
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 34

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

PART I

INTRODUCTORY AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 and shall come into operation on 20th March 2006.

Interpretation

2.—(1) In these Regulations—

“additional information” in any case where an environmental statement has been prepared in respect of proposed works means any information relating to the statement which is not contained in it;

“another EEA State” means an EEA State other than the United Kingdom;

“canal scheme” has the same meaning as in Article 42 of the Water Order(1);

“the Commission” means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973(2);

“the consultation bodies” shall be construed in accordance with regulation 6(2);

“the Department” means—

(a) in relation to any canal schemes or marina works the Department of Culture, Arts and Leisure; and

(b) for all other purposes the Department of Agriculture and Rural Development;

“the Directive” means Council Directive [85/337/EEC\(3\)](#) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive [97/11/EC\(4\)](#) and Council Directive [2003/35/EC\(5\)](#);

“drainage” includes defences against water including seawater;

“drainage works” means—

(a) any works carried out under the Drainage Order for the purpose of draining land or for preventing or mitigating flooding or erosion to which land is subject and includes the construction, cleansing, scouring, deepening, widening, straightening or diverting of any

(1) S.I.1999/662 (N.I. 6)

(2) S.I. 1973/70 (N.I. 2)

(3) O.J. No. L175, 5.7.85, p. 40

(4) O.J. No. L73, 14.3.97, p. 5

(5) O.J. No. L156, 25.6.2003, p. 17

watercourse or outfall for water, canalisation, the construction, installation or alteration of any pump, pump machinery or pump-house, the removal of any obstruction, natural or artificial, in any watercourse and the construction, repair, raising, lowering, widening, straightening, altering or removal of any embankment, dam, barrier, sluice, weir, wall, culvert or groyne or of any structure or erection for the purpose of defence against, or relief from, water; or

(b) any changes made to or extension of such works;

“the Drainage Order” means the Drainage (Northern Ireland) Order 1973⁽⁶⁾;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

“environmental statement” means a statement that includes—

(a) such of the information referred to in Part I of Schedule 2A to the Drainage Order as is reasonably required to assess the environmental effects of any proposed works and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; and

(b) at least the information referred to in Part II of Schedule 2A to the Drainage Order;

“general advertisement” means publication of a notice—

(a) in the Belfast Gazette; and

(b) on the website maintained by the Department;

“local advertisement” means a notice in one or more newspapers circulating in the immediate locality of any proposed works;

“marina works” means—

(a) works carried out in relation to a marina under Part III of the Water Order; and

(b) any changes made to or extension of such works;

“proposed works” shall be construed in accordance with regulation 5; and

“the Water Order” means the Water (Northern Ireland) Order 1999⁽⁷⁾.

(2) In these Regulations, “the Drainage Council”, “drainage scheme” and “watercourse” have the meanings respectively assigned to them by Article 2(2) of the Drainage Order.

(3) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in another EEA State.

(4) Expressions used in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) The Interpretation Act (Northern Ireland) 1954⁽⁸⁾ shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Application

3.—(1) Subject to the following provisions and regulation 23, Part II shall apply in relation to any drainage works other than works—

(a) commenced before the coming into operation of these Regulations;

⁽⁶⁾ S.I. 1973/69 (N.I. 1) as amended by S.R. No. 394

⁽⁷⁾ S.I. 1999/662 (N.I. 6)

⁽⁸⁾ 1954 c. 33 (N.I.)

- (b) carried out under a drainage scheme which was confirmed under Article 13 of the Drainage Order or treated by virtue of Article 8(1) or 9(1) of that Order as if it had been confirmed under Article 13 of that Order.
- (2) Part II shall apply in relation to any marina works which were commenced after the coming into operation of these Regulations other than works carried out under a canal scheme.
- (3) The amendments made to the Water Order by regulation 22 shall not have effect in relation to any canal scheme prepared before the coming into operation of these Regulations.
- (4) The amendments made to the Drainage Order by regulations 16 to 21 shall not have effect in relation to any drainage scheme prepared before the coming into operation of these Regulations.
- (5) Part II shall not apply in relation to any proposed drainage works or marina works which the Department directs are to be exempted from the said Part II.
- (6) Part III shall not apply in relation to any proposed drainage scheme or canal scheme which the Department directs is to be exempted from the said Part III.
- (7) The Department shall only make a direction under paragraph (5) or (6) in an exceptional case and where it does so, it shall—
 - (a) consider whether in that case another form of assessment of the environmental effects of the proposed works or scheme in question would be appropriate;
 - (b) make available to the public the information obtained under that other form of assessment, information relating to the making of the direction and the reasons for making it.
- (8) No direction shall be made under paragraph (5) or (6) where the Department or any other Northern Ireland department is aware that the proposed works or scheme in question would be likely to have significant effects on the environment of another EEA State.
- (9) Where the Department makes a direction under paragraph (5) or (6) it shall by general and local advertisement briefly describe the proposed works, explain the effects of the direction and give the reasons for making it.

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(9).

(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).

PART III

DRAINAGE SCHEMES

Amendment of the Drainage Order

16. The Drainage Order(10) shall be amended in accordance with regulations 17 to 21.

Drainage Order: Interpretation

- 17.—(1) In Article 2(2)—

- (a) for the definition of “another EEA State” there shall be substituted the following definitions—

““additional information” in any case where an environmental statement has been prepared in respect of a drainage scheme means any information relating to the statement which is not contained in it;

“another EEA State” means an EEA State other than the United Kingdom;”;

- (b) for the definition of “Commission” there shall be substituted the following definitions—

““the Commission” means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973(11);”;

““consultation bodies” shall be construed in accordance with Article 12A(5);”;

- (c) for the definition of “the Directive” there shall be substituted the following definition—

““the Directive” means Council Directive 85/337/EEC(12) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC(13) and Council Directive 2003/35/EC(14);”;

- (d) for the definition of “EEA State” there shall be substituted the following definition—

““EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;”;

- (e) for the definitions of “environmental information” and “environmental statement” there shall be inserted the following definitions—

““environmental information” means information in an environmental statement and any additional information provided in accordance with this Order in relation to an application or referral for a determination under Article 12A(8) or Article 12H(5) in relation to the likely environmental effects of the scheme which is the subject of the application;”;

““environmental statement” means a statement that includes—

(10) S.I. 1973/69 (N.I. 1) as amended by S.R. No. 394

(11) S.I. 1973/70 (N.I. 2)

(12) O.J. No. L175, 5.7.85

(13) O.J. No. L73, 14.3.97, p. 5

(14) O.J. No. L156, 25.6.2003, p. 17

- (a) such of the information referred to in Part I of Schedule 2A as is reasonably required to assess the environmental effects of the drainage scheme and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; and
 - (b) at least the information referred to in Part II of Schedule 2A;”; and
- (f) for the definition of “local newspaper” there shall be inserted the following definitions—
- ““general advertisement” means publication of a notice—
 - (a) in the Belfast Gazette; and
 - (b) on the website maintained by the Department;
 - “local advertisement” means a notice in one or more newspapers circulating in the immediate locality of a proposed drainage scheme;”.
- (2) For Article 2(2A) where it appears twice there shall be substituted the following paragraphs—
- “(2A) In this Order, any reference to significant effects on the environment shall include a reference to such effects on the environment in another EEA State.
 - (2B) Expressions used in this Order and in the Directive have the same meaning for the purposes of this Order as they have for the purposes of the Directive.”.

Restrictions on drainage schemes

18. For Articles 12 to 12E there shall be substituted the following Articles—

“Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme unless—
- (a) it has complied with the requirements of Articles 12A to 12H in relation to the scheme; and
 - (b) where a proposal for the scheme has been referred to the Commission under Article 12H(5)—
 - (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.

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

- 12A.—(1) Where the Department has prepared a drainage scheme it shall—
- (a) consider, taking into account the selection criteria in Schedule 2B, 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 situate.
- (2) The district council to which a copy of a drainage scheme is sent by the Department pursuant to paragraph (1)(b)—
- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 28 days from the date of the publication in the Belfast Gazette

of the notice relating to the scheme given under paragraph (3) 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.

(3) Where, pursuant to paragraph (1)(a), the Department considers that the works specified in a scheme 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 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;
- (d) 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 28 days of the publication of the notice in the Belfast Gazette; and
- (e) describe what other information relating to the environmental effects of the works is available and give details of where it can be obtained.

(4) Every notice published pursuant to paragraph (3) shall—

- (a) state the place or places where and the period, not being less than 28 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
- (b) state that any person who considers that his interests will be prejudicially affected by the scheme may, at any time within 28 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 he wishes to make.

(5) Where, pursuant to paragraph (3), 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 organization 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 (3)(d), no representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to carry out the scheme.

(7) Where, following the period specified in paragraph (3)(d), 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 make a determination accordingly.

(8) Where, within the period specified in paragraph (3)(d), 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, 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 (3)(d), 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 (3)(d) 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.

(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 that the works specified in the scheme are likely to have significant effects on the environment and the Department intends to prepare an environmental statement in respect of the works;
- (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 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 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 interests will be prejudicially affected by the scheme may, at any time within 28 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 he 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 and consultations thereon

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

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

(3) Where the Department requests an opinion under paragraph (2) 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.

(4) Before giving an opinion under paragraph (2) in relation to any drainage scheme the Commission shall consult the Department and each of the consultation bodies.

(5) Giving an opinion under paragraph (2) shall not preclude the Commission from requesting further information from the Department under Article 12H(6).

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 works to which the statement relates should 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 effects of the works specified in the scheme is made and the Department, having undertaken the assessment specified in Article 12H(1), considers that the scheme should proceed, it may proceed with the scheme.

(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 28 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 works therein specified, 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 Article 12F, the amount of the charge.

(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 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 it 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 Article 12D(3), the Department or, as the case may be, the Commission acting in accordance with Article 12H(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 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 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 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 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 of the consultation bodies;
- (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 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(15).

(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. A reasonable charge reflecting printing and distribution costs may be made 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 Article 12D(3) or 13A; or
- (b) any copy, in excess of one, of the whole or any part of any further information supplied to that person in accordance with Article 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 works on the environment of the 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 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 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 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.

(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 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 proceed

12H.—(1) On the expiry of the period referred to in Article 12D(2)(b) the Department shall assess in the light of the environmental statement, any additional information and any representations made in accordance with Article 12D and Article 12G the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 2C.

(2) Where—

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

the Department, having undertaken the assessment required by paragraph (1) may determine, (unconditionally or subject to conditions) that the drainage scheme shall proceed.

(3) Where the Department has determined—

- (a) in accordance with paragraph (2) that it should proceed with a drainage scheme; or
- (b) that it should not so proceed,

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

(4) Each advertisement referred to in paragraph (3) 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 Department's determination and any conditions to which it is subject;
 - (ii) the main reasons and considerations upon which the 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 works specified in the scheme.

(5) Where the Department, having undertaken the assessment specified in paragraph (1), considers that the scheme in question should proceed 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 (6) to (9).

(6) Where the Commission considers that the information about a scheme supplied to it in accordance with paragraph (5) 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 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, 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 drainage scheme should proceed—
 - (i) state that the further information is available 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 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 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 works specified in the scheme in question 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 by the Department in response to a request under paragraph (6) and any representations referred to in Article 12D, Article 12G or paragraph (7), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
- (b) afford the Department 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 and to any other person who made representations under Article 12D, Article 12G or paragraph (7) a statement in writing of—
 - (i) the Commission's determination under sub-paragraph (c) and any conditions to which the determination is subject;
 - (ii) the main reasons and considerations upon which the 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 scheme.

- (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 the Department under paragraph (8)(d).
- (10) In relation to any determination made by itself 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 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.”.

Confirmation of Drainage Schemes

19. For Article 13 there shall be substituted the following Articles—

“Confirmation of drainage schemes

13.—(1) Where—

- (a) the Department has determined in accordance with Article 12A(1)(a) that the works specified in the proposed scheme are not likely to have significant effects on the environment; and
- (b) no representations made in accordance with Article 12A(3)(d) are received in relation to those works within the time limit therein specified,

it may, within 28 days of the expiration of the time limit referred to in Article 12A(3)(d) and, after considering any representations sent to it under Article 12A(4)(b) and after holding such inquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, either without modification or with such modifications as the Department thinks fit.

(2) Subject to paragraph (3), where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme it may, after the expiration of 28 days from the expiration of the period of notice referred to in Article 12D(2)(b) and after holding such an inquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Department thinks fit.

(3) Where the Department has prepared an environmental statement in relation to the works specified in the drainage scheme it shall not, under paragraph (2) confirm the scheme unless it has first taken into consideration—

- (a) the statement and any additional information;
- (b) the works specified in the drainage scheme;
- (c) any representations sent to it under Article 12A(3)(d), 12D or made by an EEA State in pursuance of Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and
- (e) the determination made by the Department under Article 12H(2) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(8)(c) and any conditions attached to such consent.

(4) Where having taken into consideration the matters specified in paragraph (3) the Department decides to confirm a scheme in accordance with paragraph (2) it shall—

- (a) inform in writing any person who or EEA State which made representations in accordance with Article 12A (3)(d) or Articles 12D or 12G of its decision and any reasons and considerations upon which it was based and that in making it the Department has taken into consideration the matters specified in paragraph (3); and
- (b) by general and local advertisement announce its decision and the considerations on which it was based and state that in making it the Department has taken into consideration the matters specified in paragraph (3).

(5) In this Article, modification includes a variation, addition or exception.

Public Participation

13A. The Department shall, in relation to any works specified in a drainage scheme, make available to the public—

- (a) at the time that the notice in the Belfast Gazette relating to those works is published under Article 12A(3), all information that is relevant to them;
- (b) any other information which is relevant to a decision under Article 13 and which only becomes available after the time that the public was given notice in accordance with Article 12A(3), whether as a result of a request from the Commission under Article 12A(9) or otherwise; and
- (c) any further information which is relevant to the assessment under Article 12H(1) and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under Article 12B(2).”.

Amendment of drainage schemes

20. For Article 16 there shall be substituted—

“Amendment of drainage schemes

16.—(1) Where, in the course of carrying out works specified in a drainage scheme, the Department considers that any provisions of that scheme ought to be substantially varied, it may, subject to paragraphs (2) and (3), after consultation with the Drainage Council and after giving notice to—

- (a) such person as the Department considers likely to be materially affected; and
- (b) any person who, or EEA State which, made representations under Article 12A(3) (d) or Article 12D or Article 12G,

direct that such variations be made in the scheme as appear to be necessary.

(2) The Department shall not direct that any variation be made in a drainage scheme unless it has first taken into consideration—

- (a) the environmental statement and any additional information;
- (b) the works specified in the scheme as the Department proposes to vary it;
- (c) any representations made in accordance with Article 12A(3)(d) or Article 12D or Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and

(e) any determination made by the Department under Article 12H(2) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(8)(c) and any conditions attached to such consent.

(3) Where, pursuant to paragraph (1), the Department gives notice of the variation of a drainage scheme which has been made subject to an environmental statement such notice shall be given in writing and shall indicate the reasons and considerations upon which the variation was based and that the Department has taken into consideration the matters specified in paragraph (2).

(4) Where a direction given under this Article varies a drainage scheme, that scheme shall have effect, and be deemed always to have had effect, subject to that direction, and, accordingly, references in this Order to a drainage scheme shall, in relation to that scheme, be construed and have effect as referring to that scheme as varied by that direction.

(5) A direction given under this Article shall not have effect so as to authorise the Department to purchase land compulsorily for the purposes of the drainage scheme otherwise than in accordance with, and subject to, the provisions of Article 10(3) and (4) and Schedule 3.”.

Schedules 2A to 2C

21. For Schedules 2A to 2C there shall be substituted the Schedules set out in Schedule 1 to these Regulations.

Amendment of Water Order

22.—(1) The Water Order(16) shall be amended in accordance with this regulation.

(2) For Article 45(1) there shall be substituted—

“(1) The provisions of the Drainage Order specified in Part I of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to canal schemes in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions, as so modified, shall have effect as if they were provisions of this Part.

(1A) The provisions of the Drainage Order specified in Part II of Schedule 5 shall, with the modifications of those provisions specified in Part III of that Schedule, apply in relation to works under this Part (including works undertaken in pursuance of a canal scheme) in the same manner as those provisions apply in relation to drainage schemes under that Order and those provisions as so modified shall have effect as if they were provisions of this Part.”.

(3) For Schedule 5 there shall be substituted the Schedule set out in Schedule 2 to these Regulations.

PART IV

FINAL PROVISIONS

Revocations and transitional provisions

23.—(1) Subject to paragraph (2) the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001(17) are hereby revoked.

(16) S.I. 1999/662 (N.I. 6)

(17) S.R. 2001 No. 394

(2) Nothing in paragraph (1) shall affect the continued operation of the Regulations mentioned in that paragraph in relation to any—

- (a) drainage works or marina works commenced before the coming into operation of these Regulations; or
- (b) drainage scheme or canal scheme prepared before the coming into operation of these Regulations.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 9th February 2006.

L.S.

N. Cornick
A senior officer of the
Department of Agriculture and Rural
Development