STATUTORY RULES OF NORTHERN IRELAND

2001 No. 394

DRAINAGE

Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001

Made - - - -	*29th October 2001*
Coming into operation	*26th November 2001*

The Department of Agriculture and Rural Development, being a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Part I

Introductory and Application

Citation and commencement

1. These Regulations may be cited as the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001 and shall come into operation on 26th November 2001.

Interpretation

2.—(1) In these Regulations—

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

"canal scheme" has the same meaning as in Article 42 of the Water Order(**3**);

"the Commission" means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973(**4**);

"the Department" means—

(**1**) S.I.1988/785
(**2**) c. 68. Section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1994/2795 (N.I. 15)
(**3**) S.I. 1999/662 (N.I. 6)
(**4**) S.I. 1973/70 (N.I. 2)

(a) in relation to any canal schemes or marina works the Department of Culture, Arts and Leisure; and

(b) for all other purposes the Department of Agriculture and Rural Development;

"the Directive" means Council Directive 85/337/EEC(**5**) on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC(**6**);

"drainage" includes defences against water including sea water;

"drainage works" means 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;

"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 17th March 1993;

"environmental information" means information in the environmental statement and any other information provided in accordance with these Regulations in relation to an application or referral for a determination under regulation 6(5) or 14(4) relating to the likely environmental effects of the works which are the subject of the application or referral as the case may be;

"environmental statement" means a statement that includes—

(a) such of the information referred to in Part I of Schedule 2A to the Drainage Order 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; but

(b) at least the information referred to in Part II of Schedule 2A to the Drainage Order;

"local newspaper" means a newspaper circulating in the immediate locality of any proposed works;

"marina works" means works carried out in relation to a marina under Part III of the Water Order;

"proposed works" shall be construed in accordance with regulation 5; and

"the Water Order" means the Water (Northern Ireland) Order 1999.

(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.

(**5**) O.J. No. L175, 5.7.85, p. 40
(**6**) O.J. No. L73, 14.3.97, p. 5
(**7**) S.I. 1973/69 (N.I. 1) as amended by S.R 1991 No. 376 and S.R. 1998 No. 446

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

Application

3.—(1) Part II shall apply in relation to any drainage works other than works—

(a) carried out in pursuance of or for the purposes of any scheme referred to in Article 30(1) of the Drainage Order;

(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 they had been confirmed under Article 13 of that Order.

(2) Part II shall apply in relation to any marina works which were commenced after the coming into operation of these Regulations other than works carried out under a canal scheme.

(3) The amendments made to the Water Order by regulation 22 shall not have effect in relation to any canal scheme prepared before the coming into operation of these Regulations.

(4) Part II shall not apply in relation to any drainage works or marina works which the Department, in accordance with Article 2(3) of the Directive, directs are to be exempted from the said Part II.

(5) Part III shall not apply in relation to any drainage scheme or canal scheme which the Department, in accordance with Article 2(3) of the Directive, directs is to be exempted from the said Part III.

(6) No direction shall be made under paragraph (4) or (5) where the Department or any other Northern Ireland department is aware that the works or scheme in question would be likely to have significant effects on the environment of another EEA State.

(7) Where the Department makes a direction under paragraph (4) or (5) it shall publish in the Belfast Gazette and in at least two local newspapers a notice which briefly describes the proposed works, explains the effects of the direction and the reasons for it.

Part II

Drainage Works and Marina Works Generally

Restriction on proposed works

4. The Department shall not—

(a) carry out any drainage works or marina works;

(b) co-operate, in pursuance of Article 30(1) of the Drainage Order, with any person outside Northern Ireland in preparing or carrying out schemes for drainage works;

(c) enter into or carry into effect, in pursuance of Article 30(2) of the Drainage Order, an agreement or arrangement with such a person for the purposes of such a scheme; or

(d) enter into any arrangement with another body or person in pursuance of Article 46 or Article 47(2) of the Water Order with a view to exercising any power to carry out marina works,

unless it has complied with the requirements of these Regulations in relation to the works in question and, in any case where a proposal relating to those works has been referred to the Commission under regulation 14(4)—

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

(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

5. The Department shall consider, taking into account the selection criteria in Schedule 2B to the Drainage Order, whether any proposed drainage works or marina works (in this Part referred to as 'the proposed works') are likely to have significant effects on the environment.

Determinations following consideration of works under regulation 5

6.—(1) Where, pursuant to regulation 5, the Department considers that the proposed works are not likely to have significant effects on the environment, it shall, by notice published in the Belfast Gazette and at least two local newspapers—

(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

(d) 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 28 days of the date of the publication of the notice in the Belfast Gazette.

(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—

(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 situate; and

(c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

(3) Where, within the period specified in paragraph (1)(*d*), 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 or do such other thing in relation to them as is mentioned in regulation 4.

(4) Where, following the period specified in paragraph (1)(*d*), 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.

(5) Where, within the period specified in paragraph (1)(*d*), 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 works are not likely to have significant effects on the environment, it shall apply to the Commission for a determination of whether the 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 2B to the Drainage Order, determine 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)(*d*) in relation to the 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 representations under paragraph (1)(d) 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

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

(a) under regulation 6(4), the Department determines that any proposed works are likely to have significant effects on the environment; or

(b) under regulation 6(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 notice published in the Belfast Gazette and at least two local newspapers—

(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 and that the Department intends to prepare an environmental statement in respect of them;

(c) indicate whether the proposed works are likely to have significant effects on the environment in another EEA State.

(3) Where the Department publishes a notice in accordance with paragraph (2) it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to—

(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 situate; and

(c) any other person who appears to it to have an interest in the matter including, where appropriate, another EEA State.

Preparation of an environmental statement

8. The Department shall prepare an environmental statement in any case to which regulation 7 applies.

Request about the information to be included in an environmental statement

9.—(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 6(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—

(i) the Department;