



STATUTORY INSTRUMENTS.

S.I. No. 473 of 2011

EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND
HABITATS) REGULATIONS 2011

(Prn. A11/1747)

EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND
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I, PHIL HOGAN, Minister for the Environment, Community and Local Government, 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 Council Directive No. 85/337/EEC¹ of 27 June 1985 and Council Directive 92/43/EEC² of 21 May 1992 hereby make the following regulations:

Citation and Commencement

1. (a) These Regulations may be cited as the European Union (Environmental Impact Assessment and Habitats) Regulations 2011.

(b) These Regulations come into operation on 21st September 2011.

Interpretation

2. In these Regulations—

“Act of 2000” means the Planning and Development Act 2000;

“Act of 2010” means the Planning and Development (Amendment) Act 2010;

“Act of 2011” means the Environment (Miscellaneous Provisions) Act 2011.

Amendment of Section 2 of Act of 2000

3. Section 2 of the Act of 2000 is amended in the definition of “strategic infrastructure development” (inserted by section 6 of the Planning and Development (Strategic Infrastructure) Act 2006) by the substitution of “(c) any proposed development referred to in section 181A(1) which has been identified as likely to have significant effects on the environment in accordance with regulations made under section 176” for “(c) any proposed development referred to in section 181A(1)”.

Amendment of Section 5 of Act of 2000

4. Section 5 of the Act of 2000 is amended by the insertion of the following subsection after subsection (7):

“(8) (a) The Minister for Arts, Heritage and the Gaeltacht may apply to the Board under this subsection, without charge, for a determination as to whether an activity requiring the consent of that Minister—

(i) pursuant to a notification under Regulation 14(2) of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of

¹O.J. No. L 175 5.7.1985 p. 40

²O.J. No. L206 22.7.1992 p. 7

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th September, 2011.

1997) or under regulations made under the European Communities Act 1972 for the purpose of giving further effect to the Birds Directive or the Habitats Directive by designating a site as a special area of conservation or as a special protection area, or

(ii) under section 19 of the Wildlife (Amendment) Act 2000,

comprises development which is not exempted development, and the Board shall make such determination as soon as may be and shall inform that Minister of its determination and the reasons for the determination.

(b) An application from the Minister for Arts, Heritage and the Gaeltacht under this subsection shall include the following:

(i) a copy of the application for consent;

(ii) any other relevant information submitted with the application for consent;

(iii) the reasons why that Minister considers that the activity may not be exempted development;

(iv) the opinion of that Minister as to whether an appropriate assessment is required, and the reasons for that opinion;

(v) the opinion of that Minister as to whether the development is likely to have significant effects on a European site or an area designated as a Natural Heritage Area under section 18 of the Wildlife (Amendment) Act 2000 and the reasons for that opinion, having regard to the purposes for which the site was designated.

(c) The Board may seek additional information from—

(i) the applicant for consent, or

(ii) the Minister for Arts, Heritage and the Gaeltacht,

and where this is not provided within the period specified, or any further period as may be specified by the Board, the Board shall not make a determination on the matter and the application of that Minister under this subsection shall be deemed to be withdrawn and the Board shall inform that Minister accordingly.

(d) In paragraph (a)(i) “special area of conservation” and “special protection area” have the same meaning as they have in section 177R.”.

Amendment of Section 34 of Act of 2000

5. Section 34 of the Act of 2000 is amended in subsection (8) by the insertion of the following paragraph after paragraph (c) (amended by section 23 of the Act of 2010):

“(ca) Where an environmental impact statement is submitted to a planning authority under section 172(1C), or where a Natura impact statement is submitted to a planning authority under section 177T(5), the planning authority shall make its decision on the application as follows—

- (i) within 8 weeks commencing on the date on which the environmental impact statement or Natura impact statement, as the case may be, and a copy of the relevant public notice required in accordance with regulations under this Act, is received by the planning authority, or
- (ii) where a planning authority, within 8 weeks of the receipt of an environmental impact statement submitted under section 172(1C) or a Natura impact statement under section 177T(5), serves notice in accordance with regulations under this Act requiring the applicant to give to the authority further information in relation to the environmental impact statement or Natura impact statement, as the case may be—
 - (I) within 4 weeks of the notice being complied with, or
 - (II) if in relation to further information given, the planning authority considers that it contains significant additional data which requires the publication of a notice by the applicant in accordance with regulations under this Act, and gives notice accordingly to the applicant, within 4 weeks beginning on the day on which notice of that publication is given by the applicant to the planning authority.”.

Amendment of Section 172 of Act of 2000

6. Section 172 (amended by section 54 of the Act of 2010) of the Act of 2000 is amended—

- (a) in subsection (1) by the substitution of the following for “consent for proposed development, or a class of such proposed development, prescribed by regulations under section 176.”:

“consent for—

- (a) development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limit specified in that Schedule, and
- (b) development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment.”,

(b) in subsection (1A)—

- (i) in paragraph (a) by the substitution of “(III) development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;” for “(III) development by a local authority or a state authority under Part XI;”, and
- (ii) in paragraph (b) by the substitution of “(iv) consent to development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;” for “(iv) consent to development by a local authority or a State authority under Part XI;”,

(c) in subsection (1B) by the substitution of “subsection (1)(a)” for “subsection (1)”, and

(d) by the substitution of the following subsection for subsection (1C);

“(1C) Where the planning authority or the Board receives an application for consent for proposed development referred to in paragraph (b) of subsection (1) in relation to which the authority or the Board has made a determination referred to in that paragraph, and the application is not accompanied by an environmental impact statement, the planning authority or Board, as the case may be, shall require the applicant to submit an environmental impact statement and where the environmental impact statement is not submitted within the period specified, or any further period as may be specified by the planning authority or the Board, the application for consent for the proposed development shall be deemed to be withdrawn.”.

Amendment of Section 177E of Act of 2000

7. Section 177E (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended in subsection (2)(c) by the insertion of “section 261A(3)(c), section 261A(10) or section 261A(12),” after “section 177B(2),”.

Amendment of Section 177R of Act of 2000

8. Section 177R (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended in subsection (1) (amended by section 31 of the Act of 2011)—

- (a) by the insertion of “ ‘candidate special area of conservation’ means a site that is a candidate site of Community importance or a site of Community importance;”,
- (b) by the insertion of the following paragraph after paragraph (b) of the definition of “European site”:

“(ba) a candidate special area of conservation,”

- (c) by the insertion of “ ‘foreshore’ has the same meaning as it has in section 224;”,

- (d) in paragraph (a) of the definition of “proposed development” by the substitution of “(iii) development that may be carried out by a local authority under Part X or Part XAB or development that may be carried out under Part XI” for “(iii) development by a local authority or a state authority under Part XI”,
- (e) by the insertion of “ ‘road authority’ has the same meaning as it has in section 2 (amended by section 11 of the Roads Act 2007) of the Roads Act 1993;”, and
- (f) by the deletion of the definition of “Wildlife site”

Amendment of Section 177S of Act of 2000.

9. Section 177S (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended in subsection (2)—

- (a) in paragraph (f) by the deletion of the words “on appeal”, and
- (b) by the substitution of the following paragraph for paragraph (h)—

“(h) in relation to proposed development that may be carried out by a local authority under Part X or Part XAB, proposed development that may be carried out under Part XI or proposed local authority development on the foreshore, the Board.”.

Amendment of Section 177T of Act of 2000

10. Section 177T (inserted by section 57 of the Act of 2010) of the Act of 2000, is amended—

- (a) in subsection (1)(a) and (b) by the substitution of “European site” for “Natura 2000 site” in each place where it occurs,
- (b) in subsection (2) by the substitution of “European site” for “Natura 2000 site”,
- (c) in subsection (5) by the deletion of “and the applicant shall furnish the statement within the period specified in the notice”,
- (d) by the substitution of the following subsection for subsection (6)—

“(6) Where an applicant for consent for proposed development who, having been directed in accordance with subsection (5), fails to furnish a Natura impact statement within the period specified in the notice, or any further period as may be specified by the competent authority, the application for consent for the proposed development shall be deemed to be withdrawn.”,

and

- (e) in subsection (7) by the deletion of paragraph (c).

Amendment of Section 177U of Act of 2000

11. Section 177U (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended—

(a) in subsection (1) by the substitution of “assessment of a draft Land use plan or application for consent for proposed development” for “assessment of a draft Land use plan or proposed development”,

(b) in subsection (3)—

(i) by the substitution of “competent authority” for “planning authority”, and

(ii) by the insertion of “and where the applicant does not provide the information within the period specified, or any further period as may be specified by the authority, the application for consent for the proposed development shall be deemed to be withdrawn” after “appropriate”,

(c) in subsection (6) by the insertion of the following paragraph after paragraph (b)—

“(c) Paragraph (a) shall not apply in a case where the application for consent for the proposed development was accompanied by a Natura impact statement.”,

(d) by the substitution of the following subsection for subsection (7)—

“(7) A competent authority shall, as soon as may be after making the Land use plan or making a decision in relation to the application for consent for proposed development, make available for inspection by members of the public during office hours at the offices of the authority, and may also publish on the internet—

(a) any determination that it makes in relation to a draft Land use plan under subsection (4) or (5) as the case may be, and reasons for that determination, and

(b) any notice that it issues under subsection (6) in relation to a proposed development.”,

(e) by the substitution of the following subsection for subsection (8)—

“(8) In this section ‘consent for proposed development’ means, as appropriate—

(a) a grant of permission,

(b) a decision of the Board to grant permission on a planning application or an appeal,

(c) consent for development under Part IX,

- (d) approval for development that may be carried out by a local authority under Part X or Part XAB or development that may be carried out under Part XI,
 - (e) approval for development on the foreshore under Part XV,
 - (f) approval for development under section 43 of the Act of 2001,
 - (g) approval for development under section 51 of the Roads Act 1993, or
 - (h) a substitute consent under Part XA.”, and
- (f) in subsection (9), by the substitution of “a declaration or a referral under section 5” for “a declaration for the purposes of section 5”.

Amendment of Section 177V of Act of 2000

12. Section 177V (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended—

- (a) in subsection (1) by the substitution of “an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under section 177U(4) that an appropriate assessment is required, before—” for “the assessment shall be carried out by the competent authority before—”,
- (b) in subsection (3) by the insertion of “and save as otherwise provided for in sections 177X, 177Y, 177AB and 177AC” after “Roads Acts 1993 to 2007”, and
- (c) by the substitution of the following subsections for subsections (5) and (6)—

“(5) A competent authority shall give notice of its determination under subsection (1) in relation to a proposed development to the applicant for consent to the proposed development, giving reasons for the determination.

(6) A competent authority shall, as soon as may be after making the Land use plan or making a decision in relation to the application for consent for proposed development, make available for inspection by members of the public during office hours at the offices of the authority, and may also publish on the internet—

- (a) any determination that it makes under subsection (1) as respects a Land use plan and reasons for that determination, and
- (b) any notice given by the authority under subsection (5).”.

Amendment of Section 177W of Act of 2000

13. Section 177W (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended—

(a) in subsection (1)—

(i) by the insertion of “the integrity of” after “adversely affect”, and

(ii) in paragraph (a) thereof, by the substitution of “set out the” for “determine if there are”,

(b) in subsection (2)(d) by the substitution of “the Natura 2000 network” for “Natura 2000”,

(c) by the substitution of the following subsection for subsection (6):

“(6) A competent authority shall make a statement of case, referred to in subsection (1), available for inspection by members of the public at the offices of the authority during its public opening hours and may also publish the statement on the internet.”, and

(d) in subsection (7), by the substitution of “the Natura 2000 network” for “Natura 2000”.

Amendment of Section 177AA of Act of 2000

14. Section 177AA (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended—

(a) in subsection (1)—

(i) by the insertion of “the integrity of” after “will adversely affect”, and

(ii) in paragraph (a) thereof by the substitution of “set out the” for “determine if there are”, and

(b) by the substitution of the following subsection for subsection (6):

“(6) A competent authority shall make a statement of case, referred to in subsection (1), available for inspection by members of the public at the offices of the authority during its public opening hours and may also publish the statement on the internet.”.

Amendment of Section 177AE of Act of 2000

15. Section 177AE (inserted by section 57 of the Act of 2010) of the Act of 2000 is amended—

(a) in subsection (1) by the substitution of “within the functional area of the local authority concerned, or on the foreshore, (hereinafter in this section referred to as “proposed development”)” for “within the functional area of the local authority concerned (hereafter in this section referred to as “proposed development””, and

(b) by the substitution of the following paragraphs for paragraph (14)—

“(14) This section shall apply to proposed road development, other than proposed road development within the meaning of section 2(1) of the Roads Act 1993, by or on behalf of a road authority.

(15) Where a proposed development to which this section applies is also required to be submitted to the Board under section 175, it shall be sufficient for the applicant to make one application to the Board provided that the applicant complies with this section and section 175 and in such a case the Board shall issue one decision in relation to the application under this section and section 175.

(16) Where a proposed development to which this section applies is also required to be submitted to the Board under section 226, it shall be sufficient for the applicant to make one application to the Board provided that the applicant complies with this section and section 226 and in such a case the Board shall issue one decision in relation to the application under this section and section 226.”.

Amendment of Section 261A of Act of 2000

16. Section 261A (inserted by section 75 of the Act of 2010) of the Act of 2000 is amended—

- (a) in subsection (2)(a)(i) by the deletion of “which was not authorised by a permission granted under Part IV of the Act of 1963, prior to 1 February 1990,”,
- (b) in subsection (2)(a)(ii) by the deletion of “which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26 February 1997,”,
- (c) in subsection (3)(c)(iii) by the insertion of “with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),” after “section 177E,”
- (d) in subsection (10) by the insertion of “with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),” after “section 177E”, and
- (e) in subsection (12) by the insertion of “with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),” after “section 177E”.”

Revocation, saver and transitional

17. (1) On the coming into operation of section 57 (insofar as it relates to Part XAB of the Act of 2000) of the Act of 2010, Part IV of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) is revoked.

(2) Notwithstanding paragraph (1), Part IV of the European Communities (Natural Habitats) Regulations 1997 shall continue to apply to an application for consent for proposed development made to a competent authority prior to the coming into operation of section 57 (insofar as it relates to Part XAB of the Act of 2000) of the Act of 2010.

(3) The Act of 2010 is amended by the insertion of the following section after section 57:

“Transitional provisions regarding section 57

57A.—(1) Section 57 (insofar as it relates to Part XAB of the Act of 2000) shall not apply to an application for consent for proposed development made to a competent authority prior to the coming into operation of section 57 (insofar as it relates to Part XAB of the Act of 2000).

(2) Section 177AE (inserted by section 57 of the Act of 2010) of the Act of 2000 shall not apply to development in respect of which the procedures under Part 8 of the Planning and Development Regulations 2001 have been completed prior to the coming into operation of section 57 provided that the development is commenced not later than 12 months after such coming into operation unless, immediately before such coming into operation, the development was being carried out in contravention of the Act of 2000 or regulations made under it.

(3) In subsection (1)—

“competent authority” in relation to proposed development has the same meaning as it has in section 177S of the Act of 2000;

“proposed development” has the same meaning as it has in section 177R of the Act of 2000.”.

(4) The Act of 2010 is amended by the insertion of the following section after section 79:

“Transitional provision regarding section 79

79A.—The amendment to section 99F of the Environment Protection Agency Act 1992 (inserted by section 15 of the Protection of the Environment, 2003) effected by section 79 shall not apply to an application for a grant of permission under section 34 of the Act of 2000 made to a planning authority or An Bord Pleanála prior to the commencement of section 79.”.

(5) The Act of 2010 is amended by the insertion of the following section after section 80:

“Transitional provision regarding section 80

80A.—The amendment to section 54 (amended by section 257 of the Act of 2000) of the Waste Management Act 1996 effected by section 80 shall not apply to an application for a grant of permission under section 34 of the Act of 2000 made to a planning authority or An Bord Pleanála prior to the commencement of section 80.”.

(6) The Act of 2011 is amended by the insertion of the following section after section 37:

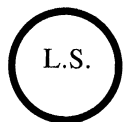
“Transitional provision regarding section 37

37A.—The amendment to section 181A (inserted by section 36 of the Act of 2006) of the Act of 2000 effected by section 37 shall not apply to development in respect of which the procedures under Part 9 of the Planning and Development Regulations 2001 have been completed prior to the coming into operation of section 37 provided that the development is commenced not later than 12 months after such coming into operation unless, immediately before such coming into operation, the development was being carried out in contravention of the Act of 2000 or regulations made under it.”.

(7) The Act of 2011 is amended by the insertion of the following section after section 38:

“Transitional provision regarding section 38

38A.—The amendment to section 181B (inserted by section 36 of the Act of 2006) of the Act of 2000 effected by section 38 shall not apply to development in respect of which the procedures under Part 9 of the Planning and Development Regulations 2001 have been completed prior to the coming into operation of section 38 provided that the development is commenced not later than 12 months after such coming into operation unless, immediately before such coming into operation, the development was being carried out in contravention of the Act of 2000 or regulations made under it.”.



GIVEN under my Official Seal,
21 September 2011.

PHIL HOGAN, T.D.
Minister for the Environment, Community and Local
Government.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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