



STATUTORY INSTRUMENTS.

S.I. No. 191 of 2020

EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT)
(ENVIRONMENTAL PROTECTION AGENCY ACT 1992)
(AMENDMENT) REGULATIONS 2020

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I, RICHARD BRUTON, Minister for Communications, Climate Action and Environment 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 further effect to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011¹ as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014², hereby make the following regulations:

1. These Regulations may be cited as the European Union (Environmental Impact Assessment) (Environmental Protection Agency Act 1992) (Amendment) Regulations 2020.
2. In these Regulations “Act of 1992” means the Environmental Protection Agency Act 1992 (No. 7 of 1992).
3. The Act of 1992 is amended in section 3-
 - (a) in subsection (1) -
 - (i) by the insertion of the following definition:

“‘EIA Directive’ means Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011³ on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014⁴;”
 - (ii) by the deletion of the definition of “environmental impact statement”,
 - (iii) by the insertion of the following definition after the definition of environmental impact assessment:

“environmental impact assessment report” shall be construed in accordance with section 83(2A)(dd);”,
 - and
 - (b) in subsection (2A), by the substitution of “EIA Directive” for “Directive No. 2011/92/EU of the European Parliament and of

¹ OJ No. L 26, 28.1.2012, p. 1

² OJ No. L 124, 25.4.2014, p. 1

³ OJ No. L 26, 28.1.2012, p. 1

⁴ OJ No. L 124, 25.4.2014, p. 1

the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment”.

4. The Act of 1992 is amended -

- (a) by the substitution of “environmental impact assessment report” for “environmental impact statement” and “environmental impact assessment reports” for “environmental impact statements” in each place where either occurs,
- (b) in section 72(3)(c), by the substitution of “the said report” for “the said statement”,
- (c) in section 83(3)(e)(v), by the substitution of “the report” for “the statement”, and
- (d) in section 87(1H), by the substitution of “such report” for “such statement” in each place where it occurs.

5. Section 83(2A) of the Act of 1992 is amended -

- (a) in paragraph (a), by the substitution of the following definition for the definition of “environmental impact assessment”:

“ ‘environmental impact assessment’ means a process –

- (i) consisting of -
 - (I) the preparation of an environmental impact assessment report by the applicant in accordance with this Act,
 - (II) the carrying out of consultation required by or under this Act,
 - (III) the examination by the Agency of -
 - (A) the information presented in the environmental impact assessment report,
 - (B) any additional information provided by the applicant under this Act, and
 - (C) any relevant information received under this Act,
 - (IV) the reaching of a reasoned conclusion by the Agency in accordance with section 87(9a) on the significant effects of the proposed activity on the environment, taking into account the

results of the examination referred to in subparagraph (III) and, where appropriate, its own supplementary examination, and

- (V) the integration of the Agency's reasoned conclusion into its decision to grant a licence, or to refuse an application, under section 83(1) or a decision to amend a licence or revised licence, to grant a revised licence, or to refuse to grant a revised licence, under section 90(2),

and

- (ii) including an examination, analysis and evaluation by the Agency in accordance with this section in order to identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the proposed activity, including significant effects derived from the vulnerability of the activity to risks of major accidents and disasters relevant to it, on-
 - (I) population and human health,
 - (II) biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC of 21 May 1992⁵ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁶,
 - (III) land, soil, water, air and climate,
 - (IV) material assets, cultural heritage and the landscape, and
 - (V) the interaction between the factors mentioned in subparagraphs (I) to (IV);”

- (b) by the insertion of the following paragraphs after paragraph (b):

“(ba) Where the Agency receives an application for a licence in respect of an activity relating to development or proposed development referred to in paragraph (c)(ii) the Agency shall require the applicant for a licence to

⁵ OJ No. L 206, 22.7.1992, p. 7

⁶ OJ No. L 20, 26.1.2010, p. 7

provide it with information on the characteristics of the activity and its likely significant effects on the environment.

- (bb) Where an applicant is subject to a requirement by the Agency under paragraph (ba) it shall -
 - (i) provide the information specified in Annex IIA to the EIA Directive, and
 - (ii) where relevant, take into account the available results of other relevant assessments of the effects on the environment carried out pursuant to any Act or under European Union legislation (other than the EIA Directive).
- (bc) Where an applicant is subject to a requirement by the Agency under paragraph (ba) it may also provide a description of any features of the activity or measures envisaged to avoid or prevent significant adverse effects on the environment.
- (bd) Where the Agency receives information from an applicant under paragraph (bb) it shall make a determination as to whether the activity to which the licence or revised licence applied for relates should be subject to environmental impact assessment on the basis of such information, taking into account the relevant selection criteria specified in Annex III to the EIA Directive and, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to any Act or under European Union legislation (other than the EIA Directive).
- (be) A determination under paragraph (bd) shall-
 - (i) where the Agency determines that the activity should be subject to environmental impact assessment, specify with reference to the relevant criteria listed in Annex III to the EIA Directive, the main reasons for that determination, and
 - (ii) where the Agency determines that the activity should not be subject to environmental impact assessment, specify-
 - (I) with reference to the relevant criteria listed in Annex III to the EIA Directive, the main reasons for that determination, and
 - (II) any features of the activity and measures proposed by the applicant, to avoid or prevent significant adverse effects on the environment relied upon by it in making the determination.

- (bf) Where the Agency specifies a measure under paragraph (be)(ii)(II) as a measure relied upon by it in making the determination pursuant to section 83(2A)(bd), that an environmental impact assessment is not required in relation to an application for a licence, the Agency shall make carrying out the measure concerned a condition of any licence granted on that application.
- (bg) Subject to paragraph (bh), the Agency shall make its determination under paragraph (bd) as soon as possible and within 90 days from the date on which the applicant has submitted all the information required by the Agency under paragraph (ba).
- (bh) The Agency may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the proposed activity, extend the 90 day period referred to in paragraph (bf) in order to make its determination and in such cases it shall inform the applicant in writing of the reasons justifying the extension and of the date when its determination is expected.
- (bi) The Agency shall make an electronic version of any determination under paragraph (bd) available to the public on its website.”,
- (c) in paragraph (c), by the substitution of -
 - (i) the following subparagraph for subparagraph (i):
 - “(i) development of a class specified in Part 1 of Schedule 5 to the Planning and Development Regulations 2001, or”,
 - and
 - (ii) the following subparagraph for subparagraph (ii):
 - “(ii) development of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 that the Agency determines would be likely to have significant effects on the environment.”,
- (d) by the insertion of the following paragraphs after paragraph (d):
 - “(dd) The applicant for a licence shall ensure that an environmental impact assessment report referred to in paragraph (d) -
 - (i) is prepared by competent experts,
 - (ii) contains, subject to paragraph (df) -
 - (I) a description of the proposed activity comprising information on the site (including information on the installation where the

- activity is to be carried out), design, size and other relevant features of the activity,
- (II) a description of the likely significant effects of the proposed activity on the environment,
 - (III) a description of any features of the proposed activity and of any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,
 - (IV) a description of the reasonable alternatives studied by the applicant which are relevant to the proposed activity and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed activity on the environment,
 - (V) a non-technical summary of the information referred to in clauses (I) to (IV),
 - (VI) any additional information specified in Annex IV of the EIA Directive that is relevant to the specific characteristics of the particular activity, or type of activity, proposed and to the environmental features likely to be affected,
- and
- (iii) takes into account the available results of other relevant assessments under European Union or national legislation with a view to avoiding duplication of assessments.”,
 - (de) The Agency shall, on the request of a person who has made, or intends to make, an application for a licence, where the request is made before the person has submitted an environmental impact assessment report -
 - (i) consult the bodies prescribed by the Minister in regulations under section 89, and
 - (ii) taking into account the information provided by the applicant or intending applicant, in particular on the specific characteristics of the activity, including its location and technical capacity, and its likely impact on the environment, issue an opinion on the scope, and level of detail, of the information to be included by the applicant or intending applicant in the environmental impact assessment report in accordance with subsection (dd),

- (df) Where the Agency issues an opinion under paragraph (de) the applicant shall -
- (i) prepare the environmental impact assessment report referred to in subsection (dd) based on that opinion, and
 - (ii) include in the report the information that may reasonably be required for reaching a reasoned conclusion in accordance with section 87(9a) on the significant effects of the proposed activity on the environment, taking into account current knowledge and methods of assessment.
- (dg) The Agency shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.
- (dh) In carrying out an environmental impact assessment in respect of an application for a licence or a revised licence, the Agency shall, where appropriate, co-ordinate the assessment with any assessment under Council Directive 92/43/EEC of 21 May 1992⁷ or Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁸".

6. Section 87 of the Act of 1992 is amended -

- (a) by the insertion of the following subsections after subsection (9):
- “(9a) Before making a decision referred to in section 83(1) or 90(2) in relation to an application for a licence in respect of which an environmental impact assessment is required under section 83(2A), the Agency shall –
- (a) duly take into account -
 - (i) the environmental impact assessment report submitted under section 83(2A)(d),
 - (ii) any additional information furnished under section 83(2A)(e) and (f)(ii)(II),
 - (iii) any submissions made in relation to the likely significant effects on the environment of the activity to which the application relates, and
 - (iv) in the case of an application to which section 85 applies the results of consultations with the other Member States concerned,

⁷ OJ No. L 206, 22.7.1992, p. 7

⁸ OJ No. L 20, 26.1.2010, p. 7

- (b) consider any other evidence that it has obtained under this Part in relation to the likely significant effects on the environment of the activity to which the application relates, and
 - (c) taking into account the results of the examination referred to in paragraphs (a) and (b), reach a reasoned conclusion on the significant effects on the environment of the activity to which the application relates.
- (9b) The Agency shall be satisfied that the reasoned conclusion referred to in subsection (9a) is still up to date when it makes a decision referred to in section 83(1) or 90(2) in relation to an application for a licence in respect of which an environmental impact assessment is required under section 83(2A) and shall incorporate into the decision -
- (a) the reasoned conclusion, and
 - (b) any environmental conditions attached to the decision, a description of any features of the project or measures envisaged to avoid, prevent or reduce and, where possible, offset significant adverse effects on the environment and any appropriate monitoring measures.
- (9c) The Agency shall make any feature of the project or measure envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, and any monitoring measure incorporated into a decision under subsection (9b) a condition of any licence granted on foot of the decision.",
- (b) in paragraph (ii) of subsection (9A), by the substitution of "subparagraphs (I) to (IV) of paragraph (ii)" for "paragraphs (i) to (iii)",
 - (c) in paragraph (iii) of subsection (9A), by the substitution of the following subparagraph for subparagraph (I):
 " (I) the main reasons and considerations on which the decision (including, in the case of an application in respect of which an environmental impact assessment is required under section 83(2A), a decision to refuse an application) is based, and",
 - (d) in paragraph (iii) of subsection (9A), by the insertion of "and, in the case of an application in respect of which an environmental impact assessment is required under section 83(2A), a summary of the results of the consultations and the information gathered pursuant to section 83(2A) and section 85 together with a description of how these results have been incorporated into the decision or otherwise," after "member of the public".



GIVEN under my Official Seal,
27 May, 2020.

RICHARD BRUTON,
Minister for Communication, Climate Action
and Environment.

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