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STATUTORY RULES OF NORTHERN IRELAND

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**2001 No. 394**

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

**Part III**

**Drainage Schemes**

**Restrictions on drainage schemes**

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

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

**12A.—**(1) Where the Department has prepared a drainage scheme it shall—

- (a) consider, taking into account the selection criteria in Schedule 2B, whether the works specified in the scheme are likely to have significant effects on the environment;
- (b) send a copy of the scheme, together with an estimate of the cost of the scheme, to the district council of the district or, as the case may be, each district in which the proposed works specified in the scheme are situate.

(2) The district council to which a copy of a drainage scheme is sent by the Department pursuant to paragraph (1)(b)—

- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 28 days from the date of the publication in the Belfast Gazette of the notice relating to the scheme given under paragraph (3) or Article 12B(2) and shall permit the copy to be inspected by any person;
- (b) shall examine and consider the scheme; and
- (c) may, at any time within the period referred to in sub-paragraph (a), send to the Department any representations with regard to the scheme which it wishes to make.

(3) Where, pursuant to paragraph (1)(a), the Department considers that the works specified in a scheme are not likely to have significant effects on the environment, it shall, by notice in the Belfast Gazette and at least two local newspapers—

- (a) announce that it proposes to carry out the works specified in the scheme;
- (b) describe briefly the nature, size and location of those works;
- (c) state that it does not intend to prepare an environmental statement in respect of the works specified in the scheme; and

- (d) give notice that any person may make representations to the Department in writing in relation to the likely environmental effects of the works at the address specified in the notice within 28 days of the publication of the notice in the Gazette.
- (4) Every notice published pursuant to paragraph (3) shall—
  - (a) state the place or places where and the period, not being less than 28 days following the date of the publication of the notice in the Belfast Gazette, during which a copy of the scheme will be available for inspection; and
  - (b) contain a statement that any person who considers that his interests will be prejudicially affected by the scheme may, at any time within 28 days of the date of publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which he wishes to make.
- (5) Where, pursuant to paragraph (3), the Department publishes a notice, it shall send a copy of the notice to—
  - (a) the Drainage Council;
  - (b) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
  - (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.
- (6) Where, within the period specified in paragraph (3)(d), no representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to carry out the scheme.
- (7) Where, within the period specified in paragraph (3)(d), any representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment and, notwithstanding those representations, the Department still considers that the works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the works specified in the scheme are likely to have significant effects on the environment and shall provide the Commission with all the relevant information and copies of all relevant documents in its possession.
- (8) Where the Commission considers that the information and copy documents provided in accordance with paragraph (7) do not provide sufficient information to enable it to make a determination for the purposes of that paragraph, it shall notify the Department in writing of the matters on which further information is required and may make a written request to the Department for such information as the Department may be able to provide on the matters raised.
- (9) Where an application is made to the Commission under paragraph (7) in relation to any drainage scheme the Commission shall, taking into account the selection criteria in Schedule 2B, determine whether the works specified in the scheme are likely to have significant effects on the environment and shall inform the Department and any person who made representations under paragraph (3)(d), of its determination.
- (10) Where an application is made to the Commission under paragraph (7) in relation to any drainage scheme the Commission shall, prior to making a determination for the purposes of that paragraph, afford to the Department and to any person who made representations under paragraph (3)(d) in relation to works specified in the scheme an opportunity of appearing before and being heard by the Commission.

**Drainage schemes likely to have significant effects on the environment**

- 12B.—**(1) This Article applies where—

- (a) under Article 12A(1) the Department determines that the works specified in a scheme are likely to have significant effects on the environment; or
  - (b) under paragraph 12A(9) the Commission determines that the works specified in a scheme are likely to have significant effects on the environment.
- (2) In any case to which this Article applies the Department shall by notice published in the Belfast Gazette and at least two local newspapers—
- (a) describe briefly the nature, size and location of the works specified in the scheme;
  - (b) state that the works specified in the scheme are likely to have significant effects on the environment and the Department intends to prepare an environmental statement in respect of the works;
  - (c) where appropriate, indicate that the works specified in the scheme are likely to have significant effects on the environment in another EEA State; and
  - (d) state that any person who considers that his interests will be prejudicially affected by the scheme may, at any time within 28 days of the date of the publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which he wishes to make.
- (3) Where the Department publishes a notice in accordance with paragraph (2) it shall on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to—
- (a) the Drainage Council;
  - (b) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
  - (c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

#### **Preparation of an environmental statement and consultations thereon**

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

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

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

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

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

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

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

to the preparation of the environmental statement and if that person has such information he shall make the information available to the Department.

(7) Paragraph (6) shall not require the disclosure of information which is capable of being treated as confidential or must be treated as confidential under Regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993<sup>(1)</sup>.

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

- (a) by notice published in the Belfast Gazette and at least two local newspapers—
  - (i) announce the preparation of the statement and give details of the places where and times at which the statement may be inspected and, if a charge is to be made for a copy of the statement under paragraph (16), the amount of the charge;
  - (ii) state that any person wishing to make representations in relation to the likely environmental effects of the drainage works to which the statement relates should make them in writing to the Department at the address specified in the notice within 28 days of the publication of the notice in the Belfast Gazette;
  - (iii) state that where no objection in relation to the likely effects of the works specified in the scheme is made and the Department, having undertaken the assessment specified in Article 12E(1), considers that the scheme should proceed, it may proceed with the scheme;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 28 days following the date of the publication of the notice in the Belfast Gazette, the details of the drainage scheme and the environmental statement relating to the works therein specified, and ensure that a reasonable number of copies of the statement are made available;
- (c) at the same time as the notice referred to in sub-paragraph (a) is published send a copy of the statement to—
  - (i) the Drainage Council;
  - (ii) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
  - (iii) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

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

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

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

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<sup>(1)</sup> S.R. 1993 No. 45 as amended by S.R. 1998 No. 238

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

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

- (a) by notice in the Belfast Gazette and at least two local newspapers state that the further information is available, and give details of the places where and times at which a copy of that further information may be inspected or obtained and, if a charge is to be made available for a copy thereof under paragraph (16), the amount of charge; and
- (b) state that any person who wishes to make representations in relation to that further information should make the representations in writing to the Department at an address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette.

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

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

(15) Nothing in paragraph (12) shall require the disclosure by any person of information which is capable of being treated as confidential, or must be treated as confidential, under regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993(2).

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

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

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

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

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

- (a) send to the EEA State, as soon as possible, and no later than the date of the publication in the Belfast Gazette of the notice referred to in Article 12C(8)—
  - (i) a copy of that notice;

- (ii) the description of the proposed scheme, together with any available information on its possible significant effects on the environment in that EEA State; and
  - (iii) information as to the nature of the determination which may be made under Article 12A(1) or (9);
- (b) publish the information referred to in sub-paragraph (a)(iii) in a notice placed in the Belfast Gazette with an indication of where additional information is available;
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed drainage scheme in accordance with paragraphs (2) to (4) it must inform the Department of that fact within 28 days beginning with the day on which the Department forwarded the copy of the notice or other information, as the case may be, to that State.
- (2) Where an EEA State indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to that EEA State—
- (a) a copy of the proposal for the drainage scheme;
  - (b) a copy of the environmental statement in respect of the scheme; and
  - (c) relevant information regarding the procedure for consultation under this Part but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(a).
- (3) The Department shall also—
- (a) arrange for any copy notice, description, proposal, statement or information referred to in paragraphs (1)(a) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected; and
  - (b) ensure that those authorities and the public are given an opportunity, before a determination is made as to whether the drainage scheme should proceed, to forward to the Department within reasonable time, their opinion on the information supplied.
- (4) The Department shall in accordance with Article 7(4) of the Directive—
- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the drainage scheme on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects, and
  - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
- (5) Where an EEA State has been consulted in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the drainage scheme in question and shall forward to it a statement of—
- (a) the determination and any conditions attached thereto;
  - (b) the main reasons and considerations on which the determination is based; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the adverse effects of the scheme.

#### **Determination of whether a drainage scheme should proceed**

**12E.—**(1) On the expiry of the period specified in the notice published under Article 12C(8) the Department shall assess in the light of the environmental statement

and representations made in accordance with Article 12C(8) and Article 12D the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C.

(2) Where—

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

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

(3) Where the Department has determined—

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

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

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

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

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

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

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

- (a) no later than the time when it provides that information to the Commission, by notice in the Belfast Gazette and at least two local newspapers—
  - (i) state that the further information is available and give details of the places where and times at which a copy may be inspected; and
  - (ii) state that any person who wishes to make representations on the likely environmental effects of the drainage scheme to which the further information relates should make the representations in writing to the Commission at the address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette;

- (b) on or before the date of the publication of the notice, supply a copy of the further information and notice to—
  - (i) the Drainage Council;
  - (ii) the district council of the district or, as the case may be, each district in which the works to which the notice relates are situate; and
  - (iii) any other person who appears to the Department to have an interest in the matter including, where appropriate, another EEA State,so that they have an opportunity to make representations to the Commission on the likely environmental effects of the works specified in the scheme in question before the expiry of the period specified in the notice.
- (8) The Commission shall—
  - (a) assess, in the light of the environmental statement, any further information provided by the Department in response to a request under paragraph (6) and any representations made in accordance with Article 12C(8), Article 12D or paragraph (7), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
  - (b) having regard to the assessment under sub-paragraph (a)—
    - (i) consent to the carrying out of the works specified in the scheme unconditionally or subject to such conditions as the Commission considers appropriate; or
    - (ii) refuse to consent to the works; and
  - (c) send to the Department and to any other person who made representations under Article 12C(8), Article 12D or paragraph (7) a statement in writing of—
    - (i) the Commission’s determination under sub-paragraph (b) and any conditions to which the determination is subject;
    - (ii) the main reasons and considerations upon which the determination was based; and
    - (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the scheme.
- (9) The Commission shall afford to the Department, and to any other person who made representations under Article 12 C(8), Article 12D or paragraph (7) the opportunity of appearing before and being heard by the Commission.
- (10) The Department shall by notice in the Belfast Gazette, and in at least two local newspapers, or by such other means as are reasonable in the circumstances—
  - (a) inform the public of the Commission’s determination under paragraph (8)(b); and
  - (b) give details of the places where and times at which the public may inspect a copy of the statement sent to the Department under paragraph (8)(c).”