Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2017 No. 88

DRAINAGE

The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

Made - - - -	*16th May 2017*
Coming into operation	*16th May 2017*

The Department for Infrastructure (**1**), being a department designated (**2**) for the purposes of section 2(2) of the European Communities Act 1972 (**3**) 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 it by the said section 2(2), hereby makes the following Regulations:

PART 1

INTRODUCTORY AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and shall come into operation on 16 May 2017.

Commencement Information

I1 Reg. 1 in operation at 16.5.2017, see **reg. 1**

Interpretation

2.—(1) In these Regulations—

(**1**) Formerly the Department for Regional Development; see section 1(6) and Schedule 1 of the Departments Act (Northern Ireland) 2016 (c.5)

(**2**) S.I.1988 No.785

(**3**) S.I. 1972 c.28

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

"another EEA State" means an EEA State other than the United Kingdom;

"the Commission" means the Water Appeals Commission as described in Articles 292 and 293 of the Water and Sewerage Services (Northern Ireland) Order 2006(**4**);

"the 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;

"drainage" includes defences against water including seawater;

"drainage works" means—

(a) any works carried out under the Drainage Order for the purpose of draining land or for preventing or mitigating flooding or erosion to which land is subject and includes the construction, cleansing, scouring, deepening, widening, straightening or diverting of any watercourse or outfall for water, canalisation, the construction, installation or alteration of any pump, pump machinery or pump-house, the removal of any obstruction, natural or artificial, in any watercourse and the construction, repair, raising, lowering, widening, straightening, altering or removal of any embankment, dam, barrier, sluice, weir, wall, culvert or groyne or of any structure or erection for the purpose of defence against, or relief from, water; or

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

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

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

"environmental statement" means a statement that includes such of the information referred to in Schedule 2A to the Drainage Order, as is reasonably required to assess the environmental effects of any proposed drainage 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; and

(**4**) S.I. 2006 No. 3336 (N.I. 21)
(**5**) 2011/92/EU (OJ L 26, 28.1.2012, p. 1–21)
(**6**) 2014/52/EU (OJ L 124, 25.4.2014, p. 1–18)
(**7**) 1973 No.69 (N.I. 1)

"Union legislation" means any enactment in the domestic law of Northern Ireland giving effect to an EU obligation.

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

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

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

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

Commencement Information

I2 Reg. 2 in operation at 16.5.2017, see **reg. 1**

Application

3.—(1) Subject to the following provisions and regulation 25, Part 2 shall apply in relation to any drainage works other than works—

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

(b) carried out under a drainage scheme which was confirmed under Article 13 of the Drainage Order or treated by virtue of Article 8(1) or 9(1) of that Order as if it had been confirmed under Article 13 of that Order.

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

Commencement Information

I3 Reg. 3 in operation at 16.5.2017, see **reg. 1**

Directions

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

(a) in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive) specific drainage 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 drainage works' purpose, provided the objectives of the Directive are met; or

(b) these Regulations do not apply in relation to particular proposed drainage works if the sole purpose of the proposed drainage 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 it shall—

(**8**) 1954 c.33 (N.I.)

(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 drainage works and the effect of the direction;

(b) consider whether, in that case, another form of assessment of the environmental effects of the proposed drainage 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 drainage works would be likely to have significant effects on the environment of another EEA State.

Commencement Information
I4 Reg. 4 in operation at 16.5.2017, see **reg. 1**

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(**9**).

Commencement Information
I5 Reg. 5 in operation at 16.5.2017, see **reg. 1**

PART 2

DRAINAGE WORKS

Restriction on proposed works

6. Subject to regulation 4, the Department shall not carry out any drainage works unless—

(a) it has complied with the requirements of these Regulations in relation to the drainage works; and

(b) where a proposal relating to those drainage works has been referred to the Commission under regulation 16(8)—

(i) the Commission has consented to the carrying out of the drainage works; and

(ii) the drainage works are carried out in accordance with any conditions to which the consent is subject.

Commencement Information
I6 Reg. 6 in operation at 16.5.2017, see **reg. 1**

(**9**) S.R. 1995 No. 380

Consideration whether proposed drainage works have significant effects on the environment

7.—(1) The Department shall provide the following information on proposed drainage works of the type listed in Annex II to the Directive—

(a) a description of the works, including in particular—

(i) a description of the physical characteristics of the whole project and, where relevant, of demolition works; and

(ii) a description of the location of the works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

(b) a description of the aspects of the environment likely to be significantly affected by the works;

(c) a description of any likely significant effects, to the extent of the information available on such effects, of the works on the environment resulting from—

(i) the expected residues and emissions and the production of waste, where relevant;

(ii) the use of natural resources, in particular soil, land, water and biodiversity,

the criteria of Schedule 2B to the Drainage Order shall be taken into account, where relevant, when compiling the information in accordance with sub-paragraphs (a) to (c).

(2) The Department shall determine within 90 days of receiving the information in paragraph (1), taking into account the selection criteria in Schedule 2B to the Drainage Order, whether or not the proposed drainage works in paragraph (1) are likely to have significant effects on the environment.

(3) Where the Department is bringing forward the proposed drainage works in paragraph (1) and will also be making the determination in paragraph (2), the Department must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these regulations, between the persons bringing forward a proposal for drainage works and the persons responsible for making the determination.

Commencement Information

I7 Reg. 7 in operation at 16.5.2017, see **reg. 1**

Determinations following consideration of drainage works under regulation 7

8.—(1) Where, pursuant to regulation 7, the Department having taken into account, so far as relevant, the criteria set out in Schedule 2B to the Drainage Order and the available results of other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), determines that the proposed drainage 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 drainage works in question;

(b) describe briefly the nature, size and location of the proposed drainage works;

(c) state that it does not propose to prepare an environmental statement in respect of the drainage works, and the main reasons why with reference to the relevant criteria in Schedule 2B to the Drainage Order;

(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 drainage 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