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STATUTORY RULES OF NORTHERN IRELAND

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**2006 No. 34**

**Drainage (Environmental Impact Assessment)  
Regulations (Northern Ireland) 2006**

**PART II**

**DRAINAGE WORKS AND MARINA WORKS GENERALLY**

**Restriction on proposed works**

4. The Department shall not—
- (a) carry out any drainage works or marina works;
  - (b) 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;
  - (c) enter into or carry into effect, in pursuance of Article 30(2) of the Drainage Order, an agreement or arrangement with such a person for the purposes of such a scheme; or
  - (d) enter into any arrangement with another body or person in pursuance of Article 46 or Article 47(2) of the Water Order with a view to exercising any power to carry out marina works,

unless it has complied with the requirements of these Regulations in relation to the works in question and, in any case where a proposal relating to those works has been referred to the Commission under regulation 14(5)—

- (i) the Commission has consented to the carrying out of the works; and
- (ii) the works are carried out in accordance with any conditions to which the consent is subject.

**Consideration whether proposed works have significant effects on the environment**

5. The Department shall consider, taking into account the selection criteria in Schedule 2B to the Drainage Order, whether any proposed drainage works or marina works (in this Part referred to as “the proposed works”) are likely to have significant effects on the environment.

**Determinations following consideration of works under regulation 5**

6.—(1) Where, pursuant to regulation 5, the Department considers that the proposed works are not likely to have significant effects on the environment, it shall, by general and local advertisement—

- (a) state that it proposes to carry out the works in question;
- (b) describe briefly the nature, size and location of the proposed works;
- (c) state that it does not propose to prepare an environmental statement in respect of the works;

- (d) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed works at an address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette; and
  - (e) describe what other information relating to the environmental effects of the proposed works is available and give details of where it can be obtained.
- (2) Where the Department publishes a notice in accordance with paragraph (1) in relation to any proposed works 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, 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 proposed works are situate;
  - (c) any other public authority, statutory body or organization which exercises statutory functions, or is otherwise designated by any statutory provision 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.
- (3) Where, within the period specified in paragraph (1)(d), no representations have been made to the effect that the proposed works are likely to have significant effects on the environment, the Department may proceed to carry out those works or do such other thing in relation to them as is mentioned in regulation 4.
- (4) Where, following the period specified in paragraph (1)(d), the Department considers (whether in the light of any representations or otherwise) that the proposed works are likely to have significant effects on the environment, it shall make a determination accordingly.
- (5) Where, within the period specified in paragraph (1)(d), any representations have been made to the effect that the proposed works are likely to have significant effects on the environment and, notwithstanding those representations, the Department 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 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.
- (6) Where the Commission considers that the information and the copy documents provided in accordance with paragraph (5) 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.
- (7) Where an application is made to the Commission under paragraph (5) in relation to any proposed works the Commission shall, taking into account the selection criteria in Schedule 2B to the Drainage Order, determine whether the proposed works are likely to have significant effects on the environment and shall inform the Department, and any person who made representations under paragraph (1)(d) in relation to the works, of its determination.
- (8) Where an application is made to the Commission under paragraph (5) in relation to any proposed works, the Commission shall, prior to making a determination for the purposes of that paragraph, afford the Department and any person who made representations under paragraph (1)(d) in relation to the proposed works the opportunity of appearing before and being heard by the Commission.

**Notification of determination that proposed works are likely to have significant effects on the environment**

7.—(1) This regulation applies to any case where—

- (a) under regulation 6(4), the Department determines that any proposed works are likely to have significant effects on the environment; or
  - (b) under regulation 6(7), the Commission determines that any proposed works are likely to have significant effects on the environment.
- (2) In any case to which this regulation applies, the Department shall by general and local advertisement—
- (a) describe briefly the nature, size and location of the proposed works in question;
  - (b) state that the proposed works are likely to have significant effects on the environment and that the Department intends to prepare an environmental statement in respect of them;
  - (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 proposed works at an address specified in the notice within 28 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 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; and
  - (f) indicate whether the proposed works are likely to have significant effects on the environment in another EEA State.
- (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 additional information which is relevant to a case to which this regulation applies but which only becomes available after the publication of the advertisements under paragraph (2).

#### **Preparation of an environmental statement**

**8.** The Department shall prepare an environmental statement in any case to which regulation 7 applies.

#### **Request about the information to be included in an environmental statement**

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

(2) Where the Department requests an opinion under paragraph (1) before a determination has been made under regulation 6(4) or (7), the Commission shall deal with the request on the assumption that the works will have significant effects on the environment.

(3) Before giving an opinion under paragraph (1) in relation to any proposed works the Commission shall consult the Department and each of the consultation bodies.

(4) Giving an opinion under this regulation shall not preclude the Commission from requesting further information from the Department under regulation 14(6).

#### **Publicity for an environmental statement**

**10.—(1)** Where the Department has prepared an environmental statement in relation to any proposed works, 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 copies, together with details of the proposed works to which the statement relates, may be inspected;
  - (b) that any person wishing to make representations in relation to the likely environmental effects of the proposed works to which the statement relates shall make them in writing to the Department at the address specified in the advertisement within 28 days of the publication of the notice in the Belfast Gazette; and
  - (c) that where no objection in relation to the likely environmental effects of the works is made and the Department, having undertaken the assessment specified in regulation 14 (1), considers that the works should proceed, 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 on the likely environmental effects of the works to which the statement relates before the expiry of the period specified in the notice;
  - (b) make available at an office of the Department or some other convenient place for a period of at least 28 days following the date of publication of the notice in the Belfast Gazette, the details of the proposed works and the environmental statement relating to the works and 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 regulation 12, the amount of the charge.
- (4) Where, in accordance with paragraph (3)(a), the Department sends any person a copy of the 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 environmental statements**

**11.**—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of regulation 8 it may consult with any person to determine whether that person has in his possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, he shall make that information available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed works and made that statement available in accordance with regulation 10(3), the Department or, as the case may be, the Commission acting in accordance with regulation 14(6), may determine that there is additional information available.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his possession any additional information and if that person has any such information, he shall make that information 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 times at which a copy of that additional information may be inspected or obtained and, if a charge is to be made for any such copy under regulation 12, 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 28 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 consultation body;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 28 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed works in question and the environmental statement relating to the works, 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 by any person 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 that charge.

### **Charges**

**12.** The Department may make a reasonable charge reflecting printing and distribution costs to any person for—

- (a) any copy, in excess of one, of the whole or any part of an environmental statement supplied to that person in accordance with regulation 10(3) or 15; or
- (b) any copy, in excess of one, of the whole or any part of any additional information supplied to that person in accordance with regulation 11(5) or 15.

### **Proposed works likely to have significant effect on the environment in another EEA State**

**13.—(1)** Where it appears to the Department that any proposed works are likely to have a significant effect 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 that State, as soon as possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 7(2)—
  - (i) a copy of the notice; and
  - (ii) any available information on the possible significant effects of the proposed works 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 works in accordance with paragraphs (2) to (4) it must inform the Department of that fact within 28 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 works;
- (b) a copy of the environmental statement in respect of the proposed works;
- (c) all the information required to be given to any person under regulation 7; 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 these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed works should proceed, to forward to the Department, within 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 proposed works 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.

(5) Where an EEA State has been consulted in relation to any proposed works in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the proposed works and shall forward to it a statement of—

- (a) the determination and conditions attached thereto;
- (b) the main reasons and 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 proposed works.

### **Determination of whether proposed works should proceed**

14.—(1) On expiry of the period referred to in regulation 10(2)(b) the Department shall assess, in the light of the environmental statement, any additional information and any representations made in accordance with regulations 10 or 13, the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C to the Drainage Order.

(2) Where—

- (a) no objection in relation to the likely environmental effects of the proposed works has been made; or
- (b) any such objection has been withdrawn, and

the Department, having undertaken the assessment required by paragraph (1) considers that the works should proceed, it may so determine (or may so determine subject to conditions).

(3) Where the Department has determined—

- (a) in accordance with paragraph (2), that it should proceed with the works or that it should proceed subject to conditions, or
- (b) that it should not so proceed,

it shall publish a general and local advertisement in accordance with paragraph (4).

(4) Each of the advertisements referred to in paragraph (3) shall—

- (a) inform the public of the determination, and
- (b) give details of the places where and the times at which the public may inspect a statement of—

- (i) the Department's determination and any conditions to which it is subject;
- (ii) the main reasons and considerations upon which its determination was based; and
- (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed works.

(5) Where the Department, having undertaken the assessment specified in paragraph (1), considers that the proposed works should proceed but objections to those works made in relation to their likely environmental effects have not been withdrawn, it shall send the proposal for the works together with the environmental statement, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (6) to (9).

(6) Where the Commission considers that the proposal, environmental statement, additional information and representations sent to it in accordance with paragraph (5) do not provide sufficient information to enable a determination to be made in relation to any proposed works in pursuance of this regulation, the Commission 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 it may be able to provide on the matters raised.

(7) Where, in accordance with paragraph (6), the Commission requests further information from the Department in relation to any proposed works, the Department shall, no later than the time when it provides that information to the Commission—

- (a) by general and local advertisement, at least 28 days before a determination as to whether the proposed works should proceed—
  - (i) state that the further information is available in relation to the works and give details of the places where and times at which a copy may be inspected; and
  - (ii) state that any person who wishes to make representations on the likely environmental effects of the works to which the further information relates may make them in writing to the Commission at the address specified in the advertisement within 28 days of the date of the publication of the notice in the Belfast Gazette;
- (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 proposed works to which the further information relates before the expiry of the period specified in the notice.

(8) The Commission shall—

- (a) assess, in the light of the environmental statement, any further information provided in response to a request under paragraph (6) and any representations referred to in regulations 10, 13 or paragraph (7), the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C to the Drainage Order;
- (b) afford the Department and any persons who made 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 works in question 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 and any person who made representations under regulations 10, 13 or paragraph (7) a statement in writing of—

- (i) the Commission's determination under sub-paragraph (c) and any conditions attached to it;
  - (ii) the main reasons and considerations upon which it was based; and
  - (iii) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed works.
- (9) The Department shall by general and local advertisement—
- (a) inform the public of the Commission's determination under paragraph (8)(c); and
  - (b) give details of the places where and times at which the public may inspect a copy of the statement sent to it under paragraph (8)(d).
- (10) In relation to any determination made by itself or by the Commission under this regulation or regulation 6, the Department shall maintain a record of, and make available to the public on request the following—
- (a) the content of the determination and any conditions attached;
  - (b) the main reasons and considerations on which the decision is based, including information about the public participation process; and
  - (c) a description, where necessary, of the main measures proposed to avoid or mitigate any major adverse effects.

### **Public Participation**

- 15.** The Department shall, in relation to any proposed works, make available to the public—
- (a) at the time that the notice in the Belfast Gazette relating to those works is published under regulation 6(1), all information that is relevant to them;
  - (b) any other information which is relevant to a determination under regulation 14 and which only becomes available after the time that the public was given notice in accordance with regulation 6(1)(e), whether as a result of a request from the Commission under regulation 6(6) or otherwise; and
  - (c) any further information which is relevant to the assessment under regulation 14 and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under regulation 7(2).