



STATUTORY INSTRUMENTS.

S.I. No. 283 of 2012



EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT)
(WASTE) REGULATIONS 2012

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I, PHIL HOGAN, 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 2011¹ on the assessment of the effects of certain public and private projects on the environment hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Environmental Impact Assessment) (Waste) Regulations 2012.

(2) These Regulations come into operation on 30 September 2012.

2. In these Regulations—

“Act of 1996” means the Waste Management Act 1996 (No. 10 of 1996);

“Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000);

“Act of 2003” means the Protection of the Environment Act 2003 (No. 27 of 2003).

3. Section 2 of the Act of 1996 is amended in the Table thereto by substituting “Directive No. 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 environment⁵” for “Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁵”

⁵O.J. No. L 26, 28.1.2012 p.1”.

4. Section 5 of the Act of 1996 is amended—

(a) by inserting the following definitions:

“ “development” has the meaning assigned to it by section 3 of the Planning and Development Act 2000”;

“environmental impact assessment” shall be construed in accordance with section 40(2A);”;

¹OJ No. L 26, 28.1.2012 p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 31st July, 2012.*

- (b) by substituting the following definition for the definition of “environmental impact statement”:

“ “environmental impact statement” means a statement of the direct and indirect effects that a proposed development will have or is likely to have on the environment and shall include the information specified in Annex IV to Directive No. 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 environment¹¹;

¹¹O.J. No. L 26, 28.1.2012 p.1”.

and

- (c) by inserting the following subsection after subsection (3A):

“(3B) Subject to this Act, a word or expression that is used in this Act and that is also used in Directive No. 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 has, unless the context otherwise requires, the same meaning in this Act as it has in that Directive.”.

5. (1) Section 40 (inserted by section 35 of the Act of 2003) of the Act of 1996 is amended—

- (a) in subsection (2) by substituting the following for paragraph (b)(ii)(I):

“(I) the particulars submitted with the application including the environmental impact statement (if any) submitted under and in accordance with a requirement of, or made pursuant to regulations under, section 45 and any other material including maps and plans,”,

- (b) by inserting the following subsection after subsection (2):

“(2A) (a) In this subsection:

“application for a waste licence” means an application made to the Agency—

(i) for a waste licence under section 40, or

(ii) by the holder of the waste licence for a review under section 46 of the waste licence;

“environmental impact assessment” means an assessment, to include an examination, analysis and evaluation, carried out by the Agency in accordance with this section that shall identify, describe and assess in an appropriate manner, in

light of each individual case and in accordance with Articles 4 to 11 of Directive No. 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, the direct and indirect effects of a proposed development on the following:

- (i) human beings, flora and fauna;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage;
 - (iv) the interaction between the factors referred to in paragraphs (i), (ii) and (iii).
- (b) The Agency as part of its consideration of an application for a waste licence shall ensure before a waste licence is granted, and where the activity to which such waste licence relates is likely to have significant effects on the environment by virtue, *inter alia*, of its nature, size or location, that, in accordance with this subsection and section 42(1A) to (1H), the application is made subject to an environmental impact assessment as respects the matters that come within the functions of the Agency including the functions conferred on the Agency by or under this Act.
- (c) Subject to paragraph (b) and section 42(1A) to (1H), an environmental impact assessment shall be carried out by the Agency in respect of an application for a waste licence relating to an activity, where development comprising or for the purpose of the activity is:
- (i) development of a class prescribed by regulations under section 176 of the Planning and Development Act 2000 that exceeds a quantity, area or other limit prescribed by those regulations, or
 - (ii) development of a class prescribed by regulations under section 176 of the Planning and Development Act Act 2000 that does not exceed a quantity, area or other limit prescribed under those regulations but that the Agency determines would be likely to have significant effects on the environment.
- (d) Subject to section 42(1A) to (1H) an applicant for a waste licence shall submit an environmental impact statement with the application for the waste licence made to the Agency—

- (i) where the application for a waste licence concerned is in respect of an activity relating to development or proposed development referred to in paragraph (c)(i), or
 - (ii) where the Agency determines that the application for a waste licence concerned is in respect of an activity relating to development or proposed development referred to in paragraph (c)(ii) that would be likely to have significant effects on the environment.
- (e) The Agency shall request the production by the applicant of any additional or supplemental information that it considers necessary to enable it to carry out an environmental impact assessment as required under this section.
- (f) In relation to an application for a waste licence to which paragraph (d) refers—
- (i) the Agency shall consider the content of the environmental impact statement and any other material including maps or plans submitted as part of the application for a waste licence and determine whether that content adequately identifies, describes, and assesses the direct and indirect effects of the proposed development, and
 - (ii) if the Agency determines that the environmental impact statement and other material does not so adequately identify, describe or assess, the Agency shall give notice in writing to the applicant for the licence requesting further information, which notice shall—
 - (I) identify the manner in which the content of the environmental impact statement and other material is inadequate, and
 - (II) require the applicant for the licence to furnish to the Agency additional information required to correct the inadequacy so identified.
- (g) In carrying out its consideration of an application for a waste licence and in carrying out an environmental impact assessment the Agency may have regard to, and adopt in whole or in part, any reports prepared by its officials or by consultants, experts or other advisors.”.
- (2) Nothing in regulations made under sections 41 or 45 of the Act of 1996 in force on the coming into operation of these Regulations should be construed as—
- (a) restricting the Agency from performing its functions, or

- (b) affecting any requirement or obligation imposed on the Agency or any person referred to in or prescribed under section 42(2) of the Act of 1996,

pursuant to the amendments to section 40 of the Act of 1996 effected by paragraph (1).

6. (1) Section 41 of the Act of 1996 is amended by inserting the following subsection after subsection (2):

“(2A) Where the Agency decides, in relation to an application for a waste licence to which section 40(2A)(c) refers, to grant a waste licence the Agency may attach such conditions to the waste licence as it considers necessary to avoid, reduce and, if possible, offset the major adverse effects of the development or proposed development (if any) comprising or for the purposes of the activity to which the application for a waste licence relates.”.

(2) Nothing in regulations under section 41 or 45 of the Act of 1996 in force on the coming into operation of these Regulations should be construed as—

- (a) restricting the Agency from performing its functions, or
- (b) affecting any requirement or obligation imposed on the Agency or any person referred to in or prescribed under section 42(2) of the Act of 1996,

pursuant to the amendments to section 41 of the Act of 1996 effected by paragraph (1).

7. (1) Section 42 of the Act of 1996 is amended—

- (a) by inserting the following subsections after subsection (1):

“(1A) In subsections (1B) to (1H)—

“application for a licence” means an application made to the Agency—

- (a) for a waste licence under section 40, or
- (b) by the holder of a waste licence for a review under section 46 of the waste licence;

“application for permission” means—

- (a) an application for permission for development under Part III of the Planning and Development Act 2000,
- (b) an application for approval for development under section 175, 177AE, 181A, 182A, 182C or 226 of the Planning and Development Act 2000, or

- (c) an application for substitute consent under section 177E of the Planning and Development Act 2000;

“grant of permission” means—

- (a) a grant of permission for development under Part III of the Planning and Development Act 2000,
- (b) an approval for development under section 175, 177AE, 181B, 182B, 182D or 226 of the Planning and Development Act 2000, or
- (c) a grant of substitute consent under section 177K of the Planning and Development Act 2000.

(1B) Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required the applicant shall furnish to the Agency—

- (a) confirmation in writing from a planning authority or An Bord Pleanála, as the case may be, that an application for permission comprising or for the purposes of the activity to which the application for a licence relates, is currently under consideration by the planning authority concerned or An Bord Pleanála, and in that case shall also furnish to the Agency either—
 - (i) a copy of the environmental impact statement where one is required by or under the Planning and Development Act 2000 relating to that application for permission, or
 - (ii) confirmation in writing from the planning authority or An Bord Pleanála that an environmental impact assessment is not required by or under the Planning and Development Act 2000,

or

- (b) a copy of a grant of permission comprising or for the purposes of the activity to which the application for the licence relates that was issued by the planning authority concerned or An Bord Pleanála and in that case shall also furnish to the Agency either—
 - (i) where the planning authority or An Bord Pleanála, accepted or required the submission of an environmental impact statement in relation to the application for permission, a copy of the environmental impact statement, or

- (ii) confirmation in writing from the planning authority or An Bord Pleanála that an environmental impact assessment was not required by or under the Planning and Development Act 2000.

(1C) Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required but the applicant does not comply with subsection (1B), the Agency shall refuse to consider the application and shall inform the applicant accordingly.

(1D) The Agency, on receipt of an application for a waste licence where an environmental impact statement is required under subsection (1B)(a)(i) shall—

- (a) within 2 weeks of the date of receipt of such application notify the planning authority in whose functional area the activity is or will be situate or An Bord Pleanála, as the case may be, that it has received an application to which subsection (1B)(a)(i) applies and request the planning authority or An Bord Pleanála to respond to the Agency within 4 weeks of receipt of the notice and furnish any observations that the planning authority or An Bord Pleanála has in relation to the application for a licence,
- (b) consider any observations furnished to the Agency by the planning authority or An Bord Pleanála following a request under paragraph (a) before giving notice under section 42(2) of the decision it proposes to make in relation to the application for a licence,
- (c) enter into consultations, as the Agency considers appropriate, with the planning authority or An Bord Pleanála in relation to any environmental impacts of the proposed development comprising or for the purposes of the activity to which the application for a licence relates,
- (d) ensure that a grant of permission has been made or a decision has been made to refuse a grant of permission for development comprising or for the purposes of the activity to which the application for the licence relates and the period for any appeal under section 37 of the Planning and Development Act 2000 has expired without an appeal being made before giving notice under section 42(2) of the decision it proposes to make in relation to the application for a licence.

(1E) The Agency, on receipt of an application for a waste licence where an environmental impact statement is required under subsection (1B)(b)(i) shall—

- (a) within 2 weeks of the date of receipt of such application notify the planning authority in whose functional area the activity is or will be situated or An Bord Pleanála, as the case may be, that it has received an application to which subsection (1B)(b)(i) applies and request the planning authority or An Bord Pleanála to respond to the Agency within 4 weeks of receipt of the notice—
 - (i) stating whether the activity to which the application for a licence relates is permitted by the grant of permission referred to in subsection (1B)(b), and
 - (ii) furnishing all documents relating to the environmental impact assessment carried out by the planning authority or An Bord Pleanála in respect of the development or proposed development to which the grant of permission referred to in subsection (1B)(b) refers and any observations that the planning authority or An Bord Pleanála has in relation to the application for a licence,
- (b) consider any observations furnished to the Agency by the planning authority or An Bord Pleanála following a request under paragraph (a) before giving notice under section 42(2) of the decision it proposes to make in relation to the application for a licence,
- (c) enter into consultations, as the Agency considers appropriate, with the planning authority or An Bord Pleanála in relation to any environmental impacts of the proposed development or development in being, as the case may be, comprising or for the purposes of the activity to which the application for a licence relates.

(1F) Where—

- (a) a planning authority concerned or An Bord Pleanála gives notice to the Agency of an application for permission comprising or for the purposes of an activity requiring a waste licence under section 40 or a review, on the application of the holder of the licence, of a waste licence under section 46, and
- (b) the application for permission is accompanied by an environmental impact statement or in relation to which an environmental impact statement was sought by the planning authority or An Bord Pleanála,

the Agency shall—

- (i) satisfy itself that the development or proposed development the subject of the application for permission is development

comprising or for the purposes of an activity requiring a licence under section 40 or a review, on the application of the holder of the licence, of a waste licence under section 46,

- (ii) forward to the planning authority or An Bord Pleanála, as the case may be, such observations as it has on the application for permission, including the environmental impact statement, and
 - (iii) enter into such consultations with the planning authority or An Bord Pleanála in relation to the environmental impacts of the proposed development as the Agency, or the planning authority or An Bord Pleanála, as the case may be, considers necessary to enable completion of the assessment.
- (1G) (a) The environmental impact assessment required to be carried out by the Agency under section 40(2A), where an application for a waste licence is in respect of an activity that involves development or proposed development that is the subject of an environmental impact assessment by the planning authority concerned or An Bord Pleanála under the Planning and Development Act 2000, may be carried out by the Agency in part or in whole by way of consultation with, or the submission of observations to, that planning authority or An Bord Pleanála.
- (b) Where an application for permission relates to development or proposed development comprising or for the purposes of an activity in respect of which a waste licence under this Part is required—
- (i) in relation to which a grant of permission is required, which development is of a class prescribed by regulations made under section 176 of the Planning and Development Act 2000 but does not exceed a quantity, area or limit prescribed under those regulations, and
 - (ii) in respect of which, the planning authority concerned or An Bord Pleanála is obliged under the Planning and Development Act 2000 to make a determination whether an environmental impact assessment is required,

the Agency shall, when requested by the planning authority concerned or An Bord Pleanála, consult with or provide observations to the planning authority or An Bord Pleanála to assist the planning authority or An Bord Pleanála in its deliberations in relation to the determination referred to in paragraph (ii) and shall accept the determination of the planning authority or An Bord Pleanála so made.

- (1H) (a) Where the Agency receives an application for a licence in respect of an activity that involves development or proposed development for which a grant of permission is not required and the Agency, under section 40(2A), decides that an environmental impact assessment is required in relation to the activity concerned, the Agency shall request the applicant to submit an environmental impact statement and where the applicant fails to submit such statement within the period specified in the request, or any additional period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.
- (b) Where an environmental impact statement is submitted to the Agency in accordance with a request under paragraph (a), the application for a licence shall be deemed to be made on the date of receipt by the Agency of the environmental impact statement.
- (c) Where an environmental impact statement is submitted to the Agency in accordance with a request under paragraph (a), the Agency shall do the following—
- (i) within 2 weeks of the date of receipt of such statement notify the planning authority in whose functional area the activity is or will be situate that it has received an application to which this subsection applies and request the planning authority concerned to respond to the Agency within 4 weeks of the date of the notice and furnish any observations that the planning authority has in relation to the application including the environmental impact statement,
 - (ii) consider any observations furnished to the Agency following a request under subparagraph (i) by the planning authority before giving notice under section 42(2) of the decision it proposes to make in relation to the application for a licence, and
 - (iii) enter into consultations, as the Agency considers appropriate, with the planning authority in relation to any environmental impacts of the proposed activity to which the application for a licence relates.
- (d) For the purposes of this subsection, section 5, insofar as it refers to the definition of “environmental impact statement”, shall be read as if “activity” were substituted for “development” and with any other necessary modifications.”,

(b) in subsection (2):

(i) by inserting “including an application for a licence, within the meaning of subsection (1A), to which section 40(2A) applies” after “under that section”, and

(ii) by inserting the following paragraph after paragraph (a):

“(aa) where a planning authority concerned or An Bord Pleanála is considering or has considered an application for permission for development comprising or for the purposes of the activity in relation to which the application for a waste licence to which section 40(2A) applies is required, the planning authority or An Bord Pleanála,”

(c) in subsection (11)(a) by inserting the following subparagraph after subparagraph (ii):

“(aa) where a planning authority concerned or An Bord Pleanála is considering or has considered an application for permission for development comprising or for the purposes of the activity in relation to which the application for a waste licence to which section 40(2A) applies is required, the planning authority or An Bord Pleanála,”

(d) by inserting the following subsection after subsection (11):

“(11A) When—

- (a) in relation to an application for a waste licence under section 40, a decision to grant or refuse a waste licence has been taken, or
- (b) a decision is made in consequence of a review on an application of the holder of the licence, of a waste licence under section 46,

the Agency, in accordance with regulations under section 45, shall inform the persons referred to in or prescribed under subsection (2), including the public, of its decision and shall make available the following information:

- (i) the content of the decision and any conditions attached thereto;
- (ii) an evaluation, subject to section 40(2A), of the project's direct and indirect effects of the activity or proposed activity on the factors referred to in paragraphs (i) to (iii) of the definition of environmental impact assessment in section 40(2A)(a) and the interaction between those factors;
- (iii) having examined any submission or observation made to the Agency—

(I) the main reasons and considerations on which the decision is based, and

(II) the main reasons and considerations for the attachment of any conditions,

including reasons and considerations arising from or related to submissions or observations made by a member of the public;

(iv) a description, where necessary, of the main measures to be taken to avoid, reduce and, if possible, offset the major adverse effects of the activity or proposed activity;

(v) any reports referred to in section 40(2A)(g);

(vi) information on the procedures available to the persons referred to in or prescribed under subsection (2), including the public, to review the substantive and procedural legality of the decision.”.

(2) Nothing in regulations made under section 41 or 45 of the Act of 1996 in force on the coming into operation of these Regulations shall be construed as—

(a) restricting the Agency from performing its functions, or

(b) affecting any requirement or obligation imposed on the Agency or any person referred to in or prescribed under section 42(2),

pursuant to the amendments to section 42 of that Act effected by paragraph (1).

8. (1) Section 45 of the Act of 1996 is amended in subsection (2) by inserting the following paragraphs after paragraph (e):

“(ea) requiring applicants, licensees or other persons to furnish to the Agency or any other specified person, within such period as may be specified, any additional or supplemental information to enable the Agency to carry out an environmental impact assessment,

(eb) requiring applicants, licensees or other persons to furnish information to the Agency in response to a request for additional or further information under and for the purposes of section 40(2A)(e).”.

(2) Nothing in regulations made under section 41 or 45 of the Act of 1996 in force on the coming into operation of these Regulations shall be construed as—

(a) restricting the Agency from performing its functions, or

(b) affecting any requirement or obligation imposed on the Agency or any person referred to in or prescribed under section 42(2),

pursuant to the amendments to section 45 of that Act effected by paragraph (1).

9. Section 54 (inserted by section 45 of the Act of 2003) of the Act of 1996 is amended by deleting subsections (3B) and (3C).

10. The Act of 2000 is amended by inserting the following section after section 173A:

“Environmental impact assessment and waste licences.

173B. (1) In this section—

“Act of 1996” means the Waste Management Act 1996;

“activity” shall be construed in accordance with section 4 of the Act of 1996;

“application for a licence” means, in relation to a waste licence under Part V of the Act of 1996, an application made to the Environmental Protection Agency—

- (a) for such a licence under section 40 of the Act of 1996, or
- (b) by the holder of the licence, for a review of a waste licence under section 46 of the Act of 1996;

“application for permission” means—

- (a) an application for permission for development under Part III,
- (b) an application for approval for development under section 175, 177AE, 181A, 182A, 182C or 226, or
- (c) an application for substitute consent under section 177E;

“grant of permission” means—

- (a) a grant of permission for development under Part III,
- (b) an approval for development under section 175, 177AE, 181B, 182B, 182D or 226, or
- (c) a grant of substitute consent under section 177K.

(2) Where a planning authority or the Board is considering an application for permission and is requested by the applicant for a grant of permission to confirm in writing that the development the subject of the application for permission relates to an activity in respect of which a waste licence under Part V of the Act of 1996 is required, the planning authority or the Board shall, as soon as possible, confirm in writing that the development the subject of the application for permission so relates to the activity.

(3) Where a request is made by an applicant under subsection (2) and the application for permission concerned was not accompanied by an environmental impact statement and the planning authority or the Board did not require the submission of an environmental impact statement, the planning authority or the Board shall on a request in that behalf made to it by the applicant, also provide written confirmation to the applicant that an environmental impact assessment in respect of the development concerned is not required by or under this Act.

(4) Where a grant of permission has been issued for a development comprising or for the purposes of an activity in respect of which a waste licence under Part V of the Act of 1996 is required and the relevant planning authority or the Board is requested by the Environmental Protection Agency, in connection with an application for a licence, to—

- (a) state whether the activity to which the application for a licence relates is permitted by the grant of permission that has been issued, and
- (b) furnish a copy of all documents relating to the environmental impact assessment carried out in respect of the proposed development, and
- (c) furnish any observations it has in relation to the application for a licence,

the planning authority or the Board shall comply with the request within the period specified in the request by the Environmental Protection Agency.

(5) Where a planning authority or the Board is considering an application for permission in respect of development—

- (a) of a class prescribed by regulations under section 176 that does not exceed a quantity, area or limit prescribed under those regulations,
- (b) in respect of which the planning authority or the Board is obliged under this Act to make a determination whether an environmental impact assessment is required, and
- (c) in respect of which application for permission the planning authority or the Board consider a waste licence under Part V of the Act of 1996 is required,

the planning authority or the Board shall request observations from the Agency to assist the planning authority or the Board in its deliberations in relation to the determination referred to in paragraph (b) and

shall take into account any such observations when making that determination.

(6) Where a person makes an application for permission in respect of development under this Act and has made, intends to make or is considering making an application for a waste licence under Part V of the Act of 1996 in respect of an activity relating to that development, the person shall so notify the planning authority or the Board when making the application for permission.”.

11. These Regulations apply to an application for a waste licence under section 40 of the Act of 1996 or an application by the holder of the licence for a review of a waste licence under section 46 of the Act of 1996 made to the Environmental Protection Agency on or after the day of the coming into operation of these Regulations.



GIVEN under the Official Seal of the Minister for the Environment,
Community and Local Government,
26 July 2012.

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

EXPLANATORY NOTE

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

The purpose of these Regulations is to give further effect in Irish law to Article 3 and Articles 2 to 4 of Directive No. 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 insofar as it applies to certain licensable activities that require both a land-use consent and a waste licence.

These Regulations amend the Waste Management Act 1996 (No. 10 of 1996) and the Planning and Development Act 2000 (No. 30 of 2000) so as to ensure that an environmental impact assessment is carried out, where required under Directive No. 2011/92/EU, in relation to relevant decisions of the Environmental Protection Agency to grant a waste licence.

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