



STATUTORY INSTRUMENTS.

**S.I. No. 145 of 2021**

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EUROPEAN UNION (FORESHORE ACT 1933) (ENVIRONMENTAL  
IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2021

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IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2021

I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>1</sup> as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>2</sup>, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Foreshore Act 1933) (Environmental Impact Assessment) (Amendment) Regulations 2021.

2. (1) In these Regulations -

“Act of 1933” means the Foreshore Act 1933 (No. 12 of 1933);

“Regulations of 2012” means the European Communities (Environmental Impact Assessment) (Foreshore) Regulations 2012 (S.I. No. 433 of 2012).

(2) A word or expression that is used in these Regulations and that is also used in Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>3</sup> as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>4</sup> has the same meaning in these Regulations as it has in that Directive.

3. The Act of 1933 is amended by the substitution of “environmental impact assessment report” for “environmental impact statement” in each place where it occurs.

4. Section 1 of the Act of 1933 is amended -

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

“ ‘Council Directive’ means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>5</sup> as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>6</sup> on the assessment of the

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

<sup>2</sup> OJ No. L 124, 25.4.2014, p. 1

<sup>3</sup> OJ No. L 26, 28.1.2012 p. 1

<sup>4</sup> OJ No. L 124, 25.4.2014, p. 1

<sup>5</sup> OJ No. L 26, 28.1.2012 p. 1

<sup>6</sup> OJ No. L 124, 25.4.2014, p. 1

effects of certain public and private projects on the environment;”,

- (b) by the substitution of the following definition for the definition of “environmental impact assessment”:

“ ‘environmental impact assessment’, in relation to a proposed development, means a process in respect of the development -

(a) consisting of -

- (i) the preparation of an environmental impact assessment report in accordance with section 13A(1)(cc),
- (ii) the carrying out of the consultations referred to in section 19A and, where relevant, section 19C,
- (iii) the examination by the appropriate Minister of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, in accordance with section 13A(1)(d) and any relevant information received through the consultations under section 19A and section 19C,
- (iv) the reaching of a reasoned conclusion referred to in section 13A(2)(a) by the appropriate Minister on the significant effects of the project on the environment, taking into account the results of the examination referred to in subparagraph (iii) and, where appropriate, the appropriate Minister’s own supplementary examination; and
- (v) the integration of the appropriate Minister’s reasoned conclusion into a decision referred to in section 13A(2)(cc) to grant or refuse consent for the relevant application,

and

- (b) including an examination, analysis and evaluation, by the appropriate Minister under section 13A(2)(a) in order to identify, describe and assess the direct and indirect significant effects of the particular proposed development, including significant effects derived from the vulnerability of the proposed development 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 1992<sup>7</sup> and Directive

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

2009/147/EC of the European Parliament and of the Council of 30 November 2009<sup>8</sup>,

- (iii) land, soil, water, air and climate,
  - (iv) material assets, cultural heritage and the landscape, and
  - (v) the interaction between the factors mentioned in subparagraphs (i) to (iv);”,
- (c) by the insertion of the following definition after the definition of “environmental impact assessment”:
- “ ‘environmental impact assessment report’ shall be construed in accordance with section 13A(1)(c) to (cd);”,
- and
- (d) by the deletion of the definition of “environmental impact statement”.

5. Section 13A of the Act of 1933 is amended -

- (a) in subsection (1) -
  - (i) in paragraph (b) -
    - (I) by the substitution of the following subparagraph for subparagraph (ii):

“(ii) An environmental impact assessment shall be carried out by the appropriate Minister in respect of a proposed development where -

      - (I) such development would be of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) but does not exceed the relevant quantity, area or other limit specified in that Part, and
      - (II) the appropriate Minister determines that the proposed development would be likely to have significant effects on the environment.”,
  - (ii) by the insertion of the following paragraph after paragraph (b):

“(bb) In carrying out an environmental impact assessment on a proposed development under this section, the appropriate Minister shall, where appropriate, coordinate the assessment with any assessment of the proposed development under Council Directive

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<sup>8</sup> OJ No. L 20, 26.1.2010, p. 7

92/43/EEC of 21 May 1992<sup>9</sup> or Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009<sup>10</sup>.”,

(iii) by the insertion of the following paragraphs after paragraph (c):

“(cc) An applicant who submits an environmental impact assessment report in accordance with this section shall ensure that an environmental impact assessment report is -

- (i) prepared by competent experts, and
- (ii) subject to subsection (3A), contains the following information:
  - (I) a description of the proposed development comprising information on the site, design, size and other relevant features of the proposed development;
  - (II) a description of the likely significant effects of the proposed development on the environment;
  - (III) a description of the features of the proposed development and of 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 development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed development on the environment;
  - (V) a non-technical summary of the information referred to in points (I) to (IV);
  - (VI) any additional information specified in Schedule 6 to the Planning and Development Regulations 2001 that is relevant to the specific characteristics of the particular proposed development or type of proposed development and to the

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<sup>9</sup> OJ No. L 206, 22.7.1992, p. 7.

<sup>10</sup> OJ No. L 20, 26.1.2010, p. 7.

environmental features likely to be affected;

and

(iii) takes into account the available results of other relevant assessments carried out pursuant to any Act or under European Union legislation with a view to avoiding duplication of assessments.

(cd) Where the appropriate Minister issues an opinion under subsection (3A)(a)(iii) the applicant shall -

(i) prepare the environmental impact assessment report referred to in paragraph (cc) based on that opinion,

and

(ii) include in the report the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment.”,

(iv) in paragraph (d), by the insertion of “specified in Schedule 6 to the Planning and Development Regulations 2001 relevant to the specific characteristics of the particular project or type of project and to the environmental features likely to be affected” after “additional or supplemental information”,

(v) by the insertion of the following paragraph after paragraph (f):

“(g) The appropriate Minister shall ensure that he or she has access to sufficient expertise to examine the environmental impact assessment report.”,

(b) in subsection (2) -

(i) by the substitution of the following paragraph for paragraph (a):

“(a) In carrying out his or her consideration and environmental impact assessment of a relevant application the appropriate Minister shall duly take into account -

(i) the particulars submitted with the relevant application, including the environmental impact assessment report and any other material, including maps and plans,

(ii) any additional or supplemental information or any further information submitted in response to a

requirement, if any, pursuant to paragraph (d) or (f) of subsection (1),

- (iii) any submissions or observations made in relation to the effects on the environment of the proposed development, including those made by bodies prescribed under section 18A(vi) or members of the public, and
- (iv) the views, if any, furnished by other Member States of the European Communities pursuant to section 19C,

and reach a reasoned conclusion on the significant effects of the relevant application on the environment.”,

- (ii) in paragraph (b), by the substitution of “to avoid, prevent or reduce and, if possible, offset significant adverse effects (if any) on the environment of the proposed development as well as, where appropriate, conditions regarding monitoring measures” for “to avoid, reduce and, if possible, offset the major adverse effects (if any) of the proposed development”,
- (iii) by the insertion of the following paragraph after paragraph (b):

“(bb) A person who fails to comply with a condition attached to a consent under paragraph (b) shall be guilty of an offence and shall be liable -

- (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, and
- (ii) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both.”,
- (iv) by the insertion of the following paragraphs after paragraph (c):

“(cc) The appropriate Minister having reached a reasoned conclusion under paragraph (a), and being satisfied that the reasoned conclusion remains up-to-date, shall make a decision to grant or refuse consent for the relevant application within a reasonable period of time after receipt of an environmental impact assessment report under subsection (1)(c), or of receipt of additional or supplemental information or any further information furnished under paragraph (d) or (f) of subsection (1), whichever is the later.

- (cd) A decision under paragraph (cc) to grant consent for the relevant application shall include -

- (i) the reasoned conclusion referred to in paragraph (a),
  - (ii) any conditions attached to the consent under subsection (2)(b), including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring, to which the consent is subject, and
  - (iii) a description of any features of the proposed development, or any measures envisaged, to avoid, prevent or reduce, or offset significant adverse effects on the environment.
- (ce) A decision under paragraph (cc) to refuse consent for the relevant application shall include the main reasons for the refusal.”,
- (v) by the substitution of the following paragraph for paragraph (d):
  - “(d) Where the appropriate Minister makes a decision referred to in paragraph (cc) he or she shall, without prejudice to section 21A, inform the applicant and the public thereof and publish in one or more newspapers circulating in the area in which the proposed development would take place, and in electronic form on the website of the Department of which the appropriate Minister is in charge at the location referred to in section 19A(2A)(g), a notice stating -
    - (i) that the appropriate Minister has made a decision to grant or, as the case may be, refuse consent for the relevant application,
    - (ii) the main reasons and considerations on which the decision to grant or refuse consent is based, including -
      - (I) information about the public participation process,
      - (II) a summary of the results of the consultations and the information with the bodies prescribed under section 18A(vi) and where information was sent to another Member State in accordance with section 19C(1), the results of consultations and the information gathered under section 19C(3), and,
      - (III) a description of how the results referred to in clause (II) have been incorporated or otherwise addressed,



- (iii) where conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring) were attached to the consent granted, particulars of those conditions,
- (iv) that a copy of the decision is available for inspection during specified hours, at a specified place, for a specified period of time, and in electronic form on the website of the Department of which the appropriate Minister is in charge at the location referred to in section 19A(2A)(g),
- (v) that practical information regarding the judicial review procedures by which a person may seek to question the validity of any determination by the appropriate Minister in respect of a relevant application for consent can be found in electronic form on the website of the appropriate Minister at the location referred to in section 19A(2A)(g).”,
- (vi) by the insertion of the following subsections after subsection (2A):
  - “(2AB) A person that makes a relevant application referred to in subsection 1(b)(ii)(I) shall provide the appropriate Minister with the information specified in the Schedule 7A to the Planning and Development Regulations 2001 and shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation (other than the Council Directive).
  - (2AC) A person that makes a relevant application referred to in subsection 1(b)(ii)(I) may also provide a description of any features of the development or measures envisaged to avoid or prevent significant adverse effects on the environment.”,
- (vii) by the substitution of the following subsection for subsection (2B):
  - “(2B) Where the appropriate Minister receives information from an applicant in accordance with subsection (2AB)

he or she shall decide whether the said development would or would not be likely to have significant effects on the environment on the basis of such information, taking into account the relevant selection criteria specified in Schedule 7 to the Planning and Development Regulations 2001 and, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation (other than the Council Directive).”,

(viii) by the insertion of the following subsections after subsection (2B):

“(2BB) A decision by the appropriate Minister as to whether a relevant application referred to in subsection 1(b)(ii)(I) would or would not be likely to have significant effects on the environment shall -

(a) where the appropriate Minister determines that the development would be likely to have significant effects on the environment, specify, with reference to the relevant criteria listed in Schedule 7 to the Planning and Development Regulations 2001 the main reasons for that determination, and

(b) where the appropriate Minister determines that the development would not be likely to have significant effects on the environment, specify –

(i) with reference to the relevant criteria listed in the Schedule 7 to the Planning and Development Regulations 2001, the main reasons for that determination, and

(ii) any features of the proposed development,

and measures proposed by the applicant, to avoid or prevent significant adverse effects on the environment.

(2BC) Subject to subsection (2BD), the appropriate Minister shall make a decision as to whether a development would or would not be likely to have significant effects on the environment as soon as possible and within 90 days from the date on which the applicant has submitted all the information required by the appropriate Minister under subsection (2B).

(2BD) The appropriate Minister may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the project, extend the 90 day period referred to in subsection (2BC) in order to make his or her determination and in such cases it shall inform the applicant in writing of the reasons justifying the extension and of the date when his or her determination is expected.”

(ix) in subsection (2C) -

(I) by the substitution of “a decision as to whether a relevant application” for “a decision pursuant to subsection (2A) on whether a proposed development”, and

(II) by the insertion of “and shall make an electronic version of it available to the public on the website of the Department of which the appropriate Minister is in charge at the location referred to in section 19A(2A)(g)” after “by members of the public”,

(x) in subsection (3A), by the substitution of the following paragraph for paragraph (a):

“(a) The appropriate Minister shall, on the request of an applicant made before the applicant submits an environmental impact assessment report in accordance with this section -

(i) consult with the applicant,

- (ii) consult with the bodies prescribed under section 18A(1)(a) in respect of applications under subparagraph (vi) of that paragraph, and
- (iii) taking into account the information provided by the applicant in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, issue an opinion on the scope, and level of detail, of the information to be included by the applicant in the environmental impact assessment report in accordance with subsection (1)(cc).”,

6. The Act of 1933 is amended by the insertion of the following section after section 13A:

“13AA. (1) The Minister shall take all reasonable steps to ensure that a developer complies with any environmental condition.

(2) For the purposes of subsection (1), the Minister may request the developer to furnish, within a specified period, specified information in relation to the developer’s compliance with an environmental condition, and that developer shall comply with such a request.

(3) A request under subsection (2) by the Minister may, in particular, include a request for information relating to -

- (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring;
- (b) the manner in which samples and measurements are taken and analyses are carried out;
- (c) the equipment being used for the purposes of taking such samples and measurements, or of carrying out such analyses, and
- (d) the results of any monitoring carried out.

(4) A developer that fails to comply with a request under subsection (3) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(5) The Minister may, for the purposes of subsection (1), having notified the developer of his or her intention to do so, carry out an assessment of the developer's compliance with an environmental condition.

(6) During the course of an assessment under subsection (5) the developer shall comply with any request, made by the Minister for the purposes of that assessment, to -

- (a) furnish information, records or reports or the results of any monitoring by the developer in relation to the developer's compliance with the condition, or
- (b) afford to the Minister access to any land, premises or structure occupied by the developer, for the purposes of assessing the developer's compliance with the condition.

(7) A developer that fails to comply with a request under subsection (6) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(8) The Minister, having made a request under subsection (2) and considered any information furnished to him or her, or that has otherwise come into his or her possession, in consequence of that request, or under subsection (5), may issue to the developer to whom the request was made the terms of a direction (in this section referred to as 'the proposed direction') that the Minister proposes to issue to the developer, requiring the developer to carry out, cause to be carried out, or arrange for, within a specified period, such action as the Minister considers necessary for the purposes of subsection (1) to ensure that that the developer complies with an environmental condition.

(9) The proposed direction shall specify a period within which the developer may make observations to the Minister in relation to the proposal to make the direction (and the developer may make such observations within that period accordingly).

(10) After the expiration of the period referred to in subsection (9) and having considered any observations made by the developer under that subsection, the Minister may confirm, with or without modification, or decide not to confirm his or her proposal to make the direction concerned and, in a case where the proposal is confirmed, the Minister, shall accordingly issue to the developer the direction concerned and the developer shall comply with the direction within the period specified in the direction.

(11) A developer that fails to comply with a direction under subsection (10) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or

- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(12) In imposing any penalty under subsection (11) the court shall, in particular, have regard to the risk or extent of damage to the environment and any remediation required arising from the act or omission constituting the offence.

(13) Where a developer, after conviction of an offence under subsection (11), continues to contravene the provision, the developer shall be guilty of an offence on every day on which the contravention continues and for each such offence shall be liable, on summary conviction, to a class A fine or, on conviction on indictment, to a fine not exceeding €200,000.

(14) In this section –

“consent” means a consent to a relevant application;

“developer”, in relation to a consent, means the person to whom the consent was granted;

“environmental condition” means a condition attached to a consent under section 13A(2)(d);

“relevant application” has the meaning given to it by section 13A(5).”.

7. Section 19A of the Act of 1933 is amended -

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

“(1A) A person who has submitted an environmental impact assessment report in accordance with a requirement of, or under, section 13A of this Act shall, as soon as practicable, send to the appropriate Minister an electronic version of -

- (a) the notice referred to in subsection (1),
- (b) the environmental impact assessment report in respect of the proposed development, and
- (c) a map of the location of the proposed development to a scale of not less than 1:1000 in relation to built-up areas and 1:2500 in relation to all other areas, or such other scale as may be agreed with the Minister for Housing, Local Government and Heritage in a particular case, and marked so as to identify clearly the land or structure to which the application relates,”

- (b) in subsection (2), by the insertion of the words “and, together with the notice referred to in subsection (1) and the map referred to in subsection (1A), is made available in electronic form on the website of the Department of which the appropriate Minister is in charge at the location referred to in section 19A(2A)(g) and” after “in accordance with subsection (1)”,

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

(2A) The appropriate Minister shall send to the Minister for Housing, Local Government and Heritage each of the following:

- (a) the name of the person who has made the application with a contact email address and phone number for correspondence;
- (b) a description of the location of the proposed development;
- (c) a description of the proposed development;
- (d) notice that the appropriate Minister is the competent authority to which the application has been made;
- (e) a map of the location of the proposed development to a scale of not less than 1:1000 in relation to built-up areas and 1:2500 in relation to all other areas, or such other scale as may be agreed with the Minister for Housing, Local Government and Heritage in a particular case, and marked so as to identify clearly the land or structure to which the application relates;
- (f) a searchable electronic version of the notice referred to in subsection (1);
- (g) notification of the location where information in electronic form that relates to the application, including the determination under section 13A(2)(cc), is available on the website of the Department of which the appropriate Minister is in charge.”;

8. Section 19B of the Act of 1933 is amended -

- (a) in subsection (3), by the insertion of “, and provide to the appropriate Minister in electronic form,” after “the relevant application relates”, and
- (b) by the substitution of the following subsection for subsection 4:
 

“(4) The appropriate Minister shall make any additional or supplemental information, or any further information, furnished in accordance with a requirement under section 13A(1)(d) or (f) that the appropriate Minister considers contains significant additional data in relation to the effects on the environment of the proposal available in electronic form on the website of the Department of which the appropriate Minister is in charge at the location referred to in section 19A(2A)(g).”.



GIVEN under my Official Seal,  
25 March, 2021.

DARRAGH O'BRIEN,  
Minister for Housing, Local Government and Heritage.



EXPLANATORY NOTE

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

The purpose of these Regulations is to provide further for the transposition into Irish Law of the Environmental Impact Assessment (EIA) Directive (2011/92/EU) as amended by Directive 2014/52/EU of the Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment, insofar as it applies to development consent in respect of foreshore activities and developments.

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