
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 209

The Waterways (Environmental Impact Assessment) Regulations (Northern Ireland) 2019

PART 2

MARINA WORKS

Restriction on proposed works

- 6.—(1) Subject to regulation 4, the Department shall not carry out any works unless—
- (a) it has complied with the requirements of these Regulations in relation to the works; and
 - (b) where a proposal relating to those works has been referred to the Commission under regulation 15(8)—
 - (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

7.—(1) Where the Department proposes to carry out works it shall, taking into account the selection criteria in Schedule 1 and the available results of other environmental assessments that may be required under other legislation applicable in Northern Ireland, determine whether the proposed works are likely to have significant effects on the environment.

(2) The Department must make the determination mentioned in paragraph (1) within 90 days of the date on which the proposal to carry out the works was made.

(3) The Department must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any function under these Regulations, between the persons bringing forward a proposal for works and the persons responsible for making the determination mentioned in paragraph (1).

Notification of determination that proposed works are not likely to have significant effects on the environment

8.—(1) Where, pursuant to regulation 7(1) the Department, having taken into account, so far as relevant, the criteria set out in Schedule 1 and the available results of other environmental assessments that may be required under other legislation applicable in Northern Ireland, determines 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, and the main reasons why with reference to the relevant criteria in Schedule 1;
 - (d) state any features of the project and/or measures envisaged to avoid or prevent any significant adverse effects on the environment;
 - (e) 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 30 days of the date of the publication of the notice in the Belfast Gazette; and
 - (f) 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 situated;
 - (c) any other public authority, statutory body or organisation 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, the Republic of Ireland.
- (3) Where, within the period specified in paragraph (1)(e), 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.
- (4) Where, following the period specified in paragraph (1)(e), 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, within a period not exceeding 90 days.
- (5) Where, within the period specified in paragraph (1)(e), 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 proposed works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the proposed 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 1, and the available results of preliminary verifications and assessments of the effects on the environment carried out pursuant to other legislation applicable in Northern Ireland, determine within a reasonable time, 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)(e) in relation to the proposed 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 representation under paragraph (1) (e) 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

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

- (a) under regulations 7(1) or 8(4), the Department determines that any proposed works are likely to have significant effects on the environment; or
- (b) under regulation 8(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, state the main reason for requiring an assessment with reference to the relevant criteria listed in Schedule 1, 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 30 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 the Republic of Ireland.

(3) Where the Department publishes a notice in accordance with paragraph (2) 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.

(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

10.—(1) The Department shall prepare an environmental statement in any case to which regulation 9 applies.

(2) The environmental statement referred to in paragraph (1) must—

- (a) contain the information specified in Schedule 2;
- (b) be prepared by persons with sufficient expertise and competence in order to ensure the completeness and quality of the statement;
- (c) contain a statement by the Department setting out how the requirement of subparagraph (b) has been complied with;
- (d) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and

(e) where an opinion is issued in accordance with regulation 11, be based on that opinion.

(3) The Department shall carry out consultation as referred to in regulation 12 and, where relevant, regulation 15.

Request about the information to be included in an environmental statement

11.—(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 7(1), 8(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 15(9).

Publicity for an environmental statement

12.—(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 environmental 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 30 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 proposed works is made, and the Department, having undertaken the examination specified in regulation 15(1), considers that the works should be approved, it may so determine.

(3) On or before the date of the 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 proposed 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 some other convenient place for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the details of the proposed works and the environmental statement relating to the proposed works, including any information obtained under regulation 13(1) or 13(3) which is relevant to the preparation of the environmental statement;
- (c) ensure that a reasonable number of copies of the statement are made available; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(4) Where, in accordance with paragraph (3)(a), the Department sends any body a copy of the environmental statement it shall consult that body about the assessment and the likely environmental effects of the proposed works to which it relates.

Assistance in the preparation of environmental statements

13.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of regulation 10 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 complied with the requirements of regulation 12(3), the Department or, as the case may be, the Commission acting in accordance with regulation 15(9), may determine that further information is required.

(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 by general and local advertisement—

- (a) state that the additional information is available, and give details of the places where and times at which a copy of the additional information may be inspected or obtained; and
- (b) state that any person who wishes to make representations in relation to the additional information should make representations in writing to the Department at the address specified in the advertisement within 30 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) the Department shall—

- (a) send copies of the additional information to each consultation body; and
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 days following 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) of the Environmental Information Regulations 2004⁽¹⁾ or must be so treated under regulation 13(1) of those Regulations.

Proposed works likely to have significant effect on the environment in the Republic of Ireland

14.—(1) Where it appears to the Department that any proposed works are likely to have a significant effect on the environment in the Republic of Ireland or where the Republic of Ireland is likely to be significantly effected and so requests, the Department shall—

- (a) send to the Republic of Ireland, as soon as possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 9(2)—
 - (i) a copy of the notice; and

(1) [S.I. 2004 No. 3391](#); regulation 13(1) was substituted by paragraph 307(2) of Schedule 19 to the Data Protection Act 2018 (c. 12)

- (ii) any available information on the possible significant effects of the proposed works on the environment in the Republic of Ireland;
 - (b) make available to the Republic of Ireland 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; and
 - (c) inform the Republic of Ireland 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 the fact within a period determined in agreement with the Republic of Ireland but which shall not be less than 30 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, to it.
- (2) Where the Republic of Ireland indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to the Republic of Ireland—
- (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 9; 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 Republic of Ireland 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 designated by the Republic of Ireland to be consulted or likely to be concerned by the proposed works by reason of their specific environmental responsibilities or local and regional competence and to the public in the territory of the Republic of Ireland where they are 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 a reasonable time, their opinion on the information supplied.
- (4) The Department shall—
- (a) consult with the Republic of Ireland regarding, inter alia, the potential significant effects of the proposed works on the environment in the Republic of Ireland and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine, in agreement with the Republic of Ireland, a reasonable period of time for the duration of the consultation period which shall not be less than 30 days beginning with the day on which the Department forwarded the information to the Republic of Ireland in pursuance of paragraph (2).
- (5) Where the Republic of Ireland has been consulted in relation to any proposed works in accordance with paragraph (4) the Department shall inform the Republic of Ireland 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 be approved

15.—(1) On expiry of the period referred to in regulation 12(2)(b) the Department shall within a reasonable timeframe—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with regulation 12 and any relevant information received through the consultation under regulation 12 and 14, to assess the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 3;
- (b) reach a reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether the proposed works are to be approved or not to be approved.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be still valid at the time that the decision is taken as to whether approval for the proposed works is or is not to be granted.

(3) The Department must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

(4) Where—

- (a) the Department is satisfied that the reasoned conclusion, or any decisions made on the proposed works are still valid; and
- (b) no objection in relation to the likely environmental effects of the proposed works has been made; or
- (c) any such objection has been withdrawn,

and the Department, having undertaken the assessment required by paragraph (1), considers that the proposed works should proceed (unconditionally or subject to conditions) or should not proceed, it may so determine.

(5) Where the Department has determined—

- (a) in accordance with paragraph (4), that the proposed works should be approved or that the proposed works should be approved subject to conditions, or
- (b) that the proposed works should not be approved,

the Department shall publish a general and local advertisement, in accordance with paragraph (6).

(6) Each of the advertisements referred to in paragraph (5) 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 reasoned conclusion of the Department on the significant effects of the proposed works on the environment, taking into account the results of the examination referred to in paragraph (1);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations;

- (v) any monitoring measures considered appropriate by the Department; and
- (vi) where the proposed works are not approved the main reason for refusal.

(7) At the same time as the notice in the Belfast Gazette is published under paragraph (5), the Department shall send a copy of the determination along with the details referred to in paragraph (6) (b)(i) to (vi) to each consultation body and any person who made representations under regulation 12 or 13, to the proposed works.

(8) Where the Department, having considered the examination specified in paragraph (1), considers that the proposed works should be approved but objections to these works made in relation to the 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 (9) to (12).

(9) Where the Commission considers that the proposal, environmental statement, additional information and representations sent to it in accordance with paragraph (8) 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 within a specified timeframe.

(10) Where, in accordance with paragraph (9), the Commission requests further information in relation to any proposed works, the Department shall—

- (a) by general and local advertisement state—
 - (i) that the further information is available in relation to the proposed works and give details of the places where and the times at which a copy may be inspected; and
 - (ii) that any person who wishes to make representations on the likely environmental effects of the proposed works to which the further information relates may make them in writing to the Commission at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette; and
- (b) on or before the date of the publication of the notice in the Belfast Gazette, send 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.

(11) The Commission shall—

- (a) assess, in light of the environmental statement, any further information provided in response to a request under paragraph (9) and any representations referred to in regulation 12 or 14 or paragraph (10), the direct and indirect effects of the proposed works on the environmental factors specified in Schedule 3;
- (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 reason and considerations upon which the determination under consideration was based, including information about the public participation process—
 - (i) consent to the proposed works in question unconditionally or subject to such conditions as the Commission considers appropriate; or
 - (ii) refuse to consent to the proposed works; and
- (d) send to the Department and any person who made representations under regulations 12 or 14 or paragraph (10) a statement in writing of—

- (i) the reasoned conclusion of the Commission on the significant effects of the proposed works on the environment, taking account the results of the examination referred to in this paragraph;
 - (ii) any conditions to which the decision is subject which relates to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultation;
 - (v) any monitoring measures considered appropriate by the Commission; and
 - (vi) where consent for the proposed works is refused the main reason for refusal.
- (12) The Department shall by general and local advertisement—
- (a) inform the public of the Commission's determination under paragraph (11)(c) within 30 days of receipt of such determination; and
 - (b) give details of the places where and the times at which the public may inspect a copy of the statement sent to it under paragraph (11)(d).
- (13) In relation to any determination made by the Department or by the Commission under this regulation or regulation 8, the Department shall maintain a record of, and make available to the public on request, the information referred to in paragraph (11)(d).

Monitoring

16.—(1) Where an environmental statement is determined by the Department or, as the case may be, the Commission, and the decision is to approve the works, the Department, or the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed works ("a monitoring condition").

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring condition, the Department or, as the case may be, the Commission must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works and the significance of their effects on the environment having regard in particular to the types of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the Department or, as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.

Public participation

17.—(1) 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 8(1), all information that is relevant to them;

- (b) any other information which is relevant to a determination under regulation 15 and which only becomes available after the time that the public was given notice in accordance with regulation 8(1)(f) whether as a result of a request from the Commission under regulation 8(6) or otherwise; and
- (c) any further information which is relevant to the assessment under regulation 15 and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under regulation 9(2).