
STATUTORY RULES OF NORTHERN IRELAND

2017 No. 88

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

PART 3

DRAINAGE SCHEMES

Restrictions on drainage schemes

21. For Articles 12 to 12H substitute—

“Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme, co-operate, in pursuance of Article 30(1) of the Drainage Order, with any person outside Northern Ireland in preparing or carrying out schemes for drainage works or enter into or carry into effect, in pursuance of Article 30(2) of the Drainage Order, and agreement or arrangement with such person for the purposes of such a scheme unless—

- (a) it has complied with the requirements of Articles 12A to 12I in relation to the scheme; and
- (b) where a proposal for the scheme has been referred to the Commission under Article 12H(7)—
 - (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,

but this is subject to Article 12ZA.

Direction that Articles do not apply

12ZA.—(1) The Department may direct that—

- (a) in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive) a specific drainage scheme is exempt from the requirements of Articles 12A to 12I and 13A if it considers that the application of those Articles would have an adverse effect on the fulfilment of the drainage scheme’s purpose, provided the objectives of the Directive are met; or
- (b) those Articles do not apply in relation to a particular proposed drainage scheme if the sole purpose of the proposed drainage scheme is to respond to a civil emergency and the Department considers the application of the Articles would have an adverse effect on the fulfilment of that purpose.

(2) The Department shall only make a direction under paragraph (1)(a) in an exceptional case and where it does so it shall—

- (a) make available to the public by general and local advertisement, the information considered in making the direction, the reasons for making the direction, briefly describe the proposed drainage scheme and the effect of the direction;
- (b) consider whether, in that case, another form of assessment of the environmental effects of the proposed drainage scheme would be appropriate; and
- (c) make available to the public any information obtained under that other form of assessment.

(3) No direction shall be made under paragraph (1)(a) or (b) where the Department or any other Northern Ireland department is aware that the proposed drainage scheme would be likely to have significant effects on the environment of another EEA State.

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

12A.—(1) The Department shall provide the following information on proposed drainage schemes of the type listed in Annex II to the Directive—

- (a) a description of the project, including in particular—
 - (i) a description of the physical characteristics of the whole project and, where relevant, of demolition works; and
 - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (b) a description of the aspects of the environment likely to be significantly affected by the project;
- (c) 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 in soil, land, water and biodiversity,

the criteria of Schedule 2B shall be taken into account, where relevant, when compiling the information in accordance with sub-paragraphs (a) to (c).

- (2) Where the Department has prepared a drainage scheme, under paragraph (1) it shall—
 - (a) consider, taking into account the selection criteria in Schedule 2B and the available results of other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), 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 situated; and
 - (c) make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under this Order, between the persons bringing forward a proposal for a drainage scheme and the persons responsible for considering the proposals and making any determination.

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

- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 30 days from the date of the publication in the Belfast Gazette of the notice relating to the scheme given under paragraph (4) 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.

(4) Where, pursuant to paragraph (2)(a), the Department considers that the works specified in the drainage scheme are not likely to have significant effects on the environment, it shall so determine, within 90 days of receiving the information specified in paragraph (1) and 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 and the main reasons why with reference to the relevant criteria in Schedule 2B;
- (d) state any features of the project or measures envisaged to avoid or prevent any significant adverse effects on the environment;
- (e) 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 30 days of the publication of the notice in the Belfast Gazette;
- (f) describe what other information relating to the environmental effects of the works is available;
- (g) state the place or places where and the period, not being less than 30 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
- (h) state that any person who considers that his or her interests will be prejudicially affected by the scheme may, at any time within 30 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 the person wishes to make.

(5) Where, pursuant to paragraph (4), 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 organisation 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 (4)(e), no representations have been made to the effects that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to confirm the drainage scheme in accordance with Article 13(2).

(7) Where, following the period specified in paragraph (4)(e), 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 within a period of 90 days beginning on the expiry of the period specified in paragraph 4(e), make a determination accordingly.

(8) Where, within the period specified in paragraph (4)(e), 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, and the available results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation (other than legislation implementing the requirements of this Directive), 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 (4)(e), 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 (4)(e) 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; or
- (c) the drainage scheme is of a type listed in Annex 1 to the Directive.

(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—
 - (i) that the works specified in the scheme are likely to have significant effects on the environment;
 - (ii) the main reasons for requiring an assessment, with reference to the relevant criteria listed in Schedule 2B; and
 - (iii) that the Department intends to prepare an environmental statement in respect of the scheme;

- (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 30 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 or her interests will be prejudicially affected by the scheme may, at any time within 30 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 that person 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

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

(2) The environmental statement referred to in paragraph (1) must—

- (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the statement;
- (b) contain a statement by the Department setting out how the requirements of paragraph (2)(a) have been complied with;
- (c) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and
- (d) where an opinion is issued in accordance with paragraph (3), be based on the most recent opinion issued.

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

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

(5) Before giving an opinion under paragraph (3) in relation to any drainage scheme the Commission shall consult the Department and each of the consultation bodies.

(6) Giving an opinion under paragraph (3) shall not preclude the Commission from requesting further information from the Department under Article 12H(8).

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 scheme to which the statement relates should make them in writing to the Department, at the address specified in the advertisement within 30 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 Drainage Council, having undertaken the examination specified in Article 12H(2), considers that the scheme should be approved, it may so determine.

(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 30 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 scheme;
- (c) 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; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(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 or her possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, that person shall make it available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed drainage scheme 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(8) may determine that further information is required.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his or her possession any additional information and if that person has any such information, that person 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 the times at which a copy of the 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 30 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; and
- (b) make available for inspection at an office of the Department or at some other convenient place for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed drainage scheme in question and the environmental statement relating to the scheme 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. The Department may make a reasonable charge reflecting printing and distribution costs to any person for any copy, in excess of one, of the whole or any part of an environmental statement, or any further information supplied to that person in accordance with Article 12D(3), 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 scheme on the environment in that EEA 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 a period determined in agreement with that State but which shall not be less than 30 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 a 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 which shall not be less than 30 days beginning with the day on which the Department forwarded the information to that State in pursuance of paragraph (2).
- (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 the 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 be approved

12H.—(1) On expiry of the period referred to in Article 12D(2)(b), the Department shall provide to the Drainage Council the information set out in sub-paragraph (2)(a).

(2) The Drainage Council must ensure that it has or has access as necessary to sufficient expertise to examine the environmental statement and on the expiry of the period referred to in Article 12D(2)(b) it shall, within 90 days—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with Article 12E and any relevant information received through the consultations under Articles 12D and 12G, to assess, the direct and indirect effects of the proposed drainage scheme on the environmental factors specified in Schedule 2C;
- (b) reach a reasoned conclusion on the significant effects of the drainage scheme on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether the proposed drainage scheme is to be approved or not to be approved.

(3) Where—

- (a) the Drainage Council is satisfied that the reasoned conclusion, or any decisions made on the proposed scheme are still valid; and
- (b) no objections in relation to the likely environmental effects of the scheme have been made; or
- (c) any such objection has been withdrawn,

the Drainage Council, having considered the examination required by paragraph (1), may determine, (unconditionally or subject to conditions) that the drainage scheme should be approved, or should not be approved.

(4) Where the Drainage Council has determined—

- (a) in accordance with paragraph (3) that the drainage scheme should be approved or should be approved subject to conditions; or
- (b) that the scheme should not be approved,

it shall provide the Department with the determination and the Department shall determine that the scheme will proceed or will not proceed, and the Department will publish a general and local advertisement, in accordance with paragraph (5).

(5) Each advertisement referred to in paragraph (4) 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 reasoned conclusion of the Drainage Council on the significant effects of the proposed scheme on the environment, taking into account the results of the examination referred to in paragraph 2(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Drainage Council.

(6) At the same time as the notice in the Belfast Gazette is published under paragraph (4), the Department shall send a copy of the Drainage Council's determination along with the details referred to in paragraph (5)(b)(i) to (v) to each consultation body and to any person who made representations under Article 12D or 12G, to the proposed works.

(7) Where the Drainage Council, having considered the examination specified in paragraph (2) considers that the scheme in question should be approved 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 (8) to (11).

(8) Where the Commission considers that the information about a scheme supplied to it in accordance with paragraph (7) 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 and the Drainage Council in writing of the matters on which further information is required and may make a written request to the Department and the Drainage Council for such information as it may be able to provide on the matters raised.

(9) Where, in accordance with paragraph (8), the Commission requests further information, the Department shall co-ordinate the information from the Drainage Council and—

- (a) no later than the time when it provides that information to the Commission, state by general and local advertisement—
 - (i) that the further information is available and give details of the places where and times at which a copy may be inspected; and
 - (ii) 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 30 days of the date of the publication of the notice in the Belfast Gazette; and
- (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.

(10) 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 (8) and any representations referred to in Article 12D, Article 12G or paragraph (9), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
- (b) afford the Department, the Drainage Council, 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, the Drainage Council, and to any other person who made representations under Article 12D, Article 12G or paragraph (9) a statement in writing of—
 - (i) the reasoned conclusion of the Commission on the significant effects of the proposed works on the environment, taking into account the results of the examination referred to in paragraph (10)(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Commission.
- (11) The Department shall by general and local advertisement—
 - (a) inform the public of the Commission’s decision under paragraph (10)(c);
 - (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 (10)(d); andplace the notice and a copy of the environmental statement on a website maintained by the Department.
- (12) In relation to any determination made by the Drainage Council 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 information referred to in paragraph (10)(d).

Monitoring

12I.—(1) Where an environmental statement is considered by the Drainage Council or, as the case may be, the Commission, and the decision is to approve the scheme, the Drainage Council or, as the case may be, the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed scheme (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring conditions, the Drainage Council, or as the case may be the Commission, must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed scheme and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and

- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.
- (3) Where mitigation measures or monitoring conditions are required, the Department or, as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.”.