

S.I. No. 410/2012 — European Union (Environmental Impact Assessment) (Aquaculture) Regulations 2012.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th October, 2012.*

I, SIMON COVENEY, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2011/92/EU of 13 December 2011¹ on the assessment of the effects of certain public and private projects on the environment hereby make the following regulations:

Citation.

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

Interpretation.

2. In these Regulations “Principal Regulations” means the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of 1998) as amended by the Aquaculture (Licence Application) (Amendment) Regulations 2010 (S.I. No. 280 of 2010), Aquaculture (Licence Application) (Amendment) (No. 2) Regulations 2010 (S.I. No. 369 of 2010) and Aquaculture (Licence Application) (Amendment) Regulations 2012 (S.I. No. 301 of 2012).

Amendment of the Principal Regulations.

3. Regulation 3 is amended by:

(a) inserting the following definition after the definition of “application” in paragraph (1)-

“ ‘environmental impact assessment’ means an assessment, to include an examination, analysis and evaluation, carried out by the Minister that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of Council Directive No. 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, the direct and indirect effects of a proposed development on the following-

- (a) human beings, flora and fauna,
- (b) soil, water, air, climate and the landscape,
- (c) material assets and the cultural heritage, and
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c);”

(b) substituting the following definition for the definition of “environmental impact statement” in paragraph (1)-

“‘environmental impact statement’ means a statement of the environmental impacts which the proposed aquaculture will have or is likely to have on the environment and shall include the information specified in Annex IV of Council Directive No. 2011/92/EU;”, and

(c) substituting the following paragraph for paragraph (2)-

“(2) A word or expression that is used in these Regulations and that is also used in Council Directive No. 2011/92/EU has, unless the context otherwise requires, the same meaning in these Regulations as it has in Council Directive No. 2011/92/EU.”.

4. The following Regulation is inserted after Regulation 4-

“4A.(1) The Minister shall, as part of his or her consideration of an application, in accordance with paragraph (2), ensure that before a decision is made aquaculture likely to have

significant effects on the environment by virtue, inter alia, of its nature, size or location is subject to an environmental impact assessment.

(2) An environmental impact assessment shall be carried out by the Minister in respect of an application for-

(a) aquaculture of a class specified in Regulation 5(1)(i) and (ii), unless the application is one which is solely for movement of navigation buoys, internal reconfiguration of the site, upgrading equipment used on the site, technology changes or improvements, or to comply with public safety requirements or a combination of these and which the Minister determines would not be likely to have significant effects on the environment, or

(b) aquaculture of a class specified in Regulation 5(1) (ii) which does not exceed a quantity, area or other limit specified in that Regulation which the Minister determines would be likely to have significant effects on the environment.

(3) An environmental impact statement shall be submitted with all applications for aquaculture referred to in paragraph 2(a) and shall also be submitted where the Minister determines that an application for aquaculture referred to in paragraph 2(b) would be likely to have significant effects on the environment.

(4) The Minister shall, in deciding whether aquaculture referred to in paragraph 2(a) or (b) would be likely to have a significant effect on the environment, have regard to the criteria specified in Annex III to Council Directive No. 2011/92/EU.

(5) The Minister shall require the production by the applicant of any additional or supplemental information that the Minister considers necessary to enable him or her to make an assessment.

(6) The Minister shall consider the content of the environmental impact statement (and any other material including maps or plans) submitted as part of the application and determine whether same adequately identifies, describes and assesses the direct and indirect effects of the proposed development. If the environmental impact statement (and other material) is inadequate, then the Minister shall serve a notice (hereinafter 'a request for further information') which sets out the manner in which the information is inadequate and requires the applicant to submit further information to remedy these inadequacies.

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

(a) the particulars submitted with the application including the environmental impact statement and any other material including plans, charts, maps or drawings,

(b) any additional material submitted in response to a request for further information, if any, pursuant to paragraph 6,

(c) any submissions or observations validly made in relation to the effects on the environment of the proposed development including those made by bodies specified in Regulation 10(1) or members of the public,

(d) the views, if any, furnished by other Member States of the European Communities pursuant to Regulation 13.

(8) In the event that the Minister decides to grant a licence, then the Minister may attach such conditions to the grant as he or she considers necessary, to avoid, reduce and, if possible, offset the major adverse effects (if any) of the proposed aquaculture.

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

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

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

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

(c) having examined any submission or observation made to the Minister-

(i) the main reasons and considerations on which the decision is based, and

(ii) the main reasons and considerations for the attachment of any conditions,

including reasons and considerations arising from or related to submissions or observations made by a member of the public,

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

(e) the reports referred to in paragraph (9),

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

(g) the views, if any, furnished by other Member States.”.

5. Regulation 5 (as substituted by Regulation 2 of the Aquaculture (Licence Application) (Amendment) Regulations 2010) is amended by-

(a) inserting in paragraph (1) before the words "shall be accompanied by an environmental impact statement" the following-

“unless the application is one which is solely for movement of navigation buoys, internal reconfiguration of the site, upgrading equipment used on the site, technology changes or improvements, or to comply with public safety requirements or a combination of these and which the Minister determines is not likely to have significant effects on the environment”, and

(b) substituting paragraphs (3) and (4) with the following-

“(3) The Minister shall, in deciding whether aquaculture referred to in paragraph (2) and Regulation 4A(2) would be likely to have significant effect on the environment have, regard to the criteria specified in Annex III to Council Directive No. 2011/92/EU.”.

L.S.

GIVEN under my Official Seal,

25 October 2012.

SIMON COVENEY,

Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

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

These Regulations amend the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of

1998) to give further effect in Irish law to Articles 2 to 4 of Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment insofar as it applies to certain aquaculture licence applications.

1 O.J. L 26, 28.1.2012 p.1