
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 34

**Drainage (Environmental Impact Assessment)
Regulations (Northern Ireland) 2006**

PART III

DRAINAGE SCHEMES

Restrictions on drainage schemes

18. For Articles 12 to 12E there shall be substituted the following Articles—

“Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme unless—

- (a) it has complied with the requirements of Articles 12A to 12H in relation to the scheme; and
- (b) where a proposal for the scheme has been referred to the Commission under Article 12H(5)—
 - (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.

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 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;
 - (d) 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 28 days of the publication of the notice in the Belfast Gazette; and
 - (e) describe what other information relating to the environmental effects of the works is available and give details of where it can be obtained.
- (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) 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 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 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 organization which exercises statutory functions, or is otherwise designated by any statutory authority as having responsibilities relating to the environment; and
 - (d) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.
- (6) Where, within the period specified in paragraph (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, following the period specified in paragraph (3)(d), 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 make a determination accordingly.
- (8) 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.

(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, 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.

(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 (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(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.

(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 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) 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 28 days of the date of the publication of the notice in the Belfast Gazette;
- (d) indicate the nature of the information in question and the times where and the means by which it will be made available;
- (e) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision;
- (f) indicate whether the works specified in the scheme are likely to have significant effects on the environment in another EEA State; and
- (g) state that any person who considers that his 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 an advertisement in accordance with paragraph (2) it shall on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to each of the consultation bodies.

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

Preparation of an environmental statement and consultations thereon

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

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

(3) Where the Department requests an opinion under paragraph (2) 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.

(4) Before giving an opinion under paragraph (2) in relation to any drainage scheme the Commission shall consult the Department and each of the consultation bodies.

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

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 works to which the statement relates should make them in writing to the Department at the address specified in the advertisement within 28 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 Department, having undertaken the assessment specified in Article 12H(1), considers that the scheme should proceed, it may proceed with the scheme.

(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 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 and, if a charge is to be made for any such copy under Article 12F, the amount of the charge.

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

Assistance in the preparation of an environmental statement

12E.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of Article 12C(1), it may consult with any person to determine whether that person has in his 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 it available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed works 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(6) may determine that there is additional information available.

(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 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 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 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 28 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;
- (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 additional information, the details of the proposed works in question and the environmental statement relating to the 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 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(1).

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

Charges

12F. 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 Article 12D(3) or 13A; 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 Article 12E(5) or 13A.

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

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

- (a) send to the State, as soon as possible, and no later than the date of the publication in the Belfast Gazette of the notice referred to in Article 12B(2)—
 - (i) a copy of that notice; and
 - (ii) any available information on the possible significant effects of the proposed works on the environment of the 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 28 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, to that State.

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

- (a) a copy of the proposal for the drainage scheme;
- (b) a copy of the environmental statement in respect of the scheme;
- (c) all the information required to be given to any person under Article 12B; and
- (d) relevant information regarding the procedure for consultation under this Part,

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

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public are given an opportunity, before a determination is made as to whether the drainage scheme should proceed, to forward to the Department within 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 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 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

12H.—(1) On the expiry of the period referred to in Article 12D(2)(b) the Department shall assess in the light of the environmental statement, any additional information and any representations made in accordance with Article 12D and Article 12G 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 general and local advertisement in accordance with paragraph (4).

(4) Each advertisement referred to in paragraph (3) 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, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (6) to (9).

(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 in relation to the works specified therein, 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 no later than the time when it provides that information to the Commission—

- (a) by general and local advertisement at least 28 days before a determination as to whether the drainage scheme should proceed—
 - (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 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.

(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 referred to in Article 12D, Article 12G or paragraph (7), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
- (b) afford the Department 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 and to any other person who made representations under Article 12D, Article 12G or paragraph (7) a statement in writing of—
 - (i) the Commission's determination under sub-paragraph (c) 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 Department shall by general and local advertisement—
 - (a) inform the public of the Commission’s determination under paragraph (8)(c); 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)(d).
- (10) In relation to any determination made by itself 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 following—
 - (a) the content of the determination and any conditions attached;
 - (b) the main reasons and considerations on which the decision is based, including information about the public participation process; and
 - (c) a description, where necessary, of the main measures proposed to avoid or mitigate any major adverse effects.”.