

CRITERIA FOR DESIGNATION

Introduction

1. This paper sets out the legal background to designation of watercourses for maintenance at public expense and focuses on the main criteria used in designating and de-designating watercourses taking account of evolving policy on economic appraisal, changing agricultural and urban drainage needs and the protection of the environment.

Relevant Legal Powers

2. Article 3 (4) (a) of the Drainage (Northern Ireland) Order 1973 (“the 1973 Order”) provides that:-

“The Drainage Council shall –

After considering such particulars of any watercourses in Northern Ireland as may be submitted to it by the Department or by any other person, determine which of such watercourses or portions thereof are to be treated or, as the case may be, are not to continue to be treated as designated watercourses for the purposes of this Order”.

3. Article 4 of the Drainage Order provides that the Department “or any other person may at any time submit to the Drainage Council such particulars as the Council may consider necessary to enable it to determine with respect to any watercourse whether that watercourse is to be treated or is not to continue to be treated as a designated watercourse”.
4. Under Article 8. (1) of the 1973 Drainage Order where the Department undertakes emergency works on an undesignated watercourse, the Drainage Council under Article 8 (3) shall determine whether or not the watercourse is to be treated as a designated watercourse.

Interpretation and Application

5. Detailed procedures to assist the Drainage Council in its determination are not, therefore, laid down in legislation and are left to the discretion of the Drainage Council.
6. However, in addressing requests for designation and de-designation the Drainage Council inter alia must take account of constraints set out in Article 3 (5) ie –

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

7. It follows from this that in arriving at any decision on designation or de-designation the Drainage Council must act objectively in the global interest of drainage in Northern Ireland and at the same time take account of any general or local interests which may be affected.
8. It is important to note that the Department's powers in relation to the maintenance of designated watercourses are discretionary. Decisions depend on the need to maintain the watercourse in a due state of efficiency consistent with the maintenance of freeboard for field drainage. In the case of designated watercourses, where riparian owners request works which do not meet the Department's cost benefit criteria (whereby the estimated cost of the proposed work must not exceed the anticipated benefit), the Department would not carry out such works. In such circumstances it may be appropriate to de-designate the watercourse and allow riparian owners to undertake approved works for which they would carry maintenance responsibility.

Criteria for Designation

9. It should be borne in mind that watercourses are designated and works undertaken for the general benefit of the community. The criteria traditionally applied on some 6,700 km of watercourses in Northern Ireland designated by the Drainage Council satisfy one or more of the following conditions:
 - (a) There is a sizeable area of agricultural land, which is being disadvantaged due to poor drainage outfall or flooding.
 - (b) Improvements, maintenance or pre-emptive action necessary to ameliorate existing or potential flooding are considered to be outside the capability of the riparians to organise and carry out at their own expense.
 - (c) Regular maintenance is required but it is not possible to identify the occupier/riparian.
 - (d) The watercourse does not perform any function connected with the drainage of the riparian land.
 - (e) To provide outfall for increased run-off from new housing and commercial development.

Subject to the overriding conditions:-

- (a) That the cost of the works would satisfy appropriate appraisal criteria, either in quantifiable cost/benefit terms (as in the case of flood defence and drainage schemes) or qualitative terms such as reduction in risk to life or damage to property from flooding (as in the case of repair and maintenance works); and

- (b) that the works meet the conditions for prioritisation to be included in the Agency programme of works and that they have a satisfactory priority assessment.

10. The cost effectiveness of any proposed works has been affected over the years by changes in agriculture and more recently by environmental assessment. The emphasis in rural drainage works has shifted to maintenance, and relatively more urban new works are being undertaken, some of which are designed to cater for the drainage impact of industrial, commercial or housing development. There is less likelihood of improvement schemes being justified on agricultural grounds.