

2005 No. xx

LAND DRAINAGE, ENGLAND AND WALES

The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2005

Made - - - - - xxx
Laid before Parliament xxx
Coming into force - - - 25th June 2005

The Secretary of State, and the National Assembly for Wales, being 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 them by the said section 2(2), hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2005 and shall come into force on 25th June 2005.

Interpretation

2. In these Regulations “the 1999 Regulations” means the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999⁽³⁾.

Public participation

3.—(1) The 1999 Regulations shall be amended as follows.

(2) In regulation 5 (Requirements where a drainage body consider improvement works are not likely to have significant effects on the environment)—

- (a) in sub-paragraph (1)(c), delete “and”;
- (b) at the end of sub-paragraph (1)(d), insert “; and”; and
- (c) after sub-paragraph (1)(d) insert –

⁽¹⁾ The Secretary of State is so designated by virtue of S.I. 1988/785. The National Assembly for Wales is so designated by virtue of S.I. 2000/2812, in so far as such measures concern improvement works within the meaning in regulation 2(1) of the 1999 Regulations.
⁽²⁾ 1972 c. 68. The enabling powers conferred by section 2(2) were extended by virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c. 51).
⁽³⁾ S.I. 1999/1783. References to “the Nature Conservancy Council for England” were amended by s.73(2) Countryside and rights of way act 2000 (c.37).

“(e) describe what additional information concerning the improvement works is available, and where it can be obtained.”.

(3) In regulation 6 (Notification of determination that improvement works are likely to have significant effects on the environment), amend paragraph (2) as follows –

- (a) in sub-paragraph (a), at the beginning insert “inform the public of the need for a determination of whether the improvement works should proceed, and”;
- (b) at the end of sub-paragraph (b), insert “; and”;
- (c) after sub-paragraph (b) insert –

“(c) give details of the drainage body responsible for taking the decision as to whether to carry out the improvement works, from whom relevant information can be obtained and to which comments or questions can be submitted, and details of the time by which comments or questions must be submitted;

(d) give an indication of the availability of the information gathered;

(e) give details of times and places where, and the means by which, the relevant information will be made available.”.

(4) In regulation 12 (Determination of whether improvement works should proceed) –

- (a) for paragraph (7)(c)(ii) substitute –

“(ii) the main reasons and considerations upon which this determination was based, including information about the public participation process; and”;

- (b) after paragraph (8) insert –

“(9) In relation to any determination made by itself or by the appropriate Authority in accordance with this regulation, the drainage body shall maintain a record of, and make available to the public on request, the following information –

(a) the content of the decision and any conditions attached thereto;

(b) the main reasons and considerations on which the decision is based, including information about representations received in the course of the public participation process; and

(c) a description, where necessary, of the main measures to avoid and reduce the major adverse effects.”.

(5) in regulation 13 (charges), amend paragraph (1) as follows –

- (a) in sub-paragraph (a)(ii), after “regulation 12(6)(b)”, insert “or regulation 13A”;

- (b) in sub-paragraph (b)(ii), after “regulation 12(6)(c)”, insert “or regulation 13A”.

(6) After regulation 13 insert —

“ Public participation

13A.—(1) The drainage body shall make available to the public –

(a) at the time that the notice under regulation 5(1) is published, all relevant information that is relevant to the improvement works;

(b) any further information which is relevant to the determination under regulation 12(7) above, and which only becomes available after the time that the public was given notice in accordance with regulation 5(1)(d), whether as a result of a request from the appropriate Authority under regulation 5(6) above or otherwise; and

(c) any further information which is relevant to the assessment under regulation 12(1) above, and which becomes available after the time that the public notice was published in accordance with regulation 6(2) above.”.

Public notices

4.—(1) The 1999 Regulations shall be further amended as follows.

(2) In regulations 5(1) and 6(2), for “by notice in at least two local newspapers”, substitute “, subject to regulation 13B below, by notice in at least two local newspapers and on any website maintained by the drainage body”.

(3) In regulations 5(3), (4) and (5), after “paragraph (1)(d) above” insert “(or the period of 28 days referred to in regulation 13B(3)(a) below, whichever is the greater)”.

(4) In regulations 10(3) and 12(6)(a), at the beginning insert “Subject to regulation 13B(1) below,”.

(5) In regulations 12(3) and 12(8), after “shall” insert “, subject to regulation 13B below,”.

(6) After regulation 13A, insert –

“ Notices on the site of the proposed improvement works

13B—(1) Where the site of the proposed improvement works is easily visible from a public highway, a drainage body may, instead of placing a notice in a local paper in accordance with regulation 5(1), 6(2), 10(3), 12(3), 12(6)(a) or 12(8), post on the site a notice or notices containing, subject to paragraph (2), the information specified in the regulation in question.

(2) In a notice posted under paragraph (1) in substitution to a notice published under regulation 5(1) or 12(6)(a), the period specified as the period within which representations may be made shall be not less than 28 days from the date on which the notice is first posted.

(3) The notice mentioned in paragraph (1) must –

- (a) be left in position for not less than seven consecutive days in the 28 days following the date on which the notice is first posted; and
- (b) be affixed firmly to some object on the site in such a way as to be easily visible to, and readable by, members of the public without going on to the land.”.

Other amendments of the 1999 Regulations

5.—(1) The 1999 Regulations shall be further amended as follows.

(2) In regulation 2 (Interpretation) –

(a) in the definition of “consultation bodies” -

(i) in paragraph (a), after “English Nature ”, insert “, English Heritage”; and

(ii) in paragraph (b), after “Countryside Council for Wales”, insert “and Cadw, being the executive agency responsible for carrying out the functions vested in the National Assembly relating to the historic environment”;

(b) in the definition of “the Directive”, at the end insert “and Council Directive 2003/35/EC on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC”;

(c) in the definition of “improvement works”, after the words “or otherwise improve” (in each place where they occur) insert “or alter,”; and

(3) In regulation 3 (Restriction on improvement works), for paragraph (2) substitute –

“(2) Where the appropriate Authority considers, in relation to particular improvement works, that there are exceptional grounds for doing so, it may direct that the provisions of these Regulations shall not apply in relation to the works in question.

(2A) In this event, the appropriate authority shall –

- (a) consider whether another form of assessment would be appropriate;

(b) where it carries out any other form of assessment, make available to the public the information obtained under that assessment, the reasons for its decision to give a direction under paragraph (2) and any information relied on in making that decision;”.

(4) In Schedule 3 (Information for other EEA states), in paragraph 4, for “the following information:–”, substitute “the information required to be given under regulation 6(2),”, and delete sub-paragraphs (a), (b) and (c).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(4),

**th 2005

The Presiding Officer of the National Assembly

2005

Department for Environment, Food and Rural Affairs

(4) 1998 c.38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (“the 1999 Regulations”) which apply to England and Wales.

Regulation 3 makes amendments to the 1999 Regulations in relation to public participation in determining whether improvements should be carried out, arising from Directive 2003/35/EC (O.J. No. L 156 , 25.06.03 p.17), which amends Directive 85/337/EEC (O.J. L 175, 5.7.1985, p.40) on the assessment of the effects of certain public and private projects on the environment, which was previously amended by Directive 97/11/EC (O.J. No. L 073 , 14.03.97 p. 5). It specifies additional information that drainage bodies are to place in notices and creates new duties upon drainage bodies to make information on improvement works available to the public, including a duty to maintain a record of all determinations.

Regulation 4 provides that notices under the 1999 Regulations are to be published not only in two local newspapers but also on any website maintained by the drainage body proposing the works. It also makes provision allowing drainage bodies to substitute for one of the notices required to be placed in local newspapers a notice on the site of the proposed improvement works. This option will only be available to a drainage body where the site of the proposed improvement works is easily visible from a public highway.

Regulation 5 makes further miscellaneous amendments to the 1999 Regulations not directly related to public participation in decision-making. It includes English Heritage and Cadw within the definition of bodies to be consulted upon determinations; changes the definition of “the Directive” to take account of Directive 2003/35/EC; and clarifies that the expression “improvement works” includes not only improvements but also alterations to existing works. In regulation 3(2) of the 1999 Regulations it removes the previous cross-reference to the Directive and instead states that the appropriate authority’s power to give a direction exempting particular improvement works from the requirements of the 1999 Regulations is exercisable on exceptional grounds. In Schedule 3 to the 1999 Regulations, the list of information which the appropriate authority is required to send to other EEA States wishing to participate in the procedures provided for by the Regulations is amended to refer to the information required to be contained in a notice under regulation 6(2).

A full Regulatory Impact Assessment and a transposition note has been prepared in connection with the amendments made by these Regulations, and placed in the library of each House of Parliament. Copies are obtainable from either, Lucy Toman, Department for Environment, Food and Rural Affairs, Flood Management Division, Room 202 Foss House, King’s Pool, 1-2 Peasholme Green York Y01 7PX (email: lucy.toman@defra.gsi.gov.uk) or, Cedric Moon, Welsh Assembly Government, Environmental Protection Division, Cathays Park, Cardiff CF10 3NQ (email: cedric.moon@wales.gsi.gov.uk).