

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

### Transposition note for Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

1. This transposition note sets out how Directive 2014/52/EU1 (“the 2014 Directive”), amending Directive 2011/92/EU2 on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”), is transposed in Northern Ireland in respect of drainage works and drainage schemes.
2. The table seeks to explain how the main elements of the EIA Directive, following its amendment by the 2014 Directive, are transposed in the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (“the Regulations”). References in the table to Article numbers are to the EIA Directive as amended by the 2014 Directive unless stated otherwise.
3. The table also highlights important changes of substance made to the EIA Directive by the 2014 Directive.
4. In the table, “EIA” means “environmental impact assessment”.

Article	Objective	Implementation
Article 1(2)	Sets out a new definition of “environmental impact assessment” with details on what is required to be included.	Definition included in regulations 2(1) and 20(1)
	Introduces the requirement for a competent authority to examine the EIA and to make a reasoned conclusion.	The role of competent authority, to examine the EIA and make a reasoned conclusion, as described in the Directive has been allocated to the Drainage Council (regulations 16 and 21 (12H of the Drainage Order))
Article 1(3)	The existing exemption from the	Exemption included in

	provisions of the EIA Directive, for projects serving national defence purposes, has been limited to cases where defence is the <i>sole</i> purpose of the project, or parts of projects. The exemption has also been extended to projects responding to a civil emergency as its <i>sole</i> purpose, if it is deemed that the application of the principles of the EIA Directive would have an adverse effect on its purpose.	regulation 4(1)
Article 2(1)	Before development consent is given, projects likely to have significant effects on the environment should be made subject to a requirement for EIA and development consent.	Included in regulations 8(4), 8(7), 16(1) and 21 (Articles 12A and 12H of the Drainage (Northern Ireland) Order 1973).
Article 2(2)	EIAs may be integrated into existing development consent procedures.	Integrated into development consent procedures set out in regulations 16(1) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973).
Article 2(3)	This imposes a requirement for joint and/or co-ordinated procedures where projects are subject to assessment under both the EIA Directive and Directive 92/43/EEC3 (“the Habitats Directive”) or Directive 2009/147/EC4 (“the Wild Birds Directive”).	Co-ordination included in regulation 5(1).  The Regulations opt for a coordinated procedure, not a joint procedure, as this is thought to provide the greatest flexibility.
Article 2(4)	In exceptional circumstances, a specific project may be exempted where the application of those provisions would result in adversely affecting the purpose of the project, or the provisions relating to public consultation, provided the objectives of this Directive are met.	Included in regulation 4(1)
Article 3	This Article sets out the factors that must be considered when carrying out an EIA. It also requires that the expected effects deriving from the vulnerability of the project to risks of	Included in Schedule 2C

	major accidents and/or disasters, relevant to the project, are included.	
Article 4(3)	Member states may set thresholds or criteria to determine when projects do not need to undergo a determination or EIA	Detailing specific thresholds was not considered appropriate for drainage works or drainage schemes. Regulations 7(2) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973) allow consideration of the selection criteria, which may result in a decision not to carry out an EIA.
Article 4(4)	Where a determination is required as to whether an EIA is necessary, the department must supply a detailed list of information as specified in Annex IIA. Information from assessments prepared for other Directives may be used, and a description included of any avoidance or protection measures envisaged to mitigate against significant adverse effects on the environment.	Included in regulations 7(1), 8(1) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).
Article 4(5)	The competent authority shall make its determination on the basis of the information provided by the developer. It must make the determination public, whether the decision is to carry out an EIA, or not.	Included in regulations 7(2), 8(1), 9(2) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).
Article 4(6)	The competent authority must make its determination within 90 days of receipt of all of the relevant information.	The 90 day period has been included in regulations 8(4) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).
Article 5(1)	Includes details of information required to be submitted by the developer in the environmental statement.	Included in regulations 10(2) and 21 (Article 12C of the Drainage (Northern Ireland) Order 1973).
Article 5(2)	Inserts a quality control provision for all assessments. An opinion can be sought as to the content, scope, etc to be included in the EIA and a	Included in regulations 11(1) and (3) and 21 (Article 12C of the Drainage (Northern Ireland) Order 1973).

	requirement added to consult with certain authorities before giving that opinion.	
Article 5(3)	<p>This Article requires that:</p> <p><b>(a)</b> the developer must ensure that their environmental statement is prepared by competent experts;</p> <p><b>(b)</b> the competent authority must ensure that it has, or has access, as necessary, to sufficient expertise to examine the environmental statement; and</p> <p><b>(c)</b> the competent authority, where necessary, must seek supplementary information from the developer, which is directly relevant to reaching a reasoned conclusion.</p>	<p><b>(a)</b> Requirement for competent experts included in regulations 10(3) and 21 (Article 12C of the Drainage (Northern Ireland) Order 1973).</p> <p><b>(b)</b> Drainage Council competency (acting as the competent authority for this purpose) included in regulations 16(3) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973).</p> <p><b>(c)</b> Included in regulation 13(2) and (3) and 21 (Article 12E of the Drainage (Northern Ireland) Order 1973).</p>
Article 6(1) & (2)	<p>Arrangements for consultation with other authorities to be laid down; and</p> <p>participation by the public by electronic means to be made available.</p>	<p>Authorities to be consulted set out in regulations 8(2) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).</p> <p>Definitions of general and local advertisement included in regulations 2 and 20. The use of electronic means is replicated throughout the Regulations.</p>
Article 6(7)	<p>Timescales for consulting with the public on the environmental statement must not be less than 30 days.</p>	<p>Timescales for consultation on an environmental statement have been amended from 28 days to 30 days in regulations 12(2), 13(4), 16(10) and regulation 21 (Articles 12D, 12E and 12H of the Drainage (Northern Ireland) Order 1973).</p>
Article 7	<p>Any transboundary EIA must be consulted upon and detailed arrangements, including time-frames must be agreed between the Member States involved.</p>	<p>Included in regulations 15 and 21 (Article 12G of the Drainage (Northern Ireland) Order 1973).</p>

	Such consultations MAY be conducted through an appropriate joint body.	Conducting consultations through an appropriate joint body has not been transposed.
Article 8	The results of consultations to be considered in any development consent.	Amended in regulations 16(1) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973).
Article 8a (1)	The decision to grant development consent shall incorporate the reasoned conclusion as laid out in Article 1(2)(g)(iv) of the Directive and should contain any environmental conditions attached to the decisions and/or measures envisaged to avoid, prevent or offset significant adverse effects on the environment, as well as monitoring measures.	Amended in regulations 16(1) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973)
Article 8a(2)	Any refusal to grant development consent must state the main reasons for the refusal.	Amended in regulations 16(5) and (6) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973).
Article 8a(3)	This Article applies to Member States which have not integrated their EIA procedures into their development consent procedures (as is permitted by Article 2(2) of the EIA Directive.	N/A
Article 8a(4)	Measures to avoid, prevent and reduce significant adverse effects on the environment must be implemented and monitored.  Monitoring parameters and duration must be proportionate to the risk and size of the development. Existing monitoring arrangements for other Directives may be used where appropriate to avoid duplication	Amended in regulations 17 and 21 (Article 12I of the Drainage (Northern Ireland) Order 1973).
Article 8a(5)	Member States must ensure that the competent authority takes any	Amended in regulations 16(1) and 21 (Article 12H of the

	of the decisions referred to in paragraphs 1 to 3 of Article 8a within a reasonable period of time.	Drainage (Northern Ireland) Order 1973).
Article 8a(6)	Any reasoned conclusion or decisions used in granting development consent must be up-to-date. Time-frames can be set.	Amended in regulations 16(2) and 21 (Article 12H of the Drainage (Northern Ireland) Order 1973).
Article 9	The public and consultees must be promptly advised of the decision to grant or refuse development consent. To include the content of the decision and any conditions attached and the main reasons and considerations, including consultations, on which the decision is based, including information about the public participation process.	Included in regulations 16(5) and 21 (Articles 12H of the Drainage (Northern Ireland) Order 1973).  Publicity participation procedures included in regulations 18 and 22 (Article 13A of the Drainage (Northern Ireland) Order 1973).
Article 9a	Requires the competent authority to perform its duties under the Directive in an objective manner and does not give rise to a conflict of interest. Where the competent authority is also the developer, suitable separation between conflicting functions must be put in place.	Included in regulations 7(3) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).
Article 10	Without prejudice to the 2003 Environmental Information Directive, the EIA Directive does not affect the responsibilities of the competent authority laid down in UK law of commercial and industrial confidentiality.	Already present in regulations 13(6) and 21 (Article 12E of the Drainage (Northern Ireland) Order 1973).
Article 10a	Member States shall lay down rules on penalties applicable to infringements of the provisions adopted pursuant to the Directive.	This has not been transposed as it does not appear appropriate for the Department to impose penalties on itself.
Article 12(2)	Requirement to exchange information with the Commission.	This paragraph sets out a direct obligation for Member States by setting the provision for reporting. As such, we feel that it does not need to be transposed into national

		legislation, but has to be complied with. Northern Ireland will report via the UK reporting mechanism.
Annex IIA	Information to be included by the developer.	Regulations 7(1) and 21 (Article 12A of the Drainage (Northern Ireland) Order 1973).
Annex III	Criteria to determine whether an Annex II project should be subject to an EIA.	Schedule 2B
Annex IV	Information to be included in the EIA report.	Reflected in Schedule 2A