

EXPLANATORY MEMORANDUM TO

THE WATERWAYS (ENVIRONMENTAL IMPACT ASSESSMENT)
REGULATIONS (NORTHERN IRELAND) 2019

2019 No. 209

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Infrastructure to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of the Regulations covered by this Memorandum is to ensure that Council Directive 2014/52/EU, which amended Council Directive 2011/92/EU, is implemented in Northern Ireland in respect of canal schemes and certain marina works.
- 2.2. Council Directive 2011/92/EU (known as the Environmental Impact Assessment or EIA Directive) is itself a codification of previous EIA Directives on the assessment of the effects of certain public and private projects on the environment and requires Member States to ensure that projects likely to have significant effects on the environment are subject to environmental impact assessments.
- 2.3. Council Directive 2014/52/EU (“the 2014 Directive”) amended the EIA Directive in order to strengthen the quality of the environmental impact assessment procedure and to simplify that procedure with a view to improving resource efficiency, ensure the objectivity of the competent authority and enhance coherence with other EU legislation.

3. Background

- 3.1. The EIA Directive is intended to provide a high level of protection of the environment by ensuring that proposed projects which are likely to have a significant effect on the environment by virtue, inter alia, of their nature, size or location are subject to an environmental assessment prior to their approval.
- 3.2. The broad aim of the 2014 Directive is deregulatory and is intended to clarify and simplify the requirements of the EIA Directive by focusing on environmental factors that are significantly impacted rather than on any potential impact. It is intended to lighten unnecessary administrative burdens, reinforce

the quality of decision-making, improve current levels of environmental protection and introduce a more harmonised regulatory framework with a view to making decisions on private and public investment more sound, more predictable and sustainable in the longer term.

- 3.3. The previous EIA Directives (as codified by the EIA Directive) were implemented in Northern Ireland in respect of canal schemes and certain marina works by way of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (“the 2006 Regulations”).
- 3.4. The 2006 Regulations were partially revoked and re-enacted with amendment by the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 in order to implement the 2014 Directive, but only in respect of drainage schemes and drainage works.
- 3.5. These Regulations revoke the remaining provisions contained in the 2006 Regulations and re-enact them with amendment to provide stand alone Regulations which implement the 2014 Directive in respect of canal schemes and certain marina works.
- 3.6. The Regulations place requirements on the Department for Infrastructure when it is exercising powers contained in Part III of the Water (Northern Ireland) Order 1999 in relation to canal schemes and certain marina works.
- 3.7. The Regulations re-enact the existing provisions with the following key changes:
 - administrative burdens are reduced and processes streamlined through the introduction of joint or co-ordinated procedures when proposed projects require assessment under the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 as well as the EIA Directive;
 - the environmental factors to be considered in the assessment have been refined and broadened to reflect emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention;
 - the screening procedure, determining whether an EIA is required, is strengthened through new requirements in terms of the information that is required, revision of the selection criteria to be considered when making decisions and the introduction of a time limit of 90 days for making the decision;
 - the information to be contained in the environmental statement has been revised and clarified to improve its quality and content;
 - the environmental statement must be prepared by persons with sufficient expertise and competence and the Department must have or have access to sufficient expertise to examine the statement.

- the grounds for decisions on proposed projects must be clear and considered and reasons for determinations and decisions must be provided and shared with the public. In addition the Department needs to be objective and avoid conflicts of interest;
- where measures are proposed to offset any significant adverse effects on the environment, monitoring, proportionate to the nature, location and size of the proposed project and the significance of its effects on the environment will be required. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.

4. Consultation

4.1. A consultation exercise was not considered necessary as the changes are not controversial and do not impact any organisation other than the Department for Infrastructure when exercising powers under Part III of the Water (Northern Ireland) Order 1999.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposals and concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately. In light of this the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. The Department concluded that a Regulatory Impact Assessment (“RIA”) is not necessary as the Regulations do not impact business, charities or voluntary bodies. The impact will be on the Department for Infrastructure only.

7. Financial Implications

7.1. There are no significant financial implications arising from the introduction of these Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered the matter of Convention Rights and Community Law and is satisfied that the proposed legislation is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Regulations are necessary to ensure implementation of Directive 2014/92/EU in relation to environmental impact assessments for canal schemes and certain marina works.

10. Parity or replicatory measure

- 10.1 The Regulations closely follow the approach to transposition taken by the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

11. Additional information

- 11.1. None