



STATUTORY INSTRUMENTS.

**S.I. No. 418 of 2019**



EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND  
HABITATS) (SECTION 181 OF THE PLANNING AND DEVELOPMENT  
ACT 2000) REGULATIONS 2019

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EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND HABITATS) (SECTION 181 OF THE PLANNING AND DEVELOPMENT ACT 2000) REGULATIONS 2019

I, EOGHAN MURPHY, Minister for Housing, Planning 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 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 (EU) 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>2</sup> and Council Directive 92/43/EEC<sup>3</sup>, hereby make the following regulations:

*Citation and commencement*

1. These Regulations may be cited as the European Union (Environmental Impact Assessment and Habitats) (Section 181 of the Planning and Development Act 2000) Regulations 2019.

*Definition*

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

*Amendment of section 174 of Act of 2000*

3. Section 174(2) of the Act of 2000 is amended by the insertion of “181(2H),” after “173(1),”.

*Amendment of section 181 of Act of 2000*

4. Section 181 of the Act of 2000 is amended -

(a) in subsection (2) -

(i) in paragraph (a), by the substitution of the following for “Where development is proposed to be carried out”:

“Subject to Parts X and XAB and any regulations made under Parts X and XAB and subsections (2A) to (2AA), where development is proposed to be carried out”,

(ii) by the insertion of the following paragraphs after paragraph (a):

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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. 206, 22.7.1992, p. 7

- “(aa) Before making an order under paragraph (a), the Minister of the Government concerned (other than where the Minister concerned is the Minister) or, in the case of development proposed to be carried out by or on behalf of the Commissioners, the Minister for Public Expenditure and Reform, shall -
- (i) inform the Minister of his or her intention to make an order under paragraph (a) and provide to the Minister a draft of the order, and
  - (ii) inform any other State authority of his or her intention to make an order under paragraph (a) and provide to the State authority a draft of the order where, in the opinion of the Minister concerned, the draft order relates to the functions of that State authority.
- (ab) Where the Minister proposes to make an order under this subsection, the Minister shall, before making such order, comply with paragraph (aa)(ii).”, and
- (b) by the insertion of the following subsections after subsection (2):
- “(2A) (a) In this subsection and in subsections (2B) to (2AA) -
- (i) ‘approval’ means a decision by the Board under subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of subsection (2L) in relation to an application for approval,
  - (ii) ‘Minister concerned’ means -
    - (I) the Minister of the Government who proposes to carry out development referred to in this subsection or subsection (2)(a), or have it carried out on his or her behalf, or
    - (II) the Minister for Public Expenditure and Reform where the Commissioners propose to carry out development referred to in this subsection or subsection (2)(a), or have it carried out on their behalf, and
  - (iii) ‘proposed development’ means development proposed to be carried out by or on behalf of a Minister of the

Government or the Commissioners under subsection (2)(a).

- (b) Where development is proposed to be carried out by or on behalf of a Minister concerned pursuant to an order under subsection (2)(a) and the Minister concerned is satisfied, having had regard to Part X and Part XAB, that an environmental impact assessment or an appropriate assessment, or both such assessments of the proposed development is or are required, the Minister concerned shall prepare or cause to be prepared an application for approval, which shall include the documents and information referred to in paragraph (c), in respect of the development and shall apply to the Board for such approval.
- (c) An application for approval referred to in paragraph (b) shall include a draft of the order the Minister concerned proposes to make under subsection (2)(a), the plans, drawings and particulars in relation to the proposed development and, other than where an exemption is granted under subsection (2I), an environmental impact assessment report or Natura impact statement, or both that report and that statement, as the case may be, in respect of the development.
- (d) The environmental impact assessment report and the Natura impact statement provided under paragraph (c) shall, as appropriate, comply with the requirements of Parts X and XAB respectively.
- (e) A Minister concerned shall not make an order under subsection (2)(a) in respect of development which requires an environmental impact assessment or an appropriate assessment, or, as necessary, both such assessments, proposed to be carried out by or on behalf of the Minister under the order, other than in accordance with an approval of that proposed development.
- (f) On receipt of an application for approval under paragraph (b), the Board shall, other than where an exemption is granted under subsection (2I), carry out an environmental impact assessment, or an appropriate assessment, or, as necessary, both such

assessments, in accordance with Part X or Part XAB, as the case may require.

(2B) Before a Minister concerned makes an application for approval under subsection (2A), the Minister shall -

- (a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and -
  - (i) stating that -
    - (I) the Minister proposes to seek approval with regard to the proposed development,
    - (II) an environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, has or have been prepared in respect of the proposed development, and
    - (III) where relevant, the proposed development is likely to have significant effects on the environment in another Member State of the European Union or a state that is a party to the Transboundary Convention,
  - (ii) specifying the times and places at which, and the period (which shall not be less than 30 days) during which a copy of the application and the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),
  - (iii) inviting the making, during such period, of submissions and observations to the Board relating to the likely significant effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, if carried out,

- (iv) specifying the types of approval the Board may make, under subsection (2L)(a), in relation to the application,
  - (v) stating that a person may question the validity of the approval 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 sections 50, 50A and 50B, and
  - (vi) stating where practical information on the review mechanism can be found,
- (b) send a copy of the application and the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, to the planning authority or each planning authority in whose functional area the proposed development would be situate and to any prescribed authorities, those prescribed authorities being, for the purposes of this subsection and subsection (2F), the same as those authorities prescribed for the purposes of section 175(4), together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to the likely significant effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, if carried out, and
- (c) where the proposed development is likely to have significant effects on the environment of a Member State of the European Union or a state that is a party to the Transboundary Convention, send a copy of the application and the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.

(2C) The Board may -

- (a) if it considers it necessary to do so, require the Minister concerned who, in respect of a

proposed development, has applied for approval, to furnish to the Board such further information in relation to the likely significant effects on the environment or adverse effects on the integrity of a European site of the proposed development as the Board may specify, or

- (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of the proposed development, notify the Minister concerned that it is of that view and invite that Minister to make to the terms of the proposed development alterations specified in the notification and, if the Minister concerned makes those alterations, to furnish to it such information (if any) as it may specify in relation to the proposed development, in the terms as so altered, or where necessary, a revised environmental impact assessment report or revised Natura impact statement or both that report and that statement, as the case may be, in respect of it.

(2D) If the Minister concerned makes the alterations to the terms of the proposed development specified in a notification given to him or her by the Board under subsection (2C), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of the application for approval of the proposed development concerned under subsection (2A).

(2E) The Board shall -

- (a) where it considers that any further information furnished to it pursuant to a requirement made under subsection (2C)(a) contains significant additional data relating to the likely significant effects on the environment or adverse effects on the integrity of a European site, as the case may be, of the proposed development, or
- (b) where the Minister concerned has made the alterations to the terms of the proposed development specified in a notification given to him or her under subsection (2C)(b),

require the Minister concerned to comply with subsection (2F).

(2F) Where subsection (2E) applies the Minister concerned shall -

- (a) publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate -
  - (i) further information in relation to the proposed development has been furnished to the Board, or
  - (ii) the Minister concerned has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a revised environmental impact assessment report or revised Natura impact statement or both that report and that statement, as the case may be, in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks in a case other than a case relating to a revised environmental impact assessment report) during which and the place, or places, where a copy of the information or the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information, report or statement may be made to the Board before the expiration of the indicated period, and

- (b) send to each prescribed authority to which a notice was given pursuant to subsection (2B)(b) or (c) -
  - (i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information, report or

statement referred to in paragraph (a)(ii),  
and

- (ii) a copy of that further information,  
information, report or statement,

and indicate to the authority that submissions  
or observations in relation to that further  
information, information, report or statement  
may be made to the Board before the  
expiration of a period (which shall not be less  
than 3 weeks in a case other than a case  
relating to a revised environmental impact  
assessment report) beginning on the day on  
which the notice is sent to the prescribed  
authority by the Minister concerned.

(2G) The period referred to in subsection (2F)(a) or (b)  
shall, in a case relating to a revised environmental impact  
assessment report, not be less than -

- (a) 30 days where the report has been furnished to  
the Board, and
- (b) 3 weeks where the report has not been  
furnished to the Board.

(2H) Before making a decision under subsection (2L)(a),  
the Board shall consider -

- (a) the environmental impact assessment report or  
Natura impact statement or both that report  
and statement, as the case may be, submitted  
pursuant to subsection (2A) or (2C) or both, as  
the case may be,
- (b) any submissions or observations made in  
accordance with subsection (2B) or (2F) or  
both, as the case may be, and
- (c) any other information furnished in accordance  
with subsection (2C),

relating to the likely significant effects on the environment  
or adverse effects on the integrity of a European site of the  
proposed development.

- (2I) (a) (i) Notwithstanding Part X, at the request in  
that behalf of the Minister concerned  
who has made an application for  
approval in respect of a proposed  
development, the Board may grant an  
exemption referred to in paragraph (b)  
where the Board is satisfied that -

- (I) exceptional circumstances so  
warrant,

- (II) the application of the requirement to prepare an environmental impact assessment report or to carry out an environmental impact assessment or both that report and that assessment, as the case may be, or any other provisions implementing the Environmental Impact Assessment Directive as set out in this section would adversely affect the purpose of the proposed development, and
  - (III) the objectives of the Environmental Impact Assessment Directive are otherwise met.
- (ii) The Minister concerned may submit the request referred to in subparagraph (i) with the application for approval under subsection (2A) or at any time before the Board makes its decision under subsection (2L)(a).
- (b) Subject to paragraph (c), the Board may grant, in respect of the proposed development, an exemption from the requirement under this section to prepare an environmental impact assessment report or carry out an environmental impact assessment, or from any other provision of Part X as the Board considers appropriate.
- (c) No exemption may be granted under paragraph (b) in respect of the proposed development where another Member State of the European Union or a state that is a party to the Transboundary Convention, having been informed about the proposed development and its likely significant effects on the environment in that State or state, as the case may be, has indicated that it intends to furnish views on those effects.
- (2J) The Board shall, in deciding to grant an exemption under subsection (2I) -
- (a) consider whether the likely significant effects, if any, of the proposed development on the environment should be assessed in some other form, and
  - (b) make available to members of the public the information relating to the decision to grant an

exemption under subsection (2I), the reasons for granting such exemption and the information obtained under any other form of assessment referred to in paragraph (a),

and the Board may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(2K) Notice of any decision by the Board to grant an exemption under subsection (2I), of the reasons for granting the exemption and of any requirements applied under subsection (2J) shall, as soon as may be -

- (a) be published in *Iris Oifigiúil*, on the Board's website and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (2J), to the European Commission.

(2L) (a) The Board shall, in respect of an application for approval under subsection (2A), make its decision as expeditiously as possible having regard to the requirement for the carrying out of the proposed development by reason of an accident or emergency and may, in respect of such application -

- (i) approve the proposed development,
- (ii) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (iii) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (iv) refuse to approve the proposed development,

and may attach to an approval under subparagraph (i), (ii) or (iii) such conditions or compensatory measures, or both as the case may be, as it considers appropriate.

- (b) The Minister concerned shall carry out or have carried out the proposed development to which the approval relates in accordance with any conditions attached to that approval.

- (2M) (a) The Board shall send a copy of the decision under subsection (2L)(a) to the Minister concerned, to any planning authority in whose area the proposed development shall be situated and to any person who made submissions or observations on the application for approval.
- (b) The Board shall cause to be published as soon as may be, in one or more newspapers circulating in the area or areas and on its website, a notice informing the public of the decision under subsection (2L)(a).
- (c) The notice referred to in paragraph (b) shall state that details of the decision by the Board referred to in subsection (2N) shall be published on the website of the Board as soon as may be.
- (d) The notice shall state that a person may question the validity of any such decision by the Board 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 sections 50, 50A and 50B.
- (e) The notice shall identify where practical information on the review mechanism can be found.
- (2N) A decision of the Board under subsection (2L)(a) shall state -
- (a) the reasoned conclusion, in relation to the likely significant effects on the environment of the proposed development, and, where relevant, whether the development would have adverse effects on the integrity of a European site,
- (b) in relation to the decision of the Board under subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of subsection (2L), where a decision (being a decision which arises from the consideration of the environmental impact assessment report concerned) by the Board is different from the recommendation in a report of a person assigned to report on behalf of the Board in relation to the application for approval, the main reasons for not accepting the recommendation in the last-mentioned report to approve or refuse to approve the development,

- (c) where a decision to impose a condition (being a condition which arises from the consideration of the environmental impact assessment report or Natura impact statement, or both such report and such statement, in respect of the proposed development) in relation to any approval is materially different, in relation to the terms of such condition, from the recommendation in a report of a person assigned to report on behalf of the Board in relation to the application for approval, the main reasons for not accepting, or for varying, as the case may be, the recommendation in the last-mentioned report in relation to such condition,
- (d) in relation to the decision of the Board under subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of subsection (2L), that the Board is satisfied that the reasoned conclusion on the likely significant effects on the environment or adverse effects on the integrity of a European site of the proposed development was up to date at the time of the taking of the decision,
- (e) that a person may question the validity of any such decision by the Board 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 sections 50, 50A and 50B, and
- (f) where practical information on the review mechanism can be found.

(2O) An approval and the notification of the approval shall include a summary of the results of consultations that have taken place and information gathered in the course of the environmental impact assessment or appropriate assessment, or both such assessments, as the case may be, and, where appropriate, the comments received in the course of the environmental impact assessment from an affected Member State of the European Union or a state that is a party to the Transboundary Convention, and specify how those results have been incorporated into the decision or otherwise addressed.

(2P) In considering under subsection (2H) information furnished relating to the likely significant effects of a proposed development on the environment or adverse effects on the integrity of a European site, the Board shall have regard to, as appropriate -

- (a) 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, and
- (b) 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.

(2Q) Nothing in subsections (2A) to (2AA) shall require the disclosure by a Minister of the Government, the Commissioners or the Board of details of the internal arrangements of a proposed development which might prejudice the internal or external security of the development or facilitate any unauthorised entrance to, or exit from, the development of any person when it is completed.

(2R) (a) A Minister concerned who is considering whether to apply for approval for proposed development under subsection (2A) (referred to in this subsection and in subsections (2S), (2T), (2V) and (2W) as a 'prospective applicant') may, before making the application, enter into consultations with the Board in relation to the proposed development.

(b) The prospective applicant may notify the Board in writing of the intention of the prospective applicant to end the consultations with the Board referred to in paragraph (a) and, upon receipt of such notification by the Board, the consultations shall be deemed to have ended on the date of such receipt by the Board.

(2S) In any consultations under subsection (2R), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding -

- (a) the procedures involved in making the application and in considering such application, and
- (b) what considerations related to the environment or a European site, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

(2T) (a) A prospective applicant who is considering whether to apply for approval for proposed development under subsection (2A) may apply to the Board -

- (i) for a determination under sections 176A and 176B or section 177U, as to whether a proposed development would be likely

to have a significant effect on the environment or an adverse effect on the integrity of a European site, as the case may be (and inform the prospective applicant of the determination), or

- (ii) for an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact assessment report or Natura impact statement or both that report and that statement as the case may be, in relation to the proposed development.

(b) Sections 176A and 176B shall apply to a determination of the Board referred to in paragraph (a)(i) subject to the following modifications:

- (i) in sections 176A and 176B, ‘planning authority’ or ‘authority’ shall be read as ‘the Board’;

- (ii) in section 176A(3), as if the following were omitted:

‘and be accompanied by such fee as may be prescribed under section 246(1)(ca)’;

- (iii) in section 176B(2) -

- (I) in paragraph (a), as if ‘4 weeks’ were substituted for ‘3 weeks’, and

- (II) in paragraph (b), as if ‘5 weeks’ were substituted for ‘4 weeks’;

- (iv) in section 176B(4), as if paragraph (ii) were omitted;

- (v) in section 176B, as if the following subsection were substituted for subsection (4A):

‘(4A) The notice under subsection (4) shall be placed with any application for approval under section 181(2A) subsequently made in respect of which an application for a screening for environmental impact assessment was made under section 176A(2).’;

- (vi) in section 176B(5) -

(I) as if paragraph (i) were omitted, and

(II) as if the following paragraph were substituted for paragraph (ii):

‘(ii) stating that a person may question the validity of the screening determination for environmental impact assessment by the Board, 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 sections 50 and 50A,’;

(vii) any other necessary modifications have been made.

(c) Section 176C shall not apply to a determination of the Board referred to in paragraph (a)(i).

(2U) On receipt of such an application under subsection (2T)(a), the Board shall make its determination or give its opinion, as the case may be, as expeditiously as possible.

(2V) A prospective applicant shall, for the purposes of -

(a) consultations under subsection (2R), and

(b) the making of a determination or the giving of an opinion by the Board on an application under subsection (2T)(a),

supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(2W) (a) Without prejudice to subsection (2V) and subject to paragraph (b), where a prospective applicant has made an application under subsection (2T)(a)(ii) for an opinion in relation to what information will be required to be contained in an environmental impact assessment report or Natura impact statement or both that report and that statement as the case may be, the Board shall, after taking into account the information provided by the prospective applicant, in particular on the specific characteristics of the proposed development, including its location and technical capacity, and its likely significant effect on the environment or adverse effect on

the integrity of a European site, give an opinion in writing on the scope and level of detail of the information to be included in such report or such statement or both that report and that statement as the case may be, subject to any consultations carried out by the Board in relation to such opinion.

- (b) The Board shall give the opinion before the submission by the prospective applicant of the environmental impact assessment report or Natura impact statement or both that report and that statement as the case may be.

(2X) Where an opinion referred to in subsection (2W) has been provided, the environmental impact assessment report or Natura impact statement or both that report and that statement as the case may be, shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the likely significant effects on the environment of the proposed development or adverse effect on the integrity of a European site, taking into account current knowledge and methods of assessment.

(2Y) Neither -

- (a) the holding of consultations under subsection (2R), nor
- (b) the provision of an opinion under subsection (2W),

shall prejudice the performance by the Board of any other of its functions under this Act or regulations made under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(2Z) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.

(2AA) Where an application for approval is made to the Board under subsection (2A), or where further information is required by and furnished to the Board in relation to an application made under that subsection, the Minister concerned shall at the same time forward a copy of the application and the environmental impact assessment report or Natura impact statement, or both that report and that statement as the case may be, or the further information, to the planning authority or each planning authority in whose functional area it is proposed to carry out the development, and the Board and the planning authority or each such

planning authority shall as soon as possible make the application, and the environmental impact assessment report or Natura impact statement, or both that report and that statement as the case may be, or the further information, available for inspection at their offices during office hours.”.



GIVEN under my Official Seal,  
6 August, 2019.

EOGHAN MURPHY,  
Minister for Housing, Planning and Local Government.

EXPLANATORY NOTE

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

These Regulations further transpose into Irish law the provisions of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU, and Council Directive 92/43/EEC, by amending the emergency order provisions in Section 181(2) of the Planning and Development Act 2000.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
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