

2017 No. 85

ENVIRONMENTAL PROTECTION

**The Water Resources (Environmental Impact Assessment)
Regulations (Northern Ireland) 2017**

Made - - - - *15th May 2017*

Coming into operation - *5th June 2017*

The Department of Agriculture, Environment and Rural Affairs being a department designated(a) in relation to the environment for the purposes of section 2(2) of the European Communities Act 1972(b), makes the following Regulations in exercise of the powers conferred upon it by that section.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and shall come into operation on 5th June 2017.

Interpretation

2.—(1) In these Regulations—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding or keeping, the use of land as grazing land, meadowland, osier land, reed beds, market gardens and nursery grounds;

“applicant” means a person who applies for a licence, or for the modification of a licence, in relation to a relevant project;

“consultation bodies” means any body designated by the Department for the purposes of Parts 2 and 3 of these Regulations on a case by case basis or designated by statutory provision as having specific environmental responsibilities which the Department considers likely to have an interest in a relevant project;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that agreement signed at Brussels on 17th March 1993, as modified or supplemented immediately prior to the commencement of these Regulations;

(a) S.I. 2008/301
(b) 1972 c.68

“EEA state” means—

- (a) a state which is a member state; or
- (b) any other state which is a party to the EEA agreement;

“environmental impact assessment” means—

- (c) the preparation of an environmental impact assessment report in accordance with regulations 7 and 8;
- (d) any consultation, publication and notification required in accordance with regulation 9 and, where relevant, regulations 11 and 12 in respect of an application for a relevant project;
- (e) the examination of the environmental impact assessment report and other information in accordance with regulation 10;
- (f) the reasoned conclusion about the likely significant environmental effects of a relevant project in accordance with regulation 10; and
- (g) the integration of that conclusion in the determination of whether or not to grant or modify a licence for a relevant project;

“environmental impact assessment report” means a report prepared in accordance with regulations 7 and 8;

“environmental information” means the environmental impact assessment report, including any supplementary information and any other information, any representations made by any consultation bodies, and any representations duly made by any other person about the environmental effects of a relevant project;

“licence” means a licence granted in accordance with regulation 10 of the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006(a);

“relevant project” has the meaning given by regulation 3;

“the 2005 Regulations” means the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005(b);

“the Commission” means the Water Appeals Commission for Northern Ireland;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“the Directive” means Directive 2011/92/EU(c) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU(d) of the European Parliament and of the Council.

(2) Expressions used in both these Regulations and the Directive and not otherwise defined in these Regulations have the same meaning for the purposes of these Regulations as they do for the purposes of the Directive.

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

Application

3.—(1) An environmental impact assessment must be carried out in accordance with these Regulations in relation to a relevant project.

(2) A project is a relevant project if—

- (a) it is a water management project for agriculture, including an irrigation project; and

(a) S.R. 2006 No.284
(b) S.R. 2005 No.32 as amended by S.R. 2006 No.483
(c) O.J. L26, 28.1.2012, p.1-21
(d) O.J. L124, 25.4.2014, p.1-18
(e) 1954 c.33 (N.I.)

- (b) it would be likely to have significant effects on the environment by virtue, inter alia, of its nature, size or location.
- (3) A project is not a relevant project if it—
- (a) constitutes development to which the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017(a) apply;
 - (b) constitutes the carrying out of drainage works within the meaning of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001(b);
 - (c) involves the abstraction, diversion or impoundment of less than 200 cubic metres of water in any period of 24 hours; or
 - (d) is exempt as a consequence of a determination made in accordance with paragraphs (4) or (5).
- (4) The Department may determine that a relevant project, or a project which may be a relevant project, is exempt where the circumstances are exceptional and it considers that—
- (a) an environmental impact assessment would have an adverse effect on the purpose of the project; and
 - (b) the objectives of the Directive will still be met even though such an assessment is not carried out.
- (5) The Department may determine that a relevant project, or a project which may be a relevant project, is exempt if—
- (a) the project has response to a civil emergency as its sole purpose; and
 - (b) the Department considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.
- (6) Where the Department makes a determination that a relevant project, or a project which may be a relevant project, is exempt in accordance with paragraph (4), it must—
- (a) consider whether another form of assessment of the likely significant effects on the environment of the project is appropriate; and
 - (b) make available to the public concerned—
 - (i) the determination including an explanation of the reasons for it; and
 - (ii) the information obtained in accordance with any other assessments referred to in sub-paragraph (a).

Environmental impact assessment

4.—(1) An environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of a relevant project on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected in accordance with Directive 92/43/EEC(c) on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC(d) on the conservation of wild birds;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(a) S.R. 2017 No.83

(b) S.R. 2001 No.394

(c) OJ No L206, 22.7.1992, p.7 as last amended by Council Directive 2013/17/EU

(d) OJ No L20, 26.1.2010, p.7 as amended by Council Directive 2013/17/EU

(2) The effects referred to in paragraph (1) on the factors set out in that paragraph must include the expected effects deriving from the vulnerability of the relevant project to risks of any major accidents or disasters that are relevant to that project.

Coordination

5.—(1) Where the likely significant environmental effects of a relevant project are being or are to be assessed in accordance with—

- (a) these Regulations; and
- (b) regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(a),

the Department as the designated authority in accordance with Article 2 of the Directive must, where appropriate, coordinate those assessments.

(2) In paragraph (1), “coordinate those assessments” means coordinate any—

- (a) requests for information, consultations, examinations and conclusions in respect of the likely significant environmental effects of the project on the environment; and
- (b) integration of the conclusion about the likely significant environmental effects of the project on the environment in any determination about whether or not to grant consent to the project.

PART 2

PRE-APPLICATION PROCEDURES & ASSESSMENT OF RELEVANT PROJECTS

Determination whether a project is a relevant project

6.—(1) Any person who proposes to apply for a licence, or the modification of a licence, in relation to a project which may be a relevant project may, in writing, request the Department to determine whether the project is a relevant project.

(2) A request in accordance with paragraph (1) must be accompanied by—

- (a) the information mentioned in Schedule 1; and
- (b) if the person elects to provide it, a description of any features of the project and/or measures proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(3) When compiling the information mentioned in paragraph (2), the person must take into account, where relevant, the available results of any other relevant assessment of the effects of the project on the environment carried out in accordance with an enactment or pursuant to an EU obligation other than one proposed in accordance with the Directive that is relevant to the assessment of the likely significant environmental effects of the project on the environment.

(4) Where the Department considers that it has insufficient information to determine the request, it must by notice in writing inform the person and specify what further information it requires.

(5) (a) Where the Department must determine whether the project is a relevant project the following matters must be taken into account—

- (i) any information provided by the person;
- (ii) where relevant, the results of preliminary verifications or assessments carried out pursuant to any EU obligation other than one implementing the requirements of the Directive; and

(a) S.R. 1995 No.380 the relevant amending Regulations are S.R. 2007 No.345

- (iii) such of the selection criteria set out in Schedule 2 as are relevant to the project.
- (b) Where the Department makes a determination in accordance with sub-paragraph (a)—
 - (i) the determination must state the main reasons for the conclusion of the Department with reference to the relevant criteria listed in Schedule 2; and
 - (ii) if it is determined that the project is not a relevant project, that determination must state any features of the project and/or measures proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (6) The Department must give the person written notice of its determination before the expiry of—
 - (a) a period of twenty-eight days beginning with—
 - (i) the date on which the request in accordance with paragraph (1) is received; or
 - (ii) where the Department has served a notice in accordance with paragraph (4), the date on which the further information required is provided to the Department; or
 - (b) where agreed in writing with the person, any other period of not more than 90 days beginning with—
 - (i) the date on which the request in accordance with paragraph (1) is received; or
 - (ii) where the Department has served a notice in accordance with paragraph (4), the date on which the further information required is provided to the Department.
- (7) The Department may extend the period mentioned in paragraph (6) in exceptional cases (such as where the nature, complexity, location or size of the works demands a longer period for determination).
- (8) Where the Department extends the deadline in accordance with paragraph (7) it must inform the person in writing of the reasons for the extension and of the date on which its determination in accordance with paragraph (5) is expected.
- (9) Where—
 - (a) the Department fails to make a determination before the expiry of the period specified in paragraph (6); or
 - (b) the person is dissatisfied with the Department's determination that the project would amount to or form part of a relevant project,

the person may appeal to the Commission by notice in writing not later than twenty-eight days after the expiry of the period specified in paragraph (6) or, as the case may be, after the date of the determination of the Department.
- (10) Where an appeal is made to the Commission in accordance with paragraph (9), the Commission must give notice of the appeal to the Department.
- (11) The Commission must by notice in writing given to the person and the Department—
 - (a) uphold or reverse the determination of the Department; or
 - (b) in default of a determination by the Department, determine whether the project is a relevant project.
- (12) A determination made in accordance with this regulation must be accompanied by a written statement of—
 - (a) the reasons for that determination with reference to such of the selection criteria set out in Schedule 2 as are relevant; and
 - (b) if the determination made in accordance with paragraph (1) is that the project is not a relevant project, any measure disclosed in accordance with paragraph 5(b)(ii).
- (13) The Department or, as the case may be, the Commission must take such steps as are considered appropriate to make a determination made in accordance with this regulation available to the public.

(14) Where a person makes an application for a licence, or for the modification of a licence, in relation to a relevant project they must furnish a copy of any determination made in accordance with this regulation relative to that project with their application.

Environmental impact assessment report to be provided in relation to an application for a licence, or the modification of a licence, in respect of a relevant project

7. An environmental impact assessment report and any further information required by the Department in accordance with regulation 8 must be provided by an applicant.

Environmental impact assessment report, and opinions of the Department on the contents of an environmental impact assessment report

8.—(1) An environmental impact assessment report must include such of the information set out in Schedule 3 as is applicable to the relevant project and at least the following—

- (a) a description of the relevant 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 relevant project on the environment;
- (c) a description of the features of the relevant 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 alternatives considered by the applicant which are applicable to the relevant project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the relevant project on the environment;
- (e) a non-technical summary of the information provided in accordance with sub-paragraphs (a) to (d); and
- (f) any additional information specified in Schedule 3 applicable to the specific characteristics of the relevant project and to the environmental features likely to be affected.

(2) The environmental impact assessment report must—

- (a) be prepared by a competent person to ensure the completeness and quality of the report;
- (b) state the relevant expertise and qualifications of the competent person;
- (c) where an opinion has been issued in accordance with paragraph (6), be based on that opinion;
- (d) include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment; and
- (e) be prepared, taking into account the available results of other relevant assessments, with a view to avoiding duplication of assessment.

(3) The Department must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.

(4) Where the Department receives an environmental impact assessment report in relation to a relevant project, it must consult the consultation bodies and invite them to express their opinion on the information supplied by the applicant and inform them that they can make representations.

(5) A person, before making an application for a licence, or the modification of a licence, in relation to a relevant project may ask the Department for an opinion on the scope and level of detail of the information to be provided in an environmental impact assessment report accompanying such an application.

(6) If a person makes a request in accordance with paragraph (5), the Department must, having consulted the person making the request and the consultation bodies, give an opinion on the scope

and level of detail of the information which should be contained in an environmental impact assessment report accompanying such an application.

(7) When making a request in accordance with paragraph (5), a person must provide the following information—

- (a) a plan sufficient to identify the specific characteristics of the relevant project;
- (b) a brief description of the nature, extent and purpose of the relevant project, including its location and technical capacity;
- (c) an explanation of the likely impact of the relevant project on the environment; and
- (d) any other information or representations which the person wishes the Department to take into account.

(8) The person making a request in accordance with paragraph (5) may also provide a description of any features of the relevant project or any measures envisaged to avoid or prevent what otherwise might have been significant adverse effects on the environment.

(9) The Department, having received a request in accordance with paragraph (5) must, if it considers that it has not been provided with sufficient information to give an opinion, notify the person of the points on which it requires additional information.

(10) The fact that the Department has given an opinion in accordance with paragraph (6) must not preclude it from subsequently requiring the person making the request to provide further information.

(11) The Department and the consultation bodies must, if requested by a person proposing to make an application for which an environmental impact assessment report is required, enter into consultation with that person to determine whether they have in their possession any information which may be relevant to the preparation of an environmental impact assessment report and, if they have, they must make it available to that person.

(12) Paragraph (11) must not require the disclosure of information where disclosure of that information may be refused in accordance with the Environmental Information Regulations 2004(a).

(13) If the Department or the consultation bodies provide information to a person in accordance with paragraph (11) they may require the payment of a charge which reflects the cost of making that information available.

(14) If the Department considers that an environmental impact assessment report does not contain all the information required by paragraph (1), it must by notice in writing—

- (a) inform the applicant; and
- (b) specify what further information the Department requires,

and the applicant must provide that information to the Department.

PART 3

PUBLICITY AND DETERMINATION

Publicity for an application

9.—(1) Where an environmental impact assessment report is provided or further information is provided in accordance with regulation 8, the Department must publish on its website and in the Belfast Gazette and such newspapers circulating in the locality of the relevant project, a notice providing—

(a) SI 2004 No. 3391

- (a) the applicant's name and that they have made an application to which these Regulations apply and that they have provided the Department with an environmental impact assessment report;
- (b) details of the nature of the possible determinations that may be made by the Department, or where there is one, the draft determination;
- (c) details of a place where copies of the application, the environmental impact assessment report and any further information provided in accordance with regulation 8 may be inspected free of charge at all reasonable hours within a period of thirty days beginning on the date the notice was published;
- (d) an address from which copies of the application, the environmental impact assessment report and any further information provided in accordance with regulation 8 may be obtained from the Department and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and
- (e) the other arrangements, if any, that have been made by the Department for informing the public of the application and for consulting them in relation to it.

(2) Any person wishing to make representations in relation to the application must make them to the Department in writing at a specified address nominated by the Department within a period of thirty days beginning on the date the notice was published in accordance with paragraph (1).

(3) In relation to information which is relevant to the determination made in accordance with regulation 10 and which becomes available to the Department, whether as a result of a request by the Department or otherwise, after the date on which the notice was published in accordance with paragraph (1), the Department must, on its website—

- (a) provide details of a place and times where, during a period of thirty days beginning on the day fourteen days after which the information becomes available to the Department, a copy of the information may be inspected free of charge; and
- (b) specify an address from which a copy of the information may be obtained from the Department and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge.

(4) Not later than the date on which the notice in paragraph (1) is published, the Department must send a copy of it and the environmental impact assessment report and further information provided in accordance with regulation 8 to the consultation bodies.

Determination of application and notice of determination

10.—(1) The Department must not determine an application for a licence, or for the modification of a licence, relating to a relevant project before the latest date allowed in accordance with these Regulations for making representations or concluding any consultation.

(2) When determining an application for a licence, or for the modification of a licence, in relation to which an environmental impact assessment report has been submitted the Department must (ensuring that in doing so it has or has access to any expertise it considers necessary)—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the relevant project on the environment, taking into account the results of the examination referred to in subparagraph (a);
- (c) integrate that conclusion into the determination as to whether the application is to be granted;
- (d) if the application is to be granted, consider whether it is appropriate to impose a condition requiring any likely significant adverse effects of the relevant project on the environment to be avoided, prevented, reduced or offset (“a mitigation condition”); and
- (e) if the application is to be granted, consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the relevant project (“a monitoring condition”).

(3) If the Department considers that it is appropriate to impose a monitoring condition in accordance with paragraph (2)(e), the Department must determine the procedures regarding the monitoring of significant adverse effects on the environment.

(4) The reasoned conclusion referred to in paragraph (2)(b) must be up to date at the time that the determination as to whether the application for a licence, or the modification of a licence, in relation to a relevant project is to be made; but that conclusion must be taken to be up to date if (in the opinion of the Department) it addresses the significant effects that are likely to arise as a result of the relevant project.

(5) When considering whether to impose a mitigation condition in accordance with paragraph (2)(d) or a monitoring condition in accordance with paragraph (2)(e), the Department must—

- (a) consider whether to make provision for potential remedial action;
- (b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the relevant project and the significance of its effects on the environment; and
- (c) consider, in order to avoid duplication of monitoring, whether monitoring arrangements required in accordance with Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition.

(6) Where mitigation conditions or monitoring conditions are required, the Department must take steps to ensure that those conditions are implemented.

(7) In cases where no statutory timescale is in place the determination of the Department as to whether the application is granted must be taken within a reasonable period of time, taking into account the nature and complexity of the relevant project, from the date on which the Department has been provided with the environmental information.

(8) Where an application in relation to which an environmental impact assessment report has been submitted is determined by the Department, it must provide the applicant with the information specified in paragraph (9).

(9) The information is—

- (a) if the determination is to grant the application—
 - (i) the reasoned conclusion of the Department on the significant effects of the project on the environment, taking into account the results of the examination referred to in paragraph (2)(a);
 - (ii) any mitigation conditions considered appropriate by the Department;
 - (iii) any monitoring conditions considered appropriate by the Department; and
 - (iv) whether, having regard to the likely significant environmental effects of the relevant project, the licence should contain provisions for any other purpose.
- (b) if the determination is to refuse the application, the main reasons for the refusal; and
- (c) information regarding the right to appeal the determination and the procedure for doing so(a).

(10) Within twenty-eight days of the determination, the Department must inform the consultation bodies and publish on its website and in those newspapers in which a notice was published in accordance with regulation 9 a notice stating that the Department has granted or refused the application and stating a place and times where any person may inspect—

- (a) any relevant licence or modification thereof;

(a) Appeals with respect to determinations on whether to grant or refuse an application for a licence in relation to a relevant project are made in accordance with regulation 29 of the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006

- (b) a document containing the relevant determination and the reasons and considerations on which it is based, including information about the arrangements taken to ensure the public had the opportunity to participate in the process of making the determination;
- (c) a description, where necessary, of the main measures to avoid, reduce and if possible offset the major adverse effects of the project;
- (d) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results, in particular the comments received from an EEA State pursuant to consultation in accordance with regulation 11 have been incorporated or otherwise addressed;
- (e) information about the public participation process; and
- (f) information regarding any right to appeal the determination and the procedures for doing so.

PART 4

PROJECTS LIKELY TO AFFECT OTHER MEMBER STATES

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

11.—(1) Where—

- (a) it comes to the attention of the Department that a relevant project is the subject of an environmental impact assessment application and is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by such a project so requests, the Department must—
 - (i) publish a notice in the Belfast Gazette giving the address of the relevant project, stating that it is accompanied by an environmental impact assessment report and that it is likely to have significant effects on the environment of another EEA State and giving an address at which further information may be obtained;
 - (ii) send to the EEA State as soon as possible and no later than the date of publication of the notice referred to in sub-paragraph (i), the particulars mentioned in paragraph (2) and if the Department thinks fit, the information referred to in paragraph (3); and
 - (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these regulations provide.

(2) The particulars referred to in paragraph (1)(b)(ii) are—

- (a) a description of the relevant project, together with any available information on its possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the determination that may be made.

(3) Where an EEA State indicated in accordance with paragraph (1)(b)(iii) that it wishes to participate in the procedure for which these regulations provide, the Department must send to that EEA State—

- (a) a description of the relevant project concerned;
- (b) a copy of the environmental impact assessment report in respect of the relevant project to which that application relates; and
- (c) relevant information regarding the procedure outlined in these Regulations, unless that information has already been provided to the EEA State earlier in accordance with paragraph (1)(b)(ii).

(4) The Department must also—

- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) to be made available, within a reasonable time, to the authorities referred to in Article 6.1 of

the Directive and to the public concerned in the territory of the EEA State likely to be significantly affected; and

- (b) ensure that those authorities and the public concerned are given an opportunity, before the licence or modification thereof is granted, to forward to the Department, within a reasonable time, their opinion of the information supplied.

(5) The Department must in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential transboundary effects of the relevant project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) agree with the other EEA State, a reasonable timeframe for the duration of the consultation period.

(6) Where an EEA State has been consulted in accordance with paragraph (3), on the determination of the application concerned, the Department must inform the EEA State and must forward to it a statement of—

- (a) the content of the determination and any conditions attached thereto;
- (b) the reasons and considerations on which the determination is based; and
- (c) a description, where necessary, of the measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

(7) The consultations referred to in paragraph (5) may be conducted through an appropriate joint body.

Projects in another EEA State likely to have significant transboundary effects

12.—(1) Where the Department receives from another EEA State pursuant to Article 7.2 of the Directive information which the EEA State has gathered from an applicant of a proposed project in that EEA State which is likely to have significant effects on the environment in Northern Ireland, the Department must, in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with that EEA State regarding, inter alia, the potential transboundary effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects and whether it wishes to participate in that EEA State's procedure; and
- (b) agree with that EEA State a reasonable timeframe, before consent for the project is granted, during which members of the public in Northern Ireland may submit to the competent authority in that EEA State representations pursuant to Article 7.3(b) of the Directive.

(2) The Department, in so far as it is concerned, must also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the consultation bodies in Northern Ireland which it considers are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Northern Ireland;
- (b) ensure that those consultation bodies and the public concerned in Northern Ireland are given an opportunity before consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied; and
- (c) make available to the public concerned in an appropriate manner any information received from the competent authority of the relevant EEA State in order to comply with Article 9.2 of the Directive.

Revocations and Savings

13.—(1) Subject to paragraph (2), the following regulations are revoked—

- (a) the 2005 Regulations; and

(b) the Water Resources (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2006^(a).

(2) The revocations made by paragraph (1) shall not apply in respect of—

- (a) a determination of whether a project is a relevant project in accordance with regulation 2 of the 2005 Regulations, where a person requested the determination in accordance with regulation 4(1) of the 2005 Regulations before 5th June 2017;
- (b) a relevant project, where a person requested an opinion about the scope and level of detail of information to be included in an environmental statement in accordance with regulation 6(2) of the 2005 Regulations before 5th June 2017; and
- (c) a relevant project, where the applicant provided an environmental statement in accordance with regulation 5 of the 2005 Regulations before 5th June 2017.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 15th May 2017



Dave Foster

A senior officer of the Department of the Environment

^(a) S.R. 2006 No. 483

SCHEDULE 1

Regulation 6(2)(a)

Information about characteristics of project for determination of whether it is a relevant project

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
2. A description of the aspects of the environment likely to be significantly affected by the project.
3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
4. The criteria of Schedule 2 must be taken into account, where relevant, when compiling the information in accordance with paragraphs (1) to (3).

SCHEDULE 2

Regulation 6(5)(a)(iii)

Selection Criteria for Relevant Projects

Characteristics of projects

1. The characteristics of projects must be considered having regard, in particular, to—
 - (a) the size and design of the whole project;
 - (b) the cumulation with other existing and/or projects;
 - (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 consumption or air pollution).

Location of projects

2. 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, 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 in accordance with EEA States' legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
- (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 of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The likely significant effects of projects on the environment must be considered in relation to criteria set out in accordance with paragraphs 1 and 2 of this Schedule, with regard to the impact of the project on the factors specified in regulation 4(1), 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 3

Regulation 8(1)

Information about Proposed Project

1. A description of the relevant project, including in particular—

- (a) a description of the location of the relevant project;
- (b) a description of the physical characteristics of the whole relevant 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 relevant project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials used and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (water, air and subsoil pollution, noise, vibration, light, heat, radiation etc.) resulting from the operation of the relevant project.

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 applicable to the relevant project and its specific characteristics, and an indication of the main reasons, 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 relevant

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 4(1) 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 inorganic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5.—(1) A description of the likely significant effects of the relevant project on the environment resulting from, inter alia:

- (a) the construction and existence of the relevant 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 relevant project on climate (for example the nature and magnitude for greenhouse gas emissions) and the vulnerability of the relevant project to climate change;
- (g) the technologies and the substances used.

(2) The description of the likely significant effects on the factors specified in regulation 4(1) 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 relevant 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 relevant project on the environment deriving from the vulnerability of the relevant 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 or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the 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 in accordance with the above headings.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace and revoke the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 32) and provide (in relation to relevant water management projects for agriculture in Northern Ireland) for the assessment of the effects of such projects on the environment in accordance with Council Directive 2011/92/EU, as amended by Directive 2014/52/EU, on assessing the potential effects of projects on the environment.

The Regulations impose procedural requirements in relation to the consideration of applications or proposals for consent for a relevant project (water management projects for agriculture involving the abstraction or impoundment of 200 cubic metres or more in any period of 24 hours which would be likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location).

Part 1 of the Regulations contains general provisions. Regulation 3 requires an environmental impact assessment (EIA) to be carried out for relevant projects. There is an exclusion for development within the meaning of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and land drainage improvement works within the meaning of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001.

Part 2 of the Regulations outlines the pre-application procedures for an EIA. Regulation 6 outlines the procedure for determining whether a water management project is a relevant project and regulation 7 requires an environmental impact assessment report to be provided by applicants of relevant projects. The Department determines, at the request of the person applying or proposing to apply, whether the project is a relevant project, using the selection criteria in Schedule 1. If the person who makes the request is dissatisfied with the Department's determination, they may appeal to the Water Appeals Commission for Northern Ireland. Determinations as to whether a project is a relevant project must be made public, and must accompany any subsequent application for a licence or modification of a licence in respect of a relevant project. Regulation 8 and Schedule 3 set out the information which an environmental impact assessment report must contain. A person may enter into consultation with any consultation body to determine whether it possesses information relevant to the environmental impact assessment report. The Department is required to give an opinion on the content of an environmental impact assessment report in respect of a proposed application for a relevant project if so requested.

Part 3 of the Regulations outlines the requirements around the publicising of any environmental impact assessment reports in respect of relevant projects and determinations taken around the granting or refusal of such projects. Regulation 9 provides for environmental impact assessment reports in respect of relevant projects to be publicised. Regulation 10 requires the Department to have regard to the environmental information provided and any representations received in determining an application for a relevant project and to consider whether it is appropriate to impose a monitoring condition or a mitigation condition in respect of the project.

Part 4 of the Regulations outlines the procedures to be followed in relation to projects likely to affect the Republic of Ireland and those in the Republic of Ireland likely to affect Northern Ireland.

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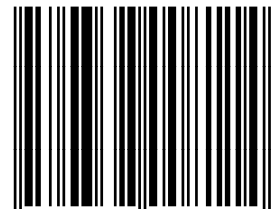
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