



STATUTORY INSTRUMENTS.

S.I. No. 320 of 2015



EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT AND
HABITATS)(NO. 2) REGULATIONS 2015

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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 Council Directive No. 92/43/EEC of 21 May 1992¹ and Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011² hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Environmental Impact Assessment and Habitats)(No. 2) Regulations 2015.

Interpretation

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

Amendment of section 177D

3. Section 177D of the Act of 2000 is amended by—

- (a) in subsection (1), the substitution of “Subject to section 261A(21), the Board shall” for “The Board shall”, and
- (b) in subsection (5), the substitution of “12 weeks” for “6 weeks” in each place where it occurs.

Amendment of section 177E

4. Section 177E of the Act of 2000 is amended by—

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

“(2A) (a) Where an application for substitute consent is made in respect of a development pursuant to—

(i) a notice given under section 177B,

(ii) a decision to grant leave to apply for substitute consent under section 177D in respect of a development to which section 177D(1)(a) applies, or

(iii) a decision to grant leave to apply for substitute consent under section 261A(20)(a),

¹OJ No. L 206, 22.7.1992, p.7.

²OJ No. L 26, 28.1.2012 p.1.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 28th July, 2015.

that application may, subject to paragraph (b), be made in relation to—

- (I) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application, or
 - (II) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application and all or part of the development permitted under the permission granted in respect of that development that has not been carried out at the time of the application.
- (b) Where an application for substitute consent made pursuant to—
- (i) a notice given under section 177B,
 - (ii) a decision to grant leave to apply for substitute consent under section 177D in respect of a development to which section 177D(1)(a) applies, or
 - (iii) a decision to grant leave to apply for substitute consent under section 261A(20)(a),

relates in part to development that has not been carried out at the time of the application, the applicant shall furnish with his or her application, in addition to the information referred to in subsection (2)—

- (I) where a direction to furnish a remedial environmental impact statement was issued in respect of the development under section 177B(2), 177D(7), 261A(3)(c), 261A(10) or 261A(12), an environmental impact statement in accordance with the permission regulations in relation to that part of the development that has not been carried out at the time of the application, and
- (II) where a direction to furnish a remedial Natura impact statement was issued in respect of the development under section 177B(2), 177D(7), 261A(3)(c), 261A(10) or 261A(12), a Natura impact statement in relation to that part of the development that has not been carried out at the time of the application.”,

(b) the deletion of subsection (3), and

- (c) the insertion in subsection (5) of “and, where subsection (2A)(b) applies, the environmental impact statement or Natura impact statement or both of those statements, as the case may be,” after “as the case may be,”.

Amendment of section 177I

5. Section 177I of the Act of 2000 is amended by—

- (a) in subsection (1), the insertion of “and, where section 177E(2A)(b) applies, an environmental impact statement or a Natura impact statement or both of those statements, as the case may be,” after “as the case may be,”, and
- (b) in subsection (2)(d)(i), the insertion of “or, where section 177E(2A)(b) applies, is proposed to take place” after “where the development took place”.

Amendment of section 177K

6. Section 177K of the Act of 2000 is amended in subsection (2) by—

- (a) the insertion in paragraph (c) of “and, where section 177E(2A)(b) applies, the environmental impact statement or Natura impact statement or both of those statements, as the case may be,” after “as the case may be,”, and
- (b) the substitution in paragraph (d) of “was or is proposed to be carried out” for “was carried out”.

Amendment of section 261

7. Section 261 of the Act of 2000 is amended in subsection (6) by the insertion of the following paragraph after paragraph (aa):

- “(ab) Where substitute consent or permission under section 34 is granted in respect of the operation of a quarry on which conditions were imposed under paragraph (a)(i) prior to the granting of the substitute consent or permission concerned, those conditions shall cease to have effect.”.

Amendment of section 261A

8. Section 261A of the Act of 2000 is amended by—

- (a) in subsection (10), the substitution of “in accordance with the determination of the planning authority under subsection (2)(a) or, where the Board has made a decision under subsection (6) in relation to the determination of the planning authority, in accordance with that decision,” for “in accordance with the determination of the planning authority under subsection (2)(a)”,
- (b) in subsection (12), the substitution of “in accordance with the determination of the planning authority under subsection (2)(a) or, where the Board has made a decision under subsection (6) in relation to the

determination of the planning authority, in accordance with that decision,” for “in accordance with the determination of the planning authority under subsection (2)(a)”,

- (c) in subsection (14), the substitution of “Subject to section 177E(2A), where an application for substitute consent is required to be made” for “Where an application for substitute consent is required to be made”,
- (d) in subsection (19), the substitution of “12 weeks” for “6 weeks” in each place where it occurs, and
- (e) the insertion of the following subsections after subsection (19):

“(20) (a) Where the Board is satisfied on application to it in writing by a person required to apply for substitute consent pursuant to subsection (7) or directed to apply for substitute consent pursuant to subsection (10) or (12) in respect of a quarry (in this subsection referred to as an “applicant”) that a permission granted by a planning authority or the Board in respect of that quarry was granted in breach of law or was invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

- (i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or
- (ii) any error of fact or law or procedural error,

the Board shall grant leave to the applicant to make an application for substitute consent in relation to all or part of the development the subject of that permission.

- (b) An applicant for leave to apply for substitute consent under paragraph (a) shall furnish the following to the Board:
 - (i) any documents that he or she considers are relevant to support his or her application;
 - (ii) any additional information or documentation that may be requested by the Board, within the period specified in such a request.

- (c) Where an applicant fails to furnish additional information or documentation within the period specified in a request under paragraph (b)(ii), or such additional period as the Board may allow, the application shall be deemed to have been withdrawn by the applicant.
- (d) The Board may seek information and documents as it sees fit from the planning authority for an administrative area in which the quarry the subject of the application under this subsection is situated, including information and documents in relation to a permission referred to in paragraph (a) and the planning authority shall furnish the information not later than 3 weeks after the information is sought by the Board.
- (e) In deciding whether the circumstances described in paragraph (a) apply, the Board shall have regard to any information furnished by the applicant under paragraph (b) and any information furnished by a planning authority under paragraph (d).
- (f) The Board shall decide whether to grant leave to the applicant to make an application for substitute consent in relation to the subject matter of the permission to which the application relates or to refuse to grant such leave.
- (g) The decision of the Board under paragraph (f) shall be made within 6 weeks after the receipt of an application under paragraph (a).
- (h) The Board shall give notice in writing to the applicant of its decision under paragraph (f) and of the reasons therefor.
- (i) Notwithstanding subsections (7), (10) and (12), the period for making an application for substitute consent referred to in those subsections shall not, in a case in which an application is made to the Board under paragraph (a) of this subsection, include the period beginning on the day of the receipt by the Board of the application under paragraph (a) and ending on the day of receipt by the applicant of notice of the Board's decision on the application under paragraph (a) in accordance with paragraph (f).
- (j) Where—
 - (i) an applicant submitted an application for substitute consent to the Board prior to the coming into operation of this subsection in respect of a quarry to which his or her application under paragraph (a) relates,

- (ii) the Board decides to grant leave to apply under this subsection in accordance with paragraph (f) in respect of that quarry, and
- (iii) the applicant applies for substitute consent in accordance with 177E(2A) in respect of that quarry,

the application for substitute consent referred to in subparagraph (i) shall be taken to be withdrawn.

- (k) No application may be made under this subsection in relation to a quarry in respect of which an application for substitute consent is made after the coming into operation of this subsection.

(21) (a) Paragraph (c) applies to a quarry where—

- (i) at the expiry of the time period set out in paragraph (a) of section 261A(2) for the making of a determination under that paragraph either of the following applied:
 - (I) the decision of a planning authority in relation to an application for permission for that quarry required under section 261(7)(a) was under appeal to the Board under section 37;
 - (II) legal proceedings in relation to a decision of a planning authority under section 34 or a determination of the Board on an appeal under section 37 in relation to an application for permission for that quarry required under section 261(7)(a) had not yet been concluded,
 - (ii) (I) an application under section 177C in respect of that quarry is being considered by the Board on the date on which this subsection comes into operation, or
 - (II) an application under section 177C in respect of that quarry is made after the date on which this subsection comes into operation, and
 - (iii) no notice has been issued in respect of the quarry under subsection (3)(a), (4)(a) or (5)(a) of section 261A prior to the date on which this subsection comes into operation.
- (b) Where an application is made under section 177C in respect of a quarry to which paragraph (c) applies the Board shall cause to be published in one or more newspapers circulated in the area and on its website a notice stating that an application has been made under section 177C in relation to the

quarry and inviting submissions in relation to the application for consideration by the Board, with such submissions to be received not later than 6 weeks after the publication of the notice.

- (c) The Board shall make a determination in relation to a quarry to which this paragraph applies as to whether—
 - (i) development was carried out at that quarry after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or
 - (ii) development was carried out at that quarry after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.
 - (d) Paragraph (c) applies to a quarry notwithstanding that an application has previously been made in respect of the quarry under section 177C.
- (22) (a) In making a determination under subsection (21), the Board shall have regard to the following matters:
- (i) any submissions or observations received by the Board in relation to the quarry not later than 6 weeks after the date of the publication of the notice under subsection (21)(b);
 - (ii) any information submitted to the planning authority in relation to the registration of the quarry under section 261;
 - (iii) any relevant information on the register;
 - (iv) any relevant information obtained by the planning authority in an enforcement action relating to the quarry;
 - (v) any other relevant information.
- (b) The planning authority to which application for permission for the quarry referred to in subsection (21) was made shall provide all of the information referred to in paragraph (a) in its possession to the Board as soon as practicable following a request from the Board.

(23) The determination of the Board under subsection (21) shall be made—

- (a) 6 weeks after the receipt of an application under section 177C,
- (b) 6 weeks after receipt of submissions or observations under subsection (21)(b), or
- (c) 6 weeks after receipt of information from the planning authority under subsection (22)(b),

whichever is the later.

(24) (a) Where the Board makes a determination under paragraph (c) of subsection (21) that subparagraph (i) or (ii) or both, if applicable, of that paragraph apply in relation to a quarry and the Board also decides that—

(i) either

(I) the quarry commenced operation before 1 October 1964, or

(II) permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and

(ii) if applicable, the requirements in relation to registration under section 261 were fulfilled,

the Board shall grant leave to apply for substitute consent in respect of the application under section 177C.

- (b) In making a decision under paragraph (a) the Board shall have regard to any information provided by a planning authority under subsection (22)(b).
- (c) The decision of the Board under paragraph (a) shall be made within 3 weeks of the determination under subsection (21)(c).".



GIVEN under my Official Seal,
22 July 2015.

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

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