

S.I. No. 433/2012 — European Union (Environmental Impact Assessment) (Foreshore) Regulations 2012.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 9th November, 2012.*

I, PHIL HOGAN T.D., 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 effect to Council Directive No. 2011/92/EU¹ on the assessment of the effects of certain public and private projects on the environment, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Environmental Impact Assessment) (Foreshore) Regulations 2012.

2. In these Regulations—

“Act of 2009” means the Foreshore and Dumping at Sea (Amendment) Act 2009 (No. 39 of 2009);

“Regulations of 1989” means the European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349 of 1989).

3. The Foreshore Act 1933 (No. 12 of 1933) is amended—

in section 1, by inserting the following definitions:

“‘Act of 2000’ means the Planning and Development Act 2000 (No. 30 of 2000);

‘Council Directive’ means Council Directive No. 2011/92/EU on the assessment of the effects of certain public and private projects on the environment;

‘environmental impact assessment’ means an assessment, to include an examination, analysis and evaluation, carried out by the appropriate Minister in accordance with this Act that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Council Directive, the direct and indirect effects of a proposed development on the following:

(a) human beings, flora and fauna,

(b) soil, water, air, climate and the landscape,

(c) material assets and the cultural heritage, and

(d) the interaction between the factors mentioned in paragraphs (a), (b) and (c);

‘environmental impact statement’ means a statement of the direct and indirect effects which the proposed development will have or is likely to have on the environment and shall include the information specified in regulations prescribed under section 177 of the Act of 2000;”,

(b) by inserting after section 1C (inserted by section 6 of the Act of 2009) the following section:

“1D.—Subject to this Act, a word or expression that is used in this Act and that is also used in the Council Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Council Directive.”,

(c) in section 13A (inserted by Regulation 13(c) of the Regulations of 1989)—

(i) by substituting the following for subsections (1) and (2):

“(1)(a) The appropriate Minister shall, as part of his consideration of a relevant application, in accordance with paragraph (b), ensure that, before a decision on the application is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an environmental impact assessment.

(b) An environmental impact assessment shall be carried out by the appropriate Minister in respect of a relevant application for consent in respect of:

(i) a class or classes of development prescribed by regulations under section 176 of the Act of 2000 which exceeds a quantity, area or other limit prescribed by those regulations, or

(ii) a class or classes of development prescribed by regulations under section 176 of the Act of 2000 which does not exceed a quantity, area or other limit prescribed under those regulations but which the appropriate Minister determines would be likely to have significant effects on the environment.

(c) An environmental impact statement shall be submitted with all applications for consent in respect of development referred to in paragraph (b)(i) and shall also be submitted where the appropriate Minister determines that development referred to in paragraph (b)(ii) would be likely to have significant effects on the environment.

(d) The appropriate Minister shall require the production by the applicant of any additional or supplemental information that he considers necessary to enable him to make an assessment as required under this section.

(e) The appropriate Minister shall consider the content of the environmental impact statement (and any other material including maps or plans) submitted as part of the application and determine whether same adequately identifies, describes and assesses the direct and indirect effects on the environment of the proposed development.

(f) If he considers that the environmental impact statement (and other material) is inadequate, then the appropriate Minister shall serve a notice (in this section referred to as 'a request for further information') which sets out the manner in which the information is inadequate and requires the applicant to submit further information to remedy those inadequacies.

(2)(a) In carrying out his consideration and environmental impact assessment the appropriate Minister shall have regard to the following matters:

(i) the particulars submitted with the application for consent, including the environmental impact statement and any other material, including maps and plans,

(ii) any additional material submitted in response to a request for further information, if any, pursuant to paragraph (f) of subsection (1),

(iii) any submissions or observations made in relation to the effects on the environment of the proposed development, including those made by bodies referred to in section 19A(3) (as amended by section 13 of the Foreshore and Dumping at Sea (Amendment) Act 2009) or members of the public, and

(iv) the views, if any, furnished by other Member States of the European Communities pursuant to section 19C.

(b) In the event that the appropriate Minister decides to grant consent for the relevant application, he may attach such conditions to the consent as he considers necessary to avoid, reduce and, if possible, offset the major adverse effects (if any) of the proposed development.

(c) In carrying out his consideration and environmental impact assessment, the appropriate Minister may have regard to, and adopt in whole or in part, any reports prepared by his officials or by consultants, experts or other advisors.

(d) When a decision to grant or refuse consent for the relevant application has been taken, the appropriate Minister shall, without prejudice to section 21A, inform the applicant and the public thereof and shall make the following information available to the applicant and the public:

(i) the content of the decision and any conditions attached thereto,

(ii) his evaluation of the project's direct and indirect effects on the factors set out in paragraphs (a) to (c) of the definition of 'environmental impact assessment' and the interaction between those factors,

(iii) having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based and the main reasons and considerations for the attachment of any conditions,

(iv) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects,

(v) the reports referred to in paragraph (c),

(vi) information for the public on the procedures available to review the substantive and procedural legality of the decision.”,

(ii) by substituting for paragraph (a) of subsection (2A) the following paragraph:

“(a) be of a class referred to in subsection (1)(b)(ii), and”,

(iii) by substituting for subsection (2B) the following subsection:

“(2B) The appropriate Minister shall, where he is deciding pursuant to this section whether a proposed development would or would not be likely to have significant effects on the environment, have regard to the criteria specified in Annex III to the Council Directive.”, and

(iv) by deleting subsection (3),

(d) in section 19B (inserted by Regulation 13(d) of the Regulations of 1989)—

(i) by deleting subsections (1) and (2), and

(ii) by substituting for subsections (3) and (4) the following subsections:

“(3) The appropriate Minister shall, where he considers that further information furnished in accordance with a requirement under section 13A(1)(f) contains significant additional data in relation to the effects on the environment of the proposal, require the applicant to—

(a) publish in one or more newspapers circulating in the district in which is situated the foreshore to which the relevant application relates a notice stating that significant further information in relation to the said effects has been furnished to the appropriate Minister, that the further information will be available, for inspection free of charge or for purchase at a fee not exceeding the reasonable cost of making a copy of same, at a specified place and at specified times during a specified period, and that submissions or observations in relation to the further information may be made in writing to the appropriate Minister before the expiry of the said period, and

(b) send notice of the furnishing to the appropriate Minister of significant further information, and a copy of the further information, to a body specified in section 19A(3), and to indicate to those bodies that submissions or observations in relation to the further information may be made in writing to the appropriate Minister before a specified date.

(4) The appropriate Minister shall make available, in a manner determined by that Minister from time to time, any additional material including objections or representations made under section 19A, upon which he determines a relevant application.”, and

(e) in section 21A (substituted by section 15 of the Act of 2009), by substituting for paragraph (b) the following paragraph:

“(b) ensure that arrangements to comply with paragraph (c) are available for inspection or for purchase by members of the public on the terms specified in the notice published in accordance with paragraph (a).”.

GIVEN under my Official Seal,

31 October 2012.

PHIL HOGAN,

Minister for the Environment, Community and Local Government.

1 OJ No. L 26, 28.1.2012 p.1.