

# **S.I. No. 388/2009 - European Communities (Arterial Drainage) Regulations 2009**

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EUROPEAN COMMUNITIES (ARTERIAL DRAINAGE) REGULATIONS 2009

*Notice of the making of this Statutory Instrument was published in*

*"Iris Oifigiúil" of 25th September, 2009.*

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 29 of 1972) and for the purpose of giving effect to the Directive 2003/35/EC of the European Parliament and of the Council of the 26th May 2003 I hereby make the following regulations:

## *Citation*

1. These regulations may be cited as the European Communities (Arterial Drainage) Regulations 2009.

## *Commencement*

2. (1) Where an application for consent for development to which these Regulations refer is made before the date of coming into operation of these Regulations, the provisions of the appropriate enactment, before they were amended by these Regulations, shall continue to apply to the said application.

(2) Where these Regulations provide for the amendment of an enactment, such enactment shall, notwithstanding any provision of the enactment as to commencement, have effect on and from the coming into operation of these Regulations.

## *Interpretation etc.*

3. (1) In these Regulations "the Directive" means Directive 2003/35/EC of the European Parliament and of the Council of the 26th May 2003.

(2) In these Regulations reference to the Arterial Drainage Act of 1945 shall be a reference to the Arterial Drainage Act 1945 as amended by the Arterial Drainage (Amendment) Act 1995 and by the European Communities (Environmental Impact Assessment) Regulations 1989 ( S.I. No. 349 of 1989 ), the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 ( S.I. No. 351 of 1998 ) and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 ( S.I. No. 93 of 1999 ).

(3) A word or expression that is used in these Regulations and is also used in Directive 2003/35/EC of the European Parliament and of the Council of the 26th May 2003 has unless the contrary intention appears, the same meaning in these Regulations as it has in the said Directive.

*Amendment of the Arterial Drainage Acts 1945 and 1995, and the European Communities (Environmental Impact Assessment) Regulations, 1989 to 1999.*

4. Section 4(2)(B) of the Arterial Drainage Act 1945 , as inserted by the European Communities (Environmental Impact Assessment) Regulations 1989 and amended by the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 is hereby amended by substituting for paragraph (b) thereof the following paragraph:

"(b) The Minister in granting an exemption under paragraph (a) of this subsection shall, consider whether;

(i) the effects, if any, of the proposed drainage works on the environment should be assessed in some other manner, and

(ii) the information collected in the course of such assessment should be made available to members of the public

and he may, by order, apply such requirements regarding these matters in relation to the proposed drainage scheme as he considers necessary or appropriate. Such requirements shall include provisions to make available to the public the information obtained under any other form of assessment ordered by him".

5. Section 5 of the Arterial Drainage Act 1945 as amended by the European Communities (Environmental Impact Assessment) Regulations 1989 and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 is hereby amended:

(1) by inserting the following paragraph after paragraph (b) of subsection 1:

"(c) The notice published in accordance with subsection (b) of this section shall also indicate;

(i) Details of the competent authority responsible for decision making,

(ii) The authority to which questions can be addressed and the time schedule for transmitting questions,

(iii) The nature of possible decisions which may be taken by the competent authority,

(iv) Details of where and when the relevant information will be made available".

(2) by inserting the following subsection after subsection (1):

"(1B) Where the Minister has sent information to another Member State pursuant to Section 7 (4) (b), he shall at the same time publish a notice in the *Iris Oifigiúil* and in one or more newspapers circulating in the area affected by the scheme as he shall consider appropriate, a notice stating that the scheme is one to which Section 7(4) applies".

6. Section 7 of the Arterial Drainage Act 1945 as amended by the European Communities (Environmental Impact Assessment) Regulations 1989 and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 and the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 is hereby amended:

(1) by substituting the following paragraph for paragraph (ii) in sub section 3(a):

"(ii) publish in the *Iris Oifigiúil*, and in one or more newspapers circulating in the area identified in the statement as likely to be affected by the scheme, a notice stating his decision in relation to the scheme".

(2) by substituting the following paragraph for subsection 3(b):

"(b) The Commissioners shall, when a decision is taken on the drainage scheme concerned, make the said statement and information on the decision available for inspection by members of the public during a period to be specified by the Minister. The information to be made available by the Commissioners shall comprise, a description of the public participation process, the concerns and opinions expressed by the public within the time provided, the main reasons on which the decision is based, having examined such concerns and opinions, and a description where appropriate of the main measures to avoid, reduce or offset where possible major adverse effects".

(3) by the insertion of the following subsection after subsection 4(b):

"(bb) Where the Minister provides information to another Member State in accordance with paragraph (b) he shall as soon as may be, place a notice in a newspaper circulating in the area of the Member State concerned where the drainage scheme is proposed to be carried out, indicating that the information has been provided, how it may be accessed by the public concerned, how observations may be submitted to the Minister and the time within which such observations must be submitted".

(4) by inserting the following subsection after subsection 4:

"(4A) Where the Minister or the Commissioners or any other Minister has been notified by another Member State of a decision in respect of drainage works in such Member State in respect of which, the Minister, the Commissioners or other Minister has furnished views to the said Member State, the Minister, the Commissioners or other Minister, shall as soon as may be publish in a newspaper circulating in the area within the State, identified in the Environmental Impact Statement supplied by the other Member State as likely to be affected by the said drainage works, a notice indicating that such notification has been received and the time and place at which such information may be viewed and the period within which it will be available".

7. Section 9 of the Arterial Drainage Act 1945 is amended by the insertion of the following subsection after subsection (g):

"(h) Where an addition to, variation in, omission or deviation from a scheme confirmed by the Minister would in itself exceed the thresholds requiring the undertaking of an Environmental Impact Assessment, or might have significant adverse effects on the environment, an Environmental Impact Assessment shall be undertaken in respect of such addition, variation, omission or deviation in accordance with subsection 2A of Section 4 of this Act unless an exemption in accordance with subsection 2B of Section 4 is granted by the Minister. The Environmental Impact Statement shall be submitted for confirmation by the Minister in accordance with Section 7 of this Act as if it were a drainage scheme and the Commissioners and the Minister shall observe all of the provisions of this Act in Section 5 and Section 7 of this Act in respect of the consideration of such Environmental Impact Statement".



GIVEN under my Official Seal,

23 September 2009

BRIAN LENIHAN,

Minister for Finance.

#### EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation).*

Directive 2003/35/EC (the Public Participation Directive) was adopted by the EU to give effect to the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. Its provisions require Member States to ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of plans or programmes which impact on the environment.

In order to transpose the Directive, several pieces of legislation required amendment, including the Arterial Drainage Act 1945 as amended by the European Communities (Environmental Impact Assessment) Regulations 1989 to 1999. These Regulations provide for amendments to the Arterial Drainage legislation which ensure that it is in compliance with the provisions of the Directive.

1 O.J. L 156 of 25.6.2003, p.17

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