

S.I. No. 92 of 1999.

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) REGULATIONS, 1999

The Minister for the Environment and Local Government, in exercise of the powers conferred on him by section 10 of the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963), and by section 25 of that Act (as amended by section 39 of the Local Government (Planning and Development) Act, 1976 (No. 20 of 1976), article 7 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989), article 5 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1994 (S.I. No. 84 of 1994), article 3 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1998 (S.I. No. 351 of 1998) and article 4 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), section 78 of that Act (as amended by article 10 of the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989), section 3 of the Local Government (Planning and Development) Act, 1993 (No. 12 of 1993), article 8 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1994 (S.I. No. 84 of 1994), article 5 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1998 (S.I. No. 351 of 1998) and article 5 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), and section 7A of the Local Government (Planning and Development) Act, 1992 (No. 14 of 1992) (as inserted by article 6 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999), hereby makes the following regulations:—

1. (1) These Regulations may be cited as the Local Government (Planning and Development) Regulations, 1999.

(2) These Regulations and the Local Government (Planning and Development) Regulations, 1994 to 1998, may be cited together as the Local Government (Planning and Development) Regulations, 1994 to 1999.

2. (1) Subject to sub-articles (2) and (3) of this article, these regulations shall come into operation on the 1st day of May, 1999.

(2) Part II of these regulations shall not apply to an application for planning permission, an appeal to An Bord Pleanála or an application for certification under Part IX of the 1994 Regulations, as the case may be, made before the date referred to in sub-article (1) of this article.

(3) Where an application for planning permission, an appeal to An Bord Pleanála or an application for certification under Part IX of the 1994 Regulations is made before the date referred to in sub-article (1) of this article, the provisions of the 1994 Regulations, before they

were amended by Part III of these regulations, shall continue to apply to the application or appeal concerned.

3. In these Regulations:—

"the Act of 1963" means the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963);

"the Act of 1992" means the Local Government (Planning and Development) Act, 1992 (No. 14 of 1992);

"the Birds Directive" means Council Directive No. 79/409/EEC of 2 April, 1979, on the conservation of wild birds (O.J. No. L. 103, 25 April, 1979);

"Habitats Directive" means Council Directive 92/43/EEC of 21 May, 1992, on the conservation of natural habitats and of wild fauna and flora (O.J. No. L.206, 22 July, 1992);

"the Local Government (Planning and Development) Regulations, 1994 to 1998" has the meaning assigned to it in the Local Government (Planning and Development) (No. 2) Regulations, 1998 (S.I. No. 194 of 1998);

"special area of conservation" has the meaning assigned to it in Regulation 2 of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997);

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

"the 1994 Regulations" means the Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994).

4. A request by an applicant or a person intending to apply for permission under Part IV of the Act of 1963 to a planning authority for a written opinion on the information to be contained in an environmental impact statement (referred to in this Part as a "written opinion") shall state:—

- (a) the name, address and telephone number of the person making the request,
- (b) the location of the land to which the request relates,
- (c) a brief description of the nature of the proposed development and of its possible effects on the environment,
- (d) if the proposed development comprises or is for the purposes of an activity in relation to which a licence under Part IV of the Environmental Protection Agency Act, 1992 (No. 7 of 1992), or a licence under Part V of the Waste Management Act, 1996 (No. 10 of 1996), is required, this fact.

5. Where a planning authority, having received a request for a written opinion, considers that it has insufficient information to enable it to give the written opinion concerned, it shall require the person making the request to provide such further information or documentation as it considers necessary.

6. (1) A planning authority shall, not later than 3 weeks after having received a request for a written opinion or, where further information or documentation was required pursuant to article 5, not later than 3 weeks after such requirement was complied with:—

(a) give notice of having received the request concerned to the bodies referred to in article 32 of the 1994 Regulations (as amended), as appropriate, indicating that submissions or observations in relation to the information to be contained in the environmental impact statement concerned may be made to the authority within a period of one month beginning on the date of the notice, and

(b) give notice to the person who made the request concerned that a submission or observations in relation to the information to be contained in the environmental impact statement concerned may be made to the authority within a period of one month beginning on the date of the notice.

(2) A notice given by a planning authority pursuant to paragraph (a) of sub-article (1) of this article shall contain the information referred to in article 4.

7. A planning authority shall, not later than 3 weeks after:—

(a) the expiry of the periods referred to in sub-article (1) of article 6, or

(b) a requirement to provide further information or documentation pursuant to article 5 has been complied with,

whichever is the later, give a written opinion to the person who made the request concerned.

8. (1) A planning authority shall, subject to sub-article (2) of this article, in dealing with a request for a written opinion have regard to:—

(a) article 25 (as amended) of the 1989 Regulations,

(b) such information and documentation as has been provided to it pursuant to articles 4 and 5, and

(c) any submissions or observations received by it in response to a notice issued pursuant to article 6.

(2) If the proposed development comprises or is for the purposes of an activity in relation to which a licence under Part IV of the Environmental Protection Agency Act, 1992 (No. 7 of 1992), or a licence under Part V of the Waste Management Act, 1996 (No. 10 of 1996), is required, the planning authority shall have regard to the matters referred to in sub-article (1) only insofar as those matters do not relate to the risk of environmental pollution from the activity.

(3) A written opinion shall indicate which of the information described in paragraph 2 of the Second Schedule to the 1989 Regulations (as amended) should be contained in the environmental impact statement concerned.

(4) In the case of proposed development referred to in sub-article (2), a planning authority shall, in giving a written opinion, notify the person who made the request concerned of any submissions or observations relating to the risk of environmental pollution from the activity.

9. (1) Where a person makes a request to the Board for a written opinion on the information to be contained in an environmental impact statement to be submitted to the Board in accordance with a requirement of or under the Act of 1992, the provisions of this Part shall apply as if the Board were a planning authority.

(2) Where a local authority makes a request to the Minister for a written opinion on the information to be contained in an environmental impact statement to be prepared in accordance with a requirement of or under section 78 of the Act of 1963, the provisions of this Part shall apply as if the Minister were a planning authority and the local authority were a person making the request.

10. Article 24 of the 1994 Regulations is hereby amended by the deletion of paragraph (b) of sub-article (1) thereof.

11. Article 26 is hereby amended by—

(a) the deletion in sub-article (1) thereof of the words "and which is not development referred to in article 24(1)(b)";

(b) the insertion following sub-article (1) thereof of the following sub-articles:—

"(1A) A planning authority shall, where it receives a planning application in respect of development which would:—

(a) be of a class referred to in article 24(1)(a) but for not exceeding a quantity, area or other limit for the time being specified in relation to that class, and

(b) be located on:—

(i) a special area of conservation.

(ii) a site notified in accordance with Regulation 4 of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997),

(iii) an area classified pursuant to paragraph (1) or (2) of article 4 of the Birds Directive,

(iv) a site where consultation has been initiated in accordance with article 5 of the Habitats Directive,

(v) 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),

(vi) land designated as a refuge for fauna under section 17 of the Wildlife Act, 1976 (No. 39 of 1976).

decide whether the development would or would not be likely to have significant effects on the environment.

(1B) A planning authority shall, where it is deciding pursuant to this article whether a proposed development 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 European Communities (Environmental Impact Assessment) Regulations, 1989."

12. Article 27 is hereby amended by the deletion in sub-article (1) thereof of the words "and which is not development referred to in article 24(1)(b)".

13. Article 31 of the 1994 Regulations is hereby amended by:—

(a) the substitution for sub-article (3) thereof of the following sub-article:—

"(3) The Minister may, in the case of a planning application in respect of which an environmental impact statement is required by or under this Part to be submitted to the planning authority, and:—

(a) which, in his opinion, relates to development which would be likely to have significant effects on the environment in another Member State of the European Communities, or

(b) where another Member State of the European Communities considers that the said development would be likely to have such effects and has requested that it be provided with information on the application,

require the planning authority to furnish to him such particulars, information or documents concerning the application as he may specify.";

(b) the insertion following sub-article (3) thereof of the following sub-article:—

"(4) Where the Minister is notified in accordance with sub-article (1), or particulars, information or documents are furnished to him in accordance with sub-article (3), the planning authority shall notify the applicant that another Member State of the European Communities is being provided with information in relation to the planning application."

14. Article 33 of the 1994 Regulations is hereby amended by the substitution for sub-articles (2) and (2A) (as inserted by article 6 of the Local Government (Planning and Development) Regulations, 1995 (S.I. No. 69 of 1995)) thereof, of the following sub-articles:—

"(2) A planning authority shall not require an applicant who has complied with a requirement under sub-article (1) to submit any further information, particulars or evidence save:—

(a) in case an environmental impact statement is required by or under this Part to be submitted to the authority and the proposed development would be likely to have significant effects on the environment in another Member State of the European Communities, where the authority, having regard to the views of such State, considers this to be reasonably necessary,

(b) as may be reasonably necessary to clarify the matters dealt with in the applicant's response to a requirement to submit further information, particulars or evidence, or to enable them to be considered or assessed.

(2A) A planning authority shall, where it considers that further information, particulars or evidence submitted in accordance with a requirement under this article contains significant additional data in relation to the effects on the environment of the proposed development:—

(a) send notice of the furnishing of the further information to the authority, and a copy of the further information, to any body to which notice was given in accordance with article 32 and to indicate to those bodies that submissions or observations in relation to the further information may be made in writing to the authority before a specified date,

(b) in case an environmental impact statement is required by or under this Part to be submitted to the authority:—

(i) require the applicant to publish in a newspaper circulating in the district in which the land or structure to which the relevant planning application relates is situate a notice stating that significant further information in relation to the said effects has been furnished to the authority, that the further information will be available, for inspection or for purchase at the offices of the authority, and that submissions or observations in relation to the further information may be made in writing to the authority before a specified date.

(ii) where the proposed development would be likely to have significant effects on the environment in another Member State of the European Communities, send notice of the furnishing of the further information and a copy of the further information to the Minister."

15. Article 39 of the 1994 Regulations is hereby amended by the insertion following paragraph (b) thereof of the following paragraph—

"(bb) in case the applicant has submitted an environmental impact statement to the authority in accordance with any provision of this Part and the proposed development would be likely to have significant effects on the environment in another Member State of the European Communities:—

(i) the views, if any, of such State have been received, or

(ii) a time specified in paragraph (a) or (b) (as the case may be), whichever ends the later;"

16. Article 41 of the 1994 Regulations is hereby amended by the insertion after paragraph (k) thereof of the following paragraph:-

"(l) in the case of a decision to grant permission, where the applicant concerned submitted an environmental impact statement to the authority in accordance with any provision of this Part, the reasons for such decision."

17. Article 43 of the 1994 Regulations is hereby amended by the substitution for sub-article (4) thereof of the following sub-article:-

"(4) (a) A planning authority shall, within three working days of giving its decision in respect of a planning application in relation to which notice was given to the Minister in accordance with article 31(1), or in relation to which particulars, information or documents were furnished to the Minister in accordance with article 31(3), send notice of the decision to:-

(i) the Minister, and

(ii) where views in relation to the proposed development were furnished by another Member State of the European Communities, such State.

(b) A notice sent pursuant to paragraph (a) of this sub-article shall contain the information referred to in article 41."

18. Article 56 of the 1994 Regulations is hereby amended by:-

(a) the deletion of paragraph (b) of sub-article (1) thereof,

(b) the deletion in sub-article (2) thereof of the words "and which is not development referred to in sub-article 1(b)".

19. Article 60 of the 1994 Regulations is hereby amended by the substitution of the following article:-

"60. (1) The Board shall, as soon as may be, notify the Minister of any appeal:-

(a) in respect of which notice in accordance with article 55 is given to the Board by the planning authority concerned, or

(b) in respect of which the Board intends to require, in accordance with article 56, an environmental impact statement, and:-

(i) which in the opinion of the Board, relates to development likely to have significant effects on the environment in another Member State of the European Communities, or

(ii) another Member State of the European Communities considers that the said development would be likely to have the said effects and has requested that it be provided with information in relation to the planning application.

(2) The Board shall furnish to the Minister a copy of any environmental impact statement received in relation to an appeal in respect of which notice is given to the Minister pursuant to sub-article (1)(b)."

20. Article 66 of the 1994 Regulations is hereby amended by the substitution of the following article:-

"66. (1) The Board shall notify:-

(a) the Minister,

(b) the other Member State of the European Communities concerned,
of its decision on any appeal in respect of which notice was given to the Minister pursuant to article 60.

(2) A notification under sub-article (1) of this article shall contain the information referred to in article 65."

21. Article 128 of the 1994 Regulations is hereby amended by the substitution of the following article:-

"128. (1) The Minister shall cause notice of his decision in relation to an application for certification in accordance with article 123 to be published in a newspaper circulating in the area in which the proposed development would be situate.

(2) When the Minister makes a decision referred to in sub-article (1), the relevant local authority shall make the environmental impact statement concerned and the decision available for inspection at specified times during a specified period (which shall be not less than one month beginning on the day of publication of the notice).

(3) Where there has been consultation with another Member State of the European Communities in accordance with article 125 in relation to the effects on the environment of a proposed development, notice of the Minister's decision in relation to the application for certification shall be given to that Member State."

22. Part I of the Second Schedule to the 1994 Regulations is hereby amended by the insertion after class 49 thereof of the following class—

Column 1

Column 2

Description of Development

Conditions and Limitations

CLASS 50

The carrying out of development below the high water mark pursuant to and in accordance with a licence under the Fisheries (Amendment) Act, 1997 (No. 23 of 1997) (including a licence deemed to be granted under that Act or the Fisheries and Foreshore (Amendment) Act, 1998 (No. 54 of 1998)).

GIVEN under the Official Seal of the Minister for the Environment and Local Government this 14th day of April, 1999.

NOEL DEMPSEY

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.)

These Regulations amend the Planning Regulations, 1994 to 1998, principally to reflect the provisions of Directive 97/11/EC of 3 March, 1997 (O.J. No. 73/5, 14 March, 1997) relating to environmental impact assessment. The Regulations come into operation on 1 May, 1999.

The amendments provide for matters of procedure in relation to a request to a planning authority for an opinion on the information which should be contained in an environmental impact statement. These procedures also apply to appeals to An Bord Pleanála and to applications to the Minister for the Environment and Local Government for the certification of proposed local authority development. The amendments also extend the procedures to be followed in the case of a proposed development which would be located on an environmentally sensitive site or be likely to have significant effects on the environment in another Member State of the European Communities.

The Regulations also provide that certain fish farming development which is licensed under the Fisheries (Amendment) Act, 1997, is exempted development for the purposes of the Planning Acts.

Amendments to the Planning Acts and other enactments containing provision relating to environmental impact assessment are contained in the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No. 93 of 1999).

Source: Irish Statute Book Database

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