



STATUTORY INSTRUMENTS.

S.I. No. 404 of 2009

EUROPEAN COMMUNITIES (FORESHORE) REGULATIONS 2009

(Prn. A9/1389)

EUROPEAN COMMUNITIES (FORESHORE) REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Directive No. 2003/35/EC of the European Parliament and of the Council of 26 May 2003¹, so far as that Directive relates to the Foreshore Acts 1933 to 2005, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Foreshore) Regulations 2009.

2. In these Regulations—

“Principal Act” means the Foreshore Act 1933 (No. 12 of 1933);

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

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

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

3. Section 13A (inserted by Regulation 13(c) of the Regulations of 1989) of the Principal Act is amended—

(a) by substituting the following for paragraphs (a) and (b) (as amended, respectively, by Regulation 9 of the Regulations of 1999 and by Regulation 8(a) of the Regulations of 1998) of subsection (4):

“(4) (a) The Minister may, where the Minister is satisfied that exceptional circumstances so warrant, exempt a relevant application from the requirement of subsection (1) of this section.

(b) The Minister shall, in granting an exemption under paragraph (a) of this subsection—

(i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other manner, and

(ii) make available to the public—

¹OJ No. L 156 of 25.6.2003, p.17.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 6th October, 2009.

- (I) the information obtained in any assessment carried out under subparagraph (i),
- (II) the information relating to any decision to exempt a relevant application under paragraph (a), and
- (III) the reasons for the decision referred to in clause (II).”,

and

(b) by inserting the following after subsection (5):

“(6) In this section ‘relevant application’ does not include an application for an aquaculture licence (within the meaning of the Fisheries (Amendment) Act 1997) that is accompanied by an environmental impact statement.”.

4. The Principal Act is amended by substituting the following for section 19A (inserted by Regulation 13(d) of the Regulations of 1989):

“Procedure in regard to certain relevant applications.

19A.—(1) Notwithstanding section 19 of this Act, a person who has submitted an environmental impact statement in accordance with a requirement of or under section 13A of this Act shall, as soon as may be, publish in one or more newspapers circulating in the district in which is situated the foreshore to which the relevant application relates a notice—

- (a) stating that the person has made the application and indicating the location and nature of the proposal to which the application relates,
- (b) stating that an environmental impact statement has been prepared in respect of the proposal,
- (c) stating that the Minister is responsible for making a decision on the application and that the Minister may either grant, approve or consent to the application with or without covenants, conditions or agreements, where applicable, or refuse the application,
- (d) stating whether section 19C of this Act applies to the proposal,
- (e) stating that submissions, comments or questions in relation to the effects on the environment of the proposal may be made in writing to the Minister within 8 weeks from the publication of the notice, and

- (f) specifying the times at which and the place where, within 8 weeks from the publication of the notice, a copy of the application, the environmental impact statement and any other relevant report or information (including copies of any submissions, comments or questions received by the Minister) may be inspected free of charge or purchased at a price to be determined by the Minister (which shall not be more than the reasonable cost of making the copy or copies concerned).

(2) The Minister shall ensure that the following information is available for inspection or for purchase by members of the public on the terms specified in the notice published in accordance with subsection (1):

- (a) a copy of the application,
- (b) the environmental impact statement prepared pursuant to section 13A of this Act,
- (c) the views, if any, furnished by a Member State of the European Communities pursuant to section 19C of this Act,
- (d) any submissions, comments or questions received by the Minister (including those received from the bodies specified in subsection (3) of this section), and
- (e) any report or other information relevant to the decision.

(3) A person who has submitted an environmental impact statement in accordance with a requirement of or under section 13A of this Act shall, as soon as may be, send a copy of the relevant application and environmental impact statement to—

- (a) the local authority in whose functional area the proposed development is to be located in whole or in part,
- (b) where the proposed development is to be located in any area contiguous to the functional area of a local authority, to each such local authority,
- (c) the National Tourism Development Authority (Fáilte Ireland),

- (d) An Taisce - The National Trust for Ireland if the development is to take place on an area of special amenity value or special interest,
- (e) the Minister for the Environment, Heritage and Local Government if the development is to take place on an area of archaeological, water quality, scientific or ecological interest (or any combination of such areas), and
- (f) any other Minister of Government where the Minister considers that the proposal relates to a function of that other Minister,

with a statement that the body may make objections or representations in relation to the effects on the environment of the proposal in writing to the Minister within 8 weeks from the date a copy of the environmental impact statement is sent to that body.

(4) A reference, in this section, section 19B or section 21A of this Act to an environmental impact statement includes a reference to an alternative form of assessment referred to in section 13A(4)(b) of this Act.”.

5. Section 19B (inserted by Regulation 13(d) of the Regulations of 1989) of the Principal Act is amended—

- (a) in subsection (1) (inserted by Regulation 9(f) of the Regulations of 1999) by substituting “period specified in section 19A(1)(f) of this Act” for “prescribed period”,
- (b) in subsection (3)(b) of section 19B (inserted by Regulation 8(b) of the Regulations of 1998) by substituting “a body specified in section 19A(3) of this Act” for “the prescribed bodies”, and
- (c) by inserting the following after subsection (3) (inserted by the Regulations of 1998):

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

6. The Principal Act is amended by substituting the following for section 21A (inserted by Regulation 9(g) of the Regulations of 1999):

“Publication of notice of Minister's decision in relation to certain relevant applications.

21A.— When the Minister determines a relevant application, the Minister shall—

- (a) publish a notice, in *Iris Oifigiúil* and in one or more newspapers circulating in the area where the foreshore subject to the determination is situate, of the determination and specifying the means by which any material received by the Minister upon which the Minister determined the application may be inspected free of charge or purchased at a price to be determined by the Minister (which shall not be more than the reasonable cost of making the copy or copies concerned),
- (b) ensure that the following information is available for inspection or for purchase by members of the public on the terms specified in the notice published in accordance with paragraph (a):
 - (i) the determination;
 - (ii) any conditions attached to such determination;
 - (iii) the main reasons and considerations upon which the determination is based;
 - (iv) details of the public participation process;
 - (v) the main measures, if the Minister considers it necessary, to avoid, reduce or offset adverse effects on the environment arising from the relevant application;
 - (vi) arrangements to comply with paragraph (c) of this section,
- (c) inform a Member State to which section 19C of this Act applies in respect of the relevant application of the determination and matters specified in paragraph (a) of this section, and
- (d) arrange to make the environmental impact statement relating to the relevant application and other material upon which the determination was based available for inspection for such period as the Minister considers appropriate.”.

7. The Foreshore (Environmental Impact Assessment) Regulations 1990 (S.I. No. 220 of 1990) are revoked.



GIVEN under my Official Seal,
30 September 2009.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These Regulations transpose Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC as it applies to applications under the Foreshore Acts for consents which require an Environmental Impact Statement.

These regulations amend and consolidate the existing consultation arrangements in the Foreshore Acts for relevant applications including the duration of consultation and the documentation to be made available during consultation. The regulations also provide for the publication of certain information following the making of a decision on a relevant application.

These Regulations come into operation on the date of their signing.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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