
STATUTORY INSTRUMENTS

1973 No. 69

Drainage (Northern Ireland) Order 1973

PART III

DRAINAGE SCHEMES

Preparation of drainage schemes

- 11.**—(1) If the Ministry is of opinion that the carrying out—
- (a) of drainage works on a designated watercourse; or
 - (b) of works on any designated sea defences;

is expedient for the drainage of any land, the Ministry may prepare a scheme for the carrying out of those works, and for that purpose may make such surveys as shall appear to the Ministry to be necessary or expedient.

(2) Every drainage scheme prepared by the Ministry shall contain such provisions as the Ministry may consider necessary for the protection of rights (including rights to water cattle or other animals) or interests affected by the scheme, and shall show, either in the body of the scheme or by means of appropriate maps, drawings, plans, sections and schedules annexed thereto, the following matters—

- (a) the watercourses, or the sea defences, proposed to be dealt with;
- (b) the land which will be drained or otherwise improved by the carrying out of the scheme;
- (c) the details of the drainage works proposed to be carried out in pursuance of the scheme, together with a description of the works to roads, bridges or culverts which will be necessary to enable the scheme to be carried out or to be effective for drainage purposes;
- (d) the manner in which it is proposed to implement^[F1] Article 40(2) of the Water (Northern Ireland) Order 1999].

(3) Without prejudice to Article 37, the officers, agents and servants of the Ministry may, at all reasonable times, on production (if so required) of their authority, enter on any land and do there all such things as may appear to them to be reasonably necessary or expedient for the purposes of the preparation of a drainage scheme.

(4) Every reference in this Order to a drainage scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such drainage scheme.

F1 1999 NI 6

[F2]Restrictions on drainage schemes

12. The Department shall not confirm a drainage scheme, 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 or enter into or carry into effect, in pursuance of Article 30(2) of the

Drainage Order, and agreement or arrangement with such person for the purposes of such a scheme unless—

- (a) it has complied with the requirements of Articles 12A to 12I in relation to the scheme; and
- (b) where a proposal for the scheme has been referred to the Commission under Article 12H(7) —
 - (i) the Commission has consented to the carrying out of the scheme; and
 - (ii) the scheme is carried out in accordance with any conditions to which the consent is subject,
 but this is subject to Article 12ZA.]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, **21**

[^{F2}Direction that Articles do not apply

12ZA.—(1) The Department may direct that—

- (a) ^{F3}... a specific drainage scheme is exempt from the requirements of Articles 12A to 12I and 13A if it considers that the application of those Articles would have an adverse effect on the fulfilment of the drainage scheme's purpose^{F4} ...; or
- (b) those Articles do not apply in relation to a particular proposed drainage scheme if the sole purpose of the proposed drainage scheme is to respond to a civil emergency and the Department considers the application of the Articles 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—

- (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 scheme and the effect of the direction;
- (b) consider whether, in that case, another form of assessment of the environmental effects of the proposed drainage scheme 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 scheme would be likely to have significant effects on the environment of [^{F5}an EEA State] .]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, **21**

F3 Words in art. 12ZA(1)(a) 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(3)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in art. 12ZA(1)(a) 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(3)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in art. 12ZA(3) 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(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F2}Consultations and determination of whether a drainage scheme has significant effects on the environment

12A.—(1) The Department shall provide the following information on proposed drainage schemes of the type listed in Annex II to the Directive—

- (a) a description of the project, 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 project, 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 project;
 - (c) a description of any likely significant effects, to the extent of the information available on such effects, of the project 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 in soil, land, water and biodiversity, the criteria of Schedule 2B shall be taken into account, where relevant, when compiling the information in accordance with sub-paragraphs (a) to (c).
- (2) Where the Department has prepared a drainage scheme, under paragraph (1) it shall—
- (a) consider, taking into account the selection criteria in Schedule 2B and the available results of other environmental assessments required under [^{F6}retained EU law] (other than legislation implementing the requirements of the Directive), whether the works specified in the scheme are likely to have significant effects on the environment;
 - (b) send a copy of the scheme, together with an estimate of the cost of the scheme, to the district council of the district or, as the case may be, each district in which the proposed works specified in the scheme are situated; and
 - (c) make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under this Order, between the persons bringing forward a proposal for a drainage scheme and the persons responsible for considering the proposals and making any determination.
- (3) The district council to which a copy of a drainage scheme is sent by the Department pursuant to paragraph (2)(b)—
- (a) shall cause a copy to be exhibited at its principal offices or other convenient place during the period of 30 days from the date of the publication in the Belfast Gazette of the notice relating to the scheme given under paragraph (4) or Article 12B(2) and shall permit the copy to be inspected by any person;
 - (b) shall examine and consider the scheme; and
 - (c) may, at any time within the period referred to in sub-paragraph (a), send to the Department any representations with regard to the scheme which it wishes to make.
- (4) Where, pursuant to paragraph (2)(a), the Department considers that the works specified in the drainage scheme are not likely to have significant effects on the environment, it shall so determine, within 90 days of receiving the information specified in paragraph (1) and by general and local advertisement—
- (a) state that it proposes to carry out the works specified in the scheme;
 - (b) describe briefly the nature, size, and location of those works;

- (c) state that it does not intend to prepare an environmental statement in respect of the works specified in the scheme and the main reasons why with reference to the relevant criteria in Schedule 2B;
 - (d) state any features of the project 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 works at the address specified in the notice within 30 days of the publication of the notice in the Belfast Gazette;
 - (f) describe what other information relating to the environmental effects of the works is available;
 - (g) state the place or places where and the period, not being less than 30 days following the date of the publication of the notice in the Belfast Gazette, during which a copy of the scheme will be available for inspection; and
 - (h) state that any person who considers that his or her interests will be prejudicially affected by the scheme may, at any time within 30 days of the date of publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which the person wishes to make.
- (5) Where, pursuant to paragraph (4), the Department publishes a notice, it shall send a copy of the 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 works to which the notice relates are situate;
 - (c) any other public authority, statutory body or organisation which exercises statutory functions, or is otherwise designated by any statutory authority 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, [F7an EEA State] .
- (6) Where, within the period specified in paragraph (4)(e), no representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment, the Department may proceed to confirm the drainage scheme in accordance with Article 13(2).
- (7) Where, following the period specified in paragraph (4)(e), the Department considers (whether in the light of any representations or otherwise) that the works specified in a drainage scheme are likely to have significant effects on the environment, it shall within a period of 90 days beginning on the expiry of the period specified in paragraph 4(e), make a determination accordingly.
- (8) Where, within the period specified in paragraph (4)(e), any representations have been made to the effect that the works specified in a drainage scheme are likely to have significant effects on the environment and, notwithstanding those representations, the Department still 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 specified in the scheme 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.
- (9) Where the Commission considers that the information and copy documents provided in accordance with paragraph (8) 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.

(10) Where an application is made to the Commission under paragraph (8) in relation to any drainage scheme the Commission shall, taking into account the selection criteria in Schedule 2B, and the available results of preliminary verifications or assessments of the effects on the environment carried out pursuant to [F8retained EU law] (other than legislation implementing the requirements of this Directive), determine whether the works specified in the scheme are likely to have significant effects on the environment and shall inform the Department and any person who made representations under paragraph (4)(e), of its determination.

(11) Where an application is made to the Commission under paragraph (8) in relation to any drainage scheme the Commission shall, prior to making a determination for the purposes of that paragraph, afford to the Department and to any person who made representations under paragraph (4) (e) in relation to works specified in the scheme an opportunity of appearing before and being heard by the Commission.]

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| F2 | Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88) , regs. 1, 21 |
| F6 | Words in art. 12A(2)(a) 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(4)(a) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F7 | Words in art. 12A(5)(d) 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(4)(b) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F8 | Words in art. 12A(10) 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(4)(c) ; 2020 c. 1, Sch. 5 para. 1(1) |

[F2] **Drainage schemes likely to have significant effects on the environment**

12B.—(1) This Article applies where—

- (a) under Article 12A(7) the Department determines that the works specified in a scheme are likely to have significant effects on the environment; or
- (b) under Article 12A(10) the Commission determines that the works specified in a scheme are likely to have significant effects on the environment; or
- (c) the drainage scheme is of a type listed in Annex 1 to the Directive.

(2) In any case to which this Article applies the Department shall by general and local advertisement—

- (a) describe briefly the nature, size and location of the works specified in the scheme;
- (b) state—
 - (i) that the works specified in the scheme are likely to have significant effects on the environment;
 - (ii) the main reasons for requiring an assessment, with reference to the relevant criteria listed in Schedule 2B; and
 - (iii) that the Department intends to prepare an environmental statement in respect of the scheme;
- (c) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the works specified in the drainage scheme at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette;

- (d) indicate the nature of the information in question and the times where and the means by which it will be made available;
- (e) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision;
- (f) indicate whether the works specified in the scheme are likely to have significant effects on the environment in [^{F9}an EEA State] ; and
- (g) state that any person who considers that his or her interests will be prejudicially affected by the scheme may, at any time within 30 days of the date of the publication of the notice in the Belfast Gazette, send to the Department any representations with regard to the scheme which that person wishes to make.

(3) Where the Department publishes an advertisement 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 each of the consultation bodies.

(4) The Department shall make available to the public concerned any further information which is relevant to a case to which this Article applies but which only becomes available after the publication of the advertisement under paragraph (2).]

- F2** Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 21
- F9** Words in art. 12B(2)(f) 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(5); 2020 c. 1, Sch. 5 para. 1(1)

[^{F2}Preparation of an environmental statement

12C.—(1) The Department shall prepare an environmental statement in any case to which Article 12B applies.

- (2) The environmental statement referred to in paragraph (1) must—
 - (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the statement;
 - (b) contain a statement by the Department setting out how the requirements of paragraph (2) (a) have been complied with;
 - (c) be prepared, taking into account other environmental assessments with a view to avoiding duplication of assessment; and
 - (d) where an opinion is issued in accordance with paragraph (3), be based on the most recent opinion issued.

(3) The Department may request the Commission to give an opinion as to the information to be contained in any environmental statement.

(4) Where the Department requests an opinion under paragraph (3) before a determination has been made under Article 12A(7) or (10), the Commission shall deal with the request on the assumption that the works specified in the drainage scheme will have significant effects on the environment.

(5) Before giving an opinion under paragraph (3) in relation to any drainage scheme the Commission shall consult the Department and each of the consultation bodies.

(6) Giving an opinion under paragraph (3) shall not preclude the Commission from requesting further information from the Department under Article 12H(8).]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 21

[^{F2}Publicity for an environmental statement

12D.—(1) Where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme, it shall by general and local advertisement give notice in accordance with paragraphs (2) and (3).

(2) The advertisement shall state —

- (a) that the environmental statement has been prepared and give details of the places where and times at which the statement may be inspected;
- (b) that any person wishing to make representations in relation to the likely environmental effects of the drainage scheme to which the statement relates should make them in writing to the Department, at the address specified in the advertisement within 30 days of the publication of the notice in the Belfast Gazette; and
- (c) that where no objection in relation to the likely effects of the works specified in the scheme is made and the Drainage Council, having undertaken the examination specified in Article 12H(2), considers that the scheme should be approved, it may so determine.

(3) On or before the date of publication in the Belfast Gazette of the notice under paragraph (1), the Department shall—

- (a) send a copy of the environmental statement and notice to each of the consultation bodies so that any such body has an opportunity to make representations as to the likely environmental effect of the works to which the statement relates before the expiry of the period specified in the notice;
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the details of the drainage scheme and the environmental statement relating to the scheme;
- (c) ensure that a reasonable number of copies of the statement are made available and, if a charge is to be made for any such copy under Article 12F, the amount of the charge; and
- (d) place the notice and a copy of the environmental statement on a website maintained by the Department.

(4) Where, in accordance with paragraph (3)(a), the Department sends any person a copy of an environmental statement it shall consult that person about the statement and the likely environmental effects of the proposed works to which it relates.]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 21

[^{F2}Assistance in the preparation of an environmental statement

12E.—(1) Subject to paragraph (6), where the Department is required to prepare an environmental statement in pursuance of Article 12C(1), it may consult with any person to determine whether that person has in his or her possession any information which may be relevant to the preparation of the environmental statement and if that person has any such information, that person shall make it available to the Department.

(2) Where the Department has prepared an environmental statement in relation to any proposed drainage scheme and made that statement available in accordance with Article 12D(3), the Department or, as the case may be, the Commission acting in accordance with Article 12H(8) may determine that further information is required.

(3) Subject to paragraph (6), the Department may consult with any person to determine whether that person has in his or her possession any additional information and if that person has any such information, that person shall make it available to the Department.

(4) Where, pursuant to paragraph (3), the Department obtains any additional information, it shall—

- (a) by general and local advertisement, state that the additional information is available and give details of the places where and the times at which a copy of the additional information may be inspected or obtained and, if a charge is to be made for any such copy under Article 12F, the amount of the charge; and
- (b) state that any person who wishes to make representations in relation to the additional information should make such representations in writing to the Department at the address specified in the advertisement within 30 days of the date of the publication of the notice in the Belfast Gazette.

(5) At the same time as the notice in the Belfast Gazette is published under paragraph (4)(a), the Department shall—

- (a) send copies of the additional information to each of the consultation bodies; and
- (b) make available for inspection at an office of the Department or at some other convenient place for a period of at least 30 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed drainage scheme in question and the environmental statement relating to the scheme and ensure that a reasonable number of copies of the information are made available.

(6) Nothing in paragraph (1) or (3) shall require the disclosure of information which is capable of being treated as confidential under regulation 12(1) or must be so treated under regulation (13(1) of the Environmental Information Regulations 2004.

(7) Any person making information available to the Department in accordance with paragraph (1) or (3) may make a reasonable charge reflecting the cost thereof and the Department shall pay the charge.]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, **21**

[^{F2}Charges

12F. The Department may make a reasonable charge reflecting printing and distribution costs to any person for any copy, in excess of one, of the whole or any part of an environmental statement, or any further information supplied to that person in accordance with Article 12D(3), 12E(5) or 13A.]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, **21**

[^{F2}Drainage schemes likely to have significant effects on the environment in [^{F10}an EEA State]

12G.—(1) Where it appears to the Department that the works specified in a proposed drainage scheme are likely to have significant effects on the environment in [^{F11}an EEA State] , or where [^{F11}an EEA State] likely to be significantly affected so requests, the Department shall—

- (a) send to the State, as soon as possible, and no later than the date of the publication in the Belfast Gazette of the notice referred to in Article 12B(2)—
 - (i) a copy of that notice; and
 - (ii) any available information on the possible significant effects of the proposed scheme on the environment in that EEA State;
- (b) make available to the State any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication;
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed drainage scheme in accordance with paragraphs (2) to (4) it must inform the Department of that fact within a period determined in agreement with that State but which shall not be less than 30 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the later, to that State.

(2) Where an EEA State indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to that EEA State—

- (a) a copy of the proposal for the drainage scheme;
- (b) a copy of the environmental statement in respect of the scheme;
- (c) all the information required to be given to any person under Article 12B; and
- (d) relevant information regarding the procedure for consultation under this Part,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1).

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time, to the authorities [^{F12}which the EEA State has designated to be consulted about the proposed drainage scheme and to the public concerned in that State; and]
- (b) ensure that those authorities, and the public are given an opportunity, before a determination is made as to whether the drainage scheme should proceed, to forward to the Department within a reasonable time, their opinion on the information supplied.

(4) The Department shall ^{F13}...—

- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the drainage scheme on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with [^{F14}that EEA State] a reasonable period of time for the duration of the consultation period which shall not be less than 30 days beginning with the day on which the Department forwarded the information to that State in pursuance of paragraph (2).

(5) Where an EEA State has been consulted in relation to any proposed drainage scheme in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the drainage scheme in question and shall forward to it a statement of—

- (a) the determination and any conditions attached thereto;
- (b) the main reasons and the 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 adverse effects of the scheme.]

F2	Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017/88) , regs. 1, 21
F10	Words in art. 12G heading 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(6)(a) ; 2020 c. 1, Sch. 5 para. 1(1)
F11	Words in art. 12G(1) 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(6)(a) ; 2020 c. 1, Sch. 5 para. 1(1)
F12	Words in art. 12G(3)(a) 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(6)(b) ; 2020 c. 1, Sch. 5 para. 1(1)
F13	Words in art. 12G(4) 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(6)(c)(i) ; 2020 c. 1, Sch. 5 para. 1(1)
F14	Words in art. 12G(4)(b) 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(6)(c)(ii) ; 2020 c. 1, Sch. 5 para. 1(1)

[^{F2}Determination of whether a drainage scheme should be approved

12H.—(1) On expiry of the period referred to in Article 12D(2)(b), the Department shall provide to the Drainage Council the information set out in sub-paragraph (2)(a).

(2) The Drainage Council must ensure that it has or has access as necessary to sufficient expertise to examine the environmental statement and on the expiry of the period referred to in Article 12D(2)(b) it shall, within 90 days—

- (a) examine the information presented in the environmental statement and any supplementary information provided, where necessary, in accordance with Article 12E and any relevant information received through the consultations under Articles 12D and 12G, to assess, the direct and indirect effects of the proposed drainage scheme on the environmental factors specified in Schedule 2C;
- (b) reach a reasoned conclusion on the significant effects of the drainage scheme on the environment, taking into account the results of the examination referred to in sub-paragraph (a) (and where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether the proposed drainage scheme is to be approved or not to be approved.

(3) Where—

- (a) the Drainage Council is satisfied that the reasoned conclusion, or any decisions made on the proposed scheme are still valid; and
- (b) no objections in relation to the likely environmental effects of the scheme have been made; or
- (c) any such objection has been withdrawn,

the Drainage Council, having considered the examination required by paragraph (1), may determine, (unconditionally or subject to conditions) that the drainage scheme should be approved, or should not be approved.

(4) Where the Drainage Council has determined—

- (a) in accordance with paragraph (3) that the drainage scheme should be approved or should be approved subject to conditions; or
- (b) that the scheme should not be approved,

it shall provide the Department with the determination and the Department shall determine that the scheme will proceed or will not proceed, and the Department will publish a general and local advertisement, in accordance with paragraph (5).

(5) Each advertisement referred to in paragraph (4) shall—

- (a) inform the public of the determination;
- (b) give details of the places where and times at which the public may inspect a statement of—
 - (i) the reasoned conclusion of the Drainage Council on the significant effects of the proposed scheme on the environment, taking into account the results of the examination referred to in paragraph 2(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Drainage Council.

(6) At the same time as the notice in the Belfast Gazette is published under paragraph (4), the Department shall send a copy of the Drainage Council's determination along with the details referred to in paragraph (5)(b)(i) to (v) to each consultation body and to any person who made representations under Article 12D or 12G, to the proposed works.

(7) Where the Drainage Council, having considered the examination specified in paragraph (2) considers that the scheme in question should be approved but objections to the works specified in the scheme made in relation to their likely environmental effects have not been withdrawn, it shall refer the proposal for a scheme together with the environmental statement, any additional information and any representations on it to the Commission for determination in accordance with paragraphs (8) to (11).

(8) Where the Commission considers that the information about a scheme supplied to it in accordance with paragraph (7) does not provide sufficient information to enable a determination to be made in relation to the works specified therein, the Commission shall notify the Department and the Drainage Council in writing of the matters on which further information is required and may make a written request to the Department and the Drainage Council for such information as it may be able to provide on the matters raised.

(9) Where, in accordance with paragraph (8), the Commission requests further information, the Department shall co-ordinate the information from the Drainage Council and—

- (a) no later than the time when it provides that information to the Commission, state by general and local advertisement—
 - (i) that the further information is available and give details of the places where and times at which a copy may be inspected; and

- (ii) that any person who wishes to make representations on the likely environmental effects of the drainage scheme to which the further information relates should make the representations in writing to the Commission at the address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette; and
 - (b) on or before the date of the publication of the notice in the Belfast Gazette, 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 Commission on the likely environmental effects of the works specified in the scheme in question before the expiry of the period specified in the notice.
- (10) The Commission shall—
- (a) assess, in the light of the environmental statement, any further information provided by the Department in response to a request under paragraph (8) and any representations referred to in Article 12D, Article 12G or paragraph (9), the direct and indirect effects of the proposed scheme on the environmental factors specified in Schedule 2C;
 - (b) afford the Department, the Drainage Council, and any person who made the representations the opportunity of appearing before and being heard by the Commission;
 - (c) having regard to the assessment under sub-paragraph (a) and the representations made under sub-paragraph (b) and having examined the concerns and opinions expressed by the public and the main reasons and considerations upon which the determination under consideration was based, including information about the public participation process—
 - (i) consent to the carrying out of the works specified in the scheme unconditionally or subject to such conditions as the Commission considers appropriate; or
 - (ii) refuse to consent to the works; and
 - (d) send to the Department, the Drainage Council, and to any other person who made representations under Article 12D, Article 12G or paragraph (9) a statement in writing of—
 - (i) the reasoned conclusion of the Commission on the significant effects of the proposed works on the environment, taking into account the results of the examination referred to in paragraph (10)(a);
 - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the proposed works on the environment;
 - (iii) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment;
 - (iv) information about the public participation process and the results of the consultations; and
 - (v) any monitoring measures considered appropriate by the Commission.
- (11) The Department shall by general and local advertisement—
- (a) inform the public of the Commission’s decision under paragraph (10)(c);
 - (b) give details of the places where and times at which the public may inspect a copy of the statement sent to the Department under paragraph (10)(d); and
place the notice and a copy of the environmental statement on a website maintained by the Department.
- (12) In relation to any determination made by the Drainage Council or by the Commission under this Article or Article 12A, the Department shall maintain a record of, and make available to the public on request the information referred to in paragraph (10)(d).]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 21

[^{F2}Monitoring

12I.—(1) Where an environmental statement is considered by the Drainage Council or, as the case may be, the Commission, and the decision is to approve the scheme, the Drainage Council or, as the case may be, the Commission, must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed scheme (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring conditions, the Drainage Council, or as the case may be the Commission, must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed scheme and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under [^{F15}retained EU law] or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the Department or, as the case may be, the Commission, must take steps to ensure that those measures and conditions are implemented.]

F2 Arts. 12, 12ZA, 12A-12I substituted (16.5.2017) for arts. 12-12H by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 21

F15 Words in art. 12I(2)(b) 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(7); 2020 c. 1, Sch. 5 para. 1(1)

[^{F16}Confirmation of drainage schemes

13.—(1) Where the Department has made a direction under Article 12ZA, it may, after the expiration of 30 days from the publication of the matters mentioned in Article 12ZA(2) and, after considering any observations on the proposed drainage scheme that have been sent to it, and after holding such enquiry (if any) as the Department considers necessary, by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Department thinks fits.

(2) Where—

- (a) the Department has determined in accordance with Article 12A(4) that the works specified in the proposed scheme are not likely to have significant effects on the environment; and
- (b) no representations made in accordance with Article 12A(4)(e) are received in relation to those works within the time limit therein specified,

it may, within 30 days of the expiration of the time limit referred to in Article 12A(4)(e) and, after considering any representations sent to it under Article 12A(4)(h) and after holding such inquiry, if any, as it considers necessary, by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Department thinks fit.

(3) Subject to paragraph (4), where the Department has prepared an environmental statement in relation to the works specified in a drainage scheme it may, after the expiration of 30 days from the expiration of the period of notice referred to in Article 12D(2)(b) and after holding such an inquiry, if any, as it considers necessary, the Department may by order confirm the scheme in whole or in part, either without modifications or with such modifications as the Drainage Council thinks fit.

(4) Where the Department has prepared an environmental statement in relation to the works specified in the drainage scheme it shall not, under paragraph (3) confirm the scheme unless it has first taken into consideration—

- (a) the environmental statement and any additional information;
- (b) the works specified in the drainage scheme;
- (c) any representations sent to it under Article 12A(3)(c), 12A(4)(e) and (h), Article 12B(2)(c) and (g) or Article 12D or made by an EEA State in pursuance of Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and
- (e) the determination made by the Drainage Council under Article 12H(3) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(10)(c) and any conditions attached to such consent.

(5) Where having taken into consideration the matters specified in paragraph (4) the Department decides to confirm a scheme in accordance with paragraph (3) it shall—

- (a) inform in writing any person who, or EEA State which, made representations in accordance with Article 12A(3)(c), 12A(4)(e) and (h), Article 12B(2)(c) and (g), Article 12D or Article 12G of its decision and any reasons and considerations upon which it was based and that in making it the Department has taken into consideration the matters specified in paragraph (4); and
- (b) by general and local advertisement, announce its decision and the considerations on which it was based and state that in making it the Department has taken into consideration the matters specified in paragraph (4).

(6) In this Article, modification includes a variation, addition or exception.]

F16 Arts. 13, 13A substituted (16.5.2017) by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 22

[^{F16}Public Participation

13A. The Department shall, in relation to any works specified in a drainage scheme, make available to the public—

- (a) at the time that the notice in the Belfast Gazette relating to those works is published under Article 12A(4), all information that is relevant to them;
- (b) any other information which is relevant to a decision under Article 13 and which only becomes available after the time that the public was given notice in accordance with Article 12A(4), whether as a result of a request from the Commission under Article 12A(9) or otherwise; and
- (c) any further information which is relevant to the assessment under Article 12H(2) and which only became available after the time that the notice in the Belfast Gazette relating to those works was published under Article 12B(2).]

F16 Arts. 13, 13A substituted (16.5.2017) by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, **22**

The carrying out of drainage schemes

14. When the Ministry has made an order confirming a drainage scheme, then, unless the order is revoked, the Ministry shall proceed to carry out the scheme, and, without prejudice to any other provision of this Order, for that purpose the order shall operate to confer on the Ministry power—

- (a) to construct, execute and complete the drainage works or sea defence works specified in the scheme, with such additions, omissions, variations and deviations as shall be found expedient in the course of the work;
- (b) to enter on any land and do there all such acts and things as shall be reasonably necessary for, or incidental to, the construction, carrying out or completion of those drainage works or sea defence works, with such additions, omissions, variations and deviations as aforesaid;
- (c) to do all such other acts and things as may be necessary for the purposes of the scheme;
- (d) for the purpose of the due carrying out of the scheme, to do all or any of the following things—
 - (i) take from any land any earth, sods or other material required for that purpose;
 - (ii) deposit on any land all spoil or other material obtained in the course of such carrying out; and
 - (iii) utilise or dispose of any earth, sods, gravel, stone, rock or other material removed in the course of such carrying out.

Provisions in regard to roads, bridges, culverts and embankments

15.—(1) Where any works under a drainage scheme affect any road, bridge, culvert or embankment which is maintainable by any authority, the Ministry may either—

- (a) itself design and carry out the works, subject to compliance with any requirement of the authority reasonably necessary for the purposes of traffic or other user; or
 - (b) agree in writing with the authority for the designing and, subject to consultation with the Ministry of Development^{F17}, the carrying out of the works by the authority, and for the payment by the Ministry to the authority of the whole or a proportion of the cost thereof.
- (2) Where, in the carrying out of any works by the Ministry under paragraph (1)—
- (a) any road, bridge, culvert or embankment has been improved as a means of communication or otherwise in consequence of the carrying out of those works, the authority shall bear such proportion of the expenses of the works as ought fairly to be borne by it;
 - (b) any extra expenses are incurred by the Ministry by reason of the carrying out of additional works at the request of any authority, such extra expenses shall be borne by the authority at whose request the additional works were carried out.

(3) Where an authority refuses, neglects or fails to give due effect to any such agreement as is referred to in paragraph (1) within the time provided by the agreement, the Ministry may do anything which ought to have been done by the authority, and the authority shall pay to the Ministry such proportion of the expenses incurred by the Ministry as would, but for such refusal, neglect or failure, have been properly borne by the authority.

(4) Any dispute between the Ministry and an authority arising under the foregoing provisions of this Article shall be referred to arbitration^{F18}

(5) For the purposes of this Article, “authority” means any person entitled or liable to maintain any road, bridge, culvert or embankment, or any part thereof, whether under any public general, local or private statutory provision or under any order of court, scheme, deed or other instrument, or otherwise, and the provisions of any such statutory provision or instrument shall have effect subject to the foregoing provisions of this Article.

F17 Now D/Env., SRO (NI) 1973/504

F18 1996 c.23

[^{F19} Amendment of drainage schemes

16.—(1) Where, in the course of carrying out works specified in a drainage scheme, the Department considers that any provisions of that scheme ought to be substantially varied, it may, subject to paragraphs (2) and (3), after approval by the Drainage Council and after giving notice to—

- (a) such person as the Department considers likely to be materially affected; and
- (b) any person who, or EEA State which, made representations under Article 12A(4)(e) or Article 12D or Article 12G,

direct that such variations be made in the scheme as appears to be necessary.

(2) The Department shall not direct that any variation be made in a drainage scheme unless it has first taken into consideration—

- (a) the environmental statement and any additional information;
- (b) the works specified in the scheme as the Department proposes to vary it;
- (c) any representations made in accordance with Article 12A(4)(e) or Article 12D or Article 12G;
- (d) the direct and indirect effect of the works on the environmental factors specified in Schedule 2C; and
- (e) any determination made by the Drainage Council under Article 12H(3) or, as the case may be, any consent or refusal of consent given by the Commission under Article 12H(10)(c) and any conditions attached to such consent.

(3) Where, pursuant to paragraph (1), the Department gives notice of the variation of a drainage scheme which has been made subject to an environmental statement such notice shall be given in writing and shall indicate the reasons and considerations upon which the variation was based and that the Department has taken into consideration the matters specified in paragraph (2).

(4) Where a direction given under this Article varies a drainage scheme, that scheme shall have effect, and be deemed always to have had effect, subject to that direction, and, accordingly, references in this Order to a drainage scheme shall, in relation to that scheme, be construed, and have effect as referring to that scheme as varied by that direction.

(5) A direction given under this Article shall not have effect so as to authorise the Department to purchase land compulsorily for the purposes of the drainage scheme otherwise than in accordance with, and subject to, the provisions of Article 10(3) and(4) and Schedule 3.]

F19 Art. 16 substituted (16.5.2017) by [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/88\)](#), regs. 1, 23

Compensation for certain losses due to construction of drainage works

17.—(1) Where any person suffers any loss by reason of the entry by the Ministry on any land owned or occupied by him, or by the construction of drainage works or sea defence works thereon, or by direct interference with any land belonging to him, the Ministry shall, subject to the provisions of this Order, pay to him reasonable compensation in respect of such loss, such compensation to be calculated in accordance with the following provisions of this Order.

(2) The Ministry may, before the carrying out of any drainage works or sea defence works, enter into an agreement with any person likely to suffer loss by reason of the carrying out of the works, whereby, in consideration of the carrying out of the works, the Ministry will be either wholly or partially exonerated from liability for payment of compensation in respect thereof, and the provisions of any such agreement shall bind that person and all the estate of that person, and any person deriving title under him in, to or over any land specified in the agreement.

(3) In lieu of awarding compensation, the Ministry may by agreement construct works or provide facilities to replace works or facilities which have been removed or impaired in the carrying out of drainage works or sea defence works; but, in the event of such construction or provision affording any additional or improved advantages, facilities or rights as compared with those existing prior to the carrying out of the drainage works or sea defence works, the Ministry may enter into an agreement with any person whereby a fair proportion of the cost incurred by the Ministry in connection with such construction or provision shall be borne by that person, and any sums so required to be borne shall be recoverable by the Ministry.

(4) Every claim for compensation under this Article—

(a) shall be made forthwith in writing to the Ministry, and such details of the claim as the Ministry may require shall be furnished in writing to the Ministry within such period as the Ministry may determine; and

(b) shall, in default of agreement, be heard and determined by the Lands Tribunal.

(5) In computing the amount of reasonable compensation, the Ministry may allow a sum in respect of the cost of the employment of any solicitor, and may allow a sum in respect of the cost of the employment of any engineer, surveyor or valuer, where the Ministry is satisfied that such employment has been necessarily and properly incurred in connection with the preparation of a claim for compensation, but, save as aforesaid, costs shall not be payable by the Ministry in respect of claims for compensation.

Compensation for injury to canals, fisheries, etc.

18.—(1) Where any person suffers any loss or damage by reason of an injury to any canal or other navigable inland waterway, to any water-power or other water right or to any fishery or fishing right, the Ministry shall, subject to the provisions of this Article and of Articles 19 and 40(6), pay him compensation in respect of injury where, but only where, such injury is caused by the operation of the drainage works or sea defence works, or by any particular mode or course of operation of such works, and would, apart from this Order, give rise to a right of action for damages against any person causing the injury.

(2) Every claim for compensation under this Article shall be made in writing to the Ministry and shall be made, in the case of an injury to a fishery or fishing right, within ten years or, in any other case, within one year after the completion of the drainage works or sea defence works in relation to which the claim arises.

(3) Every claim duly made for compensation under this Article shall, in default of agreement, be heard and determined by the Lands Tribunal.

(4) Paragraph (5) of Article 17 shall have effect for the purposes of this Article as it has for the purposes of that Article.

Matters to be regarded in assessing compensation

19. When assessing compensation in pursuance of Articles 17 and 18, regard shall be had in every case to any benefit to any property (whether such property is or is not the property in respect of which such compensation is claimed) of the person claiming such compensation which is occasioned by, or may reasonably be expected to arise from the carrying out of, the drainage scheme in relation to which the compensation is claimed, and, in particular, regard shall be had—

- (a) in the case of a claim in respect of a canal or other navigable waterway, to any permanent benefit to the navigation of such waterway occasioned by, or which may reasonably be expected to arise from, the carrying out of the drainage scheme, and to the extent to which that canal or waterway was used for purposes of navigation during the ten years immediately preceding the date of confirmation of the drainage scheme;
- (b) in the case of a claim in respect of water rights, to any alternative water supply provided by the Ministry; and
- (c) in the case of a claim in respect of interference with water or a watercourse providing power for a mill or other industrial concern or for domestic purposes, to the extent to which the power so provided was used during the ten years immediately preceding the date of the confirmation of the drainage scheme by the Ministry, and to any alternative source of power provided by the Ministry or otherwise available to the claimant.

Disposal of surplus lands, etc.

20.—(1) As soon as conveniently may be after the completion of any drainage works or sea defence works, the Ministry shall determine whether any, and if so, what land acquired by it under this Order for the purposes of the relevant drainage scheme is unnecessary, and not required, for the proper working and maintenance of any such works.

(2) Any land determined by the Ministry in pursuance of paragraph (1) to be unnecessary and not required as mentioned in that paragraph shall, subject to paragraph (3), be disposed of by the Ministry in such manner as the Ministry, with the approval of the Ministry of Finance, considers fit.

(3) The person from whom any such land was acquired by the Ministry, or such other person as appears to the Ministry to be the successor in title of such first-mentioned person in relation to that land, may, if, within three months from the completion of the works, he so requests the Ministry in writing, re-purchase such land at a price comparable with the price paid by the Ministry in respect of the acquisition thereof by the Ministry.

Changes to legislation:

There are currently no known outstanding effects for the Drainage (Northern Ireland) Order 1973, PART III.