



STATUTORY INSTRUMENTS.

S.I. No. 240 of 2018



AQUACULTURE (LICENCE APPLICATION) (AMENDMENT)
REGULATIONS 2018

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I, MICHAEL CREED, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by sections 10, 19, 68 and 70 of the Fisheries (Amendment) Act, 1997 (No. 23 of 1997) and the Sea-Fisheries, Fore-shore and Dumping at Sea (Transfer of Departmental Administration and Ministerial Functions) Order 2007 (S.I. No. 707 of 2007) (as adapted by the Agriculture, Fisheries and Food (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 455 of 2011)), for the purpose of, inter alia, giving effect to Directive No 2014/52/EU of the European Parliament and of the Council of 16 April 2014¹ hereby make the following regulations:

Citation and Construction

1. (1) These Regulations may be cited as the Aquaculture (Licence Application) (Amendment) Regulations 2018.

(2) The Principal Regulations and these Regulations may be cited together as the Aquaculture (Licence Application) Regulations 1998 and 2018, and shall be construed together as one.

Interpretation

2. In these Regulations “Principal Regulations” means the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of 1998).

Amendment of the Principal Regulations

3. The Principal Regulations are amended by—

(a) in Regulation 3(1)—

(i) inserting the following definition after the definition of “appeal”—

“‘applicant’ means a person who applies to the Minister for an aquaculture licence or a trial licence or for a review or renewal of an aquaculture licence;”,

(ii) inserting the following definition after the definition of “application”—

“‘Directive’ means Directive No 2011/92/EU of the European Parliament and of the Council of 13 December 2011² as amended by Directive No 2014/52/EU of the European Parliament and of the Council of 16 April 2014;”,

¹O.J. L 124, 25.4.2014, p.1.

²O.J. L 26, 28.1.2012, p.1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 13th July, 2018.*

- (iii) substituting for the definition “environmental impact assessment” the following—

“‘environmental impact assessment’ has the same meaning as in the Directive;

‘Environmental Impact Assessment Report’ means an environmental impact statement that complies with the requirements set out in Regulation 5B;

‘environmental information’ means the information specified in the Schedule;

‘extensive fish farming’ means aquaculture activities where there is no external supply of feed and the culture depends entirely on natural processes for production and supply of feed;

‘intensive fish farming’ means aquaculture activities where the biomass produced is beyond that which could be naturally supported without the provision of additional feed;”

- (iv) deleting the definition of “environmental impact statement”,

- (v) substituting for the definition “the Planning Acts” the following—

“‘the Planning Acts’ means the Planning and Development Acts 2000 to 2017;”

- (b) substituting the following for Regulation 3(2)—

“(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.”

- (c) substituting for Regulation 4(3)(e) the following—

“(e) in the case of intensive fish farming applications—

- (i) either information on the characteristics of the project and the likely significant impacts on the environment including the information set out in Annex IIA of the Directive or
- (ii) an Environmental Impact Assessment Report, in a format determined by the Minister, if one is required under Regulation 5, and shall include details of registration of an application requiring environmental impact assessment with the Minister for Housing, Planning and Local Government.”

- (d) deleting Regulation 4(4),

(e) substituting the following for Regulation 4A—

“4A. (1) The Minister, as part of his or her consideration of an application for intensive fish farming (other than those specified in Regulation 5(1)(a), (b), (c) or (d), shall make a determination on the basis of the information provided by the applicant under Regulation 4(3)(e)(i), the criteria listed in Annex III of the Directive and where relevant the available results of other environmental assessments carried out pursuant to European Union Legislation other than enactments implementing the requirements of the directive.

(2) Subject to paragraph (3) the Minister shall make his or her determination on the requirement of an environmental assessment as soon as possible and within a period of time not exceeding 90 days from the date on which the applicant has submitted all the information required pursuant to Regulation 4.

(3) Where the Minister cannot make the determination on the requirement of an environmental assessment within 90 days, the Minister may extend that period to make that determination; in that event, the Minister shall inform the applicant in writing of the reasons justifying the extension and of the date when the determination is expected.

(4) The determination on the requirement of an environmental assessment and the main reasons for that determination by reference to the relevant criteria listed in Annex III of the Directive shall be made available to the public by placing it on a website maintained by or on behalf of the Minister.”,

(f) substituting the following for Regulation 5—

“Requirement for certain applications to be accompanied by an Environmental Impact Assessment Report

5. (1) Subject to paragraph (3), an application under section 10 of the Act for an aquaculture licence in respect of—

- (a) a marine based intensive fish farm (other than for trial or research purposes where the output would not exceed 50 tonnes);
- (b) all fish breeding installations consisting of cage rearing in lakes;
- (c) all fish breeding installations upstream of drinking water intakes;
- (d) other fresh-water fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting water;

- (e) where the Minister, as part of his or her consideration of an application for intensive fish farming, makes a determination under Regulation 4A that such action is necessary

shall require an environmental impact assessment and be accompanied by an Environmental Impact Assessment Report.

(2) In the case of an application other than one referred to in paragraph (1), the Minister may require the applicant to submit an environmental impact statement if the Minister considers that the proposed aquaculture is likely to have significant effects on the environment.

(3) An environmental impact assessment shall not be required in respect of an application which is solely for movement of navigation buoys, internal reconfiguration of the site, upgrading equipment used on the site, technology changes or improvements, or to comply with public safety requirements or a combination of these, and is unlikely to have significant effects on the environment. In such a case the Minister shall consider if another form of assessment would be appropriate and take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.

(4) For the purpose of this regulation “marine based” means an installation that is located below the line of the high water of ordinary or medium tides.”,

- (g) by inserting the following after Regulation 5—

“Environmental Impact Assessment — requirements

5A. (1) The environmental impact assessment shall identify, describe and assess in an appropriate manner the direct and indirect significant effects of a project on the following factors:

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in subparagraphs (a) to (d).

(2) The effects to be identified, described and assessed under paragraph (1) shall include the expected effects deriving from the vulnerability of the proposed application to risks, so far as relevant to the application, of major accidents or disasters.

(3) Where there is also a requirement to carry out an assessment of the effects on the environment arising under European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) the Minister or relevant authority as the case may be must ensure, where appropriate, that this assessment and the environmental impact assessment are coordinated.

Environmental Impact Assessment Report

5B. (1) Where an environmental impact assessment is required, the applicant shall prepare and submit an Environmental Impact Assessment Report including at least:

- (a) a description of the application comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the application on the environment;
- (c) a description of the features of the application and/or measures 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 applicant, which are relevant to the application and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the application on the environment;
- (e) a non-technical summary of the information referred to in points (a) to (d);
- (f) any additional information specified in Annex IV of the Directive relevant to the specific characteristics of a particular application or type of application and to the environmental features likely to be affected.

(2) The Environmental Impact Assessment Report shall:

- (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the report;
- (b) contain a statement by or on behalf of the applicant setting out how the requirements of sub-paragraph (a) have been complied with;
- (c) where an opinion is issued pursuant to paragraph (4), the Environmental Impact Assessment Report 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.

(3) The applicant shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the Environmental Impact Assessment Report.

(4) Where requested by the applicant, the Minister, taking into account the information provided by the applicant in particular on the specific characteristics of the application, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the applicant in the Environmental Impact Assessment Report.

(5) The Minister shall consult the authorities referred to in Regulation 10(1) before the Minister gives an opinion under paragraph (4).”,

(h) in Regulation 6 by substituting for paragraph (3) the following:

“(3) Where an application fails to comply with the requirements of Regulation 4, the Minister, having regard to the extent of the failure, may, by written notice—

(a) require the applicant to furnish such further particulars, plans, charts, drawings, maps or Environmental Impact Assessment Report as may be necessary to comply with those requirements, or

(b) inform the applicant that the application is invalid and will not be considered by the Minister.”,

(i) in Regulation 6 by substituting for paragraph (4) the following:

“(4) Where the applicant is informed that the application is invalid, all particulars, plans, charts, drawings, maps or Environmental Impact Assessment Report submitted by the applicant shall be returned to the applicant.”,

(j) in Regulation 7 by substituting for paragraph (b) the following:

“(b) produce any evidence which may be reasonably required to verify any particulars or information given by the applicant in relation to the application,

(c) In the case of an extensive fish farming application, shall provide further environmental information as specified in the Schedule if the Minister considers that the proposed

aquaculture is likely to have significant effects on the environment, or

(d) if determined by the Minister that the content of the Environmental Impact Assessment Report (and any other material including maps or plans) submitted as part of the application do not adequately identify, describe and assess the direct and indirect effects of the proposed development on the environment, furnish in the manner set out by the Minister further information to remedy these inadequacies.”,

(k) in Regulation 8 substituting for paragraph (3) the following—

“(3) Where an Environmental Impact Assessment Report has been submitted, the applicant shall make copies of the report available—

(a) for inspection by an interested person at reasonable times at an address specified in the notice of application,

(b) for purchase by interested persons from the applicant for a fee not exceeding the reasonable costs of making a copy, and

(c) in a format as determined by the Minister for placing on a website maintained by or on behalf of the Minister.”,

(l) in Regulation 9 by substituting for paragraph (1) the following—

“(1) A person may make written submission or observation in accordance with paragraph (2) to the Minister concerning the proposed aquaculture by sending the submission or observation to the Minister or leaving the submission or observation with an officer of the Minister during office hours at the address specified in the notice for that purpose—

(a) within 8 weeks of publication of a notice of an application requiring an Environmental Impact Assessment Report, or

(b) within 30 days in all other cases.”,

(m) in Regulation 10 by substituting “Environmental Impact Assessment Report” for “environmental impact statement” in each place it occurs,

(n) in Regulation 10(1) inserting after subparagraph (k)—

“(l) Irish Water;

(m) Sea Fisheries Protection Authority;

(n) Marine Survey Office of the Minister of Transport, Tourism and Sport.”,

- (o) in Regulation 11 by substituting “Environmental Impact Assessment Report” for “environmental impact statement” in each place it occurs,
- (p) in Regulation 12 by—
- (i) substituting “Environmental Impact Assessment Report” for “environmental impact statement” in each place it occurs,
 - (ii) substituting the following for subparagraph (a)—

“(a) that report,”
 - (iii) substituting the following for paragraph (2):

“(2) Where an Environmental Impact Assessment Report has been submitted and further information has been provided by the applicant, that information shall be furnished in the manner set out by the Minister and may be placed on a website maintained by or on behalf of the Minister.”
 - (iv) substituting, in paragraph (3) and (4), the following for “Where further information is furnished under paragraph (2)”—

“Where further information is furnished under Regulation 7(d),”
 - (v) inserting the following after paragraph (4)—

“(5) In carrying out his or her consideration and environmental impact assessment, the Minister, in addition to the matters prescribed in Regulations 12 to 16, is obliged to have regard, inter alia, to the following matters:

 - (a) any additional material submitted in response to a request for further information, if any, pursuant to Regulation 7,
 - (b) any submissions or observations validly made in relation to the effects on the environment of the proposed development including those made by bodies specified in Regulation 10(1) or members of the public,
 - (c) the particulars submitted with the application including the Environmental Impact Assessment Report and any other material including plans, charts, maps or drawings,
 - (d) the views, if any, furnished by other Member States of the European Communities pursuant to Regulation 13.”

- (q) in Regulation 13 by substituting “Environmental Impact Assessment Report” for “environmental impact statement”,
- (r) substituting the following for Regulation 18—

“Minister’s Decision when applications are accompanied by Environmental Impact Assessment Reports

18. (1) Having considered an application accompanied by an Environmental Impact Assessment Report under Regulation 12, the Minister shall—

- (a) reach a reasoned conclusion on the significant effects of the proposed aquaculture on the environment, taking into account the examination referred to in Regulation 12 and, where appropriate, his or her own supplementary examination,
- (b) integrate that conclusion into the decision as to whether a licence is to be granted, and
- (c) if a licence is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1) should be up to date at the time that the decision as to whether a licence is to be granted is taken, but that conclusion shall be taken to be up to date if in the opinion of the Minister it addresses the significant effects that are likely to arise as a result of the carrying out of the aquaculture described in the application.

(3) When considering whether to impose a monitoring measure under paragraph (1)(c), the Minister shall—

- (a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action,
- (b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed aquaculture and the significance of its effects on the environment, and
- (c) consider, in order to avoid duplication of monitoring, whether monitoring arrangements required under European Union legislation (other than enactments implementing the requirements of the Directive) or applicable domestic legislation are more appropriate than imposing a monitoring measure.

(4) In carrying out his or her consideration and environmental impact assessment, the Minister may have regard to, and adopt in

whole or in part, any reports prepared by his or her officials or by consultants, experts or other advisors.

Advising the applicant and the public of the Minister's decision

18A. When a decision to grant or refuse a licence has been taken, the Minister, in addition to the matters prescribed in Regulations 18 to 21, shall inform the applicant and the public thereof and shall make the following information available to the applicant and the public:

- (a) the content of the decision and any conditions attached thereto,
- (b) the Minister's evaluation of the project's direct and indirect effects on the factors set out in paragraphs (a) to (e) of Article 3(1) of the Directive, if the application is accompanied by an Environmental Impact Assessment Report,
- (c) having examined any submission or observation made to the Minister—
 - (i) the main reasons and considerations on which the decision is based, and
 - (ii) the main reasons and considerations for the attachment of any conditions.

18B. For the purposes of Section 12(3) of the Act, the notice advising the applicant of the Minister's decision on an application shall specify the following:

- (a) the reference number relating to the application;
- (b) the aquaculture to which the decision relates;
- (c) the nature of the decision and the main reasons and considerations on which the decision is based;
- (d) the date of the decision;
- (e) in the case of a decision to grant a licence, the conditions attached to the licence;
- (f) in the case of a decision to grant a licence, the duration of the validity of the licence;
- (g) in the case of a decision to grant a licence, that the licence will be issued as soon as practicable after the end of the appeal period if no appeal is lodged before the end of that period;

(h) that any person aggrieved by the decision may appeal to the Board within the period of one month beginning on the date of the publication of the decision in the newspaper.”,

(s) in Regulation 19, substituting for paragraph (1) (b) the following—

“(b) on a website maintained by or on behalf of the Minister and shall include the matters referred to in paragraphs (a), (b), (c), (d), (e), (f) and (h) of Regulation 18B.”,

(t) in Regulation 20—

(i) by substituting “Environmental Impact Assessment Report” for “environmental impact statement” in each place it occurs,

(ii) by substituting “30 days” for “2 weeks” in each place that it occurs, and

(iii) inserting the following paragraph after paragraph (2)—

“(3) Notices under paragraphs (1) and (2) shall contain the location on a website maintained by or on behalf of the Minister where the matters referred to in paragraphs (a), (b), (c), (d), (e), (f) and (h) of Regulation 18B are available.”, and

(u) in Regulation 21 substituting for paragraph (3) the following:

“(3) Within 30 days after making a decision referred to in paragraph (2), the Minister shall publish a notice of the decision in—

(a) a newspaper circulating in the vicinity of the location of the aquaculture,

(b) on a website maintained by or on behalf of the Minister and shall include the matters referred to in paragraphs (a), (b), (c), (d), (e), (f) and (h) of Regulation 18B.”, and

(v) inserting the following after Regulation 22—

“23. (1) Where persons have a duty under these regulations they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where persons are bringing forward proposals for aquaculture development and that person will also be responsible for determining its own proposal the relevant person must make relevant administrative arrangements to ensure there is a functional separation when performing a duty under these regulations between the persons bringing forward a proposal for

aquaculture development and the persons responsible for determining that proposal.

Schedule

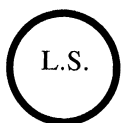
Regulation 7(c)

ENVIRONMENTAL INFORMATION

- (a) a description of the application comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the application on the environment;
- (c) a description of the features of the application and/or measures 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 applicant, which are relevant to the application and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the application on the environment;
- (e) a non-technical summary of the information referred to in points (a) to (d).”.

Transitional Arrangements

4. The Principal Regulations will continue to apply to applications received on or before 16 May 2017 without the amendments contained in these Regulations.



GIVEN under my Official Seal,
4 July 2018.

MICHAEL CREED,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This does not form part of the instrument and does not purport to be a legal interpretation.)

These Regulations amend the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of 1998) to give further effect in Irish law to Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (as amended by Council Directive 2014/52/EU) on the assessment of the effects of certain public and private projects on the environment insofar as it applies to certain aquaculture licence applications and other miscellaneous amendments.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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