



STATUTORY INSTRUMENTS

S.I. No. 454 of 2011



PLANNING AND DEVELOPMENT (AMENDMENT) (No. 2)
REGULATIONS 2011

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PLANNING AND DEVELOPMENT (AMENDMENT) (No. 2)
REGULATIONS 2011

The Minister for the Environment, Community and Local Government, in exercise of the powers conferred on him by sections 4, 176, 246 and 262 of the Planning and Development Act 2000, as amended, hereby makes the following Regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Planning and Development (Amendment) (No. 2) Regulations 2011.

(2) These Regulations and the Planning and Development Regulations 2001 to 2011 shall be construed as one and may be collectively cited as the Planning and Development Regulations 2001 to 2011.

(3) These Regulations shall come into effect on the date of signature.

Interpretation

2. In these Regulations, unless otherwise stated,

“the Regulations” means the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), as amended;

“Minister” means Minister for the Environment, Community and Local Government.

Amendment of Article 5 of the Regulations

3. Article 5 of the Regulations is amended by the insertion of the following definition:

“ “Wetlands” means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.”.

Substitution of Article 8 of the Regulations

4. Article 8 of the Regulations is substituted by the following:

“8. Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 13th September, 2011.*

necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development.

- 8A. Initial afforestation shall be exempted development.
- 8B. Works consisting of field drainage for agriculture, other than drainage of wetlands, shall be exempted development.
- 8C. Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.
- 8D. Works consisting of the removal for the purposes of agriculture of field boundaries consisting of stone walls or wire or post fences shall be exempted development.”

Amendment of Article 9 of the Regulations

5. Article 9 of the Regulations is amended by the substitution of the following sub-paragraphs for sub-paragraph (1)(a)(vii):

- “(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”

Substitution of Class 6 of Schedule 2, Part 1 of the Regulations

6. Class 6 of Schedule 2, Part 1 of the Regulations is substituted by the following:

“

<p>CLASS 6</p> <p>(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.</p> <p>(b) Any works within the curtilage of a house for—</p> <p>(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,</p> <p>(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.</p>	<p>The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.</p> <p>Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,</p> <p>or</p> <p>if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.</p>
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”

Amendment of Classes 26, 27 and 28 of Schedule 2, Part 1 of the Regulations

7. Classes 26, 27 and 28 of Schedule 2, Part 1 of the Regulations are amended by the substitution of “undertaker authorised to provide an electricity service” for “electricity undertaking”.

Substitution of Class 42 of Schedule 2, Part 1 of the Regulations

8. Class 42 of Schedule 2, Part 1 of the Regulations is substituted by the following:

“

CLASS 42

Development consisting of:

a) the use of land as a bring facility,

1. No more than 5 receptacles shall be provided.

2. The capacity of each receptacle shall not exceed 4.5 cubic metres.

3. No such receptacle shall be situated on a public road.

or

4. No such receptacle shall be situated within 50 metres of the curtilage of any house, save with the consent in writing of the owner or occupier thereof.

b) the use of land to accommodate a fully sealed portable waste disposal compactor

1. The compactor must be located within the curtilage of a business premises.

2. No more than one compactor shall be provided in any one premises.

3. The capacity of the compactor shall not exceed 10 cubic metres.

4. No such compactor shall be situated within 50 metres of the curtilage of any house, other residential building, school, hospital, church, building used for public assembly, protected structure or proposed protected structure, save with the consent in writing of the owner or occupier thereof.

”

Insertion of new Class 16A into Schedule 2, Part 2 of the Regulations

9. Schedule 2, Part 2 of the Regulations is amended by the insertion of the following after Class 16:

“

<p>CLASS 16A</p> <p>Advertisements other than advertisements specified in Class 16 of this Part of this Schedule, announcing any local event promoted or carried on for commercial purposes.</p>	<ol style="list-style-type: none"> 1. No such advertisement shall exceed 1.2 square metres in area. 2. No such advertisement shall be exhibited more than 2.5 metres above ground level or be glued, pasted or otherwise be affixed to any structure other than an advertisement structure. 3. No such advertisement shall be exhibited, and no advertisement structure erected for the purpose of exhibiting such advertisement shall be left in place for more than 7 days prior to the date of the event or for more than 3 days after the conclusion of the event to which it relates. 4. No such advertisement shall be exhibited, and no advertisement structure erected for the purpose of exhibiting such advertisement, at a distance greater than 15 kilometres from the location of the event. 5. The event shall not take place in the same location more than three times a year. 6. No advertisements shall be erected where they can be seen from any motorway or national primary road.
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”

Amendment of Class 4 of Schedule 2, Part 3 of the Regulations

10. Class 4 of Schedule 2, Part 3 of the Regulations is amended by the substitution of “construction, erection or maintenance” for “construction or erection”.

Substitution of Class 11 of Schedule 2, Part 3 of the Regulations

11. Class 11 of Schedule 2, Part 3 of the Regulations is substituted by the following:

“

<p>CLASS 11</p> <p>Development consisting of the carrying out of drainage of wetlands.</p>	<ol style="list-style-type: none"> 1. The area to be affected shall not exceed 0.1 hectares. 2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.
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Deletion of Classes 14 and 15 of Schedule 2, Part 3 of the Regulations

12. Classes 14 and 15 of Schedule 2, Part 3 of the Regulations are deleted.

Substitution of Class 17 of Schedule 2, Part 3 of the Regulations

13. Class 17 of Schedule 2, Part 3 of the Regulations is substituted by the following:

“

<p>CLASS 17</p> <p>(a) Peat extraction in a new or extended area of less than 10 hectares, or</p> <p>(b) Peat extraction in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into force of these Regulations.</p>	
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Insertion of new Class 20 into Schedule 2, Part 3 of the Regulations

14. Schedule 2, Part 3 of the Regulations is amended by the insertion of the following after Class 19:

“

<p><i>Rainwater Harvesting</i></p> <p>CLASS 20</p> <p>Works consisting of the provision of a tank or tanks for the storage of rainwater collected from the roofs of agricultural buildings and any ancillary equipment to collect and distribute the rainwater.</p>	<ol style="list-style-type: none"> 1. No such structure situated fully underground shall exceed 10 metres in length, 5 metres in width or 4 metres in depth. 2. No such structure that is totally or partially above ground shall exceed 5 metres in length, 5 metres in width or 4 metres in height. 3. All such structures shall have a solid, impervious roof. 4. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
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Amendment of 12. of Schedule 5, Part 1 of the Regulations

15. Schedule 5, Part 1 of the Regulations is amended by the insertion of the following after 12:

“In the case of (a) and (b) above, transfers of piped drinking water are excluded.”

Substitution of 16. of Schedule 5, Part 1 of the Regulations

16. Schedule 5, Part 1 of the Regulations is amended by the substitution of the following for 16:

“16. Pipelines with a diameter of more than 800mm and a length of more than 40km:

— for the transport of gas, oil, chemicals, and,

— for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.”

Amendment of 17. of Schedule 5, Part 1 of the Regulations

17. Schedule 5, Part 1 of the Regulations is amended by the insertion of “or” after 17(b).

Amendment of Schedule 5, Part 1 of the Regulations

18. Schedule 5, Part 1 of the Regulations is amended:

(a) by the insertion of the following after 22:

“23. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide⁶.

24. Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Part, or where the total yearly capture of CO₂ is 1.5 megatonnes or more.”, and

(b) by the substitution of the following for the footnotes:

¹Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

²For the purposes of this Directive, ‘airport’ means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

³OJ No. L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No. L 5, 7.1.1994, p.15).

⁴OJ No. L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ No. L 168, 2.7.1994, p.28).

⁵OJ No. L 135, 30.5.1991, p.40. Directive as last amended by the 1994 Act of Accession.

⁶OJ No. L 140, 5.6.2009, p.114.

Amendment of Schedule 5, Part 2 of the Regulations

19. Schedule 5, Part 2 of the Regulations is amended:

(a) by the removal of 1(a) and 1(b),

(b) by the substitution of the following for 1(c):

“Development consisting of the carrying out of drainage of wetlands where more than 2 hectares of wetlands would be affected.”,

(c) by the removal of 1(d)(i),

(d) by the insertion of the following after 3(i):

“(j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Part 1 of this Schedule.”,

(e) by the substitution of 100 for 1000 and 2 for 20 in 10(f)(ii),

(f) by the substitution of the following for 10(i):

“(i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Part 1 of this Schedule).”,

(g) by the insertion of the words “already authorised, executed or in the process of being executed” after “development” in 13(a),

and

(h) by the insertion of the following after 13:

“14. Works of Demolition

Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

15. Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.”.

Amendment of Schedule 12, Part 1 of the Regulations

20. Schedule 12, Part 1 of the Regulations is amended by the substitution of the following for (dd):

“

(dd) An advertisement structure (being of a fingerpost type not exceeding 1 metre in length) consisting of a direction sign.	€50
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Given under my Official Seal,
8 September 2011.

PHIL HOGAN, T.D.
Minister for the Environment, Community and Local
Government.

EXPLANATORY MEMO

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

The primary purpose of these Regulations is to amend the exempted development provisions of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), which have been updated and amended by the following Statutory Instruments:

- Planning and Development Regulations 2002 (S.I. No. 70 of 2002).
- Planning and Development (No. 2) Regulations 2002 (S.I. No. 149 of 2002).
- Planning and Development Regulations 2003 (S.I. No. 90 of 2003).
- Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. No. 436 of 2004).
- Planning and Development Regulations 2005 (S.I. No. 364 of 2005).
- Planning and Development Regulations 2006 (S.I. No. 685 of 2006).
- Planning and Development Regulations 2007 (S.I. No. 83 of 2007).
- Planning and Development (No. 2) Regulations 2007 (S.I. No. 135 of 2007).
- Planning and Development Regulations 2008 (S.I. No. 235 of 2008).
- Planning and Development (Amendment) Regulations 2008 (S.I. No. 256 of 2008).
- Planning and Development Regulations 2010 (S.I. No. 406 of 2010).
- Planning and Development (Amendment) Regulations 2011 (S.I. No. 262 of 2011).

The principal change being made in these Regulations is that the exempted development threshold for drainage of wetlands is being reduced from 20 hectares to 0.1 hectares on foot of a decision of the European Court of Justice (Case C-66/06) of 20 November 2008; the threshold for mandatory environmental impact assessment for such drainage is being reduced to 2 hectares. Some other land reclamation activities (removal of field boundaries, etc.) are being exempted from the planning system as they will be subject to a new consent system under the Department of Agriculture, Fisheries and Food.

In addition new planning exemptions are being introduced in respect of portable waste disposal compactors, agricultural rainwater harvesting, temporary advertisement signs for local commercial events and the exemption in relation to paving of gardens is being amended.

The fee payable for a section 254 licence for placing of an advertisement structure on a public road is being reduced from €630 to €50 for a directional fingerpost sign.

These Regulations shall come into force on the date of signature.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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