



STATUTORY INSTRUMENTS.

S.I. No. 719 of 2022



DEVELOPMENT (EMERGENCY ELECTRICITY GENERATION)
REGULATIONS 2022

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I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by sections 4, 5(2), 6(1) and 9 of the Development (Emergency Electricity Generation) Act 2022 (No. 35 of 2022), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Development (Emergency Electricity Generation) Regulations 2022.

Definitions

2. In these Regulations –

“Act of 2022” means the Development (Emergency Electricity Generation) Act 2022 (No. 35 of 2022);

“application” means an application under section 4 of the Act of 2022 for an approval under section 7 of that Act, made in accordance with Regulation 3;

“Appropriate Assessment” has the meaning assigned to it by Regulation 2 of the Regulations of 2011;

“Appropriate Assessment screening report” means a report prepared by the applicant for the purpose of the carrying out by the Board of a screening for Appropriate Assessment in respect of the designated development;

“Environmental Report” means a report prepared in accordance with Regulation 7;

“European Site” has the meaning assigned to it by Regulation 2 of the Regulations of 2011;

“Natura Impact Statement” has the meaning assigned to it by Regulation 2 of the Regulations of 2011.

Application to Minister

3. (1) An application shall be made to the Minister by electronic means in a readable form that enables copies of the application to be made.

(2) The Minister shall, as soon as may be upon receipt of an application, provide a copy of the application to the Board for the purpose of the carrying out by the Board of the assessments referred to in sections 5(2) and 6(1) of the Act of 2022, including the assessment required to be carried out under section 6(2) of that Act as part of those assessments.

(3) The Minister shall acknowledge receipt of an application within 5 days.

(4) An application shall, to the extent that information is reasonably available to the applicant at the time of the application, include the following:

(a) name, address and contact details of the applicant;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th December, 2022.*

- (b) a description of the designated development;
- (c) a description of the location of the designated development;
- (d) a copy of the newspaper notice referred to in Regulation 4;
- (e) a site location map sufficient to identify the land on which the designated development would be situated;
- (f) a site or layout plan on which the site boundary of the designated development shall be clearly delineated;
- (g) any site layout plans, drawings or other information required to describe the relevant features of the designated development;
- (h) an Appropriate Assessment screening report and, where the applicant considers that an Appropriate Assessment will be required, a Natura Impact Statement;
- (i) an Environmental Report;
- (j) details of the measures, if any, envisaged to avoid or prevent or reduce and, if possible, offset what might otherwise have been significant adverse effects on the environment or adverse effects on the integrity of a European Site of the designated development;
- (k) any other information or document that the applicant considers would be of assistance to the Minister in making a decision in relation to the application.

(5) An applicant shall provide such additional information in relation to the application as the Minister may request for the purpose of making a decision under section 7(1) of the Act of 2022, in such form and within such period as may be specified by the Minister in the request.

Notice of application

4. An applicant shall, within 2 weeks before making an application, publish a notice in one national newspaper specifying the following:

- (a) that an application is being made under section 4 of the Act of 2022 for an approval under section 7 of that Act of the designated development;
- (b) the name of the applicant;
- (c) the location of the designated development;
- (d) a brief description of the designated development;
- (e) that an assessment will be carried out by the Board under section 5(2) of the Act of 2022 for the purpose of ensuring that the objectives of the Environmental Impact Assessment Directive are met, and that the application will include an Environmental Report for the purpose of that assessment;
- (f) that an assessment will be carried out by the Board under section 6(1) of the Act of 2022 and that an Appropriate Assessment screening report and, where the applicant considers that an Appropriate Assessment will be required, a Natura Impact Statement, will be included with the application;

- (g) that the assessments referred to in subparagraphs (e) and (f) will include an assessment referred to in section 6(2) of the Act of 2022;
- (h) that the application will be available on the websites maintained by the Minister and the Board respectively (the addresses of which shall be specified in the notice) and will be available for inspection in electronic form free of charge at the offices of the Board during a period which shall be specified under and in accordance with a notice under Regulation 6(1);
- (i) that the public will be invited to make submissions or observations, in writing or by electronic means, to the Board during the specified period, relating to the likely main effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site;
- (j) the classes of decision the Minister may make under section 7(1) of the Act of 2022 in relation to the application.

Provision of information by Minister to Board

5. Any information to be provided by the Minister to the Board for the purposes of an assessment of the designated development by the Board in accordance with section 5(2) or 6(1) of the Act of 2022 (including the assessment required to be carried out under section 6(2) of that Act as part of those assessments) shall be provided by electronic means in a readable form that enables copies of the information to be made.

Public consultation

6. (1) As soon as may be after receipt of an application by the Minister, the application shall be published on the website maintained by the Minister together with a notice stating that –

- (a) the designated development is exempt from the provisions of the Environmental Impact Assessment Directive in accordance with subsection (1) of section 5 of the Act of 2022, providing a copy of that subsection,
- (b) an assessment will be carried out by the Board under section 5(2) of the Act of 2022 for the purpose of ensuring that the objectives of the Environmental Impact Assessment Directive are met and that an Environmental Report has been prepared in respect of the designated development,
- (c) an assessment will be carried out by the Board under section 6(1) of the Act of 2022 and, where a Natura Impact Statement is included with the application, that a Natura Impact Statement has been prepared in respect of the designated development,

- (d) the assessments referred to in subparagraphs (b) and (c) will include an assessment referred to in section 6(2) of the Act of 2022, and
- (e) submissions or observations in relation to the likely main effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site, may be made during a specified period (which shall not be less than 30 days) to the Board in writing or by electronic means to an email address specified in the notice.

(2) As soon as may be after receipt of an application, the Minister shall send a notice, by electronic means, to the persons specified in paragraph (3) and such notice shall –

- (a) state that an application has been made to him or her in respect of designated development,
- (b) provide the address of the website maintained by the Minister on which the application has been or is to be published,
- (c) state that submissions or observations in relation to the likely main effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site, may be made during the specified period referred to in the notice under paragraph (1) to the Board in writing or by electronic means to an email address specified in the notice.

(3) The persons referred to in paragraph (2) are as follows:

- (a) any planning authority and regional assembly in whose functional area the designated development would be situated;
- (b) the Minister for Housing, Local Government and Heritage;
- (c) the Minister for Agriculture, Food and the Marine;
- (d) the Minister for Enterprise, Trade and Employment;
- (e) the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media;
- (f) An Chomhairle Ealaíon;
- (g) An Taisce – the National Trust for Ireland;
- (h) the Commission for Regulation of Utilities;
- (i) the Environmental Protection Agency;
- (j) the Health and Safety Authority;
- (k) the Health Service Executive;
- (l) the Heritage Council;
- (m) Inland Fisheries Ireland;

- (n) Irish Water;
- (o) the National Roads Authority;
- (p) the National Tourism Development Authority.

(4) The Board shall, as soon as may be after receipt of a copy of an application, publish the application on its website, along with a notice containing the information specified in paragraph (1), and shall make a copy of the application available for inspection at its offices free of charge or on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy).

(5) Where calculating a specified period for the purposes of paragraph (1), the period between the 24th day of December and the 1st day of January, both days inclusive, shall be disregarded.

(6) Any person may, within the specified period referred to in the notice under paragraph (1), make a submission or observation to the Board in writing or by electronic means to the email address specified in the notice under paragraph (1) in relation to the likely main effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site.

- (7) A submission or observation referred to in paragraph (6) shall –
- (a) state the name, address and email address (if any) of the person making the submission or observation, and
 - (b) indicate the address or email address to which any correspondence relating to the application should be sent.

(8) Where a submission or observation referred to in paragraph (6) is received by the Board after the end of the specified period referred to in the notice under paragraph (1), the Board shall, where possible, notify the person making the submission or observation that the submission or observation cannot be considered by the Board.

Environmental Report

7. (1) An applicant shall prepare and submit a report (in these Regulations referred to as an “Environmental Report”) for the purposes of an assessment by the Board under section 5(2) of the Act of 2022.

(2) An Environmental Report shall be prepared by competent experts and shall, to the extent that such information is reasonably available to the applicant at the time of the application, include the following:

- (a) a description of the designated development including information on the site, design, size and other relevant features of the development;
- (b) a description of the relevant aspects of the current state of the environment (baseline scenario);

- (c) a description of the approach taken for the purposes of describing the likely main effects on the environment at the construction and operational phases of the designated development;
- (d) a description of the likely main effects of the designated development on the factors referred to in Regulation 8(2);
- (e) a description of the features of the designated development and measures envisaged in order to avoid, prevent or reduce and, if possible, offset the likely main effects on the environment;
- (f) any other information or document that the applicant considers would be of assistance to the Board in carrying out an assessment under section 5(2) of the Act of 2022.

(3) The Environmental Report shall identify and assess, in an appropriate manner in light of the purpose referred to in section 2(1) of the Act of 2022, the likely main effects of the designated development on the factors referred to in Regulation 8(2).

Assessment by Board

8. (1) An assessment carried out by the Board under section 5(2) of the Act of 2022 for the purposes of that section, and for the purpose of ensuring that the objectives of the Environmental Impact Assessment Directive are met, shall identify the likely main effects on the environment of the designated development.

(2) Without prejudice to the generality of paragraph (1), an assessment under that paragraph shall include an examination, analysis and evaluation by the Board in an appropriate manner, in light of the purpose referred to in section 2(1) of the Act of 2022, and to the extent reasonably possible in light of the information contained in the application and additional information (if any) provided in accordance with this Regulation by the applicant to the Board, of the likely main effects of the designated development on the following factors:

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC of 21 May 1992¹ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009²;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in subparagraphs (a) to (d).

¹ OJ No. L 206, 22.7.1992, p. 7.

² OJ No. L 20, 26.1.2010, p. 7.

(3) The Board may request the applicant to furnish it with such further additional information within a specified period as the Board considers necessary for the purposes of an assessment under paragraph (1) and the applicant shall comply with such request.

(4) Where additional information is received by the Board pursuant to a request made under paragraph (3), and is considered by the Board to be material, the Board shall –

- (a) publish the information on its website, together with a notice stating that during a specified period (which shall not be less than 14 days), submissions or observations in relation to that information may be made in writing or by electronic means to an email address specified in the notice,
- (b) where possible, send to each person who made submissions or observations on the application in accordance with Regulation 6 a copy of the information and inform the person concerned that, during the specified period referred to in the notice under subparagraph (a), submissions or observations in relation to that information may be made in writing or in electronic form to the email address specified in the notice, and
- (c) send a copy of the information to the Minister.

(5) Where calculating a specified period for the purposes of paragraph (4), the period between the 24th day of December and the 1st day of January, both days inclusive, shall be disregarded.

(6) Any person may, within the specified period referred to in the notice under paragraph (4), make a submission or observation to the Board in writing or by electronic means to the email address specified in the notice in relation to any additional information furnished by the applicant under paragraph (3).

(7) A submission or observation made under paragraph (6) shall –

- (a) state the name, address and email address (if any) of the person making the submission or observation, and
- (b) indicate the address or email address to which any correspondence relating to the application should be sent.

(8) Where a submission or observation referred to in paragraph (6) is received by the Board after the end of the specified period referred to in the notice under paragraph (4), the Board shall, where possible, notify the person making the submission or observation that the submission or observation cannot be considered by the Board.

(9) In carrying out an assessment under paragraph (1), the Board shall take into account –

- (a) the application (including the Environmental Report),
- (b) any additional information furnished by the applicant under paragraph (3), and
- (c) any submissions or observations duly made to the Board in accordance with Regulation 6(6) or paragraph (6),

and shall reach a conclusion on the likely main effects of the designated development on the environment.

(10) The Board shall carry out an assessment under paragraph (1) as expeditiously as possible having regard to the purpose referred to in section 2(1) of the Act of 2022 and shall reach a conclusion under paragraph (9) –

- (a) not later than 5 days after the end of the specified period referred to in the notice under Regulation 6(1),
- (b) where additional information has been requested by the Board under paragraph (3) and paragraph (4) does not apply, not later than 10 days after the end of the specified period referred to in the request, or
- (c) where additional information has been requested by the Board under paragraph (3) and paragraph (4) applies, not later than 10 days after the end of the specified period referred to in the notice under paragraph (4).

(11) As part of its conclusion under paragraph (9), the Board may recommend for inclusion in any approval that may be granted by the Minister under section 7 of the Act of 2022 such conditions (including but not limited to conditions regarding monitoring measures, the parameters to be monitored and the duration of the monitoring) as the Board considers necessary to avoid, prevent or reduce and, if possible, offset significant adverse effects (if any) of the designated development on the environment.

(12) The Board shall provide a copy of its conclusion under paragraph (9), together with the reasons for its conclusion, to the Minister and shall publish the conclusion and the reasons on its website as soon as practicable after reaching the conclusion.

Appropriate Assessment

9. (1) For the purposes of section 6(1) of the Act of 2022, Part 5 of the Regulations of 2011 is modified as follows:

- (a) subject to subparagraph (b), a reference to “public authority” shall be read as a reference to the Minister;
- (b) the following references to “public authority” shall be read as references to the Board:
 - (i) the references in paragraphs (1) to (13), (18) and (20) of Regulation 42;
 - (ii) the first such reference in paragraph (1) of Regulation 43;
 - (iii) the reference in paragraph (2)(a) of Regulation 43;
- (c) a reference to “application for consent” shall be read as an application for approval under section 7 of the Act of 2022;
- (d) a determination under paragraph (6) or (7) (as the case may be) of Regulation 42 in respect of the designated development shall be –

- (i) made by the Board within 10 days of receipt of the copy of the application by the Board,
 - (ii) provided by the Board to the Minister as soon as practicable after it is made, and
 - (iii) published on the website of the Board as soon as may be thereafter;
- (e) paragraph (8)(b) of Regulation 42 shall be read as if “and a Natura Impact Statement has not been submitted with the application for consent,” were inserted after “proposed development”;
- (f) where a determination under paragraph (6) of Regulation 42 is made by the Board in accordance with subparagraph (d), a determination referred to in paragraph (11) of Regulation 42 in respect of the designated development shall be –
 - (i) made by the Board not later than the end of the period under Regulation 8(10) within which the Board is required to reach a conclusion under Regulation 8(9),
 - (ii) provided by the Board to the Minister as soon as practicable after it is made, and
 - (iii) published on the website of the Board together with its conclusion under Regulation 8(9);
- (g) where a determination under paragraph (6) of Regulation 42 is made by the Board in accordance with subparagraph (d) and a Natura Impact Statement was included with the application for consent –
 - (i) the requirements of subparagraphs (a), (b) and (c) of paragraph (13) of Regulation 42 shall be deemed to be complied with where the Minister and the Board carry out a public consultation in accordance with Regulation 6, and
 - (ii) any submissions or observations made in accordance with Regulation 6(6) in relation to any likely adverse effects on the integrity of a European Site of the designated development shall be deemed to be submissions or observations under paragraph (13)(d) of Regulation 42 and paragraph (13)(e) of Regulation 42 shall apply in respect of those submissions or observations;
- (h) where a determination under paragraph (6) of Regulation 42 is made by the Board in accordance with subparagraph (d) and a Natura Impact Statement was not included in the application, paragraph (13)(d) of Regulation 42 shall be read as if it were amended by the substitution of “within a period specified by the Board from the date of publication of the notice and, where additional information is published, within a period specified by the Board from the date of publication of that information” for “within 30 days from the date of publication of the notice or

whatever longer timeframe is set out in the notice and, where additional information is published, at least 30 days from the date of publication of that information”;

- (i) paragraph (14) of Regulation 42 shall not apply;
- (j) Regulation 44 shall not apply.

(2) In this Regulation, a reference to Regulation 42, 43 or 44 shall, as the case requires, be read as a reference to Regulation 42, 43 or 44 of the Regulations of 2011.

Recommendation to Minister under section 6(2)

10. (1) Where the Board decides to make a recommendation under section 6(2) of the Act of 2022, the Board shall issue the recommendation, and the reasons for the recommendation, to the Minister in writing and by electronic means together with its conclusion under Regulation 8(9).

(2) The Board shall publish any recommendation it makes under section 6(2) of the Act of 2022 on its website together with the publication under Regulation 8(10) of its conclusion under Regulation 8(9).

(3) A recommendation by the Board under section 6(2) of the Act of 2022 shall be set out separately from its conclusion under Regulation 8(9) and any determination of the Board under Regulation 42(11) of the Regulations of 2011 and shall be identifiable as a recommendation made under section 6(2) of the Act of 2022.

(4) The Board shall carry out its functions under section 6(2) of the Act of 2022 as expeditiously as possible having regard to the purpose referred to in section 2(1) of the Act of 2022 and, in any event, within the period specified in Regulation 8(10).

Effects of steps not being completed by Board or Minister within specified time period

11. A person shall not question the validity of any step taken by the Minister or the Board under the Act of 2022 or these Regulations by reason only that such step was not completed within the time required to take such step under these Regulations.



GIVEN under my Official Seal,
21 December, 2022.

EAMON RYAN,
Minister for the Environment, Climate and
Communications.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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