STATUTORY RULES OF NORTHERN IRELAND

2019 No. 209

CANALS AND INLAND WATERWAYS

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

Made - - - -	*29th October 2019*
Coming into operation	*1st December 2019*

The Department for Infrastructure(**1**), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**2**).

The Department for Infrastructure is designated(**3**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the environment.

PART 1

INTRODUCTORY AND APPLICATION

Citation and commencement

1.—(1) These Regulations may be cited as The Waterways (Environmental Impact Assessment) Regulations (Northern Ireland) 2019 and come into operation on 1st December 2019.

Interpretation

2.—(1) In these Regulations—

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

"the Commission" means the Water Appeals Commission as described in Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006(**4**);

(**1**) Formerly the Department for Regional Development; *see* section 1(6) and (11) of, and Schedule 1 to, the Departments Act (Northern Ireland) 2016 (2016 c. 5 (N.I.))
(**2**) 1972 c. 68; section 2(2) is amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (2006 c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (2008 c. 7)
(**3**) S.I. 2008/301
(**4**) S.I. 2006 No. 3336 (N.I. 21)

"consultation bodies" shall be construed in accordance with regulation 8(2);

"the Department" means the Department for Infrastructure;

"the Directive" means Directive 2011/92/EU(**5**) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU(**6**) of the European Parliament and of the Council;

"the Drainage Order" means the Drainage (Northern Ireland) Order 1973(**7**);

"the Water Order" means the Water (Northern Ireland) Order 1999(**8**);

"environmental statement" means a statement that includes such of the information referred to in Schedule 2, as is reasonably required to assess the environmental effects of any proposed works and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;

"general advertisement" means publication of a notice—

(a) in the Belfast Gazette; and

(b) on the website maintained by the Department;

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

"public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

"public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures of the Department. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

"waterway" has the same meaning assigned to it by the Water Order and any reference to a waterway includes a reference to the channel or bed of a waterway which is for the time being dry; and

"works" means—

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

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

(2) In these Regulations, "canal scheme" has the same meaning assigned to it by Article 39(2) of the Water Order.

(3) In these Regulations, "the Drainage Council" has the same meaning assigned to it by Article 3(1) of the Drainage Order.

(4) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in the Republic of Ireland.

(5) Expressions used in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive, unless otherwise provided for.

(6) The Interpretation Act (Northern Ireland) 1954(**9**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(**5**) O.J L 26, 28.1.2012, p. 1
(**6**) O.J. L 124, 25.4.2014, p. 1
(**7**) S.I. 1973 No. 69 (N.I. 1)
(**8**) S.I. 1999/662 (N.I. 6)
(**9**) 1954 c.33 (N.I.)

Application

3.—(1) Subject to the following provisions, Part 2 shall apply in relation to any works other than works commenced before the coming into operation of these Regulations.

(2) The amendments made to the Water Order by these Regulations shall not have effect in relation to any canal scheme prepared before the coming into operation of these Regulations.

Directions

4.—(1) The Department may direct that—

(a) specific works are exempt from these Regulations if it considers that the application of these Regulations would have an adverse effect on the fulfilment of the works purpose, provided the objectives of the Directive are met; or

(b) these Regulations do not apply in relation to particular proposed works if the sole purpose of the proposed works is to respond to a civil emergency and the Department considers the application of the Regulations would have an adverse effect on the fulfilment of that purpose.

(2) The Department shall only make a direction under paragraph (1)(a) in an exceptional case and where it does so shall—

(a) make available to the public by general and local advertisement, the information considered in making the direction, the reasons for making the direction, briefly describe the proposed works and the effect of the direction;

(b) consider whether, in that case, another form of assessment of the environmental effects of the proposed works would be appropriate; and

(c) make available to the public any information obtained under that other form of assessment.

(3) No direction shall be made under paragraph (1)(a) or (b) where the Department or any other Northern Ireland Department is aware that the proposed works would be likely to have significant effects on the environment in the Republic of Ireland.

Coordination of assessments

5.—(1) In addition to the requirement for an assessment of the environmental effects to be carried out in accordance with these Regulations, if there is also a requirement to carry out a Habitats Regulation Assessment, the Department must, where appropriate, ensure that the Habitats Regulation Assessment and the assessment of the environmental effects are coordinated.

(2) In these Regulations, a "Habitats Regulation Assessment" means an assessment under regulation 43 of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995(**10**).

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

(**10**) S.R. 1995 No. 380; regulation 43 was substituted by S.R. 2007 No. 345, regulation 14

(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;