

**DRAINAGE (AMENDMENT)  
(NORTHERN IRELAND) ORDER 2005**

**S.I. 2005 1453**

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**EXPLANATORY MEMORANDUM**

**INTRODUCTION**

1. The Drainage (Amendment) (Northern Ireland) Order 2005 was made on 7 June 2005.
2. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development (“the Department”) to assist the reader in understanding the Order. It does not form part of the Order.

**BACKGROUND AND POLICY OBJECTIVES**

3. The Rivers Agency (“the Agency”) is an Executive Agency within the Department. The Department is the statutory drainage and flood protection authority for Northern Ireland. Under the terms of the Drainage (Northern Ireland) Order 1973 the Department has discretionary powers to:
  - Maintain watercourses and sea defences, which have been designated by the Drainage Council for Northern Ireland for maintenance by the Department at public expense.
  - Construct and maintain drainage and flood defence structures (including improved infrastructure to facilitate development).
  - Administer advisory and enforcement procedures to protect the drainage function of all watercourses including administration of the requirement for third parties to obtain Departmental consent to carry out developments, likely to affect flows in watercourses, such as culverting and storm discharge.
  - The Department also administers historic drainage trusts set up to provide for private land drainage works following the land reform legislation in the early 20<sup>th</sup> century.

**PURPOSE OF THE ORDER**

4. The Order amends the Drainage (Northern Ireland) Order 1973 to give the Department two new powers specifically:
  - a power to make orders to dissolve drainage trusts; and
  - a power to make regulations to charge for the functions it undertakes.

**DISSOLUTION OF DRAINAGE TRUSTS**

5. In the early part of the 20<sup>th</sup> Century, many of the large estates in Ireland were broken up and sold to their tenants. On some of these estates there were watercourses/drains, which had been cleansed and maintained by estate owners. This work was considered onerous and when the terms of the Land Purchase were being settled, maintenance of these watercourses/drains was taken into account when fixing the sale price. A sum of money was set aside out of the purchase price to be expended on future maintenance of

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(Amendment) (Northern Ireland) Order 2005 1453*

these watercourses/drains. This sum was intended to yield an income equivalent to the average annual expenditure of the landlord during the previous 10 years.

6. Most of the drainage trusts were set up under section 27 of the Northern Ireland Land Act 1925 with trustees nominated by the tenant farmers and as appointed by the appropriate Government Department of the time. The trustees were responsible for carrying out the provisions of the trusts.
7. The funds which were set aside were initially lodged with the Irish Land Commission, then later transferred to the Department of Finance under the Northern Ireland Land Purchase (Winding Up) Act 1935 and finally to the Department of Agriculture under the Transfer of Functions Order (NI) 1968.
8. Article 29 of the Drainage (NI) Order 1973 provides for the transfer of drainage trusts, funds, associated rights and liabilities to the Department, on agreed terms. Article 29(2) empowers the Department to apply the property transferred for drainage purposes on the land associated with the trust.
9. The Agency administers over 20 drainage trust funds. The funds held in each trust are relatively small in comparison with current drainage maintenance costs. In many cases income generated by the capital invested does not meet the likely demand for maintenance. Consequently they have become largely obsolete, and no longer serve the purpose for which they were established. It is no longer administratively efficient for the Department to continue to manage these largely moribund trusts. Also in some cases drains covered by the trusts have been designated by the Drainage Council for Northern Ireland and are now maintained by the Agency at public expense.
10. Specific power needs to be taken to enable trusts to be dissolved. The Order provides permissive powers to dissolve the drainage trusts.
11. It is intended that the individual trust funds will be dissolved as it is considered appropriate, by means of subordinate legislation following consultation, which will enable stakeholders to make representation about any detriment to their interests in the proposed dissolution. On dissolution funds will be dispersed to identified stakeholders making legitimate claims to those funds and, in the absence of identified stakeholders or in the event of unclaimed funds after public advertisement, the remaining funds will revert to Government.
12. In view of the time needed to identify interested parties for each trust and consult with them on the proposals, it is envisaged that the dissolutions may be phased.

**POWER OF DEPARTMENT TO CHARGE FOR EXERCISE OF FUNCTIONS**

13. The Department does not currently have legislative authority to charge for most of the work it does under the Drainage (Northern Ireland) Order 1973.
14. The Northern Ireland Audit Office (NIAO) report dated 8 June 2004 entitled "Recoupment of Drainage Infrastructure Costs" recommended that the Agency seek an amendment to the Drainage Order to include provision for a freestanding power to charge.
15. The NIAO report specifically deals with the issues of developers benefiting from infrastructure works undertaken by the Agency at public expense. The amendment to the Drainage Order enables the Department to address this matter by introducing charging by means of subordinate legislation subject to negative resolution in the Assembly. It also enables the Department to make regulations to charge for other functions.
16. It is envisaged that the subordinate legislation, which will be subject to public consultation, will also provide the detail of charging levels, sanctions, recovery

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(Amendment) (Northern Ireland) Order 2005 1453*

procedure and administrative financial procedures required for the associated collection and accounting of any monies arising from charges.

17. The subordinate legislation on obtaining contributions from developers will be formulated in the light of an ongoing study of methodologies for such charging, and impact appraisal of charges.

#### **CONSULTATION**

18. Public consultation on the policy of introducing general powers to charge and dissolution of drainage trusts, has been carried out in tandem with the consultation on the proposal for the Draft Order in Council. Most of the responses to consultation were supportive of the proposal and only one organisation was opposed to the principle of charging.

#### **MAIN ELEMENTS OF THE ORDER**

19. The two strands of amendment to the Drainage Order are:
  - provide powers to dissolve drainage trusts; and
  - make provision for a freestanding power to charge.

#### **COMMENTARY ON PROVISIONS**

20. Comments are not given when the wording is self-explanatory.
21. [Articles 1 & 2](#) of the Order provide for the title and commencement, apply the Interpretation Act (NI) 1954 and define the general terms used throughout the Order.
22. [Article 3](#) deals with the dissolution of drainage trusts. It inserts into the Drainage (Northern Ireland) Order 1973 a new Article 29A enabling the Department to make orders to dissolve drainage trusts and provides for the procedure associated with making a dissolution order, including public consultation and consideration of objections.
23. [Article 4](#) deals with the power of the Department to charge for exercise of its functions. It inserts, into the Drainage Order, a new Article 34A which enables the Department to make regulations, prescribing the functions requiring a charge, the amount of the charge, the method of determination, arrangements for collection and recovery including the calculation of interest for late payment.
24. The Order makes a consequential amendment to Article 35 of the Drainage Order, in relation to recovery of expenses of the Department.
25. The Order also makes the consequential amendment to Article 42 (2) of the Drainage Order in relation to financial provisions for appropriation of receipts in aid and of the expenses incurred by the Department.

#### **COMMENCEMENT**

26. It is anticipated that the Order will be brought into operation on 8 August 2005. It is also anticipated that the subordinate legislation introducing the dissolution of some drainage trusts will be brought forward in 2005, 2006 and 2007. The subordinate legislation setting out arrangements for charging for infrastructure works will be brought forward in 2007.