

S.I. No. 538/2001 — European Communities (Environmental Impact Assessment) (Amendment) Regulations, 2001.

STATUTORY INSTRUMENTS.

S.I. No. 538 of 2001.

EUROPEAN COMMUNITIES (ENVIRONMENTAL IMPACT ASSESSMENT)
(AMENDMENT) REGULATIONS, 2001.

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(AMENDMENT) REGULATIONS, 2001.

The Minister for the Environment and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to the Council Directive of 27 June 1985 (No. 85/337/EEC, O.J. No. L175/40, 5 July 1985), as amended by Council Directive of 3 March 1997 (No. 97/11/EC, O.J. No. L73/5, 14 March 1997), hereby makes the following Regulations :-

PART I

Preliminary and General

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| Citation. | <ol style="list-style-type: none">1. (1) These Regulations may be cited as the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 2001. (2) These Regulations and the European Communities (Environmental Impact Assessment) Regulations, 1989 to 2000 shall be construed as one and may be collectively cited as the European Communities (Environmental Impact Assessment) Regulations, 1989 to 2001. |
| | <ol style="list-style-type: none">2. (1) These Regulations shall come into operation on 10 December 2001. |

Commencement.

- (2) Notwithstanding sub-article (1), where an application for consent for development to which these Regulations refer is made before the date of coming into operation of these Regulations, the provisions of the appropriate enactment, before they were amended by these Regulations, shall continue to apply to the said application.
- (3) Where these Regulations provide for the amendment of an enactment, such enactment shall, notwithstanding any provision of the enactment as to commencement, have effect on and from the coming into operation of these Regulations.
- (4) In this article, “application for consent for development” means :-
 - (a) a relevant application under the Wildlife (Amendment) Act, 2000 (No. 38 of 2000) ;
 - (b) a relevant application under the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997);
 - (c) an application for planning permission under the Local Government (Planning and Development) Acts, 1963 to 1999.

Interpretation.

3. (1) In these Regulations:-

“the European Communities (Environmental Impact Assessment) Regulations, 1989 to 2000” has the meaning assigned to it in the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 2000 (S.I. No. 450 of 2000);

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

“the 1998 Regulations” means the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1998 (S.I. No. 351 of 1998);

“the 1999 Regulations” means the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No. 93 of 1999).

- (2) In these Regulations, save where the context otherwise requires :-
 - (a) any reference to a Part, Chapter or article which is not otherwise identified is a reference to a Part, Chapter or article of these Regulations,
 - (b) a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment, including these Regulations.

PART 2

Amendment of the European Communities (Environmental Impact Assessment) Regulations, 1989 to 2000.

- Amendment of Part II of First Schedule to 1989 Regulations.
4. Part II of the First Schedule to the 1989 Regulations (as substituted by the 1999 Regulations) is hereby amended -
- (a) by the substitution for sub-paragraph (d) (i) of paragraph 1 of the following sub-paragraph: -
- “(d)(i) Initial afforestation which would involve an area of 50 hectares or more.”,
- and
- (b) by the substitution for sub-paragraph (a) of paragraph 2 of the following sub-paragraph: -
- “(a) Peat extraction not included in Part I of this Schedule which would involve a new or extended area of 30 hectares or more.”.

PART 3

Amendment of Wildlife (Amendment) Act, 2000.

- Amendment of Wildlife (Amendment) Act, 2000.
5. The Wildlife (Amendment) Act, 2000 is hereby amended by the insertion after section 19 of the following sections:—
- “Environmental impact assessment of certain proposals relating to peat extraction.
- 19A.—(1) Where notice is given to the Minister under section 19 (1) (a) (i) or an application is made to the Minister under section 19 (1) (a) (ii) for permission to carry out works and the following circumstances apply:
- (a) the Minister has not refused consent, and
- (b) the works would be of a class of development for the time being specified under paragraph 2(a) of Part II of the First Schedule to the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989

) (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No. 93 of 1999)), or under any provision amending or replacing that provision, but for not exceeding the area for the time being specified in relation to that class, and

- (c) the Minister considers, having regard to the criteria specified for the purposes of article 27 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (as inserted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), or under any provision amending or replacing the said article 27, that the said works would be likely to have significant effects on the environment,

the Minister shall inform the owner, occupier or user, as the case may be, in writing that they are required to submit an environmental impact statement in respect of such works.

- (2) An environmental impact statement shall contain the information for the time being specified under article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1998 (S.I. No. 351 of 1998)), or under any provision amending or replacing the said article 25.
- (3) (a) If a person, before submitting an environmental impact statement in accordance with a requirement of this section, so requests, the Minister shall, after consulting the person who made the request, the planning authority in whose functional area the land is situated, and such Minister of the Government or other body or bodies as the Minister considers appropriate in the circumstances, give a written opinion on the information to be contained in such statement.
- (b) A request under paragraph (a) for a written opinion on the information to be contained in an environmental impact statement shall state -
 - (i) the name and address, and telephone number and e-mail address, if any, of the person making the request and of the person, if any, acting on behalf of the person making the request,
 - (ii) the location, townland or postal address of the land to which the request relates,

and

 - (iii) a brief description of the nature of the proposed works and of their possible effects on the environment.

- (c) Where the Minister considers that he or she has insufficient information to enable him or her to give a written opinion pursuant to a request, he or she shall, by notice in writing, require the person making the request to provide, within a specified period, such further information as he or she considers necessary.
 - (d) The Minister shall, in dealing with a request for a written opinion, have regard to -
 - (i) the information required to be contained in an environmental impact statement in accordance with subsection (2),
 - (ii) any information provided under paragraph (b) or any further information provided under paragraph (c), and
 - (iii) any consultations under paragraph (a).
 - (e) A written opinion shall indicate the extent to which the information specified in paragraph 2 of the Second Schedule to the European Communities (Environmental Impact Assessment) Regulations, 1989 (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), or in any provision amending or replacing the said paragraph, should be contained in the environmental impact statement.
 - (f) The giving of a written opinion in accordance with paragraph (a) shall not prejudice the exercise by the Minister of his or her powers under this Act to require the person who made the request to furnish further information in relation to the effects on the environment of the proposed works.
- (4)
 - (a) At the request of a person intending to carry out works, the Minister may, where he or she is satisfied that exceptional circumstances so warrant and after consultation with the Minister for the Environment and Local Government, grant in respect of proposed works an exemption from a requirement under this section to prepare an environmental impact statement, except that no exemption may be granted in respect of proposed works if another Member State of the European Communities, having been informed about the proposed works and their likely effects on the environment in that State, has indicated that it intends to furnish views on those effects.
 - (b) The Minister shall, in granting an exemption under paragraph (a), consider whether—
 - (i) the effects, if any, of the proposed works on the environment should be assessed in some other manner, and

- (ii) the information arising from the assessment should be made available to the public,

and the Minister may apply such requirements regarding these matters as he or she considers necessary or appropriate.

- (c) Notice of any exemption granted under paragraph (a), of the reasons for granting the exemption and of any requirements applied under paragraph (b) shall, as soon as may be,—
 - (i) be published in *Iris Oifigiúil* and in at least one newspaper circulating in the district in which is situated the land to which the proposed works relate, and
 - (ii) be given, together with a copy of the information, if any, made available to the public in accordance with paragraph (b), to the Commission of the European Communities.

Procedure in regard to submission of EIS.

19B.—(1) Where a person is required to submit an environmental impact statement in accordance with a requirement of section 19A, the person shall, not more than 2 weeks before submitting the environmental impact statement, publish notice of his or her intention to submit the environmental impact statement in at least one newspaper circulating in the district in which is situated the land to which the proposed works relate.

(2) A notice under subsection (1) shall state -

- (a) the name of the person required to submit the environmental impact statement,
- (b) the location, townland or postal address of the land to which the proposed works relate,
- (c) the nature and extent of the proposed works,
- (d) that, following a requirement of the Minister, an environmental impact statement will be submitted to the Minister in respect of the proposed works,
- (e) that the environmental impact statement will be available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and
- (f) that submissions or observations in relation to the environmental impact statement may be made in writing to the Minister within 5 weeks of the date of receipt by the Minister

of the environmental impact statement.

(3) An environmental impact statement submitted pursuant to a requirement of section 19A shall be accompanied by a copy of the relevant page of the newspaper in which a notice under subsection (1) was published.

(4) Where it appears to the Minister that a notice published under subsection (1) -

(a) does not comply with any of the requirements of subsections (1) or (2), or

(b) because of its content or for any other reason, is misleading or inadequate for the information of the public,

the Minister shall require the person concerned to give such further notice in such manner and in such terms as the Minister may specify and to submit such evidence as he or she may specify in relation to compliance with such requirement.

(5) An environmental impact statement submitted pursuant to a requirement of section 19A shall be made available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify.

(6) Where the Minister receives an environmental impact statement in accordance with a requirement of section 19A he or she shall, as soon as may be following receipt of the environmental impact statement, send a copy of the environmental impact statement to the planning authority in whose functional area the land is situated, and such Minister of the Government or other body or bodies as the Minister considers appropriate in the circumstances, and shall indicate that a submission or observation in relation to the effects on the environment of the proposed works may be made in writing to the Minister within 5 weeks of the date of receipt by the Minister of the environmental impact statement.

(7) The Minister shall consider whether an environmental impact statement submitted in accordance with a requirement of section 19A complies with subsection (2) of that section or, where the Minister has given a written opinion under subsection (3) of that section, he or she shall consider whether the environmental impact statement complies with the said opinion.

(8) Where the Minister decides that an environmental impact statement does not comply with subsection (2) of section 19A or any relevant written opinion given by the Minister under subsection (3) of that section, as appropriate, he or she shall require the person who submitted the environmental impact statement to submit such further information as may be necessary

to comply with the relevant subsection.

(9) The Minister shall, where he or she considers that further information furnished in accordance with a requirement under subsection (8) contains significant additional data in relation to the effects on the environment of the proposed works, as soon as may be following receipt of the further information, -

(a) send notice and a copy of the further information to any person or body consulted under subsection (6) indicating that a submission or observation in relation to the further information may be made in writing to the Minister within a specified period, and

(b) notify any person who made a submission or observation in relation to the proposed works -

(i) that significant further information in relation to the proposed works has been furnished to the Minister, and is available for inspection free of charge or purchase at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and

(ii) that a submission or observation in relation to the further information received may be made in writing to the Minister within a specified period,

and

(c) require the person intending to carry out the proposed works to publish a notice in at least one newspaper circulating in the district in which is situated the land to which the proposed works relate, stating -

(i) the name of the person intending to carry out the proposed works,

(ii) the location, townland or postal address of the land to which the proposed works relate,

(iii) that significant further information in relation to the proposed works has been furnished to the Minister, and is available for inspection free of charge or purchase at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and

(iv) that a submission or observation in relation to the further information may be made in writing to the Minister within a period specified by the Minister.

- (10) Where it appears to the Minister that a notice published in accordance with subsection (9)(c) does not adequately inform the public, the Minister shall require the person who published the notice to give such further notice in such a manner and in such terms as the Minister may specify and to submit such evidence as he or she may specify in relation to compliance with such requirement.

Minister to have regard to certain matters.

19C.— Where an environmental impact statement has been submitted in accordance with a requirement of section 19A, the Minister shall, when making his or her decision under section 19, have regard to the said statement, to any further information furnished in accordance with subsection (8) of section 19B, to any submissions or observations, made in accordance with section 19B, in relation to the effects on the environment of the proposed works, and to the views, if any, furnished by other Member States of the European Communities pursuant to section 19D.

Consultation with other Member States of European Communities.

19D.—(1) Where the Minister considers that proposed works, which are the subject of an environmental impact statement in accordance with a requirement of section 19A, would be likely to have significant effects on the environment in another Member State of the European Communities, or where another Member State of the European Communities considers that the said works would be likely to have such effects and so requests, he or she shall, as soon as possible, send to that other Member State:-

- (a) a description of the proposed works and any available information on their possible effects on the environment in that Member State, and
- (b) relevant information about the procedure for making a decision in respect of the proposed works,

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

(2) Where a Member State of the European Communities which has received information pursuant to subsection (1) indicates that it wishes to furnish views on the likely effects on the environment of the proposed works, the Minister shall send to that Member State-

- (a) if he or she has not already done so, a copy of the environmental impact statement, and
- (b) any further relevant information about the procedure for making a decision in respect of the proposed works.

- (3) The Minister shall enter into consultations with a Member State of the European Communities, which has, in accordance with subsection (2), indicated that it wishes to furnish views on the likely effects on the environment of the proposed works, regarding the potential effects of the proposed works on the environment in that Member State and the measures envisaged to reduce or eliminate such effects.
- (4) The Minister shall notify a Member State of the European Communities with whom consultations took place under subsection (3) of his or her decision in respect of the proposed works.

Public notice of Minister's decision.

19E. — The Minister shall, as soon as may be following the making of a decision in relation to proposed works in respect of which an environmental impact statement was submitted in accordance with a requirement of section 19A, -

- (a) publish notice of the decision in at least one newspaper circulating in the district in which is situated the land to which the proposed works relate, and
- (b) make arrangements to make the said statement and information on the decision available for inspection by members of the public during a period to be specified by him or her.”.

PART 4

Amendment of European Communities (Natural Habitats) Regulations, 1997.

Amendment of European Communities (Natural Habitats) Regulations, 1997.

6. The European Communities (Natural Habitats) Regulations, 1997, as amended by the European Communities (Natural Habitats) (Amendment) Regulations, 1998 (S.I. No. 233 of 1998), are hereby amended by -

- (1) in Regulation 16(1), the insertion of the wording “and the provisions of Regulation 16A” after the wording “under Regulation 15(1)”, and
- (2) the insertion after Regulation 16 of the following Regulations:—

“Environmental impact assessment of certain proposals relating to peat extraction.

16A.—(1) Having regard to the assessment under Regulation 15(1) and where the following circumstances apply:

- (a) the Minister has not refused consent under Regulation 16, and
- (b) the operation or activity would be of a class of development for the time being specified under paragraph 2(a) of Part II of the First Schedule to the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No. 93 of 1999)), or under any provision amending or replacing that provision, but for not exceeding the area for the time being specified in relation to that class, and
- (c) the Minister considers, having regard to the criteria specified for the purposes of article 27 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (as inserted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), or under any provision amending or replacing the said article 27, that the likely effects on the environment of the said operation or activity are such as would warrant the carrying out of an environmental impact assessment,

the Minister shall, by notice in writing, require the applicant to submit an environmental impact statement in respect of such operation or activity.

- (2) An environmental impact statement shall contain the information for the time being specified under article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1998 (S.I. No. 351 of 1998)), or under any provision amending or replacing the said article 25.
- (3) (a) If a person, before submitting an environmental impact statement in accordance with the requirement of this Regulation, so requests, the Minister shall, after consulting the person who made the request, the planning authority in whose functional area the land is situated, and such Minister of the Government or other body or bodies as the Minister considers appropriate in the circumstances, give a written opinion on the information to be contained in such statement.
- (b) A request under sub-paragraph (a) for a written opinion on the information to be contained in an environmental impact statement shall state -
 - (i) the name and address, and telephone number and e-mail address, if any, of the person making the request and of the person, if any, acting on behalf of the person making the request,

- (ii) the location, townland or postal address of the land to which the request relates, and
 - (iii) a brief description of the nature of the proposed operation or activity and of its possible effects on the environment.
 - (c) Where the Minister considers that he or she has insufficient information to enable him or her to give a written opinion pursuant to a request, he or she shall, by notice in writing, require the person making the request to provide, within a specified period, such further information as he or she considers necessary.
 - (d) The Minister shall, in dealing with a request for a written opinion, have regard to -
 - (i) the information required to be contained in an environmental impact statement in accordance with paragraph (2),
 - (ii) any information provided under sub-paragraph (b) or any further information provided under sub-paragraph (c), and
 - (iii) any consultations under sub-paragraph (a).
 - (e) A written opinion shall indicate the extent to which the information specified in paragraph 2 of the Second Schedule to the European Communities (Environmental Impact Assessment) Regulations, 1989 (as substituted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), or in any provision amending or replacing the said paragraph, should be contained in the environmental impact statement.
 - (f) The giving of a written opinion in accordance with sub-paragraph (a) shall not prejudice the exercise by the Minister of his or her powers under these Regulations to require the person who made the request to furnish further information in relation to the effects on the environment of the proposed operation or activity.
- (4) (a) At the request of a person intending to carry out an operation or activity, the Minister may, where he or she is satisfied that exceptional circumstances so warrant and after consultation with the Minister for the Environment and Local Government, grant in respect of the proposed operation or activity an exemption from a requirement under this Regulation to prepare an environmental impact statement, except that no exemption may be granted in respect of a proposed operation or activity if another Member State of the European Communities, having been informed about the proposed operation or activity and its likely effects on the environment in that State, has indicated that it intends to furnish views on

those effects.

- (b) The Minister shall, in granting an exemption under sub-paragraph (a), consider whether—
 - (i) the effects, if any, of the proposed operation or activity on the environment should be assessed in some other manner, and
 - (ii) the information arising from the assessment should be made available to the public,

and the Minister may apply such requirements regarding these matters as he or she considers necessary or appropriate.
- (c) Notice of any exemption granted under sub-paragraph (a), of the reasons for granting the exemption and of any requirements applied under sub-paragraph (b) shall, as soon as may be,—
 - (i) be published in *Iris Oifigiúil* and in at least one newspaper circulating in the district in which is situated the land to which the proposed operation or activity relates, and
 - (ii) be given, together with a copy of the information, if any, made available to the public in accordance with sub-paragraph (b), to the Commission of the European Communities.

Procedure in regard to submission of EIS.

16B.—(1) Where a person is required to submit an environmental impact statement in accordance with a requirement of Regulation 16A, the person shall, not more than 2 weeks before submitting the environmental impact statement, publish notice of the intention to submit the environmental impact statement in at least one newspaper circulating in the district in which is situated the land to which the proposed operation or activity relates.

(2) A notice under paragraph (1) shall state -

- (a) the name of the person required to submit the environmental impact statement,
- (b) the location, townland or postal address of the land to which the proposed operation or activity relates,
- (c) the nature and extent of the proposed operation or activity,
- (d) that, following a requirement of the Minister, an environmental impact statement will be submitted to the

Minister in respect of the proposed operation or activity,

- (e) that the environmental impact statement will be available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and
 - (f) that a submission or observation in relation to the environmental impact statement may be made in writing to the Minister within 5 weeks of the date of receipt by the Minister of the environmental impact statement.
- (3) An environmental impact statement submitted pursuant to a requirement of Regulation 16A shall be accompanied by a copy of the relevant page of the newspaper in which a notice under paragraph (1) was published.
- (4) Where it appears to the Minister that a notice published under paragraph (1) -
- (a) does not comply with any of the requirements of paragraphs (1) or (2), or
 - (b) because of its content or for any other reason, is misleading or inadequate for the information of the public,
- the Minister shall require the person concerned to give such further notice in such manner and in such terms as the Minister may specify and to submit such evidence as he or she may specify in relation to compliance with such requirement.
- (5) An environmental impact statement submitted pursuant to a requirement of Regulation 16A shall be made available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify.
- (6) Where the Minister receives an environmental impact statement in accordance with a requirement of Regulation 16A, he or she shall, as soon as may be following receipt of the environmental impact statement, send a copy of the environmental impact statement to the planning authority in whose functional area the land is situated, and such Minister of the Government or other body or bodies as the Minister considers appropriate in the circumstances, and shall indicate that a submission or observation in relation to the effects on the environment of the proposed operation or activity may be made in writing to the Minister within 5 weeks of the date of receipt by the Minister of the environmental impact statement.
- (7) The Minister shall consider whether an environmental impact

statement submitted in accordance with a requirement of Regulation 16A complies with paragraph (2) of that Regulation or, where the Minister has given a written opinion under paragraph (3) of that Regulation, he or she shall consider whether the environmental impact statement complies with the said opinion.

- (8) Where the Minister decides that an environmental impact statement does not comply with paragraph (2) of Regulation 16A or any relevant written opinion given by the Minister under paragraph (3) of that Regulation, as appropriate, he or she shall require the person who submitted the environmental impact statement to submit such further information as may be necessary to comply with that paragraph.
- (9) The Minister shall, where he or she considers that further information furnished in accordance with a requirement under paragraph (8) contains significant additional data in relation to effects on the environment of the proposed operation or activity, as soon as may be following receipt of the further information, -
 - (a) send notice and a copy of the further information to any person or body consulted under paragraph (6) indicating that a submission or observation in relation to the further information may be made in writing to the Minister within a specified period, and
 - (b) notify any person who made a submission or observation in relation to the proposed operation or activity -
 - (i) that significant further information in relation to the proposed operation or activity has been furnished to the Minister, and is available for inspection free of charge or purchase at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and
 - (ii) that a submission or observation in relation to the further information received may be made in writing to the Minister within a specified period,

and

- (c) require the person intending to carry out the proposed operation or activity to publish a notice in at least one newspaper circulating in the district in which is situated the land to which the proposed operation or activity relates stating -
 - (i) the name of the person intending to carry out the proposed operation or activity,

- (ii) the location, townland or postal address of the land to which the proposed operation or activity relates,
 - (iii) that significant further information in relation to the proposed operation or activity has been furnished to the Minister, and is available for inspection free of charge or purchase at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and
 - (iv) that a submission or observation in relation to the further information may be made in writing to the Minister within a period specified by the Minister.
- (10) Where it appears to the Minister that a notice published in accordance with paragraph (9)(c) does not adequately inform the public, the Minister shall require the person who published the notice to give such further notice in such a manner and in such terms as the Minister may specify and to submit such evidence as he or she may specify in relation to compliance with such requirement.

Minister to have regard to certain matters.

16C.—Where an environmental impact statement has been submitted in accordance with a requirement of or under Regulation 16A, the Minister shall, when making his or her decision under Regulation 16, have regard to the said statement, to any further information furnished in accordance with paragraph (8) of Regulation 16B, to any submissions or observations, made in accordance with Regulation 16B, in relation to the effects on the environment of the proposed operation or activity, and to the views, if any, furnished by other Member States of the European Communities pursuant to Regulation 16D.

Consultation with other Member States of European Communities.

16D.—(1) Where the Minister considers that a proposed operation or activity, which is the subject of an environmental impact statement in accordance with a requirement of Regulation 16A, would be likely to have significant effects on the environment in another Member State of the European Communities, or where another Member State of the European Communities considers that the said operation or activity would be likely to have such effects and so requests, he or she shall, as soon as possible, send to that other Member State—

- (a) a description of the proposed operation or activity and any available information on its possible effects on the environment in that Member State, and
- (b) relevant information about the procedure for making a

decision in respect of the proposed operation or activity,

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

- (2) Where a Member State of the European Communities which has received information pursuant to paragraph (1) indicates that it wishes to furnish views on the likely effects on the environment of the proposed operation or activity, the Minister shall send to that Member State-
 - (a) if he or she has not already done so, a copy of the environmental impact statement, and
 - (b) any further relevant information about the procedure for making a decision in respect of the proposed operation or activity.
- (3) The Minister shall enter into consultations with a Member State of the European Communities, which has, in accordance with paragraph (2), indicated that it wishes to furnish views on the likely effects on the environment of the proposed operation or activity, regarding the potential effects of the proposed operation or activity on the environment in that Member State and the measures envisaged to reduce or eliminate such effects.
- (4) The Minister shall notify a Member State of the European Communities with whom consultations took place under paragraph (3) of his or her decision in respect of the proposed operation or activity.

Public notice of Minister's decision.

16E.—The Minister shall, as soon as may be following the making of a decision in relation to a proposed operation or activity in respect of which an environmental impact statement was submitted in accordance with a requirement of Regulation 16A, -

- (a) publish notice of the decision in at least one newspaper circulating in the district in which is situated the land to which the proposed operation or activity relates, and
- (b) make arrangements to make the said statement and information on the decision available for inspection by members of the public during a period to be specified by him or her.”.

PART 5

Forest Consent System

Chapter 1

General

Interpretation
for this Part.

7. In this Part -

“afforestation” means initial afforestation but does not include the planting of trees within the curtilage of a house;

“application” means an application for approval in respect of afforestation and “applicant” shall be construed accordingly;

“electoral division” is an electoral division within the meaning of section 63 of the Local Government Act, 1994 (No. 8 of 1994);

“EIS” means an environmental impact statement;

“European site” means—

(a) a site—

(i) notified for the purposes of Regulation 4 of the European Communities (Natural Habitats) Regulations, 1997, subject to any amendments made to it by virtue of Regulation 5 of those Regulations, or

(ii) transmitted to the Commission in accordance with Regulation 5(4) of the said Regulations, or

(iii) added by virtue of Regulation 6 of the said Regulations to the list transmitted to the Commission in accordance with Regulation 5(4) of the said Regulations,

but only until the adoption in respect of the site of a decision by the Commission under Article 21 of the Habitats Directive for the purposes of the third paragraph of Article 4(2) of that Directive,

(b) a site adopted by the Commission as a site of Community importance for the purposes of Article 4(2) of the Habitats Directive in accordance with the procedure laid down in Article 21 of that Directive,

(c) a special area of conservation within the meaning of the European Communities (Natural Habitats) Regulations, 1997,

(d) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive;

“Habitats Directive” means Council Directive No. 92/43/EEC of 21 May 1992 (O.J. No. L206, 22 July 1992) on the conservation of natural habitats and of wild fauna and flora;

“sub-threshold afforestation” means afforestation of a class for the time being specified under paragraph 1(d)(i) of Part II of the First Schedule to the 1989 Regulations (as substituted by the 1999 Regulations), or under any provision amending or replacing that provision, but for not exceeding the area for the time being specified in relation to that class;

“the Minister” means the Minister for the Marine and Natural Resources;

“transboundary State” means any State, other than Ireland, which is a Member State of the European Communities or a party to the Transboundary Convention.

Chapter 2

Approval Procedures

Obligation to obtain approval.	8.	<p>(1) Approval shall be required under this Part in respect of afforestation.</p> <p>(2) A person shall not carry out any afforestation in respect of which approval is required by sub-article (1), except under and in accordance with an approval under this Part.</p> <p>(3) An application to undertake afforestation shall be made to the Minister and shall contain such particulars or information as the Minister may from time to time determine.</p>
Application accompanied by EIS.	9.	Any person who makes an application which is required to be accompanied by an EIS in accordance with this Part shall comply with the requirements of Chapter 3 in addition to the requirements of this Chapter.
Notice to prescribed bodies.	10.	<p>(1) Where the Minister receives an application, he or she shall send notice in accordance with sub-article (2) as soon as may be after receipt of the application —</p> <p>(a) where it appears to the Minister, having regard to any relevant protocol drawn up between the Minister and the Environmental Protection Agency, that the proposed afforestation might cause significant acidification of waters - to the Environmental Protection Agency and the appropriate regional fisheries board,</p> <p>(b) where it appears to the Minister that the proposed afforestation might have significant effects in relation to nature conservation - to the Minister for Arts, Heritage, Gaeltacht and the Islands,</p>

- (c) where it appears to the Minister that the proposed afforestation might have a significant effect on an archaeological site or feature - to the Minister for Arts, Heritage, Gaeltacht and the Islands and An Taisce - The National Trust for Ireland, and
- (d) where it appears to the Minister that the afforestation might be situated in an area of special amenity, whether or not an order in respect of that area has been confirmed under section 203 (or deemed to be so confirmed under section 268(1) (c)) of the Planning and Development Act, 2000 (No. 30 of 2000) , - to the appropriate local authority, Bord Fáilte Éireann and An Taisce — The National Trust for Ireland.

- (2) Notice given by the Minister pursuant to sub-article (1) shall include a copy of the application together with a map of the site on which the afforestation is proposed and shall state —
 - (a) the reference number of the application, and
 - (b) that any submission or observation made to the Minister in relation to the application within 4 weeks of the date of the notice will be taken into account by the Minister in making his or her decision on the application.
- (3) Without prejudice to sub-article (1), the Minister may carry out such consultation in relation to any particular application which he or she considers appropriate.
- (4) The Minister shall acknowledge in writing the receipt of any submission or observation referred to in sub-article (2)(b) as soon as may be following receipt of the submission or observation.
- (5) Where a body to whom notice is sent pursuant to sub-article (1) does not make a submission or observation in relation to an application within 4 weeks of the date of the notice, the Minister may determine the application without further notice to that body.

Public
consultation.

- 11. (1) Where the Minister has sent a notice pursuant to article 10(1), he or she shall publish notice of the application in at least one newspaper circulating in the district in which is situated the land to which the proposed afforestation relates.
- (2) Notice under sub-article (1) shall state -
 - (a) the reference number of the application,
 - (b) the location, townland and electoral division of the land to which the application relates,
 - (c) the nature and extent of the proposed afforestation,
 - (d) that the application and map of the site on which the afforestation is proposed will be available for inspection free of charge or purchase,

at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and

(e) that a submission or observation in relation to the application may be made in writing to the Minister within 3 weeks of the date of publication of the notice by the Minister.

(3) The Minister shall acknowledge in writing the receipt of any submission or observation referred to in sub-article (2)(e) as soon as may be following receipt of the submission or observation.

(4) Where a submission or observation is received by the Minister after the period specified in the notice under sub-article (1), the Minister shall return to the person or body concerned the submission or observation received and notify the person or body that their submission or observation cannot be considered by the Minister.

Determination
of application.

12. (1) Where -

(a) an application is made to the Minister in accordance with this Part,
and

(b) all requirements of this Part are complied with,

the Minister may decide to grant approval subject to or without conditions or to refuse approval.

(2) The Minister shall, when considering an application under this Part, have regard to -

(a) in addition to the application itself, any information relating to the application furnished by the applicant in accordance with this Part,

(b) any written submission or observation concerning the proposed afforestation made to the Minister in accordance with this Chapter by a person or body other than the applicant,

(c) the National Forest Standard,

(d) the Code of Best Forest Practice,

(e) any environmental guidelines which the Minister may from time to time issue,

(f) any Standards and Procedures Manual which the Minister may from time to time issue,

(g) where relevant, the policy of the Government, the Minister or any

other Minister of the Government, and

(h) any other relevant provision or requirement of this Part.

Notification of
decision on
application.

13. Notification of a decision by the Minister in respect of an application shall, as soon as may be, be given to the applicant and to any other person or body who made a submission or observation in accordance with articles 10 or 11 and shall specify —
- (a) the reference number of the application,
 - (b) the nature of the decision,
 - (c) the date of the decision,
 - (d) in the case of a decision to grant an approval, any conditions attached thereto, and
 - (e) the main reasons and considerations on which the decision is based, and, where conditions are imposed in relation to any grant of approval, the main reasons for the imposition of any such conditions.

Public
notification.

14. Where any provision of this Part requires notice to be given to any person who has made a submission or observation to the Minister, the Minister may dispense with that requirement where -
- (a) a large number of submissions or observations are made as part of an organised campaign, or
 - (b) it is not possible to readily ascertain the full name and address of any person who made a submission or observation,

provided that the Minister uses some other means of giving notice to the public that the Minister is satisfied can adequately draw the attention of the public to that notice including, in the case of an organised campaign referred to in paragraph (a), giving notice to any person who, in the opinion of the Minister, organised the campaign.

Chapter 3

Environmental Impact Assessment

Requirement for
EIS.

15. Where an application is made in respect of afforestation of a class for the time being specified under paragraph 1(d)(i) of Part II of the First Schedule to the 1989 Regulations (as substituted by the 1999 Regulations), or under any provision amending or replacing that provision, that application shall be accompanied by an EIS.

Content of EIS.

16. An EIS shall contain the information for the time being specified under article 25 of the 1989 Regulations (as substituted by the 1998 Regulations), or under any provision amending or replacing the said article 25.

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| EIS Exemption | <p>17. (1) At the request of an applicant or a person intending to apply for approval for afforestation, the Minister may, where he or she is satisfied that exceptional circumstances so warrant and after consultation with the Minister for the Environment and Local Government, grant in respect of proposed afforestation an exemption from a requirement of or under this Chapter to prepare an EIS, except that no exemption may be granted in respect of proposed afforestation if a transboundary State, having been informed about the proposed afforestation and its likely effects on the environment in that State, has indicated that it intends to furnish views on those effects.</p> <p>(2) The Minister shall, in granting an exemption under sub-article (1), consider whether —</p> <p style="padding-left: 40px;">(a) the effects, if any, of the proposed afforestation on the environment should be assessed in some other manner, and</p> <p style="padding-left: 40px;">(b) the information arising from the assessment should be made available to the public,</p> <p style="padding-left: 40px;">and the Minister may apply such requirements regarding these matters as he or she considers necessary or appropriate.</p> <p>(3) Notice of any exemption granted under sub-article (1), of the reasons for granting the exemption and of any requirements applied under sub-article (2) shall, as soon as may be,-</p> <p style="padding-left: 40px;">(a) be published in <i>Iris Oifigiúil</i> and in at least one newspaper circulating in the district in which is situated the land to which the proposed afforestation relates, and</p> <p style="padding-left: 40px;">(b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with sub-article (2), to the Commission of the European Communities.</p> |
| Invalid application. | <p>18. (1) Where an application in respect of which an EIS is required under article 15 is not accompanied by an EIS, it shall be invalid, and the provisions of sub-article (3) shall apply.</p> <p>(2) Where an exemption has been granted under article 17, sub-article (1) shall not apply.</p> <p>(3) The Minister shall, as soon as may be after receipt of an invalid application, —</p> <p style="padding-left: 40px;">(a) by notice in writing-</p> <p style="padding-left: 80px;">(i) inform the applicant that the application is invalid and cannot be considered by the Minister, and</p> |

(ii) indicate the basis on which the application is deemed invalid,

and

(b) return to the applicant the application, including all particulars, plans, drawings and maps.

EIS exemption - other requirements.	<p>19. (1) Where the Minister has, in granting an exemption under article 17, applied other requirements in respect of a proposed afforestation, an application for such afforestation shall comply with such requirements.</p> <p>(2) Where an application for afforestation in respect of which the Minister has applied other requirements under article 17(2) does not, when made, comply with sub-article (1), the Minister shall, as soon as may be following receipt of the application, by notice in writing, require the applicant to comply with such requirements.</p>
EIS submitted with sub-threshold application.	<p>20. Where an application for sub-threshold afforestation is accompanied by an EIS, the application shall be dealt with as if the EIS had been submitted in accordance with article 15.</p>
Requirement to submit EIS with sub-threshold application.	<p>21. (1) Where an application for sub-threshold afforestation is not accompanied by an EIS, and the Minister considers that the proposed afforestation would be likely to have significant effects on the environment, he or she shall, by notice in writing, require the applicant to submit an EIS.</p> <p>(2) Where an application for sub-threshold afforestation is not accompanied by an EIS, and the proposed afforestation would be located on or in —</p> <p>(a) a European site,</p> <p>(b) an area the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act, 2000 ,</p> <p>(c) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act, 2000 ,</p> <p>(d) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act, 1976 (No. 39 of 1976) , as amended by sections 26 and 27 of the Wildlife (Amendment) Act, 2000 , or</p> <p>(e) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act, 1976 , as amended by section 28 of the Wildlife (Amendment) Act, 2000 ,</p> <p>the Minister shall decide whether the proposed afforestation would or would not be likely to have significant effects on the environment of such site, area or land, as appropriate.</p>

- (3) The Minister shall, in deciding under this article whether proposed afforestation would or would not be likely to have significant effects on the environment, have regard to the criteria specified for the purposes of article 27 of the 1989 Regulations (as inserted by the 1999 Regulations), or under any provision amending or replacing the said article 27.
 - (4) Where an EIS is submitted to the Minister pursuant to a notice under sub-article (1), the application shall be deemed to be made on the date of receipt by the Minister of the EIS.
- EIS exemption. 22.
 - (1) A notice served under article 21 shall cease to have effect where an exemption is granted under article 17 in respect of afforestation to which the application relates on the date of the grant of the exemption.
 - (2) Where a notice served under article 21 ceases to have effect in accordance with sub-article (1), the Minister shall, as soon as may be, by notice in writing, inform the applicant of this fact and the date on which the notice ceased to have effect and, where other requirements have been applied in respect of the proposed afforestation, require the applicant to comply with such requirements.
- Notice of EIS. 23. Where an application is accompanied by an EIS, the Minister shall, in addition to the requirements of article 10, send a copy of the EIS to any body he or she is required to notify under that article.
- Further notice where Minister requires EIS. 24. Where the Minister receives an EIS pursuant to a notice under article 21, he or she shall, as soon as may be following receipt of the EIS, -
 - (a) where notice has already been sent in accordance with article 10 to any body referred to in that article, send a copy of the EIS to any such body, indicating that a submission or observation in relation to the EIS may be made in writing to the Minister within 5 weeks of the date of receipt by the Minister of the EIS,
 - (b) notify any person who made a submission or observation in relation to the application in accordance with this Part, indicating that the EIS is available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and that a submission or observation in relation to the EIS may be made in writing to the Minister within 4 weeks of the date of the notice,
 - (c) publish notice of receipt of the EIS in at least one newspaper circulating in the district in which is situated the land to which the proposed afforestation relates, stating-
 - (i) the reference number of the application,
 - (ii) the location, townland and electoral division of the land to which

the application relates,

(iii) the nature and extent of the proposed afforestation,

(iv) that the EIS will be available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and

(v) that a submission or observation in relation to the EIS may be made in writing to the Minister within 4 weeks of the date of publication of the notice by the Minister.

Adequacy of
EIS.

25. (1) The Minister shall consider whether an EIS submitted in respect of an application complies with article 16 or, where the Minister has given a written opinion under article 27(5), he or she shall consider whether the EIS complies with the said opinion.

(2) Where the Minister decides that an EIS does not comply with article 16 or any relevant written opinion given by the Minister under article 27(5), as appropriate, he or she shall require the person who submitted the EIS to submit such further information as may be necessary to comply with the relevant article.

Notice of further
information.

26. The Minister shall, where he or she considers that further information furnished in accordance with a requirement under article 25(2) contains significant additional data in relation to effects on the environment of the proposed afforestation, as soon as may be following receipt of the further information, -

(a) send notice and a copy of the further information to any person or body specified in article 10, as appropriate, indicating that a submission or observation in relation to the further information may be made in writing to the Minister within a specified period,

(b) notify any person who made a submission or observation in relation to the proposed afforestation -

(i) that significant further information in relation to the proposed afforestation has been furnished to the Minister, and is available for inspection free of charge or purchase at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and

(ii) that a submission or observation in relation to the further information may be made in writing to the Minister within a specified period,

and

(c) publish a notice in at least one newspaper circulating in the district in

which is situated the land to which the proposed afforestation relates, stating -

- (i) the reference number of the application,
- (ii) the location, townland and electoral division of the land to which the proposed afforestation relates,
- (iii) that significant further information in relation to the proposed afforestation has been furnished to the Minister, and is available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify, and
- (iv) that a submission or observation in relation to the further information may be made in writing to the Minister within the period specified in the notice.

- Scoping request. 27. (1) If a person, before submitting an EIS in accordance with a requirement of or under this Chapter, so requests, the Minister shall give a written opinion on the information to be contained in such statement.
- (2) A request for a written opinion on the information to be contained in an EIS shall state -
- (a) the name and address, and telephone number and e-mail address if any, of the person making the request and of the person, if any, acting on behalf of the person making the request,
 - (b) the location, townland and electoral division of the land to which the request relates, and
 - (c) a brief description of the nature of the proposed afforestation and of its possible effects on the environment.
- (3) (a) The Minister shall, as soon as may be after receiving a request for a written opinion, -
- (i) give notice of having received the request to the bodies referred to in article 10, as appropriate, indicating that a submission or observation in relation to the information to be contained in the EIS may be made to the Minister within 4 weeks beginning on the date of the notice, and
 - (ii) notify the person who made the request of the bodies to whom notice was given under sub-paragraph (i) and advise the person that a submission or observation in relation to the information to be contained in the EIS may be made to the Minister within 4 weeks beginning on the date of the notice.
- (b) A notice given under paragraph (a)(i) shall contain the information

referred to in sub-article (2) and, where appropriate, any further information provided under sub-article (4).

- (c) A notice under paragraphs (a)(i) and (a)(ii) in respect of the same request shall be issued on the same date.
- (4) Where the Minister considers that he or she has insufficient information to enable him or her to give a written opinion pursuant to a request, he or she shall, by notice in writing, require the person making the request to provide, within a specified period, such further information as he or she considers necessary.
- (5) The Minister shall, not later than 3 weeks after the expiry of the period referred to in sub-article (3)(a) or any period specified under sub-article (4), whichever is the later, give a written opinion to the person who made the request.
- (6) The Minister shall, in dealing with a request for a written opinion, have regard to —
 - (a) the information required to be contained in an EIS in accordance with article 16,
 - (b) any information provided under sub-article (2) and any further information provided under sub-article (4), and
 - (c) any submission or observation received in response to a notice under sub-article (3).
- (7) A written opinion shall indicate the extent to which the information specified in paragraph 2 of the Second Schedule to the 1989 Regulations (as substituted by the 1999 Regulations), or in any provision amending or replacing the said paragraph, should be contained in the EIS.
- (8) The giving of a written opinion under this article shall not prejudice the exercise by the Minister of his or her powers under this Part to require the person who made the request to furnish further information in relation to an application under this Part.

Copies of EIS.	28.	Where an EIS is required to be submitted to the Minister, the applicant shall submit 10 copies of the EIS.
Availability of EIS for inspection or purchase.	29.	An EIS submitted pursuant to a requirement of these Regulations shall be made available for inspection free of charge or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the Minister or such other convenient place as the Minister may specify.
Transboundary consultation.	30.	(1) Where the Minister considers that proposed afforestation which is the subject of an EIS in accordance with a requirement of or under this Part would be likely to have significant effects on the environment in a transboundary State, or where a transboundary State considers that the said

afforestation would be likely to have such effects and so requests, he or she shall, as soon as possible, send to that State -

- (a) a description of the proposed afforestation and any available information on its possible effects on the environment in that State, and
- (b) relevant information about the procedure for making a decision in respect of the proposed afforestation.

and shall give to that State a reasonable time to indicate whether it wishes to furnish views on the said effects.

- (2) Where a transboundary State which has received information under sub-article (1) indicates that it wishes to furnish views on the likely effects on the environment of the proposed afforestation, the Minister shall send to that State:-
 - (a) if he or she has not already done so, a copy of the EIS, and
 - (b) any further relevant information about the procedure for making a decision in respect of the proposed afforestation.
- (3) The Minister shall enter into consultations with a transboundary State, which has, in accordance with sub-article (2), indicated that it wishes to furnish views on the likely effects on the environment of the proposed afforestation, regarding the potential effects of the proposed afforestation on the environment in that State and the measures envisaged to reduce or eliminate such effects.

Determination of application.	31.	When considering an application to which this Chapter applies, the Minister shall, in addition to the requirements of article 12, have regard to the EIS, any additional information furnished in relation to the EIS, any submission or observation concerning the effects on the environment of the proposed afforestation and the views, if any, of any transboundary State.
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Notice of decision.	32.	<ul style="list-style-type: none">(1) In addition to the requirements of article 13, a notice under that article shall, in the case of an application to which this Chapter applies, be sent to -<ul style="list-style-type: none">(a) any person or body who made a submission or observation pursuant to article 24 or article 26, and(b) any relevant transboundary State.(2) The Minister shall, as soon as may be following the making of a decision in relation to an application to which this Chapter applies, make arrangements to make the EIS and information on the decision available for inspection by members of the public during a period to be specified by him or her.
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GIVEN under the Official Seal of the

Minister for the Environment and Local
Government this 4th day of December, 2001.

Noel Dempsey, T.D.

Minister for the Environment and Local
Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to facilitate compliance with the European Court of Justice ruling of 21 September 1999 (Case C-392/96) that the EIA thresholds adopted by Ireland in relation to initial afforestation (70 hectares) and peat extraction (50 hectares) exceeded the discretion available to Ireland under Directive 85/337/EEC on Environmental Impact Assessment in that they did not take account of the nature, location or cumulative effect of projects below these thresholds.

With regard to initial afforestation, the Regulations provide for the introduction of a statutory consent system by the Minister for the Marine and Natural Resources (to coincide with initial afforestation being taken out of the planning control system under the Local Government (Planning and Development) (Amendment) Regulations, 2001 (S.I. No. 539 of 2001)). The forest consent system provides for mandatory EIA above the reduced 50-hectare threshold and also provides for the possibility of sub-threshold EIA, where a project is likely to have significant effects on the environment.

The threshold for mandatory EIA in relation to peat extraction is reduced from 50 hectares to 30 hectares. Separate Regulations have been made i.e. the Local Government (Planning and Development) (Amendment) Regulations, 2001 (S.I. No. 539 of 2001), to introduce a new planning threshold for peat extraction of 10 hectares. In addition, these Regulations introduce amendments to the Wildlife (Amendment) Act, 2000 and the European Communities (Natural Habitats) Regulations, 1997 to allow for the possibility of EIA for peat extraction in NHAs and SACs, respectively, below the 10-hectare planning threshold, where a project is likely to have significant effects on the environment.

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