

EXPLANATORY MEMORANDUM

The Water Environment (Floods Directive) Regulations (Northern Ireland) 2009

SR 2009 No. 376

1.1 Introduction

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

2. Purpose

- 2.1 These Regulations are required to implement the EU Directive 2007/60/EC on the assessment and management of flood risk in Northern Ireland. The Directive, known as the Floods Directive entered into force on the 26 November 2007 and its main purpose is to establish a framework for the assessment of flood risk which aims to reduce the adverse consequences of flooding on human health, the environment, cultural heritage and economic activity.

3. Background

- 3.1 The principal rationale for the EU Floods Directive rests on the need to avoid inconsistent or contradictory approaches to flood risk management, and to ensure co-ordinated planning and action within river basins and in particular river basins which span two or more Member States. The growing incidents of severe flood events in some parts of Europe, the increasing risks from climate change and the risks from continuing development in flood plains are other reasons cited. The Commission holds the view that because flooding is a serious problem with major social, environmental and economic consequences, there is a need for concerted action.
- 3.2 The main requirements contained within the Directive and transposed in the Northern Ireland Regulations are to:
 - a) Prepare a Preliminary Flood Risk Assessment of all river basins and coastal zones in Northern Ireland by December 2011. On the basis of this assessment, identify all areas at potential significant flood risk;
 - b) Produce detailed Flood Hazard and Flood Risk maps for the areas determined to be at potential significant flood risk by December 2013;
 - c) Produce Flood Risk Management Plans that are focused on prevention, protection and preparedness and which contain objectives and measures to reduce significant risk in these areas. Plans must be produced by December 2015;
 - d) Co-ordinate efforts with ROI in relation to implementation of the provisions in international catchments;
 - e) Encourage the active involvement of interested parties in the production of Flood Risk Management Plans and co-ordinate this with the involvement of interested parties to the Water Framework Directive.

f) Make available to the public the Preliminary Flood Risk Assessment, Flood Hazard maps, Flood Risk maps and the Flood Risk Management Plans.

3.3 DARD, Rivers Agency has been designated as the competent authority to implement the Directive in NI and currently has responsibility for flooding from rivers and the sea. However, there are other sources of flooding which are the responsibilities of other authorities. As there is often a complex relationship between the sea, rivers, sewerage systems and surface water in the generation of a flood, it is essential that all responsible authorities co-ordinate their activities to effectively manage flood risk. The Regulations place a statutory duty on all responsible authorities to exercise their relevant functions in a manner which ensures compliance with the requirements of the Directive. The Regulations also place obligations on public bodies to provide information and assistance to the Department in implementing these Regulations in Northern Ireland.

3.4 As Northern Ireland shares river basins and coastal zones with ROI the Regulations provide for the exchange of relevant information and coordination in the implementation of the Directive within these areas.

4. Consultation

4.1 A public consultation was undertaken on the proposed implementation of the Directive in Northern Ireland. Responses were broadly supportive of the proposals and where appropriate, the Regulations have been amended to reflect points raised in the public consultation.

4.2 A summary of the responses received and the Department's response is available on the Rivers Agency website www.riversagencyni.gov.uk.

5. Equality Impact

5.1 The proposals have been subject to an Equality Impact Assessment screening exercise and this has concluded that flooding is indiscriminate and that no adverse differential impact is likely on section 75 groups. A copy of the Equality and Human Rights screening template is attached at Annex A.

6. Regulatory Impact

6.1 A Partial Regulatory Impact Assessment (RIA) has been carried out and it is considered that the proposals primarily affect Government Departments and Northern Ireland Water which has responsibility for water and sewerage in Northern Ireland and is a government owned company.

6.2 The policy may have a positive impact on businesses which are located in flood prone areas as the main purpose of the policy is to reduce the risk of flooding. Even in the circumstances that it is not possible to reduce the likelihood of flooding to some businesses, the flood mapping requirements of the Regulations will ensure that businesses are at least aware of the flood risk to their property and can take appropriate steps to mitigate the risk.

6.3 No comments were received on the partial RIA during the consultation process. A final RIA is attached for information at Annex B.

7. Financial Implications

- 7.1 The work programmes necessary to ensure full compliance with the Directive may cost government of the order of £5.5m over the first 6 year cycle.
- 7.2 Funding has been identified in budget allocations up to 2010/11 and the Investment Strategy for Northern Ireland up to 2017/18. Further bids will be made in the next Budget round.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 It is the view of the Department that these Regulations are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 A Transposition Note has been prepared and laid along with the statutory rule and explanatory memorandum. The proposed legislation fulfils the requirements of the EU Floods Directive. The Transposition Note is attached at Annex C.

10. Position in Great Britain

- 10.1 These Regulations apply in Northern Ireland only. Scotland has determined that primary legislation is most appropriate in their particular circumstances to transpose the requirements of the EU Floods Directive. England and Wales also prepared primary legislation to transpose the requirements of the EU Floods Directive and address other major shortcomings of their existing legislative framework for flood risk management. The decision within GB to use primary legislation was primarily influenced by the recommendations of the Pitt Report which was commissioned by government to conduct an independent review of the flooding emergency that occurred in England in 2007. However, since the public consultation on the NI Regulations, England and Wales has opted to prepare secondary legislation to transpose the requirements of the Directive so as to meet the transposition deadline of the 25 November 2009.
- 10.2 The legislation proposed in England and Wales is broadly in line with the NI Regulations and takes account of the organisational arrangements in England and Wales where a number of organisations and local authorities have responsibility for flood defence and drainage functions.

11. Additional Information

- 11.1 Mary McKeown at the Department of Agriculture and Rural Development, Tel: 028 90253378 or email mary.mckeown@dardni.gov.uk can answer any queries regarding the Regulations.

Equality and Human Rights Screening Template



DARD Equality and Human Rights Screening Template

DARD has a statutory duty to screen. This includes our strategies and plans, policies, legislative developments; and new ways of working such as – the introduction, change or end of an existing service, funding arrangement or facility. This screening template is designed to help business areas consider the likely equality and human rights impacts of their proposed decisions on DARD's customers, service users, staff and visitors.

Section A - asks you to provide details about the policy / decision that is being screened.

Section B - has 4 key questions that require you to consider the likely impact on Section 75 equality groups. Details of all consultation activity should be recorded.

Section C - has 4 key questions in relation to obligations under the Disability Discrimination Order and the Human Rights Act.

Section D - is the formal record of the screening decision. It is important that all efforts to consult and consider evidence are recorded precisely throughout the entire screening process, in accordance with the terms of the Guidance Note at the end of the document.

Section A

Details about the policy / decision to be screened

Title of policy / decision to be screened:- Water Environment (Floods Directive) Regulation (NI) 2009

Brief description of policy / decision to be screened:- These Regulations implement the EU Floods Directive on the assessment and Management of Flood Risk in Northern Ireland. The Regulations requires the competent authority to identify areas of potential significant flood risk by undertaking a preliminary Flood Risk Assessment of all River Basins, and coastal zones by December 2011. For all areas determined to be at potential significant risk, flood hazard and flood risk maps must be produced by December 2013. Flood Risk Management Plans that focus on prevention, protection and preparedness, and contain details of objectives and measures to reduce significant risk must be produced by December 2015.

Aims and objectives of the policy / decision to be screened:- The Regulations implement the requirements of the EU Floods Directive by establishing a framework for managing flood risk that is aimed at reducing the adverse consequences of flooding on human health, the environment, culture, heritage and economic activity. Co-ordination with the Water Framework Directive and the engagement and consultation with interested parties and the public is required in the production of flood risk management plans.

On whom will the policy / decision impact:- The implementation of the policy will impact mainly on government departments, namely DARD Rivers Agency, DRD Roads Service and the Government owned company NI Water. The Regulations also places a statutory duty on all public bodies to consider the potential impact of flood risk and the management of flood risk in exercise of their function and in the development of polices. The flood risk management plans that are produced as the outcome of the policy will have an impact on the public and businesses located within the areas determined to be at potential significant flood risk.

Section B

1. Is there any evidence of higher or lower participation or uptake by different groups?

	Yes	No	Don't know
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Evidence held? Outline all supporting evidence: Flooding does not discriminate and there is currently no evidence to indicate that it adversely affects any particular groups more than others.

No evidence held? Outline how you will obtain it: The Preliminary Flood Risk Assessment will collect evidence on the adverse effects on human health, the environment, economic activity and cultural heritage.

2. Do different groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No	Don't know
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Evidence held? Outline all supporting evidence: Due to the indiscriminate nature of flooding all groups are affected equally by its adverse consequences and will have similar experiences, issues and priorities.

No evidence held? Outline how you will obtain it: The Preliminary Flood Risk Assessment will collect evidence on the adverse effects on human health, the environment, economic activity and cultural heritage.

3. Consultation is an integral part of policy development and policy screening. Have consultations with relevant groups, organisations or individuals indicated that policies of this type create problems that are specific to them?

	Yes	No	Don't know
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Evidence held? Outline all supporting evidence: The Directive is very prescriptive in terms of the flood risk management framework that must be adopted in the transposing Regulations. As there is very little room for significant departure from the Directive, there is no merit in widespread consultation in advance of the draft Regulations.

However, all groups shall have an opportunity to respond to, and influence, the proposed transposing Regulations through the formal consultation on the draft Regulations.

No evidence held? Outline how you will obtain it:

4. In relation to implementing this policy, is there an opportunity to better promote equality of opportunity or good relations by altering the policy or by working with others in Government or in the larger community?

	Yes	No	Don't know
Religious belief	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Racial group	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Marital status	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dependants	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Evidence held? Outline all supporting evidence: DARD is not aware of any opportunities to better promote equality of opportunities. This legislation implements an EU Directive and DARD have very limited scope for flexibility in implementing this legislation.

No evidence held? Outline how you will obtain it: The current consultation will be issued to all Section 75 Groups, the feedback from this should highlight any opportunities to promote equality around the issue of flood risk management.

Section C

DARD also has legislative obligations to meet under the Disability Discrimination Order and Human Rights Act. Questions 5 -9 relate to these two areas.

Consideration of Disability Duties

5. Does this proposed policy / decision provide an opportunity for DARD to better promote positive attitudes towards disabled people?

Explain your assessment in full The draft regulation provides a framework for the assessment and management of flood risk as required by the EU Flood Directive. DARD has not identified any opportunities to better promote positive attitudes towards disabled people.

6. Does this proposed policy / decision provide an opportunity for DARD to actively increase the participation by disabled people in public life?

Explain your assessment in full The proposed legislation requires engagement and consultation with interested parties and the public in the production of flood risk management plans for areas at potential significant flood risk. Therefore everyone will have an opportunity to provide input at this stage.

Consideration of Human Rights

7. Indicate below (by placing an X in the appropriate box) any *adverse impacts* of the policy / decision in relation to the Human Rights Articles as set out in the European Convention of Human Rights.

Right to Life	Article 2	<input type="checkbox"/>
Prohibition of torture, inhuman or degrading treatment	Article 3	<input type="checkbox"/>
Prohibition of slavery and forced labour	Article 4	<input type="checkbox"/>
Right to liberty and security	Article 5	<input type="checkbox"/>
Right to a fair and public trial	Article 6	<input type="checkbox"/>
Right to no punishment without law	Article 7	<input type="checkbox"/>
Right to respect for private and family life, home and correspondence	Article 8	<input type="checkbox"/>
Right to freedom of thought, conscience and religion	Article 9	<input type="checkbox"/>
Right to freedom of expression	Article 10	<input type="checkbox"/>
Right to freedom of assembly and association	Article 11	<input type="checkbox"/>
Right to marry and to found a family	Article 12	<input type="checkbox"/>
The prohibition of discrimination	Article 14	<input type="checkbox"/>
Protection of property	Protocol 1 Article 1	<input type="checkbox"/>
Right to education	Protocol 1 Article 2	<input type="checkbox"/>
Right to free and secret elections	Protocol 1 Article 3	<input type="checkbox"/>

8. Please explain any adverse impacts on human rights that you have identified Not applicable

9. Please indicate any ways which you consider the policy positively promotes human rights Not applicable

Section D

Formal Record of Screening Decision

Title of Proposed Policy / Decision being screened – The Water Environment (Floods Directive) Regulation (NI) 2009.

I can confirm that the proposed policy / decision has been screened for –

- equality of opportunity and good relations
- disabilities duties; and
- human rights issues

On the basis of the answers to the screening questions, I recommend that this policy / decision is –

- *Screened Out – No EQIA necessary
- *Screened In – Necessary to conduct a full EQIA

*(please check appropriate box above)

Screening assessment completed by (Staff Officer level) -

Name: MARY MCKEOWN

Grade: DP

Date: 27 APRIL 2009

Branch: RIVERS AGENCY, HYDEBANK

Details of all consultation/engagements undertaken in making the Screening Assessment *

Signature: please insert a scanned image of your signature below

Mary McKeown.

Screening decision approved by (must be G7 or above) -

Name: JEFF GLASS

Grade: G7

Date: 27 APRIL 2009

Branch: RIVERS AGENCY, HYDEBANK

Signature: please insert a scanned image of your signature below

Jeff Glass

This screening assessment will be copied to all those who contributed to this screening exercise and to all groups listed on the DARD s75 contact and consultee list.

Signed and date actioned:

For more information about screening, contact –

DARD Equality Branch
Room 509
Dundonald House
Upper Newtownards Road
Belfast BT4 3SB
Telephone 028 9052 4435
Textphone 028 9052 4420

Or check out our intranet site

http://dardintranet/coord_intranet/EqualityBranch/index.shtml

***Guidance Note**

Consideration of evidence at each section of this screening assessment should be recorded in detail, in accordance with the following terms:

- Names of all groups and/or individuals consulted, noting (where appropriate) the Section 75 category or stakeholder interest being represented
- Nature of consultation/engagements undertaken, including date, time, location and method (whether in writing; by phone or email; or in person)
- Source and status of all evidential data presented (Title, date, author, publisher, page reference)

FINAL REGULATORY IMPACT ASSESSMENT

Title of proposal

1. Impact assessment on the implementation in the north of Ireland of EU Council Directive 2007/60/EC on the assessment and management of flood risks.
2. The Regulations implementing the Directive in the north of Ireland will apply only here. Separate legislation will be brought forward in England, Scotland and Wales.

Purpose and intended effect

Objectives

3. The objective is to bring forward Regulations to implement Council Directive 2007/60/EC on the assessment and management of flood risks in the north with the aim of reducing and managing flood related risks to human health, the environment, cultural heritage and economic activity.
4. The principal direct effects of the proposals would be on public bodies in the form of additional administrative requirements in implementing the requirements of the Directive.

Background

5. There is no existing EU legislation in the field of flood risk management, although some related issues, notably the management of the environmental effects of flooding are covered in other legislation, particularly the Water Framework Directive.
6. The principal rationale for the EU Floods Directive rests on the need to avoid inconsistent or contradictory approaches to flood risk management, and to ensure co-ordinated planning and action within river basins and in particular river basins which span two or more Member States. The growing incidents of severe flood events in some parts of Europe, the increasing risks from climate change and the risks from continuing development in flood plains are other reasons cited. The Commission holds the view that because flooding is a serious problem with major social, environmental and economic consequences, there is a need for concerted action.
7. The Directive provides a framework within which flood risk may be assessed and managed across the Community with the aim of reducing the adverse consequences of flooding on human health, the environment, cultural heritage and economic activity.

8. The main requirements contained within the Directive and transposed in the north of Ireland's Regulations are to:
 - a) Undertake a Preliminary Flood Risk Assessment of all river basins and coastal zones in the north by December 2011. On the basis of this assessment, identify all areas at potential significant flood risk;
 - b) Produce detailed Flood Hazard and Flood Risk maps for the areas determined to be at potential significant flood risk by December 2013;
 - c) Produce Flood Risk Management Plans that are focused on prevention, protection and preparedness and which contain objectives and measures to reduce significant risk in these areas. Plans must be produced by December 2015;
 - d) Co-ordinate efforts with the south of Ireland in relation to implementation of the provisions in international catchments;
 - e) Encourage the active involvement of interested parties in the production of Flood Risk Management Plans and co-ordinate this with the involvement of interested parties to the Water Framework Directive.
 - f) Make available to the public the Preliminary Flood Risk Assessment, Flood Hazard maps, Flood Risk maps and the Flood Risk Management Plans.
9. The north of Ireland is in a different position than Britain as only in the north are there river basins and coastal zones shared with another Member State.

Risks and rationale for government intervention

10. The risk of flooding is undoubtedly a serious issue in the north of Ireland as well as in the other EU countries. The effective management of this risk requires the intervention of government, working in cooperation with public bodies and the public. Government is the only body with the wide-ranging responsibilities and powers that are necessary to effectively manage flood risk.

Options

Option 1 - Do nothing / Non Implementation of the Directive

11. With this option no action would be taken to transpose the Floods Directive and a failure to implement the Directive in full would be a breach of our EU obligations. This would inevitably lead to the Commission taking infraction proceedings against the UK Government and the imposition of sanctions by the European Court.
12. The Floods Directive provides an opportunity to establish a legal framework for reducing flood risk through the best practice and nationally consistent approach of flood risk management. As government embraces the principles of flood risk management the 'Do nothing' option would be an unreasonable proposition.

Option 2: Implementation of Directive to exclude all flooding from sewerage systems

13. This option is to ensure the legal and administrative framework for complying with the Directive is put in place. However, It is possible that the EC may take the view that this option, in the relevant circumstances particular to the north of Ireland, does not constitute effective and proportionate implementation of the Directive.
14. Article 2(1) of the Directive states that floods from sewerage systems may be excluded and therefore the decision with respect to this matter is at the discretion of individual member states. However the EC must be satisfied that the decision taken must be consistent with the basic principle that the Directive should be implemented in a manner such that effect is given to what they require. It is clear that the principal aim of the Directive is to reduce the adverse effects of flooding in areas determined to be at significant risk of flooding. It is a matter of record that the most significant source of the flooding that affected the many thousands of properties in 2007 and 2008 was surface water and that this directly links to inundation of the urban sewerage systems. Therefore in view of this fact, it is possible that the EC may take the view that flooding from sewerage systems is a significant risk in the north and that it should not be excluded from our transposing legislation.
15. Understandably, members of the public have no regard for the source of the flooding that affects their communities and will have an expectation that government should be equally committed to reducing flooding to property regardless of whether the source is a river, the sea or surface water. Therefore if flooding from sewerage systems is excluded from the regulations it is possible that government and the EC may be lobbied by the public and their representatives to have it included and that a failure to include it could lead to infraction proceedings by the Commission against Britain and the north of Ireland.

Option 3: Implementation of Directive to include floods from sewerage systems that have been designed to accept hydraulic loading from stormwater and excluding system failure (such as blockages or pump failures)

16. This is the only option that is certain to meet all of the requirements of the Directive.
17. The inclusion of flooding from sewerage systems that are designed to withstand external hydraulic loading from stormwater is considered because in many circumstances these systems are the only practical vehicle by which to reduce the risk of surface water flooding. This source of flooding represents a significant risk and is known to have been responsible for a high percentage of the flooding to property in the recent flood events in June 2007 and August 2008.

18. The exclusion of flooding from sewerage systems due to a system failure (such as blockages or pump failure) is considered because it would be impractical to produce flood models to replicate the consequences of system failures which in theory could occur at any time and at almost any point in the sewer network. As modelling for system failure does not fit with the requirements of the floods Directive to produce flood hazard/risk maps flood events with particular return periods it is unlikely that this exclusion would be viewed unfavourably by the Commission.
19. In comparison with other sources, flooding that occurs solely as a consequence of foul sewerage systems has a relatively minor adverse affect. In view of the limited potential benefits, it would not be appropriate or proportionate to include this source of flooding within the terms of the transposing Regulations. Therefore flooding that occurs solely from foul sewerage systems shall not be subject to the requirements of the Regulations.

Preferred option

20. The preferred option is to implement option 3.

21. Benefits, Costs and Risks

Option	Cost	Benefit	Risk
Option 1	No direct costs.	None	There is a probability of heavy penalties/fines being imposed on UK government by the European Court for non transposition.
Option 2	<p>The work programmes necessary to ensure full compliance with the Directive may cost government in excess of £5.5m over the next 6 years.</p> <p>However, in the absence of the Directive, DARD-Rivers Agency, like all other flood protection authorities in Britain, would still be committed to significant spending on flood risk assessments and plans that are closely aligned with those required by the Directive.</p>	<p>May satisfy the EC requirement for full implementation of the Directive.</p> <p>Establishes a robust legal framework for the assessment and management of flood risk and places obligations on all public bodies to exercise their functions in a manner that takes account of the risk of flooding.</p> <p>The processes laid down by the Directive, encourage best practice in flood risk management and will result in a reduction in flood risk and the cost of flood damages in the future.</p> <p>Potential for the implementation of measures that reduce the adverse affects of flooding and protect and enhance the environment.</p>	<p>Insofar as surface water flooding is considered to be a significant source of flooding the EC may take a view that sewerage systems (which vent surface water) should be included in the transposing regulations. Consequently, there is a risk that the EC may take infraction procedures against Britain and the north of Ireland and this will result in legal costs and possibly fines.</p> <p>By excluding flooding from all sewerage systems an opportunity to assess and manage the significant risk from surface water will be denied and those affected by flooding from this source will consider that they are being unfairly treated.</p> <p>This option to exclude all flooding from sewerage systems is not consistent with the approach taken in Britain and the south of Ireland.</p>
Option 3	Costs as for Option 2, plus a marginal increase due to the cost of flood modelling of sewer networks as required in areas of potential significant flood risk.	<p>Certain to satisfy the EC requirement for full implementation of the Directive.</p> <p>This option is consistent with the approach taken in Britain and in the south of Ireland.</p> <p>Establishes a robust legal framework for the assessment and management of flood risk and places obligations on all public bodies to exercise their functions in a manner that takes account of the risk of flooding.</p> <p>The processes laid down by the Directive, encourage best practice in flood risk management and will result in a reduction in flood risk and the cost of flood damages in the future.</p> <p>Potential for the implementation of measures that reduce the adverse affects of flooding and protect and enhance the environment.</p>	None

Small business impact test

22. The principal direct impact of the Regulations will be on Government and on NI Water which has responsibility for water and sewerage in the north and is a government owned company.
23. The policy may have a positive impact on businesses which are located in flood prone areas as the main purpose of the policy is to reduce the risk of flooding. Even in the circumstances that it is not possible to reduce the likelihood of flooding to some businesses, the flood mapping requirements of the Regulations will ensure that businesses are at least aware of the flood risk to their property and can take appropriate steps to mitigate the risk.

Equality and other impacts

24. The proposals have been subject to an Equality impact assessment screening exercise and this has concluded that flooding is not discriminate and that no adverse differential impact is likely on section 75 groups.
25. Screening exercises for all other impacts concluded that the proposals would have no direct negative impacts. Proposals are considered to have an indirect positive impact as all sections of the community will benefit from the reduction in the adverse effects of flooding.
26. In relation to the Environmental impact it concluded that the Flood Risk Management Plans required by the Regulations are likely to have a significant effect on the environment and will be subject to a Strategic Environmental Assessment. Likewise, any proposed structural measures arising from these plans shall be subject to Environmental Impact Assessment.
27. The objectives and measures defined to mitigate flood risk, contained within the Flood Risk Management plans, will be subject to further screening exercises to assess possible impacts and assessments completed as necessary.

Enforcement and sanctions

28. No enforcement or sanctions are applicable in the regulations.

Consultation

29. The Department has worked closely with Defra and the other devolved administrations in putting in place arrangements to transpose the requirements of the Directive throughout Britain and the north of Ireland. Consultation through a Departmental Steering Group is ongoing. The Department is also working closely with the south of Ireland to ensure coordination in transboundary catchments.
30. The proposals are being subject to full public consultation, including consultation with all relevant stakeholders.

Implementation and delivery plan

31. It is proposed to bring the Regulations into operation by 25 November 2009 with full implementation of the Directive within the timescales imposed. DARD has been designated as the competent authority to ensure implementation and compliance of the Directive here in the north.

Monitoring and post-implementation review

32. The effectiveness of the Regulations will be monitored as part of the on-going policy process and by the Commission under the reporting regime to be agreed.

Summary

33. The Directive on the assessment and management of flood risk provides a framework for a consistent approach to flood risk management across the EU. It encourages the involvement of the public and interested groups in the planning process.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.



15.10.09

TRANSPOSITION NOTE

This note explains how the main elements of Council Directive 2007/60/EC on the assessment and management of flood risks are now transposed in the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009.

Council Directive 2007/60/EC establishes a framework for the assessment and management of flood risks, aiming at the reduction of the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods in the community.

These Regulations do not go beyond what is necessary to implement the Directive in Northern Ireland.

Implementation of the main elements of Council Directive 2007/60/EC

Directive Article	Effect	Implemented by Regulation number	Comments
1.	Sets out purpose and aims of Directive	Not transposed	
2. 2(1) 2(2)	Explicit that definitions of terms used in Water Framework Directive (WFD) are used for purposes of the Floods Directive Provides definition of 'Flood' and provides for exclusion of floods from sewerage systems Defines 'flood risk'	Regulation 2 (2) and (3).	Regulation 2 excludes floods from sewerage systems where it is caused solely by a failure or blockage of a sewerage system or which is not connected with any loading on the system by abnormal external hydraulic factors (for example by heavier than normal rainfall or higher than usual river levels).
3(1)	Requires the same administrative arrangements as set out in Article 3(1),(2),(3), (5) and (6) of Water Framework Directive in relation to River Basin Districts and International River Basin Districts.	Regulation 2(2) – River Basin and International River Basin are defined as per Regulation 4(1) of the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003	

3(2) (a)	Permits the appointment of a different competent authority than the competent authority for the Water Framework Directive.	Regulation 3 appoints the Department of Agriculture and Rural Development (DARD) as the competent authority	Department of Environment is the competent authority for implementation of the Water Framework Directive
3(2) (b)	<p>Permits Member States to identify certain coastal areas or individual river basins and assign them to a Unit of Management different from those assigned under the WFD.</p> <p>Member States shall communicate to the Commission, by 26 May 2010, details of competent authorities, river basin districts and Units of Management.</p>	<p>Not transposed – see note under 3(1)</p> <p>Does not require to be transposed.</p>	
4(1)	Member States to undertake a Preliminary flood risk assessment for each river basin district or unit of management, or portion of each international river basin district within their territory in accordance with paragraph 4 (2).	Regulation 5 (1)	
4(2)	The preliminary flood risk assessment shall be undertaken to provide an assessment of the potential flood risks and be based on available or readily derivable information such as reports / studies, in particular impacts of climate change on the occurrence of floods. The assessment must include at least the following.	Regulation 5(4)	
4(2) (a)	Maps at appropriate scale of river basin district, showing borders of river basins, sub basins, and, where existing, coastal areas, showing topography and land use.	Regulation 5(5) and Schedule 2	
		Schedule 2 (1)	

4(2) (b)	Description of floods which have occurred in the past and which have had a significant adverse impact on human health, the environment, cultural heritage and economic activity and for which there is the likelihood of similar future event is still relevant, including their flood extent and conveyance routes and an assessment of the adverse impacts they have entailed.	Schedule 2 (2)	
4(2) (c)	Description of significant floods which have occurred in the past where significant adverse consequences of similar future events might be envisaged.	Schedule 2 (3)	
4(2) (d)	Depending on the needs of the Member States requires an assessment of potential adverse consequences of future floods for human health, the environment, cultural heritage and economic activity taking onto account of a number of issues.	Schedule 2 (4)	
4(3)	Requires the exchange of relevant information between relevant competent authorities in respect of international river basin districts.	Regulation 5(2)	
4(4)	Requires the Preliminary Flood risk assessment to be completed by 22 December 2011.	Regulation 5(3)	
5 (1)	On the basis of the Preliminary Flood Risk Assessment, Member states shall, for each river basin district or portion of international river basin lying within their territory, identify those areas for which they conclude that potential significant flood risks exist or might be considered likely to occur.	Regulation 8 (1)	

5 (2)	Member states are required to coordinate with other member states in the identification of areas at potential significant flood risk in international river basin districts.	Regulation 8(2)	
6 (1)	Requires the preparation of flood hazard and flood risk maps at river basin district level for the areas identified at potential significant flood risk. Member states may decide on the most appropriate scale.	Regulation 10 (1), 10 (2) (b) and (c)	
6(2)	Requires the prior exchange of information between member states in the preparation of flood hazard and flood risk maps for areas at potential significant risk in international river basin districts.	Regulation 10 (3)	
6(3)	Sets out the scope of the flood hazard maps - to include geographical areas which could be flooded according to the scenarios - low, medium and high probability.	Regulation 11 (1) (a) Note that medium probability is set at least 100 year return period	
6 (4)	For each scenario the flood extent, water depths or water level and where appropriate the flow velocity or relevant water flow must be shown.	Regulation 11 (1) (b)	
6 (5)	Requires flood risk maps to show the potential adverse consequences associated with flood scenarios and how this is to be expressed in terms of potential inhabitants affected, economic activity affected, environment etc.	Regulation 12 (1) and (2)	
6 (6)	Permits Member states to decide, for coastal areas where an adequate level of protection is in place that flood hazard maps may be limited to the flood scenario low probability.	Regulation 11 (3)	

6 (7)	Permits Member States to decide that for areas where flooding from groundwater sources that flood hazard maps may be limited to the scenario low probability.	Not transposed.	
6 (8)	Requires Flood hazard and flood risk maps to be completed by 22 December 2013.	Regulation 10 (2) (a)	
7 (1)	On the basis of the flood maps this Article requires flood risk management plans coordinated at river basin district to be prepared for the areas identified at potential significant risk.	Regulation 16(1) to (3)	
7 (2)	Requires the establishment of appropriate objectives for the management of flood risk in areas identified as at potential significant risk. Objectives to focus on the reduction of potential adverse consequences of flooding on human health, the environment, economic activity and cultural heritage and if appropriate on non-structural initiatives and/or on the reduction of the likelihood of flooding.	Regulation 16 (5) (a), 17 (b)	
7 (3)	<p>Requires Plans to include measures to achieve the objectives and the components set out in Part A of the Annex to Directive.</p> <p>Also lists relevant aspects which must be taken into account when preparing Flood risk management plans.</p> <p>Plans should address all aspects of flood risk management focusing on prevention, protection, and preparedness including emergency response and early warning systems and</p>	<p>Regulation 16 (5) (b) and (6) and Schedule 3 Part 1</p> <p>Regulation 17 (1) (a)</p> <p>Regulation 17 (2)</p>	

	<p>take account of the characteristics of the river basin. Plans may also include the promotion of sustainable land use practices, improvement in water retention as well as controlled flooding of certain areas in a flood event.</p>		
7 (4)	<p>Requires that Plans shall not include any measures which would significantly increase flood risks upstream or downstream in another member state unless these measures have been coordinated and an agreed solution has been found.</p>	Regulation 16 (4) (b)	
7 (5)	<p>Flood risk management Plans to be completed and published by 22 December 2015</p>	Regulation 16 (9)	
8 (1)	<p>For river basin districts which fall entirely within their territory, Member States shall ensure that a single flood risk management plan or set of plans coordinated at river basin district is produced.</p>	Regulation 16 (1)	
8 (2)	<p>Where an international river basin falls entirely within the Community Member States must coordinate with the aim of producing a single international flood risk management plan or set of plans coordinated at the level of the international river basin district. Where such plans are not produced, member states must prepared plans covering the parts of the international river basin within their territory and as far as possible, coordinate at the level of international river basin district.</p>	Regulation 16 (2), 16 (3) and 16 (4) (a)	
8 (3)	<p>For international river basin which extend beyond the boundaries of the Community member states should endeavour to produce a single plan</p>	No transposed	

	coordinated at international river basin district and if not possible produce a plan for the areas which falls within their territory.		
8 (4)	Permits more detailed flood risk management plans coordinated at the level of international sub-basins for international river basin districts	Not transposed	
8 (5)	Permits Member States to report and make recommendations to the Commission and other member state concerned, any issue which has an impact on the management of flood risks of its water that they cannot resolve. Defines the timescale for Commission response.	Not transposed	
9	Requires member states to coordinate the application of this Directive with the Water Framework Directive. In particular, coordination of the information contained in the flood maps, the production of flood risk management plans and river basin management plans and the active involvement of interested parties in the production of these plans.	Regulations 15, 18 and 19.	
10 (1)	Requires the preliminary flood risk assessment, the flood hazard maps, the flood risk maps and the flood risk management plans to be made available to the public.	Regulations 7, 14, 19, and 20	
10 (2)	Requires member States to encourage the active involvement of interested parties in the production, review and updating of the flood risk management Plans.	Regulation 19	

11 & 12	Places obligations on the Commission for implementing measures and amendments.	Does not need to be transposed.	
13	Permits the use of Transitional measures where member states may make use of existing flood risk assessments and flood mapping.	Not transposed	
14	Requires that the Preliminary Flood risk assessment, flood maps and flood risk management Plans are reviewed and updated as necessary within specified deadlines. Determines that climate change to be considered in the reviews of the preliminary flood risk assessment and the flood risk management plans.	Regulations 6, 9, 13, 21,	
15	Outlines Member States reporting requirements and timescales to the Commission	Not transposed	
16	Obligation on Commission to report to European Parliament and Council	Not transposed	
17 - 19	Final provisions setting out transposition deadlines and entry into force.	Not transposed except for references to the Directive in the Regulations and the Explanatory Note.	
Annex 1	Part A sets out the components of the first flood risk management plan and description of the implementation of the plan Part B sets out the components of the subsequent update of the flood risk management plan	Schedule 3 Part 1 Schedule 3 Part 2	