

2017 No. 172

AGRICULTURE, NORTHERN IRELAND

**The Environmental Impact Assessment (Agriculture)
(Amendment) Regulations (Northern Ireland) 2017**

Made - - - - *31st August 2017*

Coming into operation - *25th September 2017*

The Department of Agriculture, Environment and Rural Affairs(a), being a Department designated(b) for the purposes of section 2(2) in relation to the common agricultural policy of the European Communities and matters relating to the promotion of rural development, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(c), makes the following Regulations:

Citation and Commencement

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

Amendment to the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007

2. The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007(e) shall be amended as provided by regulations 3 to 18.

3. In regulation 2(1) (Interpretation)—

- (a) for the definition “Area of Special Scientific Interest” substitute “means and area so declared by Article 28 of the Environment (Northern Ireland) Order 2002(f);”
- (b) for the definition “the Department” substitute “means the Department of Agriculture, Environment and Rural Affairs;”

4.—(1) These Regulations may be cited as the Environmental Impact Assessment (Agriculture) (Amendment) Regulations (Northern Ireland) 2017 and come into operation on 25th September 2017.

- (a) for the definition “EIA Directive” substitute “means Directive 2011/92/EU(g) of the European Parliament and of the Council on the assessment of the effects of

(a) S.I. 2000 No 2812 and S.I. 2000 No 3238
(b) S.I. 2000/2812 and S.I. 2000/3238
(c) 1972 c. 68
(d) 1954 c. 33 (N.I.)
(e) S.R. 2007 No 421 as amended by S.R. 2008 No 278
(f) 2002 No. 3153 (N.I. 7) as commenced by art 2
(g) OJ L 26, 28.01.2012, p.1

certain public and private projects on the environment as amended by Council Directive 2014/52/EU(a) of the European Parliament and of the Council;”

(b) for the definition “Environmental Statement” substitute—
“means an environmental impact assessment report, which should be prepared by a competent expert and—

- (a) include at least the information referred to in Part 1 of Schedule 3;
- (b) is based on any scoping opinion given under regulation 10 in respect of the significant project;
- (c) any additional information which, taking into account current knowledge and methods of assessment, may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment;
- (d) takes into account the results of any relevant UK environmental assessments which are reasonably available to the applicant, and
- (e) states the relevant expertise and qualifications of the competent person.”

(c) for the definition “European site” substitute “means a site mentioned in regulation 9 of the Habitat Regulations.

(d) in the definition of “the Habitat Directive” for the words from “the Act concerning” to the end substitute “as last amended by Council Directive 2013/17/EU(b);”;

(e) in the definition of “the Habitat Regulations” for “&c” substitute “etc”;

(f) in the definition of “sensitive area” after “1985” insert “(c)”

(g) insert at the appropriate places—

““the Birds Directive” means Directive 2009/147/EC(d) of the European Parliament of the Council of 30 November 2009 on the conservation of wild birds as last amended by Council Directive 2013/17/EU;”

““EU environmental assessment” means an assessment carried out—

- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than the EIA Directive), or
- (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive, of the effect of anything on the environment;”

““UK environmental assessments” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;”

5.—(1) In regulation 3 (Extent of regulations)—

- (a) In paragraph (2)(a) substitute “Planning (Northern Ireland) (Environmental Impact Assessment) Regulations 1999(b)” with “Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017(e);”
- (b) In paragraph (2)(b) substitute “Article 2(3)” with “Article 2(4)”;
- (c) In paragraph (2)(c) substitute “Environmental Impact Assessment (Land Drainage Improvement Works) Regulations (Northern Ireland) 2006(c);” with “The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017(f);”

(a) OJ L 124, 25.4.2014, p.1

(b) OJ L 158, 10.6.2013, p.1 193

(c) 1985 No. 170 (N.I. 1) as amended by 1989 No. 93 (N.I. 3)

(d) OJ L 20, 26.01.2010, p.7

(e) S.R. 2017 No 83

(f) S.R. 2017 No 88

- (d) In paragraph (2)(d) substitute “Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2000(d);” with “Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006(a);”
- (e) In paragraph (2)(e) substitute “Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005(e);” with “The Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017(b);”
- (f) In paragraph (3) substitute “paragraph (2)” with “paragraph (2)(b)”, and
- (g) In paragraph (4) substitute “paragraph (2),” with “paragraph (2)(b).”

6. In regulation 7 (Application for a screening decision) for paragraph (1) substitute—

“7.—(1) An application for a screening decision must be made to the Department and contain the information as specified in Schedule 2A.”

7.—(1) In regulation 8 (The screening decision) after paragraph (1) insert—

“(1A) The Department must take into account the results of any EU environmental assessments which are reasonably available to it.”

(2) For paragraph (4)(a) substitute—

“(a) notify the applicant of—

- (i) the decision and the main reasons for it with reference to the criteria in Schedule 2;
- (ii) where the decision is that the project is not likely to have significant effects on the environment, a description of any measures disclosed by the applicant under Schedule 2A(4).”

(3) In paragraph (4)(b) for “the decision” substitute “the information referred to in sub-paragraph (a)”.

(4) In paragraph (4)(c) for “notify those bodies of it” substitute “notify those bodies of the information referred to in sub-paragraph (a)”.

(5) For paragraph (5) substitute—

“(5) The Department must make, and notify the applicant of, a screening decision before the end of the period of 35 days beginning with—

- (a) the date referred to in regulation 7(3), or
- (b) where applicable, the date the Department receives any additional information it has requested under regulation 7(2).

(5A) The Department may, where it considers there are exceptional circumstances (including relating to the nature, complexity, location or size of the project), extend the period mentioned in paragraph (5) by informing in writing the applicant of—

- (a) the new period within which it will make the screening decision, and
- (b) the reasons for the extension.”.

8. Insert after Regulation 9—

“Environmental Impact Assessment

9A.—(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an environmental statement by the developer as laid out in Schedule 3 Part 1;
- (b) the carrying out of consultation, publication and notification as required by this Part of the regulations;

(a) S.R. 2006 No 518 as amended by S.R. 2017 No 86
 (b) S.R. 2017 No 85

- (c) the examination by the Department of the information presented in the environmental statement and any supplementary information provided, where necessary, by the developer in accordance with Schedule 3 Part 2, and any relevant information received through the consultations in regulation 11;
- (d) the reasoned conclusion by the Department on the significant effects of the project on the environment, taking into account the results of the examination referred to in sub-paragraph (c) and where appropriate, its own supplementary examination; and
- (e) the integration of the Department’s reasoned conclusion into the decision notice in accordance with regulation 16.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect effects of the proposed development on the factors specified in paragraph (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under the Habitats Directive and the Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape.

(4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the project to risks, so far as relevant to the project, of major accidents and/or disasters.

(5) An environmental impact assessment to be carried out in relation to a determination of an application for consent under these Regulations must identify the likely significant effects of the proposed project on the environment before a decision to grant consent for that project is made.

(6) The Department must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.”

9.—(1) In regulation 10(1) (Scoping opinions) for “what information” substitute “the scope and level of detail of information which”;

(2) After paragraph (1) insert—

“(1A) The request must include the screening decision and all relevant documentation provided under regulation 7 along with any other information or representation the applicant wishes to provide or make.”

10. In regulations 11(2)(b); 12(4)(b); and 13(2)(b) substitute “28 days” with “30 days”.

11. After regulation 15 insert—

“Conclusion about the environmental impact

15A.—(1) The Department must consider (ensuring that in doing so it has, or has access to, any expertise it considers necessary)—

- (a) the environmental statement;
- (b) any additional environmental information;
- (c) any representations it receives under—
 - (i) regulation 12(4)(b) and 12(5)(c),
 - (ii) regulation 13(2)(b) and 13(3)(d), and
 - (iii) regulation 14(5)(b), and

- (d) any features of the significant project or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the significant project on the environment.

(2) Following that consideration, the Department must reach a conclusion about the likely significant effects of the significant project on the factors specified in regulation 9A(3).”

12. For regulation 16 (the consent decision) substitute—

“The consent decision

16.—(1) The Department must consider—

- (a) the conclusion reached under regulation 15A(2) in respect of the significant project and the reasons for that conclusion;
- (b) whether it is appropriate to require the applicant to monitor the significant adverse effects of the significant project on the environment, and if so—
 - (i) whether consent should be given subject to conditions to ensure that the applicant is under such a duty, and
 - (ii) whether consent should be given subject to conditions to require remedial action to be taken in circumstance described in the conditions;
- (c) whether, having regard to the likely significant environmental effects of the significant project, consent should be given subject to any other conditions;
- (d) any social or economic impacts which might result from a decision to refuse consent for the significant project.

(2) Following that consideration, the Department must grant, or refuse to grant, consent for a significant project.

(3) The Department may make a decision under paragraph (2) only if satisfied that the conclusion reached under regulation 15A(2) in respect of the significant project and the reasons for it address the likely significant environmental effects of the significant project.

(4) The Department must not make a decision under paragraph (2) before—

- (a) the expiry of the period in the notice under regulation 12(5)(c),
- (b) the expiry of the period of 30 days after—
 - (i) the date on which any additional environmental information was sent to the consultation bodies, or
 - (ii) the date notice of the additional environmental information was to be published under regulation 13(3), and
- (c) the expiry of any period agreed with another EEA State under regulation 14(6)(b).

(5) The Department must reach its decision under paragraph (2) within a reasonable period of time beginning with the date on which it is given all the information it is required to consider in accordance with regulation 15A(2), taking into account the nature and complexity of the application and significant project.”

13. In regulation 17 (Additional requirements relating to the Habitat Regulations), after paragraph (6) insert—

“(7) Where, in respect of a significant project, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under regulation 18 and 56 of the Habitat Regulations, the Department must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are co-ordinated.”.

14. For regulation 37 substitute—

“37. The Common Agriculture Policy Single Payment and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2005(a) are amended by substituting paragraph 7 of the Schedule (Compliance with Statutory Provisions) with the following:

“7.—(1) A farmer shall comply with any stop notice served upon him under regulation 26(1) of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007.””

15. Regulation 38 should be omitted.

16. For Schedule 2 (selection criteria for a screening notice or a screening decision) substitute Schedule 2 set out in Schedule 1 of these Regulations.

17. Following Schedule 2, insert Schedule 2A (information to be provided for a screening decision) as set out in Schedule 2 of these Regulations.

18. For Schedule 3 (information for inclusion in the environmental statements), substitute Schedule 3 as set out in Schedule 3 of these Regulations.

19.—(1) In Schedule 5 (Consultation Bodies), substitute “Department of Rural Development” with “Department for Communities”

(2) In Schedule 5 omit “Department of the Environment and all its executive agencies”, “Northern Ireland Biodiversity Group” and “World Wildlife Fund Northern Ireland” from the list.

Transitional Provisions

20. These regulations do not apply in respect of—

- (a) a decision as to whether or not a restructuring project or an uncultivated land project is likely to have significant effects on the environment under regulation 8(1) of the 2007 Regulations, in respect of an application for screening decision under regulation 7(1) of those Regulations made before these Regulations came into effect,
- (b) a significant project, where the applicant concerned asked for a scoping opinion under regulation 10(1) of the 2007 Regulations before these Regulations came into effect, or
- (c) a significant project, where the applicant concerned applied for consent under regulation 12(1) of the 2007 Regulations before these Regulations came into effect.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 31st August 2017



Dave Foster
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

(a) S.R. 2005 No. 6

“SCHEDULE 2

Regulations 6 and 8

Selection criteria for a screening notice or a screening decision

1. Characteristics of projects

The characteristics of project must be considered, with particular regard:—

- (a) the size and design of the whole project;
- (b) cumulation with other existing and/or approved project;
- (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 and/or disasters which are relevant to the project concerned including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard 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 the 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 legislation (“including European sites or Areas of Special Scientific Interest” or “Natura 2000 areas designated pursuant to Directive 92/43/EEC and Directive 2009/147/EEC”);
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. Type and characteristics of the potential impact

The likely significant effects of projects on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 of this schedule, with regard to the impact of the project on the factors specified in regulation 9(3), taking into account:—

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

SCHEDULE 2

Regulation 16

“SCHEDULE 2A

Regulation 7

Information to be provided for a Screening decision

1. A plan sufficient to identify the relevant land.
2. A description of the project, including in particular a description of—
 - (a) the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
3. A description of the aspects of the environment likely to be significantly affected by the project.
4. A description of any features of the proposed project or measures to avoid or prevent any likely significant adverse effects on the environment.
5. A description under paragraph 2 must include a description or any likely significant effects, of the project on the environment resulting from—
 - (a) the expected residues and emissions and the production of waste, where relevant, and
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
6. When compiling the information in accordance with paragraphs 1 to 4, the applicant must take into account—
 - (a) the criteria of Schedule 2 which are relevant to the project, and
 - (b) the results of any relevant EU environmental assessments which are reasonably available to the applicant.”

“SCHEDULE 3

Information for inclusion in the Environmental Statements

PART 1

1. The information to be provided shall include at least:—
 - (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
 - (b) a description of the likely significant effects of the project on the environment;
 - (c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible offset likely significant adverse effects on the environment;
 - (d) a description of the reasonable alternative studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
 - (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
 - (f) any additional information specified in Part 2 of this Schedule relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be effected.

PART 2

1. Description of the project, including in particular:—
 - (a) a description of the location of the project;
 - (b) a description of the physical characteristics of the whole project 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 project (in particular any production process), 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) and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project 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 (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario 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 regulation 9(3) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, scaling), 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 landscapes.

5. A description of the likely significant effects of the project on the environment resulting from, including:—

- (a) the construction and existence of the project, 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 cumulation of effects with other existing and/or approved projects, 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 project on climate (for example the nature and magnitude of green house gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 9(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

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

7. A description of the measures envisaged to avoid, prevent, reduce or, if 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-project 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.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as directive 2012/18/EU of the European Parliament and of the Council^(a) or Council Directive

(a) Directive 2012/18/EU of the European Parliament and the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p.1).

2009/71/Euratom(a) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.”

(a) Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for nuclear safety of nuclear installations (OJ L 172, 2.7.2009 p. 18)

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007 (the primary regulations) by transposing Council Directive 2014/52/EU (OJ L 124, 25.04.2014, p.1) amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

The Regulations also make minor technical amendments to the primary regulations.

Regulation 3 makes technical amendments to update EU Directive references to include last amended references. It also inserts two new definitions to take account of terminology used “EU environmental assessments” and “UK environmental assessments”.

The definition of “Environmental Statement” inserted by regulations 3 and 17 (only in regard to Part 1 of new Schedule 3) transposes the new Article 5(1) and (3)(a) of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU.

Regulation 4 makes technical amendment to correct the cross references to the legislation within regulation 3 of the primary regulations.

Regulation 5 transposes Article 4(4), of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, amends regulation 7(1) of the primary regulations.

Regulation 6 transposes Article 4(5) and (6) of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, by amending regulation 8 of the primary regulations.

Regulation 7 transposes Articles 1(2)(g), 3(1) to (2) and 5(3)(b) Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, by inserting regulation 9A into the primary regulations.

Regulation 8 amends regulation 10 of the primary regulations to take account of additional information that may now be required in accordance with regulation 7 (as amended) of the primary regulations.

Regulation 9 transposes Article 6(7) of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, making amendment to the relevant regulations to take account of the minimum consultation period.

Regulation 10 makes provision requiring the Department to consider the environmental statement and reach a conclusion on the likely significant effects on the environment of the significant project.

Regulation 11 transposes Articles 2(1) to (2), 8 and 8a of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, relating to the Department’s decision on whether or not consent in respect of a significant project and the matters it must take into account.

Regulation 12 transposes Article 2(3) of Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, to provide for a co-ordinated approach on environmental assessments in respect of a significant project.

Regulations 13 and 14 make technical amendments to correct regulation 37 and 38 of the primary regulations.

Regulations 15 to 17 transpose Annexes IIA, III Annex IV to Council Directive 2011/92/EU as amended by Council Directive 2014/52/EU, inserting Schedule 2, Schedule 2A, paragraphs 2, 3, 5, 6(a), and Part 2 to Schedule 3.

Regulation 18 is a technical amendment, amending the list of Consultation Bodies.

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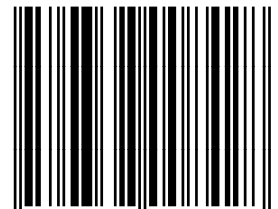
Printed in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.00

NI201709011002 09/2017 19585

<http://www.legislation.gov.uk/id/nisr/2017/172>

ISBN 978-0-33-800842-8



9 780338 008428