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STATUTORY INSTRUMENTS

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**1999 No. 1783**

**LAND DRAINAGE**

**The Environmental Impact Assessment (Land  
Drainage Improvement Works) Regulations 1999**

<i>Made</i>	- - - -	<i>22nd June 1999</i>
<i>Laid before Parliament</i>		<i>24th June 1999</i>
<i>Coming into force</i>	- -	<i>21st July 1999</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales, acting jointly, being Ministers designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

**Title, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 and shall come into force on 21st July 1999.

(2) These Regulations apply to England and Wales.

**Interpretation**

2.—(1) In these Regulations—

“the appropriate Authority” means, in relation to England, the Minister of Agriculture, Fisheries and Food, and in relation to Wales, the National Assembly for Wales;

“consultation bodies” means—

(a) in relation to improvement works which are to be carried out in England, the Nature Conservancy Council for England<sup>(3)</sup> and the Countryside Agency<sup>(4)</sup>;

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(1) S.I. 1988/785.

(2) 1972 c. 68. The enabling powers conferred by section 2(2) were extended by virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c. 51).

(3) See section 128 of the Environment Protection Act 1990 (c. 43).

(4) See section 1(1) of the National Parks and Access to the Countryside Act 1949 (c. 97) as substituted by the Environment Protection Act 1990, section 130 and Schedule 8 paragraph 1, and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999 (S.I. 1999/416).

- (b) in relation to improvement works which are to be carried out in Wales, the Countryside Council for Wales<sup>(5)</sup>; and
- (c) any other public authority, statutory body or organisation which, in the opinion of the drainage body proposing any improvement works, has an interest in those improvement works;

“the Directive” means Council Directive [85/337/EEC](#)<sup>(6)</sup> as amended by Council Directive [97/11/EC](#)<sup>(7)</sup> on the assessment of the effects of certain public and private projects on the environment;

“district” includes metropolitan district;

“drainage” includes defence against water including sea water;

“drainage body” means any of the following public authorities which initiates improvement works, namely–

- (a) the Environment Agency<sup>(8)</sup>;
- (b) an internal drainage board; and
- (c) the council of a county, a county borough, a district or a London borough, the Common Council of the City of London or the Council of the Isles of Scilly;

“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 at Brussels on 17th March 1993;

“environmental statement” means a statement–

- (a) that includes such of the information referred to in Schedule 1 as is reasonably required to assess the environmental effects of the improvement works and which the drainage body can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the following–
  - (i) a description of the improvement works comprising information on the site, design and size of the improvement works;
  - (ii) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
  - (iii) the data required to identify and assess the main effects which the improvement works are likely to have on the environment;
  - (iv) an outline of the main alternatives studied by the drainage body and an indication of the main reasons for their choice, taking into account the environmental effects;
  - (v) a non-technical summary of the information provided under sub-paragraphs (i) to (iv) above;

“improvement works” means works which are–

- (a) the subject of a project to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work; and
- (b) permitted development by virtue of Part 14 or 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995<sup>(9)</sup>;

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<sup>(5)</sup> See section 128 and 130 of the Environment Protection Act [1990](#) (c. 43).

<sup>(6)</sup> O.J. No. L175, 5.7.85, p. 4.

<sup>(7)</sup> O.J. No. L73, 14.3.97, p. 5.

<sup>(8)</sup> See section 1(1) of the Environment Act [1995](#) (c. 25).

<sup>(9)</sup> S.I. [1995/418](#), to which there are amendments which are not relevant to these Regulations.

“watercourse” includes any river and stream and any ditch, drain, cut, culvert, dike, sluice, sewer (other than public sewer as defined in section 219(1) of the Water Industry Act 1991(10)) and any passage through which water flows.

(2) Expressions used in these Regulations and in the Directive shall have the same meaning in these Regulations as they have in the Directive.

(3) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation in or Schedule to these Regulations bearing that number.

### **Restriction on improvement works**

**3.**—(1) Subject to paragraph (2) below, a drainage body shall not carry out any improvement works unless—

- (a) they have complied with the requirements of these Regulations in relation to those improvement works; and
- (b) where a proposal is referred to the appropriate Authority under regulation 12(4)—
  - (i) that Authority has consented to the carrying out of the improvement works; and
  - (ii) the works are carried out in accordance with any conditions to which the consent is subject.

(2) In accordance with Article 2(3) of the Directive, the appropriate Authority may direct that particular improvement works are exempted from the application of these Regulations.

(3) No direction shall be made under paragraph (2) above where either the appropriate Authority or the drainage body are aware that the proposed improvement works would be likely to have significant effects on the environment of another EEA State.

(4) Where the appropriate Authority makes a direction under paragraph (2) above it shall—

- (a) send a copy of the direction to the drainage body; and
- (b) publish in at least two newspapers local to the site of the proposed improvement works a notice which briefly describes the proposed works, explains the effect of the direction and explains the reasons for it.

### **Determination of whether improvement works have significant effects on the environment**

**4.** In relation to all improvement works, the drainage body, taking into account the selection criteria in Schedule 2, shall determine whether the proposed improvement works are likely to have significant effects on the environment.

### **Requirements where a drainage body consider improvement works are not likely to have significant effects on the environment**

**5.**—(1) Where, under regulation 4 above, a drainage body consider that the improvement works are not likely to have significant effects on the environment, they shall, by notice in at least two local newspapers—

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

- (d) give notice that any person who wishes to do so should make representations to them in writing in relation to the likely environmental effects of the proposed improvement works at an address specified in the notice within 28 days of the date of publication of the notice.
- (2) A drainage body which publishes a notice under paragraph (1) above shall, on or before the date of such publication, supply a copy of the notice to each of the consultation bodies so that they have an opportunity to make representations in relation to the likely environmental effects of the proposed improvement works before expiry of the period specified in the notice.
- (3) Where, within the period provided for in paragraph (1)(d) above, no representations have been made to the effect that the works are likely to have significant effects on the environment, the drainage body may proceed to carry out the improvement works.
- (4) Where, following the period provided for in paragraph (1)(d) above, the drainage body consider (whether in the light of any representations or otherwise) that the improvement works are likely to have significant effects on the environment, they shall so determine.
- (5) Where, within the period provided in paragraph (1)(d) above, any representations have been made to the effect that the works are likely to have significant effects on the environment and, notwithstanding those representations, the drainage body still consider that the improvement works are not likely to have significant effects on the environment, they shall apply to the appropriate Authority for a determination of whether the improvement works are likely to have significant effects on the environment and shall provide the Authority with all the relevant facts and copies of all relevant documents in their possession.
- (6) Where the appropriate Authority considers that the information and copy documents provided in accordance with paragraph (5) above do not provide sufficient information to enable a determination to be made, that Authority shall notify the drainage body in writing of the points on which further information is required and may make a written request to the drainage body for such information as they may be able to provide on the points raised.
- (7) Where an application is made to the appropriate Authority under paragraph (5) above, that Authority shall, taking into account the selection criteria in Schedule 2, determine whether the improvement works are likely to have significant effects on the environment and shall inform the drainage body in writing of their determination.

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

- 6.—(1) This regulation applies where—
- (a) under regulation 4 or 5(4) above, a drainage body determine that improvement works are likely to have significant effects on the environment; or
  - (b) under regulation 5(7) above, the appropriate Authority determines that improvement works are likely to have significant effects on the environment.
- (2) In any case to which this regulation applies, the drainage body shall by notice in at least two local newspapers—
- (a) describe briefly the nature, size and location of the proposed improvement works;
  - (b) state that the works are likely to have significant effects on the environment and that the drainage body intend to prepare an environmental statement in respect of them.
- (3) A drainage body which publishes a notice under paragraph (2) above shall, on or before the date of such publication, supply a copy of the notice to each of the consultation bodies.

### **Preparation of environmental statement**

7. A drainage body shall prepare an environmental statement in any case to which regulation 6 applies.

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

8.—(1) A drainage body may request the appropriate Authority to give an opinion as to the information to be contained in the environmental statement required for particular improvement works.

(2) Where a drainage body requests an opinion under paragraph (1) above before a determination has been made, the appropriate Authority shall deal with the request on the assumption that the improvement works will have significant effects on the environment.

(3) Before giving an opinion under paragraph (1) above, the appropriate Authority shall consult the drainage body and the consultation bodies.

(4) Giving an opinion under this regulation shall not preclude the appropriate Authority from requesting further information from the drainage body concerned under regulation 12(5).

### **Assistance in preparation of environmental statements**

9.—(1) Subject to paragraph (2) below and to regulation 13, where a drainage body is required to prepare an environmental statement by virtue of regulation 7, the drainage body may enter into consultation with any other authority to determine whether that authority has in its possession any information which may be relevant to the preparation of the environmental statement and if the authority has such information, the authority shall make such information available to the drainage body.

(2) Paragraph (1) above shall not require the disclosure of information which is capable of being treated as confidential, or must be so treated, under regulation 4 of the Environmental Information Regulations 1992<sup>(11)</sup>.

### **Publicity for environmental statements**

10.—(1) Where a drainage body has prepared an environmental statement in accordance with these Regulations, they shall publish a notice in accordance with paragraphs (2) and (3) below.

(2) The notice shall—

- (a) announce that the statement has been prepared and give details of the place and times where copies may be inspected;
- (b) state that any person wishing to make representations in relation to the likely environmental effects of the improvement works to which the statement relates shall make them in writing to the drainage body at the address specified in the notice within 28 days from the publication of the notice; and
- (c) state that where no objection in relation to the likely environmental effects of the works are made and the drainage body, having undertaken the assessment specified in regulation 12(1) below, consider that the improvement works should proceed, they may so determine.

(3) The notice shall be published in such newspapers (not being less than two) as the drainage body consider necessary to ensure that the environmental statement is made available to the public and in order to give the public concerned the opportunity to express an opinion before a determination is made as to whether the improvement works should proceed.

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<sup>(11)</sup> S.I. 1992/3240, amended by S.I. 1998/1447.

(4) On or before the date of publication of the notice referred to in paragraph (1) above, the drainage body shall supply a copy of the environmental statement and notice to each of the consultation bodies so that they have an opportunity to make representations on the likely environmental effects of the improvement works to which the statement relates before expiry of the period specified in the notice.

(5) The drainage body shall provide a copy of the environmental statement to any other person who so requests.

### **Information for another EEA State**

11. Schedule 3 shall have effect in relation to improvement works which may have significant effects on the environment of another EEA State.

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

12.—(1) On expiry of the period specified in the notice published under regulation 10(1), the drainage body shall assess, in the light of the environmental statement and any representations made in accordance with regulation 10 or Schedule 3, the direct and indirect effects of the proposed improvement works on the environmental factors specified in Schedule 4.

(2) Where—

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

and the drainage body, having undertaken the assessment specified in paragraph (1) above, consider that the improvement works should proceed, they may so determine (and may so determine subject to conditions).

(3) Where a drainage body have determined—

- (a) in accordance with paragraph (2) above, that they should proceed with the works or that they should proceed subject to conditions, or
- (b) that they should not so proceed, they shall, by notice in at least two local newspapers or by such other means as are reasonable in the circumstances,—

(A) inform the public of the determination, and

(B) give details of the place and times where the public may inspect a statement of—

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

(4) Where a drainage body, having undertaken the assessment specified in paragraph (1) above, consider that the improvement works should proceed but objections to those works made in relation to their likely environmental effects have not been withdrawn, they shall refer the proposal for works together with the environmental statement and any representations on it to the appropriate Authority for determination.

(5) Where the appropriate Authority considers that the information supplied in accordance with paragraph (4) above does not provide sufficient information to enable a determination to be made, that Authority shall notify the drainage body in writing of the points on which further information is required and may make a written request to that body for such information as they may be able to provide on the points raised.

(6) Where, in accordance with paragraph (5) above, the appropriate Authority requests further information from a drainage body, the body shall, no later than the time when it provides that information to the appropriate Authority,—

- (a) by notice, published in such newspapers (not being less than two) as the drainage body consider necessary to ensure that the further information is made available to the public and in order to give the public concerned the opportunity to express an opinion before a determination is made as to whether the improvement works should proceed,—
  - (i) announce that the further information is available and give details of the place and times where a copy may be inspected; and
  - (ii) state that any person who wishes to make representations on the likely environmental effects of the improvement works to which the further information relates should make them in writing to the appropriate Authority at the address specified in the notice within 28 days of the date of the publication of the notice;
- (b) on or before the date of publication of the notice, 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 appropriate Authority on the likely environmental effects of the improvement works to which the further information relates before expiry of the period specified in the notice; and
- (c) provide a copy of the further information to any other person who so requests.

(7) The appropriate Authority shall—

- (a) assess, in the light of the environmental statement, any further information provided in response to a request under paragraph (5) above and any representations in accordance with regulation 10, Schedule 3 or paragraph (6) above, the direct and indirect effects of the proposed improvement works on the environmental factors specified in Schedule 4;
- (b) having regard to the assessment under sub-paragraph (a) above,
  - (i) consent to the carrying out of the works absolutely or subject to such conditions as the Authority considers appropriate, or
  - (ii) refuse consent to the works; and
- (c) send to the drainage body a statement in writing of—
  - (i) the Authority's determination under sub-paragraph (b) above 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 major adverse effects of the improvement works.

(8) The drainage body shall by notice in at least two local newspapers, or by such other means as are reasonable in the circumstances,—

- (a) inform the public of the appropriate Authority's determination under paragraph (7)(b) above; and
- (b) give details of the place and times where the public may inspect a copy of the statement sent to them under paragraph (7)(c) above.

## **Charges**

**13.—**(1) A reasonable charge reflecting printing and distribution costs may be made to—

- (a) a consultation body for any copy of the whole or part of—
  - (i) an environmental statement provided in addition to the copy supplied in accordance with regulation 10(4); or

- (ii) further information provided in addition to the copy supplied in accordance with regulation 12(6)(b); and
- (b) any other person for a copy of the whole or part of—
  - (i) an environmental statement provided in accordance with regulation 10(5); or
  - (ii) further information provided in accordance with regulation 12(6)(c).
- (2) Regulation 9(1) shall not prevent an authority imposing a reasonable charge for the identification, preparation and copying of any information or making the payment of such a charge a condition of providing the information.

### **Enforcement**

- 14.—**(1) If a drainage body carries out improvement works—
- (a) without complying with the requirements of these Regulations; or
  - (b) without the consent of the appropriate Authority under regulation 12(7) where a proposal is referred to that Authority under regulation 12(4), or in breach of a condition to which such consent is subject,
- the appropriate Authority may apply to the Court for any of the following orders—
- (i) that the drainage body shall not proceed further with the improvement works;
  - (ii) that the drainage body shall remove any work carried out;
  - (iii) that the drainage body shall reinstate the site in accordance with the reasonable requirements of the appropriate Authority.
- (2) An order made under paragraph 1(ii) or (iii) above may provide that, if the drainage body fails to comply with the order within a specified period, the appropriate Authority may remove any work carried out and reinstate the site and may recover the reasonable costs and expenses of doing so from the drainage body as a debt due from that body.
- (3) In this regulation, “the Court” means the County Court for the district in which improvement works are being carried out or the High Court.

### **Revocations, savings and amendments**

- 15.—**(1) Subject to paragraph (2) below, the Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988(**12**) and the Land Drainage Improvement Works (Assessment of Environmental Effects) (Amendment) Regulations 1995(**13**) are hereby revoked.
- (2) Nothing in paragraph (1) above shall affect the continued application of the Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988(**14**) (hereinafter called “the 1988 Regulations”) to any proposed improvement works in respect of which, before the date of coming into force of these Regulations, a drainage body—
- (a) under paragraph (2) of regulation 3 of the 1988 Regulations, have considered whether those works are likely to have significant effects on the environment; and
  - (b) under paragraph (3) or (4) of that regulation, have published a notice of their intention to prepare or not to prepare an environmental statement, as the case may be.
- (3) In article 3(12)(b) of the Town and Country Planning (General Permitted Development) Order 1995(**15**) for the words “the Land Drainage Improvement Works (Assessment of Environmental

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(12) S.I. [1988/1217](#).

(13) S.I. [1995/2195](#).

(14) S.I. [1988/1217](#) amended by S.I. [1995/2195](#).

(15) S.I. [1995/418](#), to which there are amendments which are not relevant to these Regulations.



Effects) Regulations 1988” there shall be substituted the words “the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999”.

22nd June 1999

*Elliot Morley*  
Parliamentary Secretary, Ministry of Agriculture,  
Fisheries and Food

Signed by the authority of the Secretary of State for Wales

22nd June 1999

*Jon Owen Jones*  
Parliamentary Under-Secretary of State, Welsh  
Office

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## SCHEDULE 1

Regulation 2(1)

### INFORMATION IN ENVIRONMENTAL STATEMENT

1. Description of the improvement works, including in particular—
  - (a) a description of the physical characteristics of the whole improvement works and the land-use requirements during the construction and operational phases;
  - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
  - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed improvement works.
2. An outline of the main alternatives studied by the drainage body and an indication of the main reasons for their choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed improvement works, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed improvement works on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the improvement works, resulting from—
  - (a) the existence of the improvement works;
  - (b) the use of natural resources;
  - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,
 and the description by the drainage body of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 above.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the drainage body in compiling the required information.

## SCHEDULE 2

Regulations 4 and 5(7)

### IMPROVEMENT WORKS HAVING A SIGNIFICANT EFFECT ON THE ENVIRONMENT: SELECTION CRITERIA

#### Characteristics of improvement works

1. The characteristics of improvement works must be considered having regard, in particular, to:
  - the size of the improvement works;
  - the cumulation with other improvement works;
  - the use of natural resources;
  - the production of waste;

- pollution and nuisances;
- the risk of accidents, having regard in particular to substances or technologies used.

### **Location of improvement works**

**2.** The environmental sensitivity of geographical areas likely to be affected by improvement works must be considered, having regard, in particular, to:

- the existing land use;
- the relative abundance, quality and regenerative capacity of natural resources in the area;
- the absorption capacity of the natural environment, paying particular attention to the following areas:
  - (a) wetlands;
  - (b) coastal zones;
  - (c) mountain and forest areas;
  - (d) nature reserves and parks;
  - (e) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive [79/409/EEC](#) (on the conservation of wild birds)(16), as amended, and Directive [92/43/EEC](#) (on the conservation of natural habitats of wild fauna and flora)(17), as amended;
  - (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
  - (g) densely populated areas;
  - (h) landscapes of historical, cultural or archaeological significance.

### **Characteristics of the potential impact**

**3.** The potential significant effects of improvement works must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population);
- the transfrontier nature of the impact;
- the magnitude and complexity of the impact;
- the probability of the impact;
- the duration, frequency and reversibility of the impact.

## **SCHEDULE 3**

Regulation 11

### **INFORMATION FOR OTHER EEA STATES**

**1.** Where it appears to a drainage body that improvement works would be likely to have significant effects on the environment of another EEA State or where another EEA State likely to be significantly affected requests, the drainage body shall—

- (a) inform the appropriate Authority without delay; and

(16) O.J. No. L103, 25.4.79, p. 1.

(17) O.J. No. L206, 22.7.92, p. 7.

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- (b) supply to the appropriate Authority all information or documents in their possession which are reasonably required by the appropriate Authority for the purpose of complying with the requirements of this Schedule.
2. Where it appears to the appropriate Authority that improvement works would be likely to have significant effects on the environment of another EEA State or where another EEA State likely to be significantly affected requests, the appropriate Authority shall—
- (a) send to the EEA State as soon as possible, and no later than the date of publication required by sub-paragraph (b) of this paragraph, the particulars mentioned in paragraph 3 below and, if the Authority thinks fit, the information mentioned in paragraph 4 below;
  - (b) publish the information referred to in sub-paragraph (a) above in a notice placed in the London Gazette with an indication of where further information is available;
  - (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide; and
  - (d) inform the drainage body.
3. The particulars referred to in paragraph 2(a) above are—
- (a) a description of the improvement works, together with any available information on their possible significant effect on the environment in another EEA State; and
  - (b) information on the nature of the determination which may be made.
4. Where an EEA State indicates, in accordance with paragraph 2(c) above, that it wishes to participate in the procedure for which these Regulations provide, the appropriate Authority shall as soon as possible send to that EEA State the following information:—
- (a) a copy of the proposal for the improvement works;
  - (b) a copy of the environmental statement in respect of the improvement works; and
  - (c) relevant information regarding the procedure under these Regulations,
- but only to the extent that such information has not been provided to the EEA State earlier under paragraph 2(a) above.
5. The appropriate Authority, insofar as concerned, shall also—
- (a) arrange for the particulars and information referred to in paragraphs 3 and 4 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
  - (b) ensure that those authorities and the public concerned are given an opportunity, before a determination is made as to whether the improvement works should proceed, to forward to the appropriate Authority, within a reasonable time, their opinion on the information supplied.
6. The appropriate Authority shall in accordance with Article 7(4) of the Directive,—
- (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential significant effects of the improvement 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.
7. Where an EEA State has been consulted in accordance with paragraph 6, the appropriate Authority shall inform the EEA State of the determination in respect of the improvement works in question and shall forward to it a statement of—
- (a) the content of 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 major adverse effects of the improvement works.

## SCHEDULE 4

Regulation 12

### ENVIRONMENTAL FACTORS

The environmental factors are–

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between the factors mentioned in sub-paragraphs (a) to (c) above.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which replace the Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988 (as amended), implement in part Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.85, p. 40), following its amendment by Council Directive [97/11/EC](#) (O.J. No. L73, 14.3.97, p. 5).

Directives [85/337/EEC](#) and [97/11/EC](#) were respectively extended to the Contracting Parties of the European Economic Area (EEA) by Article 74 and Annex XX paragraph I.1 of the Agreement on the European Economic Area and by Decision No. 20/1999 of the EEA Joint Committee adopted on 26th February 1999 (not yet published).

The Regulations apply to specified land drainage projects in England and Wales (“improvement works”) for which the Town and Country Planning (General Permitted Development) Order 1995 (S.I. [1995/418](#)) grants planning permission without any requirement for an application to be made under Part III of the Town and Country Planning Act 1990. The Regulations prohibit drainage bodies from carrying out improvement works unless specified conditions are met. First, the requirements of the Regulations must have been complied with, including the preparation of an “environmental statement” for the purposes of assessing improvement works which are likely to have significant effects on the environment. Secondly, in specified cases, the “appropriate Authority” (that is, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the National Assembly for Wales) must have given consent and the works must have been carried out in accordance with any conditions to which the consent is subject (regulations 2 and 3).

The principal requirements of the Regulations are as follows:–

- (a) drainage bodies must determine whether improvement works are likely to have significant effects on the environment (regulation 4 and Schedule 2);

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- (b) where a drainage body consider improvement works are unlikely to have such effects, they must publicise their intention to carry out the works. If no representations are received to the effect that the environmental effects are likely to be significant, they may proceed. If the drainage body conclude that the works are likely to have significant effects on the environment, they must publicise their determination as described in (c) below. If representations are received to the effect that the environmental effects are likely to be significant but the drainage body still consider otherwise, they must apply to the appropriate Authority for a determination (regulation 5 and Schedule 2);
- (c) where improvement works are determined to be likely to have significant effects on the environment, the drainage body must publicise their intention to prepare an environmental statement, notify specified consultation bodies and prepare the statement (regulations 6 and 7);
- (d) at the request of the drainage body, the appropriate Authority must give an opinion on the contents of the environmental statement (regulation 8) and other authorities must make available any relevant information (regulation 9);
- (e) a drainage body must publicise the preparation of an environmental statement, make it available to the public and copy it to consultation bodies, to allow an opportunity for representations (regulation 10);
- (f) where improvement works would be likely to have significant effects on the environment of another EEA State, the appropriate Authority must provide information to and consult that State (regulation 11 and Schedule 3);
- (g) the environmental effects of the improvement works must be assessed in the light, in particular, of the environmental statement and representations. If there are no objections, the drainage body may determine that they will proceed with the works. If there are objections, the proposal must be referred to the appropriate Authority for a determination consenting or refusing consent to the works. Determinations must be publicised (regulation 12 and Schedule 4).

The Regulations also provide for reasonable charges for copy documents, for enforcement and for revocations, savings and amendments (regulations 13, 14 and 15).