



STATUTORY INSTRUMENTS.

S.I. No. 352 of 2014



EUROPEAN UNION (ACCESS TO REVIEW OF DECISIONS FOR
CERTAIN BODIES OR ORGANISATIONS PROMOTING
ENVIRONMENTAL PROTECTION) REGULATIONS 2014

EUROPEAN UNION (ACCESS TO REVIEW OF DECISIONS FOR CERTAIN BODIES OR ORGANISATIONS PROMOTING ENVIRONMENTAL PROTECTION) REGULATIONS 2014

I, ALAN KELLY, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2003/35/EC of the European Parliament and the Council of 26 May 2003¹ hereby make the following regulations:

1. These Regulations may be cited as the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014.

2. Section 7 of the Arterial Drainage Act 1945 (No. 3 of 1945) is amended by the insertion of the following subsections after subsection (5):

“(6) A person shall not question the validity of a decision made or other act done by the Minister in the performance or purported performance of a function under section 4, 5 or 7, where a drainage scheme requires an environmental impact statement 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).

(7) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—

(a) the applicant has a sufficient interest in the matter which is the subject of the application, or

(b) 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, and

(ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

(8) A sufficient interest for the purposes of paragraph (a) of subsection (7) is not limited to an interest in land or other financial interest.

¹O.J. No. L156, 25.06.2003, p.17.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 1st August, 2014.

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

(10) In this section “State authority, a public authority or governmental body or agency” means—

- (a) a Minister of the Government;
- (b) the Commissioners of Public Works in Ireland;
- (c) a harbour authority within the meaning of the Harbours Act 1946;
- (d) a local authority within the meaning of the Local Government Act 2001;
- (e) the Health Service Executive;
- (f) a person established—
 - (i) by or under any enactment (other than the Companies Acts),
 - (ii) by any scheme administered by the Government, or
 - (iii) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
- (g) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

3. Section 87 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) is amended by the insertion of the following paragraphs after paragraph (b) of subsection (10):

- “(c) The High Court shall not grant leave for judicial review under this section unless it is satisfied that:
- (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
 - (ii) 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, and

- (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (d) A sufficient interest for the purposes of subparagraph (i) of paragraph (c) is not limited to an interest in land or other financial interest.
- (e) The Court, in determining either an application for leave for judicial review under this section, or an application for judicial review on foot of such leave, shall act as expeditiously as possible consistent with the administration of justice.
- (f) In paragraph (c) “State authority, a public authority or governmental body or agency” means—
- (i) a Minister of the Government;
 - (ii) the Commissioners of Public Works in Ireland;
 - (iii) a harbour authority within the meaning of the Harbours Act 1946;
 - (iv) a local authority within the meaning of the Local Government Act 2001;
 - (v) the Health Service Executive;
 - (vi) a person established—
 - (I) by or under any enactment (other than the Companies Acts),
 - (II) by any scheme administered by the Government, or
 - (III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
 - (vii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

4. Section 29 of the European Communities (Assessment and Management of Flood Risks) Regulations 2010 (S.I. No. 122 of 2010) is amended by—

- (a) the insertion of the following subsection after subsection (2):

“(2A) (a) A person shall not question the validity of an order or decision made by the Minister or the Commissioners under this section 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).

- (b) The High Court shall not grant leave for judicial review unless it is satisfied that—
- (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
 - (ii) 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, and
 - (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (c) A sufficient interest for the purposes of subparagraph (i) of paragraph (b) is not limited to an interest in land or other financial interest.
- (d) The Court, in determining either an application for leave for judicial review, or an application for judicial review on foot of such leave under this section, shall act as expeditiously as possible consistent with the administration of justice.
- (e) In paragraph (b) “State authority, public authority or governmental body or agency” means—
- (i) a Minister of the Government;
 - (ii) the Commissioners of Public Works in Ireland;
 - (iii) a harbour authority within the meaning of the Harbours Act 1946;
 - (iv) a local authority within the meaning of the Local Government Act 2001;
 - (v) the Health Service Executive;
 - (vi) a person established—
 - (I) by or under any enactment (other than the Companies Acts),
 - (II) by any scheme administered by the Government, or
 - (III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans

made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;

- (vii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”, and

(b) the insertion of the following subsections after subsection (3):

“(3A) The notice referred to in subsection (3) shall inform the public that a person may question the validity of any decision referred to in that subsection by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

(3B) The notice shall identify where practical information on the review mechanism can be found.”.

5. Section 73 of the Fisheries (Amendment) Act 1997 (No. 23 of 1997) is amended by—

(a) the insertion of the following subsections after subsection (1):

“(1A) The High Court shall not grant leave for judicial review unless it is satisfied that—

(a) the applicant has a sufficient interest in the matter which is the subject of the application, or

(b) 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, and

(ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

(1B) A sufficient interest for the purposes of paragraph (a) of subsection (1A) is not limited to an interest in land or other financial interest.

(1C) The Court, in determining either an application for leave for judicial review under this Act, or an application for judicial review on foot of such leave, shall act as expeditiously as possible consistent with the administration of justice.”, and

(b) the insertion of the following subsection after subsection (5):

“(6) In this section “State authority, a public authority or governmental body or agency” means—

- (a) a Minister of the Government;
- (b) the Commissioners of Public Works in Ireland;
- (c) a harbour authority within the meaning of the Harbours Act 1946;
- (d) a local authority within the meaning of the Local Government Act 2001;
- (e) the Health Service Executive;
- (f) a person established—
 - (i) by or under any enactment (other than the Companies Acts),
 - (ii) by any scheme administered by the Government, or
 - (iii) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
- (h) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

6. The Foreshore Act 1933 (No. 12 of 1933) is amended by—

- (a) in subsection (5) of section 13A, the substitution of “sections 19A, 19C, 21A and 21B” for “sections 19A, 19C and 21A”, and
- (b) in section 21B, the insertion of the following paragraph after paragraph (b):
 - “(c) A person shall not question the validity of a decision made or act done or purported to be done by the Minister in relation to a relevant application 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).
- (d) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—
 - (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
 - (ii) 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, and
 - (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (e) A sufficient interest for the purposes of subparagraph (i) of paragraph (d) is not limited to an interest in land or other financial interest.
- (f) The Court, in determining either an application for leave for judicial review under this section, or an application for judicial review on foot of such leave under this section, shall act as expeditiously as possible consistent with the administration of justice.
- (g) In paragraph (d), “State authority, a public authority or governmental body or agency” means—
- (i) a Minister of the Government;
 - (ii) the Commissioners of Public Works in Ireland;
 - (iii) a harbour authority within the meaning of the Harbours Act 1946;
 - (iv) a local authority within the meaning of the Local Government Act 2001;
 - (v) the Health Service Executive;
 - (vi) a person established—
 - (I) by or under any enactment (other than the Companies Acts),
 - (II) by any scheme administered by the Government, or
 - (III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;

(viii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

7. Section 40A of the Gas Act 1976 (No. 30 of 1976) is amended by—

(a) the substitution of the following subsection for subsection (8):

“(8) When a decision is taken on an application by the Board or another person or arising from a notice given to the Commission or the Minister by a person other than the Board in the case of a proposed pipeline in respect of which an environmental impact statement was submitted in accordance with a requirement of or under subsection (1) of this section, the Commission or the Minister as the case may be shall—

- (a) publish notice of its or his decision in the *Iris Oifigiúil* and in one or more newspapers circulating in the area of the proposed pipeline, and
- (b) make arrangements to make the said statement and information on the decision available for inspection by members of the public during a period to be specified by the Commission or the Minister as the case may be.”.

(b) the insertion of the following subsection after subsection (8):

“(8A) (a) The notice under subsection (8)(a) shall inform the public that a person may question the validity of a decision of the Commission or the Minister by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

- (b) The notice under subsection (8)(a) shall identify where practical information on the review mechanism can be found.
- (c) A person shall not question the validity of a decision made or act done or purported to be done by the Commission or the Minister under this section 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).
- (d) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—
 - (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
 - (ii) 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, and

(II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

(e) A sufficient interest for the purposes of subparagraph (i) of paragraph (d) is not limited to an interest in land or other financial interest.

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

(g) In paragraph (d), “State authority, a public authority or governmental body or agency” means—

(i) a Minister of the Government;

(ii) the Commissioners of Public Works in Ireland;

(iii) a harbour authority within the meaning of the Harbours Act 1946;

(iv) a local authority within the meaning of the Local Government Act 2001;

(v) the Health Service Executive;

(vi) a person established—

(I) by or under any enactment (other than the Companies Acts),

(II) by any scheme administered by the Government, or

(III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;

(vii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

8. The National Monuments Act 1930 (No. 2 of 1930) is amended by the insertion of the following section after section 14D:

“14E. (1) (a) A notice under section 14B(7M), 14B(10A), 14D(16) or 14D(46) shall inform the public that a person may question the validity of any such decision by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

(b) The said notice shall identify where practical information on the review mechanism can be found.

(2) A person shall not question the validity of—

(a) a consent granted or act done by the Minister under section 14D in the performance or purported performance of a function under section 14D for which an environmental impact assessment is required,

(b) a confirmation, approval or refusal by the Board under section 14B (8)(a),

(c) a determination by the Board under section 14B as to whether an environmental impact assessment is needed, or

(d) a decision of the Board under section 14B as to whether or not to confirm the approved road development as affected by the Minister's directions,

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).

(3) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—

(a) the applicant has a sufficient interest in the matter which is the subject of the application, or

(b) 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, and

(ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

(4) A sufficient interest for the purposes of paragraph (a) of subsection (3) is not limited to an interest in land or other financial interest.

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

(6) In this section, “State authority, a public authority or governmental body or agency” means—

- (a) a Minister of the Government;
- (b) the Commissioners of Public Works in Ireland;
- (c) a harbour authority within the meaning of the Harbours Act 1946;
- (d) a local authority within the meaning of the Local Government Act 2001;
- (e) the Health Service Executive;
- (f) a person established—
 - (i) by or under any enactment (other than the Companies Acts),
 - (ii) by any scheme administered by the Government, or
 - (iii) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
- (g) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

9. Section 13A of the Petroleum and Other Minerals Development Act 1960 (No. 7 of 1960) is amended by—

(a) the substitution of the following subsection for subsection (8):

“(8) When a decision is taken on an application for approval of working of petroleum in respect of which an environmental impact statement was submitted in accordance with a requirement of or under subsection (1) of this section the Minister shall—

- (a) publish a notice of the decision in the *Iris Oifigiúil* and in at least one daily newspaper published in the State,
- (b) make arrangements to make the said statement and information on the decision available for inspection by members of the public during a period specified by him or her.”, and

(b) the insertion of the following subsection after subsection (8):

“(8A) (a) The notice under subsection (8)(a) shall inform the public that a person may question the validity of a decision referred to in subsection (8) by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts.

(b) The notice under subsection (8)(a) shall identify where practical information on the review mechanism can be found.

(c) A person shall not question the validity of a decision made or act done or purported to be done by the Minister in the performance or purported performance of a function under this section or section 13B 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).

(d) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—

(i) the applicant has a sufficient interest in the matter which is the subject of the application, or

(ii) 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, and

(II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

(e) A sufficient interest for the purposes of subparagraph (i) of paragraph (d) is not limited to an interest in land or other financial interest.

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

(g) In paragraph (d), “State authority, a public authority or governmental body or agency” means—

(i) a Minister of the Government;

(ii) the Commissioners of Public Works in Ireland;

- (iii) a harbour authority within the meaning of the Harbours Act 1946;
- (iv) a local authority within the meaning of the Local Government Act 2001;
- (v) the Health Service Executive;
- (vi) a person established—
 - (I) by or under any enactment (other than the Companies Acts),
 - (II) by any scheme administered by the Government, or
 - (III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;
- (vii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.

10. Section 47A of the Transport (Railway Infrastructure) Act 2001 (No. 55 of 2001) is amended by the substitution of—

(a) the following subparagraph for subparagraph (i) of subsection (2)(b):

“(i) The applicant has a sufficient interest in the matter which is the subject of the application, or”, and

(b) the following subsection for subsection (3):

“(3) A sufficient interest of the purposes of subsection (2)(b)(i) is not limited to an interest in land or other financial interest.”.

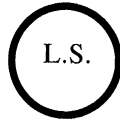
11. Section 43 of the Waste Management Act 1996 (No. 10 of 1996) is amended by the insertion of the following paragraphs after paragraph (b) of subsection (5):

“(ba) The High Court shall not grant leave for judicial review unless it is satisfied that—

- (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
- (ii) 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, and
 - (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (bb) A sufficient interest for the purposes of subparagraph (i) of paragraph (ba) is not limited to an interest in land or other financial interest.
- (bc) The Court, in determining either an application for leave for judicial review under this section, or an application for judicial review on foot of such leave under this section, shall act as expeditiously as possible consistent with the administration of justice.
- (bd) In paragraph (ba), “State authority, a public authority or governmental body or agency” means—
- (i) a Minister of the Government;
 - (ii) the Commissioners of Public Works in Ireland;
 - (iii) a harbour authority within the meaning of the Harbours Act 1946;
 - (iv) a local authority within the meaning of the Local Government Act 2001;
 - (v) the Health Service Executive;
 - (vi) a person established—
 - (I) by or under any enactment (other than the Companies Acts),
 - (II) by any scheme administered by the Government, or
 - (III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government.

(vii) A company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.”.



GIVEN under my Official Seal,
23 July 2014.

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

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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