in this Schedule referred to as "the Loughs") and of the portion of the River Erne which is in Northern Ireland.

Works schemes

5.—(1) The Ministry may prepare a scheme or schemes for the purposes of the carrying out of works which the Ministry considers necessary—

(a) for giving effect to any of the provisions of the principal agreement;

(b) for reducing the flooding of land around the Loughs.

(2) A scheme prepared under this paragraph shall contain such particulars with regard to such matters and shall be in such form as the Ministry may consider fit and, in particular, and without prejudice to the generality of the foregoing provisions, shall contain such provisions as the Ministry may consider necessary for the implementation of**[**[F83] Article 40(2) of the Water (Northern Ireland) Order 1999**]** and for the protection of rights or interests affected by the scheme.

(3) The authorised officers, agents and servants of the Ministry may, at all reasonable times, on production (if so required) of their authority, enter on any land and do there all such things as may appear to them to be reasonably necessary or expedient for the purposes of the preparation of a scheme.

(4) Every reference in this Schedule to a scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such scheme.

F83 1999 NI 6

6.—(1) After the preparation of a scheme, the Ministry shall—

(a) send a copy of the scheme to such district councils as the Ministry may consider appropriate;

(b) publish in the Belfast Gazette and such one or more newspapers as it shall consider appropriate a notice stating that the scheme has been prepared and also stating the place or places and times at which, and the period, not being less than twenty-eight days, during which, a copy of the scheme will be available for inspection;

(c) serve on every person appearing to the Ministry to be the owner, lessee or occupier of any land proposed in the scheme to be acquired or otherwise directly interfered with, a copy of the public notice, together with a statement that the scheme proposes the acquisition of, or interference with, such land; and

(d) serve on any person appearing to the Ministry to be an owner or lessee of any fishery proposed in the scheme to be interfered with a copy of the public notice, together with a statement informing that person of the proposed interference.

(2) Every notice published under this paragraph shall contain or be accompanied by a statement to the effect that any person who considers that his interests will be prejudicially affected by the scheme may, in the manner and within the time, not being less than twenty-eight days, specified in the statement or notice, send to the Ministry any observations in regard to the scheme which he wishes to make.

(3) A district council to which a copy of a scheme is sent by the Ministry in pursuance of this paragraph—

(a) shall cause such copy to be exhibited in its principal offices or other convenient place during the period required to be specified in that behalf under sub-paragraph (2) with respect to the scheme, and shall permit such copy to be inspected during normal office hours by any person claiming to be interested therein;

(b) shall examine and consider the scheme; and

(c) may, at any time within twenty-eight days after the date of the publication in the Belfast Gazette pursuant to sub-paragraph (2) of the notice relating to such scheme, send to the Ministry any observations in regard to the scheme which it wishes to make.

7. After the expiration of twenty-eight days from the service of notices in pursuance of paragraph 6, the Ministry may, after considering any observations sent to it under that paragraph and after holding such inquiry (if any) as the Ministry considers necessary, by order confirm the scheme in whole or in part, and either without modifications or with such modifications (which may include variations, additions or exceptions) as the Ministry considers fit (and such scheme or part thereof as so confirmed is in this Schedule referred to as a "confirmed scheme").

8. For the purposes of this Schedule, the provisions of this Order specified in Part II of this Schedule shall, with the modifications thereof specified in Part III of this Schedule, apply in relation to the Loughs and such portion of the River Erne as is in Northern Ireland in like manner as those provisions apply in relation to any other watercourse to which this Order applies, and those provisions, as so modified, shall have effect as if they were provisions of this Schedule.

9.—(1) Where, in carrying out works under this Schedule—

(a) any road, bridge, culvert or embankment has been improved as a means of communication or otherwise in consequence of the carrying out of those works, such proportion of the cost of such works as ought fairly to be borne by the authority liable to maintain such road, bridge, culvert or embankment, or any portion thereof, shall be borne by that authority;

(b) any extra expenses are incurred by the Ministry by reason of the carrying out of additional works at the request or requirement of any authority pursuant to the principal agreement, such extra expenses shall be borne by the authority at whose request or requirement the additional works were carried out.

(2) Any dispute between the Ministry and an authority as to the amounts which, under the foregoing provisions of this paragraph, fall to be borne by that authority shall be referred to arbitration[F84]. . . .

(3) For the purposes of this paragraph, "authority" means any person entitled or liable to maintain any road, bridge, culvert or embankment, or any part thereof, whether under any public general, local or privte statutory provision or under any order of court, scheme, deed or other instrument, or otherwise, and the provisions of any such statutory provision shall have effect subject to the foregoing provisions of this paragraph.

F84 1996 c.23

10.—(1) Where, in pursuance of the provisions of the principal agreement, such works have been carried out as will, in the opinion of the Ministry, enable the water levels of the Loughs and River Erne to be controlled and regulated in accordance with those provisions, the Ministry shall, by order made after consultation with the Board, prescribe the date on and from which those water levels shall be so controlled and regulated.

(2) For the purposes of this Schedule, the date of completion of any works carried out under any confirmed scheme shall be such date as may be certified by an order made by the Ministry in that behalf.

(3) Notice of the making of any order under this paragraph shall be published in the Belfast Gazette and any such one or more newspapers as the Ministry may consider appropriate.

Finance

11.—(1) For the purposes of the principal agreement, the account known as the Erne Development Account shall continue in being as such and shall continue to be administered and controlled by the Ministry.

(2) There shall be paid to the credit of the Erne Development Account—

(a) all sums paid by the Board to the Ministry pursuant to the provisions of the principal agreement;

(b) such sums as are paid by any authority to the Ministry pursuant to paragraph 9 in consequence of works carried out under, or for the purposes of giving effect to, the principal agreement; and

(c) such other sums as the Ministry may determine.

(3) There shall be charged to and paid out of the Erne Development Account all expenses properly incurred by the Ministry pursuant to the provisions of the principal agreement, together with any other sums which the Ministry and the Board agree should be so charged and paid.

Miscellaneous and general

Paras. 12, 13, 13A rep. by 1999 NI 6

14.—(1) An Arbitration Tribunal constituted in accordance with the provisions of the principal agreement may determine, in accordance with those provisions, any dispute or difference between the Ministry and the Board arising out of the principal agreement.

(2) Subject to sub-paragraph (4), the Ministry shall, on the request of a Tribunal constituted as aforesaid, cause to be produced for inspection by the Tribunal such documents, books, records or accounts in its possession as are relevant to the matter at issue before the Tribunal.

(3) Subject to sub-paragraph (4), a Tribunal constituted as aforesaid may, for the purpose of determining any such dispute or difference, by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents or articles in his custody or under his control which relate to any matter pending before the Tribunal, and may hear, receive and examine evidence on oath, and for that purpose may administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined.

(4) Nothing in sub-paragraph (2) or (3) shall authorise a Tribunal constituted as aforesaid to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or answer if the Tribunal were a proceeding in a court of law.

(5) Any person who—

(a) refuses or wilfully neglects to attend when required to do so by any Tribunal constituted as aforesaid or to give evidence in the manner required by the Tribunal; or

(b) who wilfully gives false evidence before the Tribunal or wilfully alters, suppresses, cancels, destroys or refuses to produce any document or article which he may be required by the Tribunal to produce;

shall, without prejudice to any of the provisions of the [[F85] Perjury (Northern Ireland) Order 1979], be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 100, or to both.

(6) Counsel of the Bar of Ireland or any solicitor entitled to practise in the Republic of Ireland may, notwithstanding any other statutory provision, practise in connection with any hearing in Northern Ireland of any Arbitration Tribunal constituted as aforesaid, and may appear and represent the Board at such hearing.

(7) Any award of a Tribunal constituted as aforesaid may, by leave of the High Court, be entered as a judgment in terms of the Award, and shall thereupon have the same force and effect as a judgment or order of the High Court.

F85 1979 NI 19

15. Notwithstanding anything to the contrary in any statutory provision, stamp duty shall not be chargeable in respect of any agreement entered into, pursuant to this Schedule, by the Ministry with the Board, or of any agreement entered into by the Ministry with any person other than the Board for the purpose of carrying the principal agreement into effect.

16. In this Schedule—

"the Board" has the meaning assigned to it by paragraph 1;

"confirmed scheme" has the meaning assigned to it by paragraph 7;

"the Loughs" has the meaning assigned to it by paragraph 4;

"the principal agreement" has the meaning assigned to it by paragraph 1.

PART II

PROVISIONS OF THE ORDER APPLIED FOR THE PURPOSES OF THIS SCHEDULE

17. The provisions of this Order applied by paragraph 8 of this Schedule are as follows—

Provision	***Subject Matter***
Part I	**Introductory.**
Article	
7	General powers of Ministry with respect to the carrying out of works.
10	Powers of the Ministry in relation to the acquisition and disposal of land.
14	Carrying out of drainage schemes.
17	Compensation for certain losses due to construction of drainage works.
18	Compensation for consequential injury to canals, fisheries, etc.
19	Matters to be regarded in assessing compensation.
20	Disposal of surplus lands, etc.

21	Powers of maintenance in relation to designated watercourses, etc.
25	Power of Ministry to carry out works on behalf of other persons.
26	Power of Ministry to contribute to cost of works.
31	Noxious weeds.
34	Power of Ministry to carry out experimental work, etc.
35	Provision as to recovery of expenses.
36	Miscellaneous offences.
37	Entry and inspection of land, etc.
40	Protection of fisheries.
Schedule 2	Description of drainage works, etc.
Schedule 3	Modification of Schedule 6 to the Local Government Act (Northern Ireland) 1972.
Schedule 6	Protection of watercourses.

PART III

MODIFICATIONS OF THE PROVISIONS APPLIED BY PART II

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

(a) references therein to a watercourse shall be construed as including references to the Loughs and to such portion of the River Erne as is in Northern Ireland;

(b) references therein to this Order shall be construed as references to this Schedule;

(c) references therein to—

(i) a scheme or a drainage scheme carried out under this Order, or any part thereof;

(ii) drainage works;

(iii) drainage purposes or to purposes connected with drainage;

shall respectively be construed as references to—

(A) a scheme or schemes confirmed under this Schedule;

(B) works carried out under any provision contained in this Schedule or any confirmed scheme made thereunder; and

(C) the purposes of any such provision or scheme;

(d) references therein to sea defences and sea defence works shall be omitted;

(e) in Article 7, the words "Without prejudice to the generality of the provisions of Article 6," shall be omitted;

(f) in Article 17—

(i) for paragraph (1) there shall be substituted the following—

"(1) Where any person—

(a) suffers any permanent loss or damage by reason of—

(i) the entry by the Ministry on any land owned or occupied by him; or

(ii) by the construction of works thereon carried out under any provision of Schedule 7 or any confirmed scheme made thereunder; or

(iii) by direct interference with any land belonging to him; or

(b) satisfies the Ministry that he has suffered, or is likely to suffer, permanent loss or damage by reason of the control or regulation of the water levels of the Loughs and River Erne in accordance with the provisions of the principal agreement referred to in that Schedule;

the Ministry shall, subject to and in accordance with the provisions of that Schedule, pay to him reasonable compensation in respect of such loss or damage." ; and

(ii) the word "forthwith" in paragraph (4) shall be omitted, and after the word "Ministry", where it occurs for the first time in that paragraph, there shall be inserted the words " within three years from the date of completion of the work from which, or from the operation of which, the claim arises ";

(g) in Article 18(1), the words "or to any water power or other water right" shall be omitted;

(h) in Schedule 2, paragraph 3 shall be omitted.

PROSPECTIVE

Schedule 8—Amendments

SCHEDULE 9

Article 44.

TRANSITIONAL AND SAVING PROVISIONS

Savings for Secretary of State

Transitional provisions relating to interest payable on certain compensation

1. An order by the Ministry of Finance under sub-paragraph (2) of paragraph 18 of Schedule 6 to the Local Government Act (Northern Ireland) 1972 prescribing the rate of interest payable under that paragraph shall apply to the rate of interest payable upon any outstanding compensation under the Drainage Act (Northern Ireland) 1947 (including that Act as applied by any other statutory provision) as if the interest were payable under the said paragraph 18.

Savings for Secretary of State

2. The administrative powers conferred by this Order on the Ministry shall not be taken to authorise any matter or thing to be done without the consent of the Secretary of State or of the Board of Trade and, if the case so requires, of the Crown Estate Commissioners, where that consent is

required to be obtained under section 9(2) of the Northern Ireland (Miscellaneous Provisions) Act 1932 .

[[F86]**3.**—(1) Subject to the provisions of this paragraph, nothing in this Order or any scheme made there under shall affect any rights conferred by or in accordance with the**[**[F87] electronic communications code**]** on the operator of**[**[F87] an electronic communications code network**]** or authorise the Department to interfere with any**[**[F87] electronic communications apparatus**]** kept installed for the purposes of**[**[F87] any such network**]** .

(2) Where for the purposes of carrying out any scheme, the Department diverts or closes any public road, or any part of a public road, under, in, on, over, along or across which there is any**[**[F87] electronic communications apparatus**]** kept installed for the purposes of**[**[F87] an electronic communications code network**]**, the operator of**[**[F87] that network**]** shall have the same powers in respect of that apparatus as if such road or part had not been diverted or closed; but the Department or any person in whom the site of that road, or part of a road, is vested shall be entitled to require the alteration of the apparatus.

(3) Paragraph 23 of the**[**[F87] electronic communications code**]** (which provides a procedure for certain cases where works involve the alteration of**[**[F87] electronic communications apparatus**]**) shall apply to the Department for the purposes of the carrying out of any drainage scheme or of a confirmed scheme under Schedule 7.

(4) Paragraph 1(2) of the**[**[F87] electronic communications code**]** (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this paragraph as it applies for the purposes of the code.

(5) Paragraph 21 of the**[**[F87] electronic communications code**]** (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this paragraph to require the alteration, moving or replacement of any**[**[F87] electronic communications apparatus**]** as it applies in relation to an entitlement to require the removal of any such apparatus.**]**

F86 1984 c.12
F87 2003 c. 21

Saving for powers under other statutory provisions and powers of certain trustees, etc.

4. Nothing in this Order shall, except when otherwise expressly provided, affect the provisions of any other statutory provision or the powers of any trustee or other person (including a government department) holding any property on trust for the purpose of draining or maintaining or improving the drainage of any land.

5. Notwithstanding the repeal of any statutory provision by this Order—

(a) any loan repayable under any such provision shall continue to be repayable as if this Order had not been made; and

(b) any money recoverable under any such provision shall be recoverable under this Order.

6. Nothing in this Order shall affect the provisions of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (effect of repeals and of substituting provisions).

Status:
This version of this Order contains provisions that are prospective.

Changes to legislation:
There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973.