



STATUTORY INSTRUMENTS

**S.I. No. 865 of 2007**



EUROPEAN COMMUNITIES (DUBLIN DOCKLANDS DEVELOPMENT  
AUTHORITY ACT 1997)(AMENDMENT) REGULATIONS 2007

**(Prn. A7/2409)**

## EUROPEAN COMMUNITIES (DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY ACT 1997)(AMENDMENT) REGULATIONS 2007

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to certain provisions of Directive 2003/35/EC of the European Parliament and the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (No. 2003/35/EC, O.J. No. L156/17 — L156/24, 25 June 2003), hereby makes the following Regulations:

*Citation.*

1. These Regulations may be cited as the European Communities (Dublin Docklands Development Authority Act 1997) (Amendment) Regulations 2007.

*Interpretation.*

2. In these Regulations, “the Act” means the Dublin Docklands Development Authority Act 1997 as amended by the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 (S.I. No. 351 of 1998), the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 (S.I. No. 93 of 1999 and the Housing (Miscellaneous Provisions) Act 2002 (No. 9 of 2002);

“the Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000) (as amended by the Planning and Development (Strategic Infrastructure) Act 2006 (No. 27 of 2006));

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

*Amendment of section 25 of the Act.*

3. (1) The following subsection is inserted after subsection 25(3) of the Act:

“(3A) For the purposes of subsection 3(e), the Authority shall—

(a) publish in one or more newspapers circulating in the Dublin Docklands Area, and on its website, a notice stating—

(i) that a planning scheme is being prepared and will be considered for submission to the Minister for approval,

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 15th January, 2008.*

- (ii) whether development proposed in the draft planning scheme is subject to an environmental impact assessment pursuant to section 26(1),
  - (iii) the title and nature of any reports relied upon by the Authority for the purposes of preparing the draft planning scheme,
  - (iv) the times at which, the period (which shall be not less than one month) during which, and the place where a copy of the draft planning scheme, any relevant report, and any relevant environmental impact statement prepared pursuant to section 26(1), may be inspected,
  - (v) that the draft planning scheme and any relevant environmental impact statement prepared pursuant to section 26(1), is accessible on the Authority's website (the address of which shall be specified),
  - (vi) where a copy of the draft planning scheme, any relevant report and any relevant environmental impact statement prepared pursuant to section 26(1), or extracts therefrom, may be obtained and specifying the fee (if any) fixed by the Authority (which shall not be more than the reasonable cost of making the copy or copies concerned),
  - (vii) that submissions, comments or questions may be made in writing to the Authority in relation to the draft planning scheme before a specified date (which shall be not less than one month after the end of the period for inspection),
  - (viii) where copies of any submissions or comments may be obtained and specifying the fee (if any) fixed by the Authority (which shall not be more than the reasonable cost of making the copy or copies concerned),
  - (ix) that any submissions or comments received and not withdrawn will be considered by the Authority and that the draft planning scheme may be amended or modified to take account of such submissions before it is submitted to the Minister for approval,
    - (x) that the Minister may approve the ensuing planning scheme with or without modifications,
- (b) make a copy of the draft planning scheme, any relevant report and any relevant environmental impact statement prepared pursuant to section 26(1), or extracts therefrom, and any other information which is relevant to the decision

(including any submissions, comments or questions received by the Authority) available for inspection or for purchase by members of the public on the terms specified in the notice published in accordance with paragraph (a).

(2) Subsection 25(6) is amended by the addition after “State” of the following:

“and the Minister shall, upon request by any person, make available a copy of the planning scheme as approved under this section and provide information on any modifications made to the planning scheme, the reasons and considerations on which the approval was based, including information about the preceding public consultation process, and a description where necessary of the main measures provided for in the planning scheme to avoid, reduce or offset major adverse effects, if any, on the environment”.

*Amendment of section 26 of the Act.*

4. (1) Subsection 26(3) of the Act of 1997 is repealed.

(2) The following subsection is substituted for section 26(4) of the Act:

“(4) The Authority before submitting a planning scheme for approval of the Minister pursuant to section 25(4) shall have regard to any environmental impact statement prepared pursuant to subsection (1)(a) and to any views submitted by Dublin Corporation and interested persons in relation to the draft planning scheme or to the effects on the environment of proposed development in respect of which an environmental impact statement was prepared.”.

(3) The following subsection is substituted for section 26(5) of the Act:

“(5) The Authority shall, when submitting a planning scheme for approval of the Minister pursuant to section 25(4), furnish to the Minister a copy of any environmental impact statement prepared pursuant to subsection (1)(a) in respect of development proposed in the scheme and of any views submitted by Dublin Corporation and interested persons in relation to the draft planning scheme or to the effects on the environment of proposed development in respect of which an environmental impact statement was prepared.”.

(4) The following subsection is substituted for section 26(6) of the Act:

“(6) Before modifying or approving a planning scheme under section 25(5) the Minister shall have regard to any environmental impact statement prepared by the Authority pursuant to subsection (1)(a) and to any views submitted by Dublin Corporation and interested persons in relation to the draft planning scheme or to the effects on the environment of proposed development in respect of which an environmental impact statement was prepared.”.

(5) The following paragraph is substituted for section 26(7)(b) of the Act of 1997:

“(b) The Minister shall, in granting an exemption under paragraph (a)—

- (i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other form, and
- (ii) make available to members of the public the information relating to the exemption decision referred to in paragraph (a), the reason or reasons for granting such an exemption and the information obtained under any other form of assessment referred to in subparagraph (i),

and the Minister may, by order, apply such requirements regarding these matters in relation to the planning scheme as he considered necessary or appropriate.”.

*Sections 26A and 26B.*

5. The following sections are inserted after section 26 of the Act:

“26A (1) A person shall not question the validity of a decision made or other act done by the Authority or the Minister in respect of the preparation or approval, as the case may be, of a planning scheme otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the ‘Order’).

(2) The Authority or the Minister may, at any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (1) applies and which relates to a matter for the time being before the Authority or the Minister, as the case may be, apply to the High Court to stay the proceedings pending the making of a decision by the Authority or the Minister in relation to the matter concerned.

(3) On the making of such an application, the High Court may, where it considers that the matter before the Authority or the Minister is within the jurisdiction of the Authority or the Minister, make an order staying the proceedings concerned on such terms as it thinks fit.

(4) Subject to subsection (5), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (1) applies shall be made within the period of 8 weeks beginning on the date on which notice of the decision was first published in accordance with Section 25(6) or, as the case may be, the date of the doing of the act by the Authority or the Minister, as appropriate.

(5) The High Court may extend the period provided for in subsection (4) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—

- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

(6) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court.

26B (1) In this section—

‘Court’, where used without qualification, means the High Court (but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made);

‘Order’ shall be construed in accordance with section 26A;

‘section 26A leave’ means leave to apply for judicial review under the Order in respect of a decision to which section 26A(1) applies.

(2) An application for section 26A leave shall be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave)—

- (a) if the application relates to a decision made or other act done by the Minister, to the Minister,
- (b) if the application relates to a decision made or other act done by the Authority, to the Authority
- (c) to any other person specified for that purpose by order of the High Court.

(3) The Court shall not grant section 26A leave unless it is satisfied that—

- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and
- (b) (i) the applicant has a substantial interest in the matter which is the subject of the application, or
  - (ii) where the decision or act concerned relates to a proposed development identified by the Authority under

section 26 as being development which may have significant effects on the environment, the applicant—

- (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, relevant to the class of matter into which the decision or act the subject of the application for section 26A leave, falls,
- (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives otherwise than for profit, and
- (III) satisfies such requirements (if any) as a body or organisation, if it were to make an appeal under section 37(4)(c) of the Act of 2000, would have to satisfy by virtue of section 37(4)(d)(iii) of that Act (and for this purpose, any requirement prescribed under Section 37(4)(e)(iv) of that Act shall apply as if the reference in it to the class of matter into which the decision, the subject of the appeal, falls were a reference to the class of matter into which the decision or act, the subject of the application for section 26A leave, falls).

(4) A substantial interest for the purposes of subsection (3)(b)(i) is not limited to an interest in land or other financial interest.

(5) If the Court grants section 26A leave, no grounds shall be relied upon in the application for judicial review under the Order other than those determined by the Court to be substantial under subsection (3)(a).

(6) The Court may, as a condition for granting section 26A leave, require the applicant for such leave to give an undertaking as to damages.

(7) The determination of the Court of an application for section 26A leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case save with leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(8) Subsection (7) shall not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(9) If an application is made for judicial review under the Order in respect of part only of a decision or other act to which section 26A(1) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or part of the decision, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.

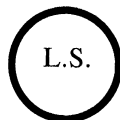
(10) The Court shall, in determining an application for section 26A leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice.

(11) On an appeal from a determination of the Court in respect of an application referred to in subsection (10), the Supreme Court shall—

(a) have jurisdiction to determine only the point of law certified by the Court under subsection (7) (and to make only such order in the proceedings as follows from such determination), and

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(12) Rules of court may make provision for the expeditious hearing of applications for section 26A leave and applications for judicial review on foot of such leave.”.



GIVEN under my Official Seal,  
20 December 2007

JOHN GORMLEY T.D.  
Minister for the Environment, Heritage and Local  
Government.



## EXPLANATORY NOTE

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

These Regulations provide for the transposition into certain Irish law of provisions in EU Directive 2003/35/EC amending the Environmental Impact Assessment (EIA) Directive (85/337/EEC) regarding public participation in the assessment of the effects of certain public and private projects on the environment.

These Regulations amend the provisions of the Dublin Docklands Development Authority Act 1997 by providing more explicitly for procedures for public participation in the making and environmental impact assessment of planning schemes under section 25 of that Act, and provide for judicial review of decisions and acts of the Dublin Docklands Development Authority or the Minister for the Environment, Heritage and Local Government in relation to the making and approval of such plans.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
51 ST. STEPHEN'S GREEN, DUBLIN 2  
(Tel: 01-6476834/35/36/37; Fax: 01-6476843)  
or through any bookseller.

---

€3.05

ISBN 1-4064-3486-8



9 781406 434866