



STATUTORY INSTRUMENTS.

**S.I. No. 301 of 2015**



EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND  
HABITATS) REGULATIONS 2015

## EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND HABITATS) REGULATIONS 2015

I, ALAN KELLY, Minister for the Environment, Community and Local Government, 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 No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>1</sup> and Council Directive No. 92/43/EEC of 21 May 1992<sup>2</sup> hereby make the following regulations:

1. These Regulations may be cited as the European Union (Environmental Impact Assessment and Habitats) Regulations 2015.

2. In these Regulations, “Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000).

3. Section 2 of the Act of 2000 is amended in subsection (1)—

(a) by the substitution of the following definition for the definition of “permission”:

“ ‘permission’ means a permission granted under section 34, 37G or 37N, as appropriate;”

(b) by the substitution of the following definition for the definition of “permission regulations”:

“ ‘permission regulations’ means regulations under section 33, 37P, 172(2) or 174;” and

(c) in the definitions of “unauthorised structure”, “unauthorised use” and “unauthorised works”, by the substitution of “or under section 34, 37G or 37N of this Act” for “or under section 34 or 37G of this Act” in each place where those words occur.

4. The Act of 2000 is amended by inserting the following sections after section 37K:

*“Quarry substitute consent applications — Board’s jurisdiction in relation to simultaneous applications for further development*

37L. (1) Where an application for substitute consent is or was required to be made by the owner or operator of a quarry pursuant to subsection (7), (10) or (12) of section 261A, the owner or operator

<sup>1</sup>OJ No. L 26, 28.1.2012 p.1.

<sup>2</sup>OJ No. L 206, 22.7.1992, p.7.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 17th July, 2015.*

may apply for permission to further develop that quarry in accordance with this section.

(2) An application for permission to further develop a quarry under subsection (1) shall be made to the Board.

(3) An application for permission under subsection (1) may only be made for further development of a quarry as a quarry.

(4) Subject to subsections (5) and (6), an application under subsection (1) may be made not later than 6 weeks after the date of receipt by the Board of the application for substitute consent.

(5) Where prior to the date of the coming into operation of this section an application for substitute consent referred to in subsection (1) has been made in respect of a quarry, but no decision has been made by the Board in respect of that application prior to or on that date, an application for permission for further development of the quarry may be made under subsection (1) within 6 months of that date.

(6) No application may be made under subsection (1) where a decision has been made by the Board in respect of an application for substitute consent referred to in subsection (1) prior to or on the date of the coming into operation of this section.

(7) Where—

(a) subsection (5) applies, and

(b) the applicant informs the Board by notice in writing prior to it making its decision in respect of the application for substitute consent that the applicant intends to submit an application for permission under subsection (1),

the Board shall, notwithstanding section 177P(1), not make its decision on the application for substitute consent prior to—

(i) the day that is 6 months after the date of the coming into operation of this section,

(ii) the day the application for permission under subsection (1) is received by the Board, or

(iii) the day the applicant informs the Board by notice in writing that it no longer intends to submit an application for permission under subsection (1),

whichever is the earlier.

(8) Where the Board receives an application for permission under subsection (1) in respect of a quarry, it shall consider that application

in conjunction with the application for substitute consent in respect of that quarry and it shall be the duty of the Board to take all such steps as are open to it to ensure that the decision under section 37N is made as soon as possible after the decision on the application for substitute consent.

(9) The Board, at its own discretion and at the request of a person intending to make an application under subsection (1), may enter into consultations with the person before that person makes an application under subsection (1).

(10) On receipt of an application under subsection (1), the Board shall send a copy of the application and, where relevant, any environmental impact statement or Natura impact statement to the planning authority or authorities in whose functional area or areas the proposed development would be situated.

(11) Where the Board considers that the proposed development is likely to have significant effects on the environment of a Member State of the European Union or a state which is a party to the Transboundary Convention, it shall send a copy of the application and, where relevant, any environmental impact statement or Natura impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may be made in writing to the Board within the period specified in that notice.

(12) (a) Where requested to do so by the Board, the planning authority for the functional area (or, as the case may be, each planning authority for the functional areas) in which the proposed development would be situated shall, within 6 weeks from the making of the request, prepare and submit to the Board a report setting out the views of the authority on the effects of the proposed development on the environment and the proper planning and sustainable development of the functional area of the authority, having regard in particular to the matters specified in section 34(2) to which a planning authority is to have regard.

(b) The Board may agree to extend the period specified in subparagraph (a), provided that such period of extension shall not exceed 6 weeks.

(c) The Board may make a decision under section 37N(3) notwithstanding that a planning authority has failed to submit a report requested under paragraph (a) within the time specified in that paragraph or within such period of extension as may have been agreed under paragraph (b).

(13) In addition to the report referred to in subsection (12), the Board may, where it considers it necessary to do so, require the planning authority or authorities referred to in that subsection or any planning authority or authorities on whose functional area or areas the

proposed development would have a significant effect to furnish to the Board such information in relation to the effects of the proposed development on the proper planning and sustainable development of the functional area concerned and on the environment as the Board may specify.

*Section 37L: supplemental provisions*

37M. (1) Before making a decision in relation to an application for permission under section 37L the Board may, at its absolute discretion and at any time—

- (a) require the applicant for permission to submit further information, including a revised environmental impact statement or Natura impact statement,
- (b) indicate that it is considering granting permission, subject to the applicant for permission submitting revised particulars, plans or drawings in relation to the development,
- (c) request submissions or observations from the applicant for permission, any person who made written submissions or observations concerning the proposed development to it in accordance with the permission regulations, or any other person who may, in the opinion of the Board, have information which is relevant to the making of the decision in relation to the application, or
- (d) make any information relating to the application available for inspection, notify any person or the public that the information is so available and, if it considers appropriate, invite further submissions or observations to be made to it within such period as it may specify.

(2) The Board may, at any time after the expiration of the period specified in a notice issued under the permission regulations for making submissions or observations, make its decision under section 37N on the application.

*Decision by Board on application under section 37L*

37N. (1) When making a decision in relation to an application under section 37L, the Board shall consider all information relating to the application provided to it under this Act and any matter to which, by virtue of this Act, it can have regard.

(2) Without prejudice to the generality of subsection (1), the Board shall consider—

- (a) (i) any environmental impact statement or Natura impact statement submitted,
- (ii) any submissions or observations made to it,

- (iii) any report submitted by a planning authority in accordance with section 37L(12),
- (iv) any information furnished in accordance with section 37L(13),
- (v) any information furnished in accordance with section 37M(1), and
- (vi) any other relevant information before it relating to—
  - (I) the likely consequences of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the development, and
  - (II) the likely effects on the environment of the proposed development,
- (b) any report or recommendation prepared in relation to the application in accordance with section 146, including any report of a person conducting an oral hearing of the proposed development,
- (c) the provisions of the development plan or plans for the area,
- (d) the provisions of any special amenity area order relating to the area,
- (e) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (f) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact, and
- (g) the matters referred to in section 143.

(3) The Board may, in respect of an application under section 37L for permission, decide to grant the permission, subject to or without conditions, or to refuse it.

(4) The Board may decide to grant a permission for development, or any part of a development, under this section even if the proposed development, or part thereof, contravenes materially the development plan relating to any area in which it is proposed to situate the development where it considers that—

- (a) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

- (b) permission for the proposed development should be granted having regard to guidelines under section 28 or any relevant policy of the Government, the Minister or any Minister of the Government.

(5) Where the Board grants a permission in accordance with subsection (4)(b), the Board shall, in addition to the requirements of section 37O(4), indicate in its decision the main reasons and considerations for contravening materially the development plan.

(6) Without prejudice to the generality of the Board's powers to attach conditions under subsection (3) the Board may attach to a permission for development under this section—

- (a) a condition with regard to any of the matters specified in section 34(4),
- (b) a condition requiring the payment of a contribution or contributions of the same kind as the appropriate planning authority could require to be paid under section 48 or 49 (or both) were that authority to grant the permission (and the scheme or schemes referred to in section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions in the same way as if the authority were to impose the condition), or
- (c) a condition requiring the applicant to submit further information to it or any other local or state authority, as the Board may specify before commencing development.

(7) In subsection (6)(b) 'appropriate planning authority' means whichever planning authority would, but for the operation of section 37L, be the appropriate planning authority to grant the permission referred to in this section or, where the development is situated in the functional area of more than one planning authority, the planning authority in whose functional area the largest portion of the development, as determined by the Board by reference to area, is situated.

(8) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situated and the person carrying out the development; if that authority or those authorities and that person cannot agree on the point of detail, the point of detail may be referred to the Board for determination.

(9) The Board shall not grant a permission in respect of an application under section 37L that—

- (a) is not made in accordance with, or

(b) does not comply with the requirements of,  
the permission regulations.

*Section 37N: supplemental provisions*

37O. (1) The Board shall send a copy of a decision under section 37N, as soon as may be after the making of the decision, to—

- (a) the applicant,
- (b) any planning authority in whose functional area the development would be situated, and
- (c) any person who made submissions or observations on the application for permission under section 37L to which the decision relates.

(2) A planning authority referred to in subsection (1) shall enter the details of the decision under section 37N in the register.

(3) (a) Where an environmental impact statement was submitted with the application for permission under section 37L to which the decision relates, the Board shall cause to be published on its website a notice informing the public of the decision under section 37N.

(b) The notice under paragraph (a) shall state that a person may question the validity of the decision by the Board to which the notice relates by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with section 50.

(c) The notice under paragraph (a) shall identify where practical information on the review mechanism can be found.

(4) A decision given under section 37N and a notice of the decision required to be given under subsection (3) shall state—

- (a) the main reasons and considerations on which the decision is based,
- (b) where conditions are imposed in relation to the grant of any permission, the main reasons for the imposition of any such conditions, and
- (c) where a decision by the Board under section 37N to grant or to refuse permission is different, in relation to the granting or refusal of permission, from the recommendation in a report of a person assigned to report on the application on behalf of the Board, the main reasons for not accepting the recommendation in the report to grant or refuse permission.



(5) A grant of permission under section 37N shall be made as soon as may be after the making of the relevant decision.

(6) A person shall not be entitled solely by reason of a permission under section 37N to carry out any development.

*Regulations*

37P. (1) The Minister shall make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for permission under section 37L and decisions under section 37N.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) make provisions for the payment of fees to the Board, and
- (b) make provision for matters of procedure in relation to the making of an application under section 37L, including the giving of public notice and the making of applications in electronic form.

*Objective of the Board in relation to applications under section 37L*

37Q. (1) It shall be the duty of the Board to ensure that a decision under section 37N on an application made under section 37L is made as expeditiously as is consistent with proper planning and sustainable development and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the making of that decision.

(2) Without prejudice to the generality of subsection (1) and subject to subsections(3) to (5), it shall be the objective of the Board to ensure that a decision under section 37N on an application made under section 37L is made within a period of 18 weeks beginning on the later of—

- (a) the date of receipt of the application, or
- (b) where a report requested under section 37L(12)(a) is received within the time specified in that paragraph or within such period of extension as may have been agreed under section 37L(12)(b), the date of receipt of that report.

(3) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of the matter with which the Board is concerned, to determine the matter within the period referred to in subsection (2), the Board shall, by notice in writing served on the applicant for permission, any planning authority involved and any other person who submitted submissions or observations in relation to the matter before the expiration of that period, inform the authority and those persons of the reasons why it would not be possible or appropriate to determine the matter within that

period and shall specify the date before which the Board intends that the matter shall be determined.

(4) Where a notice has been served under subsection (3), the Board shall take all such steps as are open to it to ensure that the matter is determined before the date specified in the notice.

(5) The Board shall include in each report made under section 118 a statement of the number of matters which the Board has determined within the period referred to in subsection (2) and such other information as to the time taken to determine such matters as the Minister may direct.”.

5. Section 41 of the Act of 2000 is amended by the substitution of “section 34, 37, 37G or 37N” for “section 34, 37 or 37G” in each place where those words occur.

6. Section 125 of the Act of 2000 is amended by the substitution of “under section 37E or section 37L” for “under section 37E”.

7. Section 140 of the Act of 2000 is amended—

(a) in subsection (1) by the substitution of the following paragraph for paragraph (a):

“(a) A person who has made—

- (i) an appeal,
- (ii) a planning application to which an appeal relates,
- (iii) a referral,
- (iv) an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development, or
- (v) an application for permission under section 37L,

may withdraw, in writing, the appeal, application or referral at any time before that appeal, application, or referral is determined by the Board.”, and

(b) in subsection (2)(a) by the substitution of “in respect of a strategic infrastructure development, an application for permission under section 37L,” for “in respect of a strategic infrastructure development,”.

8. Section 174 of the Act of 2000 is amended in subsection (2) by the substitution of “sections 34(3), 37G(2), 37N(2), 146C(6), 173(1), 181B(1), 182B(1) and 182D(1)” for “sections 34(3), 37G(2), 146C(6), 173(1), 181B(1), 182B(1) and 182D(1)”.

9. Section 177L of the Act of 2000 is amended in subsection (6) by the substitution of “subsection (5)” for “subsection (4)”.

10. Section 177P of the Act of 2000 is amended by the substitution of the following subsection for subsection (1):

“(1) Section 126 shall apply in relation to the duty of the Board to dispose of applications for substitute consent as it applies to the duty of the Board to dispose of appeals and referrals subject to—

- (a) the modification that references in that section to appeals and referrals shall be to applications for substitute consent,
- (b) the modification that the period of 18 weeks referred to in paragraph (a) of subsection (2) shall begin on the date of receipt by the Board of the report submitted by the planning authority to the Board in accordance with section 177I, and
- (c) any other necessary modifications.”.



GIVEN under my Official Seal,  
14 July 2015.

ALAN KELLY,  
Minister for the Environment, Community and  
Local Government.

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