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STATUTORY RULES OF NORTHERN IRELAND

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**2017 No. 88**

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

**PART 2**

**DRAINAGE WORKS**

**Restriction on proposed works**

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

**Consideration whether proposed drainage works have significant effects on the environment**

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

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

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

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

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

### **Determinations following consideration of drainage works under regulation 7**

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

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

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

- (a) the Drainage Council;
- (b) the district council of the district or, as the case may be, each district in which the proposed drainage works are situated;
- (c) any other public authority, statutory body or organisation which exercises statutory functions, or is otherwise designated by any statutory provision as having responsibilities, relating to the environment; and
- (d) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(3) Where, within the period specified in paragraph (1)(e), no representations have been made to the effect that the proposed drainage works are likely to have significant effects on the environment, the Department may proceed to carry out those drainage works.

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

(5) Where, within the period specified in paragraph (1)(e), any representations have been made to the effect that the proposed drainage works are likely to have significant effects on the environment and, notwithstanding those representations, the Department considers that the drainage works are not likely to have significant effects on the environment, it shall apply to the Commission for a

determination of whether the drainage works are likely to have significant effects on the environment and shall provide the Commission with all the relevant information and copies of all relevant documents in its possession.

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

(7) Where an application is made to the Commission under paragraph (5) in relation to any proposed drainage works the Commission shall, taking into account the selection criteria in Schedule 2B to the Drainage Order, and the available results of preliminary verifications and assessments of the effects on the environment carried out pursuant to Union legislation (other than legislation implementing the requirements of the Directive), determine within a reasonable time, whether the proposed drainage works are likely to have significant effects on the environment and shall inform the Department, and any person who made representations under paragraph (1)(e) in relation to the drainage works, of its determination.

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

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

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

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

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

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

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

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

#### **Preparation of an environmental statement**

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

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

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

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

#### **Request about the information to be included in an environmental statement**

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

(2) Where the Department requests an opinion under paragraph (1) before a determination has been made under regulation 8(4) or (7), the Commission shall deal with the request on the assumption that the drainage works will have significant effects on the environment.

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

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

#### **Publicity for an environmental statement**

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

(2) The advertisement shall state—

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

in regulation 16(1), considers that the drainage works should be approved, it may so determine.

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

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

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

#### **Assistance in the preparation of environmental statements**

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

(2) Where the Department has prepared an environmental statement in relation to any proposed drainage works, and complied with the requirements of regulation 12(3), the Department, the Drainage Council, or as the case may be, the Commission acting in accordance with regulation 16(9), may determine that further information is required.

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

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

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

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

- (a) send copies of the additional information to each consultation body; and

(b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed works in question and the environmental statement relating to the drainage works, and ensure that a reasonable number of copies of the information are made available.

(6) Nothing in paragraph (1) or (3) shall require the disclosure by any person of information which is capable of being treated as confidential under regulation 12(1), or must be so treated under regulation 13(1) of the Environmental Information Regulations 2004<sup>(1)</sup>.

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

### **Charges**

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

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

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

- (a) send to that State, as soon as possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 9(2)—
  - (i) a copy of the notice; and
  - (ii) any available information on the possible significant effects of the proposed drainage works on the environment in that EEA State;
- (b) make available to the State any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication; and
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed drainage works in accordance with paragraphs (2) to (4) it must inform the Department of that fact within a period determined in agreement with that State but which shall not be less than 30 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, to that State.

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

- (a) a copy of the proposal for the drainage works;
- (b) a copy of the environmental statement in respect of the proposed drainage works;
- (c) all the information required to be given to any person under regulation 9; and
- (d) relevant information regarding the procedure for consultation under this Part,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1).

- (3) The Department shall also—
- (a) arrange for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected; and
  - (b) ensure that these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed drainage works should proceed, to forward to the Department, within reasonable time their opinion on the information supplied.
- (4) The Department shall in accordance with Article 7(4) of the Directive—
- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the proposed drainage works on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine, in agreement with the other EEA State, a reasonable period of time for the duration of the consultation period which shall not be less than 30 days beginning with the day on which the Department forwarded the information to that State in pursuance of paragraph 2.
- (5) Where an EEA State has been consulted in relation to any proposed drainage works in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the proposed drainage works and shall forward to it a statement of—
- (a) the determination and conditions attached thereto;
  - (b) the main reasons and considerations on which the determination is based; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed drainage works.

### **Determination of whether proposed drainage works should be approved**

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

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with regulation 12 and any relevant information received through the consultations under regulations 12 and 15, to assess the direct and indirect effects of the proposed drainage works on the environmental factors specified in Schedule 2C to the Drainage Order;
  - (b) reach a reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
  - (c) include that reasoned conclusion in the decision as to whether the proposed drainage works are to be approved or not to be approved.
- (2) The reasoned conclusion referred to in paragraph (1)(b) must be still valid at the time that the decision is taken as to whether approval for the proposed drainage works is or is not to be granted.
- (3) The Drainage Council must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.
- (4) Where—
- (a) the Drainage Council is satisfied that the reasoned conclusion, or any decisions made on the proposed drainage works are still valid; and

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

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

(5) Where the Drainage Council has determined—

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

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

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

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

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

(8) Where the Drainage Council, having considered the examination specified in paragraph (1), considers that the proposed drainage works should be approved but objections to these works made in relation to their likely environmental effects have not been withdrawn, it shall send the proposal for the drainage works together with the environmental statement, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (9) to (12).

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

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

- (a) by general and local advertisement—
  - (i) state that the further information is available in relation to the works and give details of the places where and times at which a copy may be inspected; and
  - (ii) state that any person who wishes to make representations on the likely environmental effects of the drainage works to which the further information relates may make them in writing to the Commission at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette;
- (b) on or before the date of the publication of the notice in the Belfast Gazette supply a copy of the further information and notice to each of the consultation bodies so that they have an opportunity to make representations to the Commission on the likely environmental effects of the proposed drainage works to which the further information relates before the expiry of the period specified in the notice.

(11) The Commission shall—

- (a) assess, in the light of the environmental statement, any further information provided in response to a request under paragraph (9) and any representations referred to in regulations 12, 15, or paragraph (10), the direct and indirect effects of the proposed drainage works on the environmental factors specified in Schedule 2C to the Drainage Order;
- (b) afford the Department, the Drainage Council, and any persons who made representations the opportunity of appearing before and being heard by the Commission;
- (c) having regard to the assessment under sub-paragraph (a) and the representations made under sub-paragraph (b) and having examined the concerns and opinions expressed by the public and the main reasons and considerations upon which the determination under consideration was based, including information about the public participation process—
  - (i) consent to the drainage works in question unconditionally or subject to such conditions as the Commission considers appropriate; or
  - (ii) refuse to consent to the drainage works; and
- (d) send to the Department, the Drainage Council, and any person who made representations under regulations 12, 15 or paragraph (10) a statement in writing of—
  - (i) the reasoned conclusion of the Commission on the significant effects of the proposed drainage works on the environment, taking into account the results of the examination referred to in this paragraph;
  - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed drainage works on the environment;
  - (iii) a description of any features of the proposed drainage works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
  - (iv) information about the public participation process and the results of the consultations; and
  - (v) any monitoring measures considered appropriate by the Commission.

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

- (a) inform the public of the Commission's determination under paragraph (11)(c) within 30 days of receipt of such determination; and

- (b) give details of the places where and times at which the public may inspect a copy of the statement sent to it under paragraph (11)(d).

(13) In relation to any determination made by the Drainage Council or by the Commission under this regulation or regulation 8, the Department shall maintain a record of, and make available to the public on request, the information referred to in paragraph (11)(d).

### **Monitoring**

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

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

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

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

### **Public participation**

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

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