



STATUTORY INSTRUMENTS.

S.I. No. 130 of 2020

EUROPEAN UNION (WASTE MANAGEMENT) (ENVIRONMENTAL
IMPACT ASSESSMENT) REGULATIONS 2020

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The Minister for Communications, Climate Action and Environment, 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 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:

Citation

1. These Regulations may be cited as the European Union (Waste Management) (Environmental Impact Assessment) Regulations 2020.

Transitional arrangements

2. (1) Where, in relation to an application for a waste licence, within the meaning of 40(2A) of the Principal Act, an environmental impact statement was submitted to the Environmental Protection Agency before 16 May 2017, the Principal Act and the Regulations of 2004 shall continue to apply as if these Regulations had not come into operation.

(2) In this Regulation, “environmental impact statement” means a statement of the direct and indirect effects that a proposed development will have or is likely to have on the environment and includes the information specified in Annex IV to Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011¹.

Interpretation

3. In these Regulations -

“Principal Act” means the Waste Management Act 1996 (No. 10 of 1996);

“Regulations of 2004” means the Waste Management (Licensing) Regulations 2004 (S.I. 395 of 2004).

¹ OJ No. L 26, 28.1.2012, p.1

² OJ No. L 124, 25.4.2014, p.1

Environmental impact assessment report

4. The Principal Act is amended -
- (a) by the substitution of “environmental impact assessment report” for “environmental impact statement” in each place where it occurs, and
 - (b) by the substitution of “such report” for “such statement” in each place where it occurs.

Amendment of section 2 of Principal Act

5. Section 2 of the Principal Act is amended in the Table to that section by the insertion of “, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014²” after the reference to “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”.

Amendment of section 5 of Principal Act

6. Section 5 of the Principal Act is amended -
- (a) in subsection (1), by -
 - (i) the insertion of the following definition after the definition of “development”:
“ ‘EIA Directive’ means 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;”,
 - (ii) the insertion of the following definition after the definition of “environmental impact assessment”:
“ ‘environmental impact assessment report’ shall be construed in accordance with section 40(2A);”, and
 - (iii) the deletion of the definition of “environmental impact statement”,
 - and
 - (b) by the substitution of the following subsection for subsection (3B):
“(3B) Subject to this Act, a word or expression that is used in this Act and that is also used in the EIA Directive has, unless the context otherwise requires, the same meaning in this Act as it has in that Directive.”.

Amendment of section 15 of Principal Act

7. Section 15 of the Principal Act is amended by the insertion of the following subsection after subsection (1):

“(1A) Each local authority and the Agency shall carry out, or cause to be carried out, such monitoring of compliance with environmental conditions attached to a waste licence under section 41(2A) or section 41(2B) as it considers to be necessary having regard to the nature, location and size of the activity and the significance of its effects on the environment.”.

Amendment of section 40 of Principal Act

8. Section 40 of the Principal Act is amended -

(a) in subsection (2)(b)(ii) -

- (i) by the insertion, in clause (I), of “this Part, or with” after “and in accordance with”, and
- (ii) by the insertion, in clause (III), of “this Part, or with” after “and in accordance with”,

and

(b) in subsection (2A) -

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

“ ‘environmental impact assessment’ in relation to an application for a waste licence, means a process in respect of the proposed activity -

(i) consisting of -

(I) the preparation of an environmental impact assessment report in accordance with section 40(2A)(d),

(II) the carrying out of consultation with the public, public authorities and where applicable, another Member State,

(III) the examination by the Agency of the information presented in the environmental impact assessment report, any supplementary information provided by the applicant in accordance with section 40(2A)(e) and any relevant information received in written submissions made in accordance with regulations under section 45, or objections made to the Agency under section 42(3),

(IV) the reaching by the Agency of a reasoned conclusion on the significant effects of the proposed activity on the environment, and

(V) the integration by the Agency of its reasoned conclusion into its decision under section 42(11A),

and

(ii) including an examination by the Agency to identify, describe and assess the direct and indirect significant effects of the proposed activity, including the expected 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 1992³ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁴,
- (III) land, soil, water, air and climate,
- (IV) material assets, cultural heritage and the landscape, and
- (V) the interaction between the factors mentioned in clauses (I) to (IV);”;

(ii) by the insertion, in paragraph (a), of the following definition after the definition of “environmental impact assessment”:

“ ‘environmental impact assessment report’ means a report prepared by competent experts which contains the following information:

- (i) a description of the proposed activity comprising information on the site, 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,

³ OJ No. L 206, 22.7.1992, p. 7

⁴ OJ No. L 20, 26.1.2010, p. 7

- taking into account the effects of the proposed activity on the environment;
- (v) any additional information specified in paragraph 2 of Schedule 6 to the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) that is relevant to the specific characteristics of the proposed activity and to the environmental features likely to be affected;
 - (vi) a non-technical summary of the information referred to in subparagraphs (i) to (v);
 - (vii) a reference list detailing the sources used for the descriptions and assessments included in the report.”,
 - (iii) by the insertion of the following paragraph after paragraph (a):

“(aa) In carrying out an environmental impact assessment under this subsection, the Agency shall, where appropriate, coordinate the assessment with any assessment of the proposed activity under Council Directive 92/43/EEC of 21 May 1992³ or Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁴.”,
 - (iv) by the substitution of the following paragraph for paragraph (c):

“(c) Subject to paragraph (b) and section 42(1A) to (11), an environmental impact assessment shall be carried out by the Agency in respect of an application for a waste licence relating to an activity, where development comprising or for the purpose of the activity is:

 - (i) of a class specified in Part 1 or Part 2 of Schedule 5 to the Planning and Development Regulations, 2001 and either -
 - (I) such development would equal or exceed, as the case may be, any relevant quantity, area or other limit specified in Part 1 or Part 2, or
 - (II) no quantity, area or other limit is specified in that Part in respect of the development concerned,
 - or
 - (ii) of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 but does not equal or

exceed, as the case may be, the relevant quantity, area or other limit specified in that Part and the Agency, in exercise of the powers conferred on it by regulations under section 45, determines that the proposed activity is likely to have significant effects on the environment.”,

(v) by the substitution of the following paragraph for paragraph (d):

“(d) Subject to section 42(1A) to (11), an applicant for a waste licence shall submit an environmental impact assessment report to the Agency in respect of an application that is subject to an environmental impact assessment under paragraph (c) and where applicable, such report shall -

- (i) with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation, and
- (ii) be based on an opinion issued by the Agency in accordance with regulations under section 45.”,

(vi) by the insertion, in paragraph (e), of “, including information specified in paragraph 2 of Schedule 6 to the Planning and Development Regulations 2001,” after “additional or supplemental information”, and

(vii) by the insertion, in paragraph (g), of “, the Agency shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report, and” after “environmental impact assessment”.

Amendment of section 41 of Principal Act

9. Section 41 of the Principal Act is amended -

(a) by the substitution of the following subsection for subsection (2A):

“(2A) In relation to an application for a waste licence, within the meaning of section 40(2A)(c), the Agency may attach such environmental conditions to the waste licence as it considers necessary to avoid, prevent, reduce or offset the significant adverse effects of the activity on the environment.”,

and

- (b) by the insertion of the following subsection after subsection (2A):

“(2B) Where the Agency decides, in relation to an application for a waste licence, that an environmental impact assessment is not required on the basis of features or measures proposed by the applicant to avoid or prevent significant adverse effects on the environment, the Agency may attach such features or measures as environmental conditions to the waste licence.”.

Amendment of section 42 of Principal Act

10. Section 42 of the Principal Act is amended -

- (a) by the insertion of the following subsection after subsection (1A):

“(1AA) Unless the context otherwise requires, in subsections (1B) to (1G), “environmental impact assessment” and “environmental impact assessment report” have the same meaning as they have in the Planning and Development Act 2000.”,

- (b) in subsection (1G)(b), by the substitution of the following for subparagraph (i):

“(i) in relation to which a grant of permission is required, where the development or the proposed development is of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 but does not equal or exceed, as the case may be, the relevant quantity, area or other limit specified in that Part, and”,

- (c) in subsection (1H), by the deletion of paragraph (d),

- (d) in subsection (2), by the substitution of “and the Agency shall publish that decision on its website.” for “and, where the decision so notified is a decision to grant a waste licence or a revised waste licence, shall specify where a copy of the proposed licence or revised licence may be obtained.”,

- (e) in subsection (11A) -

(i) by the substitution of “make the following information available on its website:” for “make available the following information:”, and

(ii) by the substitution of the following subparagraphs for subparagraphs (i) to (vi):

“(i) the decision and, where the application was subject to an environmental impact assessment by the Agency, the reasoned conclusion on the significant effects of the activity on the environment, taking into account the results of the Agency’s examination of the environmental impact assessment report, and where appropriate, its own supplementary examination;

- (ii) any environmental conditions attached to the decision, including conditions regarding monitoring measures, parameters to be monitored and the duration of the monitoring;
- (iii) a description of the features, if any, of the activity and the measures, if any, envisaged to avoid, prevent, reduce or offset the significant adverse effects of the activity on the environment;
- (iv) the main reasons and considerations on which the decision is based, including -
 - (I) information about the public participation process,
 - (II) a summary of the results of consultations and information gathered from the environmental impact assessment report (where applicable), written submissions made in accordance with regulations under section 45, or objections made to the Agency under section 42(3), and
 - (III) a description of how the results referred to in clause (II) have been incorporated or otherwise addressed by the Agency;
- (v) information on the procedures available to the persons referred to in or prescribed under subsection (2), including the public, to review the substantive and procedural legality of the decision.”,
- (f) by the insertion of the following subsection after subsection (11A):

“(11AA) Where applicable, the Agency shall be satisfied that the reasoned conclusion referred to in subsection (11A)(b)(i) remains up-to-date when making its decision under this subsection.”, and
- (g) in subsection (12), by the substitution of “30 days” for “28 days”.

Amendment of section 54 of Principal Act

11. Section 54 of the Principal Act is amended, in subsection (7) -
- (a) by the substitution of the following paragraphs for paragraph (a) and (b):

“(a) In exceptional cases, the Minister may, by order, exempt an application for a waste licence, within the meaning of section 40(2A), made by or on behalf of a local authority in its functional area from a requirement to prepare an environmental impact assessment report, where such a report would adversely affect the purpose of the proposed activity.

- (b) The Minister, in making an order under this subsection, shall ensure that the objectives of the EIA Directive are met and the Minister shall comply with Article 2(4) of the EIA Directive.",
- (b) by the substitution, in paragraph (c), of "paragraph 4" for "paragraph "3(a)",
- (c) by the insertion, in paragraph (d), of "on the website of the Department of Communications, Climate Action and Environment and" after "published", and
- (d) by the insertion of the following paragraph after paragraph (e):

"(f) The Minister shall, every 2 years, inform the Commission of the European Union of any orders made under this subsection."

Environmental impact assessment report

12. The Regulations of 2004 are amended -

- (a) by the substitution of "environmental impact assessment report" for "environmental impact statement" in each place where it occurs,
- (b) by the substitution, in article 6(d), of "such a report" for "such a statement",

and
- (c) by the substitution, in article 18(3), of "the report" for "the statement".

Amendment of Article 3 of Regulations of 2004

13. Article 3 of the Regulations of 2004 is amended -

- (a) in paragraph (t) by the deletion of "and",
- (b) in paragraph (u) by the substitution of "No. 172/2007, and" for "No. 172/2007.",

and
- (c) by the insertion of the following paragraph after paragraph (u):

"(v) the EIA Directive.".

Amendment of Article 6 of Regulations of 2004

14. Article 6 of the Regulations of 2004 is amended -

- (a) by the substitution of the following for paragraph (e):

"(e) state that a copy of -

- (i) the application for a waste licence or for the review of a waste licence, as the case may be,
 - (ii) the environmental impact assessment report (where the application is required to be accompanied by such report in accordance with Part III) and any opinion issued by the Agency on the scope of that report,
 - (iii) where applicable, such further information, including reports and advice, relating to the environmental impact assessment as may be furnished to the Agency in the course of the Agency's consideration of the application, shall, as soon as is practicable after receipt by the Agency, be available on the Agency's website and a copy of such information shall be available for inspection or purchase at the headquarters of the Agency during office hours and, where the applicant is a local authority, at the principal office of the authority,”,
and
- (b) by the insertion of the following paragraphs after paragraph (e):
- “(f) state that if, pursuant to article 17, it appears to the Agency that the activity the subject of the application would or is likely to have a significant impact on the environment in another Member State, the Agency shall as soon as may be after receipt of the said application, notify the appropriate competent authority in the Member State concerned,
 - (g) state that, pursuant to section 42(2) of the Act, a draft decision shall be published by the Agency, and
 - (h) state the arrangements for public participation, including -
 - (i) the right of the public to make a written submission under article 15, and
 - (ii) the right of the public to make an objection against a proposed decision under section 42(3) of the Act.”.

Amendment of Article 11 of Regulations of 2004

15. Article 11 of the Regulations of 2004 is amended by the substitution of “in electronic form through the Agency website” for “to the principal office of the Agency”.

Amendment of Article 12 of Regulations of 2004

16. Article 12(4) of the Regulations of 2004 is amended by the substitution of “article 13” for “sub-articles 13(1) and (2)”.

Amendment of Article 13 of Regulations of 2004

17. Article 13 of the Regulations of 2004 is amended -

(a) by the substitution of the following sub-article for sub-article (1):

“(1) An application for a waste licence to which section 40(2A)(c) of the Act applies shall, in addition to the matters specified in article 12, be accompanied by an environmental impact assessment report prepared in respect of the application.”,

(b) by the deletion of sub-articles (2), (3), (4) and (5),

and

(c) by the substitution of the following sub-article for sub-article (6):

“(6) An applicant shall submit the environmental impact assessment report referred to in sub-article (1) in electronic form through the Agency website.”.

Insertion of new Articles

18. The Regulations of 2004 are amended by the insertion of the following articles after article 13:

“Screening by Agency

13A. (1) In accordance with section 40(2A)(c) of the Act, where an application for a waste licence in respect of a proposed activity comprises development of a class specified in subparagraph (ii) of section 40(2A)(c), the Agency shall determine whether or not the proposed activity is likely to have significant effects on the environment and where it determines that the proposed activity is likely to have significant effects on the environment, the application shall be subject to an environmental impact assessment.

(2) In respect of an application referred to in paragraph (1), the applicant shall provide the information specified in Schedule 7A to the Planning and Development Regulations when submitting the application to the Agency under article 11, including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation (other than the EIA Directive) have been taken into account.

(3) In addition to the information furnished under paragraph (2), the applicant may provide a description of the features, if any, of the proposed activity and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(4) The Agency shall make its determination under paragraph (1) on the basis of the information provided under paragraphs (2) and (3), taking into account the relevant criteria specified in Schedule 7 to the Planning and Development Regulations and, where relevant, the results of other preliminary verifications or assessments of the effects on the environment carried out

pursuant to any Act of the Oireachtas or under European Union legislation (other than the EIA Directive).

(5) In a determination under paragraph (1)-

- (a) where the Agency determines that the proposed activity is likely to have significant effects on the environment, the Agency shall specify, with reference to the relevant criteria listed in Schedule 7 to the Planning and Development Regulations, the main reasons for that determination, and
- (b) where the Agency determines that the proposed activity is not likely to have significant effects on the environment, the Agency shall specify -
 - (i) the main reasons for that determination by reference to the relevant criteria listed in Schedule 7 to the Planning and Development Regulations, and
 - (ii) any features of the proposed activity and measures proposed by the applicant to avoid or prevent significant adverse effects on the environment.

(6) Subject to paragraph (7), the Agency shall make its determination under paragraph (1) as soon as possible and within 90 days from the date on which the applicant has submitted all of the information required under paragraph (2).

(7) 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 (6) 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.

(8) The Agency shall publish -

- (a) notice of a determination under paragraph (1) in a newspaper circulating in the area or areas in which the proposed activity is to be carried on,
- (b) a determination under paragraph (1) on its website, and
- (c) information on the procedures available to the public to review the substantive and procedural legality of the determination.

Opinion on Environmental Impact Assessment Report

13B. (1) The Agency shall, on the request of an applicant to whom section 40(2A)(d) of the Act applies and before the submission of an environmental impact assessment report, prepare a written opinion on the scope and level of detail of the information to be included in the environmental impact assessment report.

(2) In making a request for an opinion under paragraph (1), the applicant shall provide the information that may reasonably be required by the Agency in preparing the opinion, including information on the specific characteristics of the proposed activity, including its location and technical capacity, and its likely impact on the environment.

- (3) In preparing an opinion under paragraph (1), the Agency shall -
- (a) consult the following -
 - (i) the Minister for Communications, Climate Action and Environment,
 - (ii) the Minister for Housing, Planning and Local Government,
 - (iii) such other public authorities or persons as the Agency considers necessary having regard to the nature and extent of the activity to which the application refers,
 - and
 - (b) take into account the information provided by the applicant, in particular on the specific characteristics of the proposed activity, including its location and technical capacity, and its likely impact on the environment.

(4) Where an opinion referred to in paragraph (1) has been issued, the opinion shall be provided to the applicant and the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required by the Agency for reaching a reasoned conclusion on the significant effects of the proposed activity on the environment, taking into account current knowledge and methods of assessment.

(5) Where the Agency prepares and issues an opinion under this article, it shall not prejudice the exercise by the Agency of its powers to require the applicant to furnish it with specified additional information in relation to the likely effects of the proposed activity on the environment.

Notice of Environmental Impact Assessment Report

13C. (1) Where the Agency determines that an application for a waste licence should be subject to an environmental impact assessment under article 13A(1), the applicant shall, within 2 weeks of the submission of an environmental impact assessment report to the Agency, publish a notice in a newspaper circulating in the area or areas in which the proposed activity is to be carried on.

- (2) The notice referred to in paragraph (1) shall -
 - (a) contain as a heading the words "SUBMISSION OF AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT TO THE ENVIRONMENTAL PROTECTION AGENCY", and
 - (b) contain the information specified in article 6(a) to (h).".

Amendment of Article 14 of Regulations of 2004

19. Article 14 of the Regulations of 2004 is amended -

- (a) in sub-article (1)(b), by the substitution of "13" for "sub-articles 13(1) and (2)",

- (b) in sub-article (2)(a), by the substitution of “13” for “sub-articles 13(1) and (2)”, and
- (c) in sub-article (2)(b), by the substitution of “13” for “sub-articles 13(1) and (2)”.

Amendment of Article 15 of Regulations of 2004

20. Article 15 of the Regulations of 2004 is amended by the substitution of “30 days” for “one month”.

Amendment of Article 16 of Regulations of 2004

21. Article 16(2) of the Regulations of 2004 is amended by the substitution of “article 13(1) relates” for “sub-articles 13(1) and (2) relate”.

Amendment of Article 17 of Regulations of 2004

22. Article 17(3) of the Regulations of 2004 is amended -

- (a) in paragraph (g), by the substitution of “the EIA Directive” for “Council Directive 85/337/EEC”,
and
- (b) in paragraph (i), by the substitution of “30 days” for “four weeks”.

Amendment of Article 18 of Regulations of 2004

23. Article 18 of the Regulations of 2004 is amended by the deletion of sub-article (4).

Amendment of Article 19 of Regulations of 2004

24. Article 19 of the Regulations of 2004 is amended -

- (a) by the substitution of the following for paragraph (6):
“(6) For the purposes of sub-articles (1) and (3), the documents or other items specified in sub-articles (2) and (4), and any report to which sub-article (8) refers, shall be available for public inspection on the Agency’s website.”,
and
- (b) in paragraph (8), by the deletion of “, following the decision to grant or refuse the said waste licence in accordance with section 40(1) of the Act.”.

Amendment of Article 34 of Regulations of 2004

25. Article 34 of the Regulations of 2004 is amended -

(a) by the substitution of the following for sub-article (1):

“(1) The Agency shall promptly notify each person specified in sections 42(2) and 42(11) of the Act, any Member State consulted pursuant to article 17 and the public authorities, persons or bodies referred to in article 18 of its decision under section 42(11A) of the Act.”,

and

(b) by the insertion of the following sub-article after sub-article (2):

“(2A) The Agency shall promptly publish notice of a decision under section 42(11A) of the Act in a newspaper circulating in the area or areas in which the proposed activity is to be carried on.”.



GIVEN under the Official Seal of the Minister for Communications, Climate Action and Environment,
14 April, 2020.

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

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