



STATUTORY INSTRUMENTS.

**S.I. No. 472 of 2019**

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EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT)  
(ARTERIAL DRAINAGE) REGULATIONS 2019

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I, PASCHAL DONOHOE, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>1</sup>, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>2</sup>, hereby make the following regulations:

**Citation**

1. These Regulations may be cited as the European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2019.

**Definition**

2. In these Regulations—

“drainage scheme” has the same meaning as it has in section 4(1) of the Principal Act;

“Principal Act” means the Arterial Drainage Act 1945 (No. 3 of 1945).

**Amendment of Principal Act**

3. Part II of the Principal Act is amended—

(a) by the insertion of the following section before section 4:

**“Interpretation**

3A. (1) In this Part—

the expression ‘Act of 1999’ means the Electricity Regulation Act 1999;

the expression ‘consultation body’ means—

- (a) such Ministers of the Government as the Minister considers appropriate having regard to their specific environmental responsibilities or local and regional competencies,
- (b) the Environmental Protection Agency,
- (c) Inland Fisheries Ireland,

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<sup>1</sup> OJ No. L 26, 28.01.2012, p. 1

<sup>2</sup> OJ No. L 124, 25.04.2014, p. 1

- (d) a local authority in whose functional area arterial drainage works are proposed to be carried out,
- (e) a regional assembly established in respect of a region in which arterial drainage works are proposed to be carried out,
- (f) National Roads Authority,
- (g) Irish Water,
- (h) the holder of the licence granted under section 14(1)(e) of the Act of 1999,
- (i) the holder of the licence granted under section 14(1)(f) of the Act of 1999,
- (j) the holder of the licence granted under section 14(1)(g) of the Act of 1999,
- (k) the holder of the licence granted under section 14(1)(k) of the Act of 1999,
- (l) the holder of the licence granted under section 16(1)(c) of the Gas (Interim) (Regulation) Act 2002,
- (m) the holder of the licence granted under section 16(1)(d) of the Gas (Interim) (Regulation) Act 2002,
- (n) Iarnród Éireann-Irish Rail,
- (o) Waterways Ireland,
- (p) An Taisce — The National Trust for Ireland, or
- (q) any other person having a statutory function or a specialist skill or expertise in, or knowledge of, a particular relevance that the Minister considers appropriate having regard to the matters referred to in a drainage scheme submitted to the Minister under section 7B;

the expression ‘directive’ means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>3</sup> as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>4</sup>;

the expression ‘EEA Agreement’ means the Agreement on the European Economic Area signed at

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<sup>3</sup> OJ No. L 26, 28.1.2012, p. 1.

<sup>4</sup> OJ No. L 124, 25.4.2014, p. 1.

Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

the expression 'EIA drainage scheme' means a drainage scheme in pursuance of which arterial drainage works, in respect of which an environmental impact assessment is required to be carried out under section 4C, are to be executed;

the expression 'EIA portal' means the website referred to in section 172A of the Planning and Development Act 2000;

the expression 'environmental impact assessment' shall be construed in accordance with section 4A;

the expression 'environmental impact assessment report' shall be construed in accordance with section 4E;

the expression 'local authority' has the same meaning as it has in the Local Government Act 2001;

the expression 'Member State' means a state, other than the State, which is a Member State of the European Union, or not being such a Member State, a state which is a contracting party to the EEA Agreement;

the expression 'proposed arterial drainage works' means the drainage works proposed to be executed in pursuance of a drainage scheme;

the expression 'sub-threshold drainage works' means proposed arterial drainage works which would be of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349 of 1989), or a provision amending or replacing that Article, but for not exceeding a quantity, area or other limit.

- (2) A word or expression which is used in this Part and is also used in the directive has, unless the context otherwise requires, the same meaning in this Part as it has in the directive.”,
- (b) in section 4, by the deletion of subsections (1A), (2A) and (2B),
- (c) by the insertion of the following sections after section 4:

**“Environmental impact assessment**

4A. (1) An environmental impact assessment in respect of proposed arterial drainage works is a process consisting of—

- (a) the preparation of an environmental impact assessment report by the Commissioners,
  - (b) the carrying out of consultations, as referred to in sections 5 and 7C and, where relevant, sections 5A and 7D,
  - (c) the examination by the Minister of—
    - (i) the information presented in the environmental impact assessment report,
    - (ii) any supplementary information provided by the Commissioners in accordance with section 7B (4), and
    - (iii) any relevant information received through consultations under sections 5 and 7C and, where relevant, sections 5A and 7D,
  - (d) the reasoned conclusion by the Minister on the significant effects of the proposed arterial drainage works on the environment, taking into account the results of the examination referred to in paragraph (c) and, where appropriate, his or her own supplementary examination, and
  - (e) the integration of the Minister's reasoned conclusion into any of the decisions referred to in section 7E(1).
- (2) An environmental impact assessment in respect of proposed arterial drainage works shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of those works on the following factors:

- (a) population and human health;
  - (b) biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC of 21 May 1992<sup>5</sup> and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009<sup>6</sup>;
  - (c) land, soil, water, air and climate;
  - (d) material assets, cultural heritage and the landscape;
  - (e) the interaction between the factors referred to in paragraphs (a) to (d).
- (3) The effects referred to in subsection (2) on the factors set out therein shall include the expected effects deriving from the vulnerability of the proposed arterial drainage works to risks of major accidents or disasters that are relevant to those works.

#### **Sub-threshold drainage works**

- 4B. (1) Where proposed arterial drainage works are sub-threshold drainage works, the Commissioners—
- (a) shall provide the information specified in Annex IIA to the directive to the Minister, taking into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to the law of the European Union (or the law of a Member State giving effect to that law), other than the directive, and
  - (b) may provide a description of any features of the drainage works, or measures, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (2) Where the Minister receives information from the Commissioners under subsection (1) he or she shall make a determination as to whether the sub-threshold drainage works concerned are likely to have a significant effect on the environment on the basis of such information, taking into account—

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<sup>5</sup> OJ No. L 206, 22.07.1992, p. 7.

<sup>6</sup> OJ No. L 20, 26.01.2010, p. 7.

- (a) the relevant selection criteria specified in Annex III to the directive, and
  - (b) where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to the law of the European Union (or the law of a Member State giving effect to that law), other than the directive.
- (3) A determination made under subsection (2) shall—
  - (a) where the determination is that the sub-threshold drainage works concerned are likely to have a significant effect on the environment, specify the main reasons for that determination, by reference to the relevant criteria specified in Annex III to the directive, and
  - (b) where the determination is that the sub-threshold drainage works concerned are not likely to have a significant effect on the environment—
    - (i) specify the main reasons for that determination, by reference to the relevant criteria specified in Annex III to the directive, and
    - (ii) in a case in which such a description has been provided under subsection (1)(b), include a description of any features of the drainage works, or measures, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (4) Subject to subsection (5), a determination under subsection (2) shall be made as soon as possible and in any event, subject to subsection (5), not later than 90 days from the date on which the Commissioners have provided all of the information required to be provided to the Minister under subsection (1).
- (5) The Minister may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the sub-threshold drainage works, extend the 90 day period referred to in subsection (4) in order to make his or her

determination and in such cases he or she shall inform the Commissioners in writing of the reasons justifying the extension and of the date when his or her determination is expected.

- (6) The Minister shall make an electronic version of any determination made under subsection (2) available to the public on a website maintained by him or her.

### **Obligation to carry out environmental impact assessment**

4C. (1) The Minister shall, before making a decision under section 7E (1), carry out an environmental impact assessment in respect of proposed arterial drainage works of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349 of 1989), or a provision amending or replacing that Article.

- (2) The Minister shall, before making a decision under section 7E(1), carry out an environmental impact assessment in respect of proposed arterial drainage works which are sub-threshold drainage works where he or she determines under section 4B(2) that those works are likely to have a significant effect on the environment.

### **Exemption from obligation to carry out environmental impact assessment**

4D. (1) Subject to subsections (2) and (3), the Minister may, following consultation with the Minister for the Housing, Planning and Local Government, by order, exempt proposed arterial drainage works from the obligation under section 4C to carry out an environmental impact assessment.

- (2) The Minister may make an order under subsection (1) only where he or she is satisfied that—
- (a) exceptional circumstances apply, justifying the making of the order,
  - (b) the carrying out of an environmental impact assessment would adversely affect the purpose of the proposed arterial drainage works concerned, and



- (c) the objectives of the directive will be met, notwithstanding that an environmental impact assessment is not carried out.
- (3) Where the Minister makes an order under subsection (1), he or she shall—
- (a) make available to the public, on a website maintained by him or her or in such other manner as he or she thinks fit—
    - (i) a brief description of the proposed arterial drainage works,
    - (ii) the information which the Minister considered for the purposes of satisfying himself or herself of the matters referred to in subsection (2),
    - (iii) the reasons underlying the decision to make the order, and
    - (iv) a brief description of the effect of the making of the order,
  - (b) consider whether another form of assessment of the environmental effects of the proposed arterial drainage works would be appropriate,
  - (c) where he or she considers that another form of assessment would be appropriate, make available to the public, on a website maintained by him or her or in such other manner as he or she thinks fit, the information obtained by the Minister as a result of that other form of assessment being carried out,
  - (d) inform the Commission of the European Union before making a decision under section 7 in respect of the proposed arterial drainage works of the reasons underlying the decision to make the order, and
  - (e) provide the Commission of the European Union with a copy of—
    - (i) the information made available to the public in accordance with paragraph (a), and
    - (ii) the information, if any, made available to the public in accordance with paragraph (c).

- (4) The Minister shall not make an order under subsection (1) where he or she is aware that the proposed arterial drainage works concerned would be likely to have significant effects on the environment of another Member State.

### **Environmental impact assessment report**

- 4E. (1) The Commissioners shall prepare a report (in this Part referred to as an ‘environmental impact assessment report’) on proposed arterial drainage works in respect of which an environmental impact assessment is required to be carried out pursuant to section 4C.
- (2) An environmental impact assessment report shall include, at a minimum, the following information:
- (a) a description of the proposed arterial drainage works concerned, comprising information on the site, design, size and other relevant features of those works;
  - (b) a description of the likely significant effects of the proposed arterial drainage works on the environment;
  - (c) a description of—
    - (i) the features of the proposed arterial drainage works, if any, and
    - (ii) the measures, if any, envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
  - (d) a description of the reasonable alternatives studied by the Commissioners, which are relevant to the proposed arterial drainage works and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment;
  - (e) a non-technical summary of the information referred to in paragraphs (a) to (d);
  - (f) any additional information specified in Annex IV to the directive relevant to the specific characteristics of the proposed

arterial drainage works and to the environmental features likely to be affected.

- (3) Where the Minister issues an opinion under section 4F, the environmental impact assessment report for the drainage works concerned shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.
- (4) The Commissioners shall, in preparing the environmental impact assessment report, take into account the available results of other relevant assessments under the law of the State, the European Union or Member States with a view to avoiding duplication of assessments.
- (5) The Commissioners shall ensure that an environmental impact assessment report is prepared on their behalf by competent experts.

#### **Scope of environmental impact assessment report**

- 4F. (1) The Commissioners may request the Minister to issue an opinion to them on—
- (a) the scope, and
  - (b) the level of detail,
- of the information to be included in an environmental impact assessment report being prepared by the Commissioners under section 4E.
- (2) The Commissioners shall, when submitting a request under subsection (1), provide information to the Minister on—
    - (a) the specific characteristics of the proposed arterial drainage works concerned, including their location and technical capacity, and
    - (b) the likely impact of those works on the environment.
  - (3) The Minister shall, where requested under subsection (1), provide the opinion referred to in that subsection.
  - (4) In issuing an opinion in response to a request under subsection (1), the Minister shall take into

account the information provided under subsection (2).

- (5) The Minister shall consult with the consultation bodies in relation to the scope and level of detail to be included in the environmental impact assessment report referred to in subsection (1) before issuing an opinion in response to a request under that subsection.
- (6) The issuing of an opinion under this section shall not prejudice the exercise by the Minister of his or her powers pursuant to section 7B(4) to require the Commissioners to provide supplementary information in relation to the likely effects on the environment of the proposed arterial drainage works concerned.”,

(d) by the substitution of the following section for section 5:

**“Pre-submission consultation**

5. (1) When the Commissioners have prepared a drainage scheme in respect of proposed arterial drainage works they shall—
- (a) send a copy of such scheme to the council of every county in which the area or any part of the area proposed by such scheme to be constituted a separate drainage district is situate,
  - (b) publish in *Iris Oifigiúil* and such one or more newspapers circulating in each area, referred to in paragraph (a), as they shall consider appropriate, a notice stating—
    - (i) that such scheme has been prepared by them,
    - (ii) the electoral divisions to which or to a part of which the scheme relates,
    - (iii) that the Minister is the competent authority for the taking of a decision in relation to the scheme and the nature of the possible decisions,
    - (iv) where applicable, that the proposed arterial drainage works concerned are subject to an environmental impact assessment,

- (v) where the proposed arterial drainage works concerned are subject to an environmental impact assessment, that an environmental impact assessment report in respect of those works has been prepared,
  - (vi) where applicable, that subsection (6) applies,
  - (vii) the place or places at which and the period, not being less than 30 days, during which a copy of the scheme (and the environmental impact assessment report, where applicable) will be available for inspection in accordance with subsection (2),
  - (viii) where the proposed arterial drainage works concerned are subject to an environmental impact assessment, the website on which a copy of the environmental impact assessment report is available, and
  - (ix) where the proposed arterial drainage works concerned are subject to an environmental impact assessment, that submissions may be made in writing to the Commissioners by members of the public in relation to the likely effects on the environment of the works during the period referred to in subparagraph (vii),
- (c) where the scheme is an EIA drainage scheme, send a notice to the consultation bodies, including copy of the scheme and the environmental impact assessment report with the notice, indicating that submissions may be made in writing by the consultation body concerned to the Commissioners in relation to the likely effects on the environment of the scheme within such period as may be specified in the notice, not being less than 30 days after the date of the notice, and
- (d) where the scheme is an EIA drainage scheme, provide the following information in electronic form to the EIA portal:

- (i) that the applicants for development consent in respect of the EIA drainage scheme are the Commissioners;
  - (ii) the name, e-mail address and phone number of the person to whom correspondence in relation to the EIA drainage scheme should be sent;
  - (iii) the location of the EIA drainage scheme;
  - (iv) a description of the EIA drainage scheme;
  - (v) that the application for development consent will be made to the Minister;
  - (vi) a location map of sufficient size and containing details of features in the vicinity such as to permit the identification of the site to which the EIA drainage scheme relates;
  - (vii) an electronic copy of the notice published in accordance with paragraph (b).
- (2) A member of the public may make a submission in writing to the Commissioners in relation to the likely effects on the environment of a drainage scheme in respect of which a notice has been published under paragraph (b) of subsection (1) within the period referred to in subparagraph (vii) of that paragraph.
- (3) A consultation body to which a notice is sent under paragraph (c) of subsection (1) may make a submission in writing to the Commissioners in relation to the likely effects on the environment of the drainage scheme concerned within the period specified in that notice.
- (4) Every council of a county to which a copy of a drainage scheme is sent by the Commissioners in pursuance of this section—
- (a) shall cause such copy to be exhibited in their principal offices or other convenient place during the period specified in that behalf in the notice relating to such scheme published under subsection (1)(b) and shall permit such copy to be inspected during

office hours by any person claiming to be interested therein,

(b) shall examine and consider the drainage scheme of which such copy is a copy, and

(c) may, at any time within 3 months after the date of the publication in the *Iris Oifigiúil* of the notice relating to such scheme under subsection (1), send to the Commissioners all such observations in regard to such scheme as such council shall think proper.

(5) The duty imposed on the council of a county by paragraph (b) of subsection (4) and the power conferred on the council of a county by paragraph (c) of that subsection shall each be a reserved function.”,

(e) by the insertion of the following section after section 5:

**“Pre-submission consultation on transboundary effects**

5A. (1) Where the Commissioners consider that proposed drainage works comprised in an EIA drainage scheme would be likely to have significant effects on the environment in a Member State, or where a Member State considers that the said drainage works would be likely to have the said effects and so requests, they shall, no later than the date of the publication of a notice in respect of the scheme under section 5(1)(b), send to that Member State—

(a) a description of the proposed drainage works and any available information on their possible effects on the environment in that Member State, and

(b) information on the nature of the decision which may be taken in relation to the scheme,

and shall give to that Member State a reasonable time to indicate whether it wishes to send observations on the said effects.

(2) Where a Member State, which has received information pursuant to subsection (1), indicates that it wishes to send observations on the likely effects on the environment of the proposed drainage works, the Commissioners shall, if they have not already done so, send to that Member State—

- (a) a copy of the environmental impact assessment report,
  - (b) information published in accordance with subsection (6)(b), and
  - (c) relevant information about the procedure for making a decision on the drainage scheme concerned.
- (3) Where the Commissioners provide information to a Member State in accordance with subsection (2), they shall as soon as may be—
- (a) place a notice in a newspaper circulating in the area within the Member State concerned identified in the environmental impact assessment report concerned as likely to be affected by the drainage works concerned, indicating that the information has been provided, how it may be accessed by the public in that Member State, how submissions may be made to the Commissioners and the time within which such submissions must be made, which shall not be less than 30 days from the date of the publication of the notice, and
  - (b) notify the authorities in that Member State likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences indicating that the information has been provided, how it may be accessed by the authorities, how submissions may be made to the Commissioners and the time within which such submissions must be made, which shall not be less than 30 days from the date of the notification.
- (4) The Commissioners shall enter into consultations with a Member State to which information was sent pursuant to subsection (2) regarding the potential effects of the proposed drainage works on the environment in that Member State and the measures envisaged to reduce or eliminate such effects.”,
- (f) by the substitution of the following section for section 7:
- “Confirmation of drainage scheme (no EIA required)**
7. (1) This section applies to a drainage scheme that is not an EIA drainage scheme.



(2) When, in respect of a drainage scheme to which this section applies—

- (a) the times limited by section 5(4)(c) for the sending to the Commissioners of observations by councils of counties, and
- (b) the times limited by section 6(3) for the sending to the Commissioners of observations by persons on whom a notice has been served pursuant to section 6,

have expired, the Commissioners shall—

- (i) consider every such observation sent to them within the time appropriate thereto,
- (ii) after consultation with the Minister for Transport, Tourism and Sport, the Minister for Culture, Heritage and the Gaeltacht, the Minister for Communications, Climate Action and Environment, the Minister for Agriculture, Food and the Marine, the Minister for Housing, Planning and Local Government, and such other (if any) Minister of the Government as they shall think proper, make such, if any, alterations (whether by addition, omission, or variation) in the drainage scheme as they shall think proper, and
- (iii) submit the drainage scheme as so altered (if at all) to the Minister.

(2) When a drainage scheme to which this section applies has been submitted to the Minister under this section, the Minister shall do whichever of the following things shall appear to him to be proper:

- (a) make an order confirming the scheme,
- (b) refuse to confirm the scheme, or
- (c) refer the scheme back to the Commissioners for revision in specified respects.”,

(g) by the insertion of the following sections after section 7:

**“Revision of scheme (no EIA required)**

7A. (1) Where, having been referred back for revision in accordance with section 7(2)(c), a drainage scheme is revised (in this section referred to as a ‘revised drainage scheme’), section 4B shall

apply to the arterial drainage works to be executed in pursuance of the scheme (as so revised) as if those works were sub-threshold drainage works.

- (2) Where the Minister determines under section 4B (as applied in accordance with subsection (1)) that arterial drainage works to be executed in pursuance of a revised drainage scheme are likely to have a significant effect on the environment, sections 4A, 4C(2), 4D, 4E, 4F, 7B, 7C, 7D, 7E, 7F, 7G, 7H and 7I shall, subject to the modifications specified in subsection (3), apply—
  - (a) to the revised drainage scheme as if it were an EIA drainage scheme, and
  - (b) to those works as if those works were sub-threshold drainage works in respect of which he or she had made a determination under section 4B (2) that the works were likely to have a significant effect on the environment.
- (3) The modifications referred to in subsection (2) are as follows:
  - (a) in section 4A(1)—
    - (i) in paragraph (b), the substitution of ‘consultations, as referred to in section 7C and, where relevant, section 7D’ for ‘consultations, as referred to in sections 5 and 7C and, where relevant, sections 5A and 7D’, and
    - (ii) in paragraph (c)(iii), the substitution of ‘consultations under section 7C and, where relevant, section 7D’ for ‘consultations under sections 5 and 7C and, where relevant, sections 5A and 7D’;
  - (b) in section 7B—
    - (i) the deletion of subsections (1) and (2), and
    - (ii) the substitution of the following subsection for subsection (3):
 

‘(3) When the Commissioners have prepared an EIA drainage scheme and the environmental impact

assessment report relating to that scheme, they shall submit that scheme and report to the Minister.’;

- (c) in section 7C(1), the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’;
  - (d) in section 7E, the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’ in each place where it occurs.
- (4) Where the Minister determines under section 4B (as applied in accordance with subsection (1)) that arterial drainage works to be executed in pursuance of a revised drainage scheme are not likely to have a significant effect on the environment, section 7 shall, subject to the modification specified in subsection (5), apply—
- (a) to the revised drainage scheme as if it were a drainage scheme that is not an EIA drainage scheme, and
  - (b) to those works as if those works were sub-threshold drainage works in respect of which he or she had made a determination under section 4B(2) that the works were not likely to have a significant effect on the environment.
- (5) The modification referred to in subsection (4) is the substitution of the following subsection for section 7(2):
- ‘(2) The Commissioners shall—
- (a) after consultation with the Minister for Transport, Tourism and Sport, the Minister for Culture, Heritage and the Gaeltacht, the Minister for Communications, Climate Action and Environment, the Minister for Agriculture, Food and the Marine, the Minister for Housing, Planning and Local Government, and such other (if any) Minister of the Government as they shall think proper, make such, if any, alterations (whether by addition, omission, or variation) in the drainage scheme as they shall think proper, and

- (b) submit the drainage scheme as so altered (if at all) to the Minister.’.

### **Submission of EIA drainage scheme**

- 7B. (1) Subject to subsection (2), the Commissioners shall, in respect of an EIA drainage scheme, consider each observation and submission sent or made, as the case may be, pursuant to section 5, 5A, 6 or 7.
- (2) The Commissioners shall not be required to consider an observation or submission which was sent or made, as the case may be, after the expiry of the period within which the observation or submission was required to be sent or made, as the case may be, under section 5, 5A, 6 or 7.
  - (3) The Commissioners, following consideration of the observations and submissions required to be considered in accordance with subsections (1) and (2) —
    - (a) may make such, if any, alterations (whether by addition, omission, or variation) in the EIA drainage scheme concerned and the environmental impact assessment report relating to that scheme, as they shall think proper, and
    - (b) shall submit the EIA drainage scheme and the environmental impact assessment report relating to that scheme as so altered (if at all) to the Minister, together with those observations.
  - (4) Where the Commissioners have submitted an environmental impact assessment report to the Minister under this section, the Minister shall, where necessary, request the Commissioners to provide supplementary information, specified in Annex IV to the directive, which is directly relevant to reaching a reasoned conclusion on the significant effects of the drainage works concerned on the environment and the Commissioners shall comply with such a request.

### **Consultation on EIA drainage scheme**

- 7C. (1) The Minister shall, following receipt of an EIA drainage scheme and the environmental impact

assessment report relating to that scheme under section 7B(3)(b)—

(a) publish—

(i) on a website maintained by him or her, and

(ii) either—

(I) in one or more newspapers circulating in the county in which the area or any part of the area proposed by the EIA drainage scheme to be constituted a separate drainage district is situate, or

(II) in such other manner as he or she thinks fit,

a notice stating—

(A) that the scheme has been submitted for confirmation to the Minister,

(B) that the scheme is subject to environmental impact assessment,

(C) where applicable, that section 7D applies,

(D) how further information can be obtained in relation to the scheme,

(E) the nature of the possible decisions by the Minister in relation to the scheme,

(F) the place or places at which and the period, not being less than 30 days, during which a copy of the scheme and the environmental impact assessment report relating to the scheme will be available for inspection,

(G) the address of the website on which the scheme and the environmental impact assessment report relating to the scheme are available,

- (H) the reference number of the scheme,
  - (I) each location, townland and county to which the scheme relates,
  - (J) the nature and extent of the scheme,
  - (K) that submissions may be made in writing (including by means of electronic communication) to the Minister by members of the public in relation to the likely effects on the environment of the scheme during the period referred to in subparagraph (F),
  - (L) how submissions on the scheme can be made,
  - (M) the time limit for making submissions on the scheme, and
  - (N) any other information that the Minister considers relevant,
- (b) send a notice to the consultation bodies, including a copy of the scheme and the environmental impact assessment report relating to the scheme with the notice, indicating that submissions may be made in writing by the consultation body concerned to the Minister in relation to the likely effects on the environment of the scheme within such period as may be specified for that purpose in the notice, not being less than 30 days after the date of the notice, and
- (c) provide the following information in electronic form to the EIA portal:
- (i) that the applicants for development consent in respect of the EIA drainage scheme are the Commissioners;
  - (ii) the name, e-mail address and phone number of the person to whom correspondence in relation

to the EIA drainage scheme should be sent;

- (iii) the location of the EIA drainage scheme;
  - (iv) a description of the EIA drainage scheme;
  - (v) that the application for development consent will be made to the Minister;
  - (vi) a location map of sufficient size and containing details of features in the vicinity such as to permit the identification of the site to which the EIA drainage scheme relates;
  - (vii) an electronic copy of the notice published in accordance with paragraph (a);
  - (viii) the reference number of the scheme;
  - (ix) the address of the website referred to in paragraph (a)(I).
- (2) The Minister shall, where information has been provided in relation to the EIA drainage scheme under section 5(1)(d), when providing information under subsection (1)(c) in relation to the scheme, inform the Minister for Housing, Planning and Local Government that the information under section 5(1)(d) has been so provided.
- (3) The Minister shall, where he or she considers that supplementary information furnished in accordance with a request made pursuant to section 7B(4) contains significant additional information in relation to the effects on the environment of the EIA drainage scheme—
- (a) publish on a website maintained by him or her and in such other manner as he or she thinks fit, a notice stating—
    - (i) that significant additional information in relation to the said effects has been furnished to the Minister,
    - (ii) the arrangements for viewing the significant additional information

- during a specified period (which shall be not less than 30 days), and
- (iii) that submissions in relation to the significant additional information may be made in writing to the Minister before the expiry of that period, and
- (b) send a notice to the consultation bodies stating—
- (i) that significant additional information in relation to the said effects has been furnished to the Minister,
  - (ii) the arrangements for viewing the significant additional information during a specified period (which shall be not less than 30 days), and
  - (iii) that submissions in relation to the significant additional information may be made in writing to the Minister before the expiry of that period.
- (4) The Minister shall, at the same time as he or she publishes a notice under subsection (1) or (3), send a copy of the notice to the Minister for Housing, Planning and Local Government.
- (5) A member of the public may make a submission in writing (including by means of electronic communication) to the Minister in relation to the likely effects on the environment of an EIA drainage scheme, not later than the expiry of the period referred to in subsection (1)(a)(F) or, where supplementary information that is significant additional information is received by the Minister pursuant to a request under section 7B(4), not later than the expiry of the period specified for the purpose of subsection (3)(a)(ii).
- (6) A consultation body to which a copy of an EIA drainage scheme is sent under paragraph (b) of subsection (1) may make a submission in writing to the Minister in relation to the likely effects on the environment of the scheme, not later than the expiry of the period specified for that purpose in accordance with that paragraph or, where supplementary information is received by the Minister pursuant to a request under section 7B(4), not later than the date specified in the



notice relating to such information sent in accordance with subsection (3)(b).

### **Consultation on transboundary effects**

7D. (1) Where the Minister considers that proposed drainage works comprised in an EIA drainage scheme would be likely to have significant effects on the environment in a Member State, or where a Member State considers that the said drainage works would be likely to have the said effects and so requests, he or she shall, no later than the date of the publication of a notice in respect of the scheme under section 7C(1), send to that Member State—

- (a) a description of the proposed drainage works and any available information on their possible effects on the environment in that Member State, and
- (b) information on the nature of the decision which may be taken in relation to the scheme,

and shall give to that Member State a reasonable time to indicate whether it wishes to send observations on the said effects.

(2) Where a Member State, which has received information pursuant to subsection (1), indicates that it wishes to send observations on the likely effects on the environment of the proposed drainage works, the Minister shall, if he or she has not already done so, send to that Member State—

- (a) a copy of the environmental impact assessment report,
- (b) information published in accordance with section 7C(1)(a), and
- (c) relevant information about the procedure for making a decision on the drainage scheme concerned.

(3) Where the Minister provides information to a Member State in accordance with subsection (2), he or she shall as soon as may be—

- (a) place a notice in a newspaper circulating in the area within the Member State concerned identified in the environmental impact assessment report concerned as likely to be

affected by the drainage works concerned, indicating that the information has been provided, how it may be accessed by the public in that Member State, how submissions may be made to the Minister and the time within which such submissions must be made, which shall not be less than 30 days from the date of the publication of the notice, and

- (b) notify the authorities in that Member State likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences indicating that the information has been provided, how it may be accessed by the authorities, how submissions may be made to the Minister and the time within which such submissions must be made, which shall not be less than 30 days from the date of the notification.
- (4) The Minister shall enter into consultations with a Member State to which information was sent pursuant to subsection (2) regarding the potential effects of the proposed drainage works on the environment in that Member State and the measures envisaged to reduce or eliminate such effects.
- (5) The Minister shall notify a Member State which was sent information pursuant to subsection (2) of his or her decision on the drainage scheme concerned.
- (6) Where the Minister or the Commissioners or any other Minister of the Government has been notified by a 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 sent observations to the said Member State, the Minister, the Commissioners or other Minister, as the case may be, shall as soon as may be publish, in a newspaper circulating in the area within the State identified in the environmental impact assessment report supplied by the 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 the notification may be viewed and the period within which it will be available.

**Decision on EIA drainage scheme**

- 7E. (1) Where an EIA drainage scheme has been submitted to the Minister in accordance with section 7B(3)(b), the Minister shall, following the expiry of the periods provided under sections 7C and 7D for the making of submissions and sending of observations, do whichever of the following things shall appear to him to be proper:
- (a) make an order confirming the scheme,
  - (b) refuse to confirm the scheme, or
  - (c) refer the scheme back to the Commissioners for revision in specified respects.
- (2) An order made under subsection (1)(a) confirming an EIA drainage scheme may be made subject to such conditions, including conditions regarding the monitoring of significant adverse effects on the environment imposed pursuant to section 7H(1), as the Minister considers appropriate.
- (3) The Minister shall, when making his or her decision under subsection (1) in respect of an EIA drainage scheme—
- (a) take into account—
    - (i) the information submitted under section 7B(3)(b) in relation to the scheme,
    - (ii) the supplementary information submitted in response to a request, if any, under section 7B(4),
    - (iii) the submissions made to the Minister under section 7C(5) and (6) in relation to the effects on the environment of the proposed drainage works concerned,
    - (iv) the observations sent and submissions made, if any, pursuant to section 7D, and
    - (v) the reports, if any, prepared by his or her officials or by consultants, experts or other advisors in relation to the scheme, and

- (b) reach a reasoned conclusion on the significant effects of the scheme on the environment.
- (4) The Minister shall ensure that he or she has, or has access to, sufficient expertise to examine an environmental impact assessment report.
- (5) Where the Minister is required to carry out an assessment under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) in respect of an EIA drainage scheme, the Minister shall, where appropriate, co-ordinate the carrying out of that assessment with the carrying out of an environmental impact assessment in respect of that scheme.
- (6) A decision under subsection (1) shall be made within a reasonable period of time following the expiry of the periods referred to in subsection (1).
- (7) The Minister shall be satisfied, at the time of the making of a decision under subsection (1), that his or her reasoned conclusion on the significant effects of the scheme on the environment, reached under subsection (3), does not require amendment.
- (8) The Minister shall notify the Commissioners in writing of his or her decision under subsection (1).
- (9) Where the Minister makes an order under subsection (1) confirming a drainage scheme, the order shall include—
  - (a) his or her reasoned conclusion on the significant effects of the scheme on the environment,
  - (b) the conditions, including the conditions, if any, regarding the monitoring of significant adverse effects on the environment imposed pursuant to section 7H(1), to which the confirmation of the drainage scheme is subject, and
  - (c) a description of the features of the drainage scheme, or measures envisaged, if any, to avoid, prevent, reduce and, where possible, offset the significant adverse effects (if any) of the drainage scheme on the environment.
- (10) Where the Minister refuses to confirm a drainage scheme under subsection (1)(b), the notification

under subsection (8) shall state the main reasons for the refusal.

### **Publication of decision on EIA drainage scheme**

- 7F. (1) Where the Minister has made his or her decision under section 7E(1) in relation to an EIA drainage scheme, he or she shall—
- (a) publish on a website maintained by him or her, and
  - (b) send to the consultation bodies,
- the information referred to in subsection (2).
- (2) The information to be published and sent under subsection (1) shall be the following:
- (a) the decision of the Minister in relation to the EIA drainage scheme concerned;
  - (b) where the decision is to confirm the EIA drainage scheme, the conditions, if any, included in the order made under section 7E(1);
  - (c) the main reasons and considerations on which the decision was based, including information about the public participation process.
- (3) The information referred to in subsection (2)(c) shall include a summary of the following in relation to the EIA drainage scheme concerned:
- (a) the results of the consultations carried out in accordance with sections 7C and 7D;
  - (b) the environmental impact assessment report;
  - (c) the submissions if any, made by members of the public and consultation bodies under section 7C(5) and (6);
  - (d) the observations sent and submissions made, if any, pursuant to section 7D;
  - (e) how the submissions and observations (and in particular the observations, if any, sent by an affected Member State under section 7D) referred to in paragraphs (c) and (d) have been incorporated or otherwise addressed.
- (4) The Minister shall send to a Member State consulted in accordance with section 7D a copy

of the information published in accordance with subsection (1)(a).

- (5) Where the Minister receives information from a Member State pursuant to the law of that Member State giving effect to Article 9(2) of the directive, the Minister shall publish that information on a website maintained by him or her.
- (6) A notice published in accordance with subsection (1)(a) shall—
  - (a) inform the public that a person may question the validity of the decision concerned by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), and
  - (b) identify where practical information on the judicial review mechanism may be found.

### **Review**

- 7G. (1) A person shall not question the validity of a decision made or other act done by the Minister in the performance or purported performance of a function under section 7E(1) otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).
- (2) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—
  - (a) the applicant has a sufficient interest in the matter which is the subject of the application, or
  - (b) the applicant—
    - (i) is a body or organisation (other than a State authority) the aims or objectives of which relate to the promotion of environmental protection, and
    - (ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

- (3) A sufficient interest for the purposes of subsection (2)(a) is not limited to an interest in land or other financial interest.
- (4) The High Court, in determining either an application for leave for judicial review under this section, or an application for judicial review on foot of such leave under this section, shall act as expeditiously as possible consistent with the administration of justice.
- (5) In this section ‘State authority’ means—
- (a) a Minister of the Government,
  - (b) the Commissioners of Public Works in Ireland,
  - (c) Drogheda Port Company,
  - (d) Dublin Port Company,
  - (e) Galway Harbour Company,
  - (f) New Ross Port Company,
  - (g) Port of Cork Company,
  - (h) Port of Waterford Company,
  - (i) Shannon Foynes Port Company,
  - (j) a local authority within the meaning of the Local Government Act 2001 (No. 37 of 2001),
  - (k) the Health Service Executive,
  - (l) a person established—
    - (i) by or under any enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act),
    - (ii) by any scheme administered by the Government, or
    - (iii) under the Companies Act 2014, or a former enactment relating to companies within the meaning of section 5 of that Act, in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares

held by or on behalf of a Minister of the Government, or

- (m) a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act, a majority of the shares in which are held by or on behalf of a Minister of the Government.

### **Monitoring of effects on environment**

- 7H. (1) The Minister may, where he or she considers it appropriate, attach conditions in relation to the monitoring of significant adverse effects on the environment, to an order made under section 7E(1)(a).
- (2) Where conditions referred to in subsection (1) are attached to an order made under section 7E(1)(a)—
    - (a) the type of parameters to be monitored in those conditions, and
    - (b) the duration of the monitoring,
 shall be proportionate to the nature, location and size of the drainage scheme concerned and the significance of its effects on the environment.
  - (3) The Minister shall, in determining whether it is appropriate to attach conditions referred to in subsection (1) to an order made under section 7E(1)(a), consider whether those conditions would duplicate monitoring arrangements under the law of the European Union or the law of the State (other than the law of the State giving effect or further effect to the directive).
  - (4) The Minister may consider matters other than that referred to in subsection (3) in determining whether it is appropriate to attach conditions referred to in subsection (1) to an order made under section 7E(1)(a).
  - (5) For the purposes of ensuring—
    - (a) implementation of the features of an EIA drainage scheme (if any), or measures envisaged (if any), to avoid, prevent, reduce and, where possible, offset the significant adverse effects (if any) of the drainage scheme on the environment, and



- (b) compliance with conditions attached to an order made under section 7E(1)(a),

the Minister may request the Commissioners to furnish to him or her, within a specified period, information in relation to its implementation of features or measures referred to in paragraph (a) or compliance with conditions referred to in paragraph (b).

- (6) In particular the Minister may request the Commissioners, under subsection (5), to provide information within a specified period on—
  - (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring,
  - (b) the manner in which samples and measurements are taken and analyses are carried out,
  - (c) the equipment being used for the purposes of taking such samples and measurements, or of carrying out such analyses, or
  - (d) the results of such monitoring.
- (7) The Minister may, having notified the Commissioners of his or her intention to do so, carry out an assessment of the Commissioners' implementation of features or measures referred to in subsection (5)(a) or compliance with condition referred to in subsection (5)(b) and for that purpose the Minister may, during the course of such assessment, request the Commissioners—
  - (a) to furnish to the Minister information, records or reports or the results of any monitoring by the Commissioners, or
  - (b) to afford to the Minister access to any premises occupied by the Commissioners.
- (8) The Commissioners shall comply with a request under this section.

### **Enforcement**

- 7I. (1) Where the Minister makes an order under section 7E(1)(a) confirming a drainage scheme, the Commissioners shall—
  - (a) comply with the conditions, if any, imposed under section 7E(1A), and

- (b) implement the features of the EIA drainage scheme (if any), or measures envisaged (if any), to avoid, prevent, reduce and, where possible, offset the significant adverse effects (if any) of the drainage scheme on the environment.
- (2) It shall be an offence for the Commissioners to fail to comply with—
- (a) subsection (1)(a),
  - (b) subsection (1)(b), or
  - (c) section 7H(8).
- (3) Where the Commissioners commit an offence under subsection (2), they shall be liable—
- (a) on summary conviction, to a class A fine, or
  - (b) on conviction on indictment, to a fine not exceeding €500,000.

#### **Revision of scheme (EIA required)**

- 7J. (1) Where a drainage scheme is revised in accordance with section 7E(1)(c) (in this section referred to as a ‘revised drainage scheme’), sections 4A, 4C(2), 4D, 4E, 4F, 7B, 7C, 7D, 7E, 7F, 7G, 7H and 7I shall, subject to the modifications specified in subsection (3), apply—
- (a) to the revised drainage scheme as if it were an EIA drainage scheme, and
  - (b) to the works proposed to be executed in pursuance of that scheme as if those works were sub-threshold drainage works in respect of which he or she had made a determination under section 4B(2) that the works were likely to have a significant effect on the environment.
- (2) The modifications referred to in subsection (1) are as follows:
- (a) in section 4A(1)—
    - (i) in paragraph (b), the substitution of ‘consultations, as referred to in section 7C and, where relevant, section 7D’ for ‘consultations, as referred to in sections 5 and 7C and, where relevant, sections 5A and 7D’, and

- (ii) in paragraph (c)(iii), the substitution of ‘consultations under section 7C and, where relevant, section 7D’ for ‘consultations under sections 5 and 7C and, where relevant, sections 5A and 7D’;
  - (b) in section 7B—
    - (i) the deletion of subsections (1) and (2), and
    - (ii) the substitution of the following subsection for subsection (3):
      - ‘(3) When the Commissioners have prepared an EIA drainage scheme and the environmental impact assessment report relating to that scheme, they shall submit that scheme and report to the Minister.’;
  - (c) in section 7C(1), the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’;
  - (d) in section 7E, the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’ in each place where it occurs.”
- (h) in section 9—
- (i) in paragraph (a), by the substitution of ‘subject to section 12A, to construct’ for ‘to construct’,
  - (ii) in paragraph (b), by the substitution of ‘subject to section 12A, to enter’ for ‘to enter’, and
  - (iii) by the deletion of paragraph (h),
- (i) in section 12, by the substitution of ‘Subject to section 12A, whenever’ for ‘Whenever’,
- (j) by the insertion of the following section after section 12:

**“Scheme variations**

- 12A. (1) Where the Commissioners form the opinion that a scheme variation proposed in respect of a drainage scheme confirmed by the Minister may have significant effects on the environment—
- (a) section 4B shall apply to the arterial drainage works to be executed in pursuance of the proposed scheme variation as if those

works were sub-threshold drainage works,  
and

- (b) section 9(a) and (b) and section 12 shall not apply in respect of the scheme variation unless an order is made under section 7 or 7E (as applied and modified in accordance with this section) confirming the scheme variation.
- (2) Where the Minister determines under section 4B (as applied in accordance with subsection (1)) that arterial drainage works to be executed in pursuance of a proposed scheme variation are likely to have a significant effect on the environment, sections 4A, 4C(2), 4D, 4E, 4F, 7B, 7C, 7D, 7E, 7F, 7G, 7H and 7I shall, subject to the modifications specified in subsection (3), apply—
- (a) to the proposed scheme variation as if it were an EIA drainage scheme, and
  - (b) to those works as if those works were sub-threshold drainage works in respect of which he or she had made a determination under section 4B(2) that the works were likely to have a significant effect on the environment.
- (3) The modifications referred to in subsection (2) are as follows:
- (a) in section 4A(1)—
    - (i) in paragraph (a), the substitution of ‘consultations, as referred to in sections 7C and, where relevant, section 7D’ for ‘consultations, as referred to in sections 5 and 7C and, where relevant, sections 5A and 7D’, and
    - (ii) in paragraph (c)(iii), the substitution of ‘consultations under section 7C and, where relevant, section 7D’ for ‘consultations under sections 5 and 7C and, where relevant, sections 5A and 7D’;
  - (b) in section 7B—
    - (i) the deletion of subsections (1) and (2), and

- (ii) the substitution of the following subsection for subsection (3):
    - ‘(3) When the Commissioners have prepared an EIA drainage scheme and the environmental impact assessment report relating to that scheme, they shall submit that scheme and report to the Minister.’;
  - (c) in section 7C(1), the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’;
  - (d) in section 7E, the substitution of ‘section 7B(3)’ for ‘section 7B(3)(b)’ in each place where it occurs.
- (4) Where the Minister determines under section 4B (as applied in accordance with subsection (1)) that arterial drainage works to be executed in pursuance of a scheme variation are not likely to have a significant effect on the environment, section 7 shall, subject to the modification specified in subsection (5), apply to the scheme variation and those works as if those works were sub-threshold drainage works in respect of which he or she had made a determination under section 4B(2) that the works were not likely to have a significant effect on the environment.
- (5) The modification referred to in subsection (4) is the substitution of the following subsection for section 7(2):
- ‘(2) The Commissioners shall—
    - (a) after consultation with the Minister for Transport, Tourism and Sport, the Minister for Culture, Heritage and the Gaeltacht, the Minister for Communications, Climate Action and Environment, the Minister for Agriculture, Food and the Marine, the Minister for Housing, Planning and Local Government, and such other (if any) Minister of the Government as they shall think proper, make such, if any, alterations (whether by addition, omission, or variation) in the drainage scheme as they shall think proper, and
    - (b) submit the drainage scheme as so altered (if at all) to the Minister.’.

- (6) In this section ‘scheme variation’ means—
- (a) an addition, omission, variation or deviation in respect of a drainage scheme confirmed by the Minister,
  - (b) a substantial interference with lands not mentioned in a drainage scheme confirmed by the Minister, or
  - (c) a diversion, removal or other interference of a road or bridge (whether public or private) not mentioned in a drainage scheme confirmed by the Minister.”, and

(k) by the insertion of the following section after section 13:

**“Conflicts of interest**

13A. The Minister shall, for the purposes of compliance by the State with Article 9a of the directive, carry out his or her obligations under sections 4 to 13 in a manner which is objective and avoids him or her being subject to a conflict of interest.”.

**Transitional Provision**

4. (1) Where, in relation to a drainage scheme, the Minister was consulted under paragraph (b) of section 4(2A) of the Principal Act (as it stood before these Regulations came into operation) before 16 May 2017, but a decision has not been made under that paragraph, that paragraph shall apply to the drainage scheme as if the changes in these Regulations had not been made.

(2) Where in relation to a drainage scheme—

- (a) the Commissioners made a request under paragraph (d) of section 4(2A) of the Principal Act (as it stood before these Regulations came into operation), before 16 May 2017, or
- (b) the Commissioners have submitted to the Minister the scheme under section 7 of the Principal Act (as it stood before these Regulations came into operation) before 16 May 2017,

the Principal Act shall apply to the drainage scheme as if the changes in these Regulations had not been made.

**Revocation**

5. The Arterial Drainage Acts, 1945 and 1955 (Environmental Impact Assessment) Regulations 1990 (S.I. No. 323 of 1990) are revoked.



GIVEN under my Official Seal,  
21 September, 2019.

PASCHAL DONOHOE,  
Minister for Public Expenditure and Reform.

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