Status: *This version of this Order contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Drainage (Northern Ireland) Order 1973. 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 INSTRUMENTS

1973 No. 69 (NI 1)

Drainage (Northern Ireland) Order 1973

\- - - - - - *[19th January 1973]*

Modifications etc. (not altering text)
C1 Order: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 2** (with art. 9(2))

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Drainage (Northern Ireland) Order 1973 …
Commencement …
Paras.(2)(3)—Commencement

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of Article 1 and the following provisions of this Order as it applies to an Act of the Parliament of Northern Ireland.

(2) In this Order—

F1…

[F2“additional information” in any case where an environmental statement has been prepared in respect of a drainage scheme means any information relating to the statement which is not contained in it;

F3…**]**

“authorised” means authorised by the Ministry;

“bank” means any bank, wall or embankment adjoining or confining, or constructed for the purposes of or in connection with, any watercourse, or for the protection of any land from flooding;

[F4“the Commission” means the Water Appeals Commission **[**F5for Northern Ireland**]**;

“consultation bodies” shall be construed in accordance with Article 12A(5);**]**

"dam" includes a lock, weir or other structure whatsoever which is likely to affect the flow of water in any watercourse;

"designated sea defences" means sea defences designated by the Drainage Council under this Order;

"designated watercourse" means a watercourse designated by the Drainage Council under this Order;

[F6"the Directive" means Directive 2011/92/EU 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 of the European Parliament and of the Council;**]**

"drainage" includes protection;

"the Drainage Council" has the meaning assigned to it by Article 3(1);

"drainage scheme" means a scheme prepared under Article 11(1);

F7...

"embankment" includes an embankment which is part of any sea defence works;

[F8"environmental information" means information in an environmental statement and any additional information provided in accordance with this Order in relation to an application or referral for a determination under Article 12A(8) or Article 12H(5) in relation to the likely environmental effects of the scheme which is the subject of the application;**]**

[F9"environmental statement" means a statement that includes such of the information referred to in Schedule 2A as is reasonably required to assess the environmental effects of the drainage scheme and which the Department can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;**]**

"fish pass" means a channel for the free run or migration of fish in, over or in connection with an obstruction in a watercourse, and includes a fish ladder or any contrivance which facilitates the passage of fish;

[F10"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 a proposed drainage scheme;**]**

[F11"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as last amended by Council Directive 2013/17/EU;**]**

"the Minister" and "the Ministry" mean respectively the Minister and the Ministry of Agriculture;

"occupier", in relation to any land, includes an agent or other person entrusted by any owner, occupier or person having an estate therein with the management thereof;

"protection" means protection against flooding but not erosion by the sea;

[F12"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;**]**

"sea defences" means any works designed for the protection against flooding by the sea of land and existing at the commencement of this Order;

"sea defence works" means any works of construction, reconstruction, alteration, improvement, repair, maintenance, demolition or removal for the purpose of the protection

against flooding by the sea of any land, and includes the sowing or planting of vegetation for that purpose;

"sluice" includes any appliance capable of regulating the flow of water and all structures and apparatus connected with that appliance;

[F13"species and habitats" means—

(a) species of naturally occurring birds in the wild state as specified in Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds;

(b) natural habitat types listed in Annex 1 to the Habitats Directive;

(c) animal and plant species listed in Annex 2 or Annex 4 to the Habitats Directive;**]**

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

"transferred provision" has the meaning assigned to it by section 1(*g*) of the said Act of 1954;

"tree" includes bush and shrub;

F14...

"watercourse" means any channel or passage of whatever kind, whether natural or artificial, through which water flows and, without prejudice to the generality of the foregoing, includes any river, stream, canal, ditch, drain, cut, culvert, dyke, sluice, valve, sewer, overland carrier, millrace or layde, but does not include any drain or sewer **[**F15vested in a sewerage undertaker**]**, or any water main or service pipe **[**F16vested in a water undertaker**]**.

[F17(2A) In this Order, any reference to significant effects on the environment shall include a reference to such effects on the environment in **[**F18an EEA State**]** .

(2B) Expressions used in this Order and in the Directive have the same meaning for the purposes of this Order as they have for the purposes of the Directive **[**F19unless otherwise provided for**]** .**]**
Para.(3) rep. by SLR 1976

F1 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 In art. 2(2) definitions of "additional information" and "another EEA State" substituted (20.3.2006) for definition of "another EEA State" by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(a)**

F3 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 SR 2001/394

F5 Art. 2(2): words in definition of "the Commission" substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3 Sch. 2)

F6 Words in art. 2(2) substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(a)**

F7 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 Art. 2(2): "for the definition of "environmental information" there shall be inserted" definition of "environmental information" (20.3.2006) by virtue of Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(e)**

F9 Words in art. 2(2) substituted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(b)**

F10 Art. 2(2): "for the definition of "local newspaper" there shall be inserted" the definitions of "general advertisement" and "local advertisement" (20.3.2006) by virtue of Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(1)(f)**

F11 Words in art. 2(2) inserted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(iv)**; 2020 c. 1, Sch. 5 para. 1(1)

F12 Words in art. 2(2) inserted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)(c)**

F13 Words in art. 2(2) inserted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(v)**; 2020 c. 1, Sch. 5 para. 1(1)

F14 Words in art. 2(2) omitted (31.12.2020) by virtue of The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(a)(vi)**; 2020 c. 1, Sch. 5 para. 1(1)

F15 Art. 2(2): words in definition of "watercourse" inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(2)(a)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F16 Art. 2(2): words in definition of "watercourse" substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 10(2)(b)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**. Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F17 Art. 2(2A)(2B) substituted (20.3.2006) for "art. 2(2A) where it appears twice" by Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006 (S.R. 2006/34), **reg. 17(2)**

F18 Words in art. 2(2A) substituted (31.12.2020) by The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/31), regs. 1(1), **2(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F19 Words in art. 2(2B) inserted (16.5.2017) by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88), regs. 1, **20(1)**

PART II

FUNCTIONS OF DRAINAGE COUNCIL AND MINISTRY

Functions of Drainage Council

3.—(1) The Council known as the Drainage Council for Northern Ireland (in this Order referred to as "the Drainage Council") shall, subject to paragraph (2), continue in being as such, and the provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Drainage Council.

Paras.(2)(3) rep. by SLR 1980

(4) The Drainage Council shall—

(a) after considering such particulars of any watercourses in Northern Ireland as may be submitted to it by the Ministry or by any other person, determine which of such watercourses, or portions thereof, are to be treated or, as the case may be, are not to continue to be treated as designated watercourses for the purposes of this Order;

(b) after considering such particulars of any sea defences in Northern Ireland as may be submitted to it by the Ministry determine which of such sea defences, or portions thereof, are to be or, as the case may be, are not to continue to be treated as designated sea defences for the purposes of this Order;

(c) consider the proposals of the Ministry in respect of drainage schemes, and substantial variations suggested by the Ministry in relation to drainage schemes;

(d) consider all bye-laws proposed to be made by the Ministry under Article 22 in respect of the maintenance and efficient operation of drainage works;

(e) consider drainage proposals affecting roads, bridges, culverts and embankments;

(f) consider such matters affecting or affected by drainage questions as may be referred to it by the Ministry or, after consultation with the Ministry, by any other government department.

(5) The Drainage Council, in determining matters coming before it in pursuance of this Article, shall have regard to the uniform treatment of drainage throughout Northern Ireland, and shall consider all such matters and schemes in their relation to any interest which may appear to the Drainage Council to be affected.

(6) The Ministry shall consult the Drainage Council with regard to the general drainage programmes from time to time proposed by the Ministry, shall cause an annual summary of the work of the Ministry in relation to drainage to be made available to the Council and shall, if requested, supply the Council with full information as to the progress of any drainage works being undertaken by or on behalf of the Ministry.

(7) The expenses of the Drainage Council, to such amount as may be approved by the Ministry of Finance, shall be paid by the Ministry.

Submission of particulars with respect to designated watercourses

4. The Ministry or any other person may at any time submit to the Drainage Council such particulars as the Council may consider necessary to enable it to determine with respect to any watercourse whether that watercourse is to be treated or is not to continue to be treated as a designated watercourse for the purposes of this Order.

Right to apply for review of determination of Drainage Council

5.—(1) Any person aggrieved by a determination made by the Drainage Council under Article 3(4)(*a*) or 8(3) in relation to any watercourse or part of a watercourse affecting land owned or occupied by him may, within twenty-eight days from the date on which he is notified by the Council of such determination and on giving notice to the Council and to the Ministry referring to the determination and specifying the land, apply to the Lands Tribunal for a review of that determination.

(2) On an application under paragraph (1) the Lands Tribunal may review the determination to which the application relates, and any decision of the Lands Tribunal on such review shall have effect as if it were a decision of the Drainage Council.

(3) On a review under this Article, the person applying for the review and the Ministry shall be entitled to appear, be heard and adduce evidence before the Lands Tribunal, and for that purpose may appear by counsel or solicitor.

Ministry to be drainage authority

6. Save as otherwise provided by this Order, the Ministry shall be the authority for the exercise of all functions conferred on or transferred to it under this Order or under any other statutory provision (whether passed before or after the commencement of this Order) in relation to the drainage of land, and for that purpose the Ministry may, subject to the provisions of this Order, exercise all such functions as are conferred on or transferred to it under this Order.

General powers of the Ministry

7. Without prejudice to the generality of the provisions of Article 6, the Ministry may—

(a) undertake, construct and maintain all such drainage works and do all such things as are mentioned in Schedule 2;