



STATUTORY INSTRUMENTS.

S.I. No. 4 of 2019

EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT)
(PEAT EXTRACTION) REGULATIONS 2019

S.I. No. 4 of 2019

EUROPEAN UNION (ENVIRONMENTAL IMPACT ASSESSMENT)
(PEAT EXTRACTION) REGULATIONS 2019

I, Richard Bruton, Minister for Communications, Climate Action and Environment, 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 as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014², hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019.
- (2) These Regulations shall come into operation on 25 January 2019.

Interpretation

2. In these Regulations “Act of 1992” means the Environmental Protection Agency Act 1992 (No. 7 of 1992).

Amendment of section 3 of Act of 1992

3. Section 3 of the Act of 1992 is amended, in subsection (1), by the insertion of the following definition:

“ ‘peat extraction’ means the extraction of peat that involves an area of 30 hectares or more;”.

Provision supplemental to section 82 of Act of 1992.

4. The Act of 1992 is amended by the insertion of the following section:

“**82B.**(1) In this section –

¹ OJ No. L26 of 28 January 2012, p.1

² OJ No. L124 of 25 April 2014, p.1

‘operative date’ means the date on which the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019 come into operation;

‘Regulations of 2013’ means the Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013 (S.I. No. 283 of 2013);

‘relevant activity’ means the extraction of peat in the course of business that involves an area exceeding 50 hectares.

(2) Subject to subsection (7), a person shall not carry on peat extraction other than in accordance with a licence or revised licence under this Part.

(3) A person who, immediately before the operative date, was carrying on a relevant activity in accordance with a licence or revised licence under this Part shall, if he or she proposes to carry on peat extraction after that date in all or part of the area in which he or she so carried on that activity, apply, not later than 36 months after that date, for a licence in respect of peat extraction.

(4) A person who, immediately before the operative date, was carrying on peat extraction (other than a relevant activity carried on in accordance with a licence or revised licence under this Part) shall, if he or she proposes to continue to carry on peat extraction on or after that date, apply, not later than 18 months after that date, for a licence in respect of such peat extraction.

(5) (a) Where a decision in relation to an application for a licence in respect of a relevant activity remains outstanding immediately before the operative date, the application shall be treated as an application made under subsection (4), whether or not the applicant was carrying on that activity immediately before that date, and accordingly, paragraph (b) of subsection (7) shall apply to the applicant as it applies to a person who has made an application in accordance with subsection (4).

(b) The Agency may, by notice in writing, require an applicant to whom paragraph (a) applies to provide the Agency with such information and documentation additional to the information and documentation that he or she provided the Agency in relation to the application concerned before the operative date as the Agency considers appropriate, including –

(i) an updated environmental impact assessment report, and

(ii) a map identifying the area to which the application relates,

within such period as is specified in the notice.

- (c) Where a person fails to comply with a requirement specified in a notice under paragraph (b), the Agency may declare that the application concerned is deemed to have been withdrawn.
- (6) (a) Subject to sections 92, 95, 96 and 97, a licence or revised licence in force immediately before the operative date shall remain in force in accordance with its terms until –
- (i) the expiration of the period of 36 months after the operative date, or
 - (ii) in the case of a person who holds that licence or revised licence and who makes an application under subsection (3), the relevant day.
- (b) In this section “relevant day” means -
- (i) in circumstances where the Agency makes a decision to grant a licence, the day on which the Agency notifies the person of the decision,
 - (ii) in circumstances where the Agency makes a decision to refuse to grant a licence, such day as falls 8 weeks (or such extended period as may be determined by the High Court in accordance with paragraph (b) of subsection (10) of section 87) from the day on which the Agency notifies the person of the decision, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the decision,
 - (iii) in circumstances where, in accordance with regulation 19 of the Regulations of 2013, a person withdraws the application concerned, the day on which the application is so withdrawn,
 - (iv) in circumstances where, in accordance with paragraph (c) of subsection (5) or regulation 19 of the Regulations of 2013, the application is declared by the Agency to have been abandoned or withdrawn, such day as falls 8 weeks from the day on which the Agency notifies the person of the declaration, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the declaration,
 - (v) in circumstances where, in accordance with regulation 10(2), 11(2)(c) or 13(4) of the Regulations of 2013, the Agency informs the person that it cannot consider

the application, on the day on which the Agency so informs the person in accordance with that regulation, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the Agency's decision that it cannot so consider the application,

- (vi) in circumstances where the person has applied for an order under Order 84 of the Rules of the Superior Courts in respect of a decision of the Agency referred to in paragraph (ii) –
 - (I) in case the order is refused, on the day on which final judgment is given refusing the order, or
 - (II) in the case of the withdrawal of the application for such order, the day on which the person so withdraws that application, or
- (vii) in circumstances where the person applies for an order under Order 84 of the Rules of the Superior Courts in respect of a declaration of the Agency referred to in subparagraph (iv) or a decision of the Agency referred to in subparagraph (v) –
 - (I) in case the order is refused, on the day on which final judgment is given refusing the order, or
 - (II) in case the person withdraws the application for such order, on the day on which the person withdraws that application.

(7) (a) Subsection (2) shall –

- (i) subject to subparagraph (ii), not apply during the period specified in subsection (4) to a person who, immediately before the operative date, was carrying on peat extraction (other than a relevant activity carried on in accordance with a licence or revised licence under this Part), and
 - (ii) not apply during the relevant period, to a person who makes an application in accordance with subsection (4),
- (b) In this subsection “relevant period” means, in relation to a person who has made an application in accordance with subsection (4), the period commencing on the day on which the application is made and ending –

- (i) in circumstances where the Agency makes a decision to grant a licence, on the day on which the Agency notifies the person of the decision,
- (ii) in circumstances where the Agency makes a decision to refuse to grant a licence, 8 weeks (or such extended period as may be determined by the High Court in accordance with paragraph (b) of subsection (10) of section 87) from the day on which the Agency notifies the person of the decision, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the decision,
- (iii) in circumstances where, in accordance with regulation 19 of the Regulations of 2013, the person withdraws the application, on the day on which the application is so withdrawn,
- (iv) in circumstances where, in accordance with paragraph (c) of subsection (5) or regulation 19 of the Regulations of 2013, the application is declared by the Agency to have been abandoned or withdrawn, 8 weeks from the day on which the Agency notifies the person of the declaration, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the declaration,
- (v) in circumstances where, in accordance with regulation 10(2), 11(2)(c) or 13(4) of the Regulations of 2013, the Agency informs the person that it cannot consider the application, on the day on which the Agency so informs the person in accordance with that regulation, unless the person makes an application for an order under Order 84 of the Rules of the Superior Courts in respect of the Agency's decision that it cannot so consider the application,
- (vi) in circumstances where the person applies for an order under Order 84 of the Rules of the Superior Courts in respect of a decision of the Agency referred to in paragraph (ii) –
 - (I) in case the order is refused, on the day on which final judgment is given refusing the order, or
 - (II) in case the person withdraws the application for such order, on the day on which the person withdraws that application, or

- (vii) in circumstances where the person applies for an order under Order 84 of the Rules of the Superior Courts in respect of a declaration of the Agency referred to in subparagraph (iv) or a decision of the Agency referred to in subparagraph (v) –
 - (I) in case the order is refused, on the day on which final judgment is given refusing the order, or
 - (II) in case the person withdraws the application for such order, on the day on which the person withdraws that application.
- (8) (a) The termination of a licence in accordance with this section shall not operate to effect the discharge or revocation of a condition attaching to the licence, and accordingly the person who, immediately before the said termination, was the holder of the licence shall, upon and after the said termination, continue to be required to comply with that condition.
- (b) In this subsection –
 - ‘termination’ includes, in relation to a licence, expiration or revocation of the licence; and
 - ‘licence’ includes revised licence.
- (9) This section shall not affect the operation of section 92, 95, 96 or 97 in relation to any licence or revised licence –
 - (a) in force immediately before the operative date, and
 - (b) that remains in force in accordance with subsection (6).”.

Amendment of section 83 of Act of 1992

- 5. Subsection (2A) of section 83 of the Act of 1992 is amended -
 - (a) in paragraph (c), by the substitution of “Subject to paragraphs (b) and (ca)” for “Subject to paragraph (b)”,
 - (b) by the insertion of the following paragraph:
 - “(ca) Subject to subsections (1A) to (1I) of section 87, an environmental impact assessment shall be carried out by the Agency in respect of –
 - (i) an application for a licence (other than an application by a licensee for the review of a

licence or revised licence under paragraph (b) of subsection (1) of section 90) to carry on peat extraction, and

- (ii) a review, in accordance with subsection (1) of section 90, of a licence or revised licence to carry on peat extraction, relating to a change or extension of the licensed activity, where the change or extension -
 - (I) involves an area of 30 hectares or more, or
 - (II) is, in the opinion of the Agency, likely to have significant adverse effects on the environment.”, and

(c) in paragraph (d), by -

- (i) the deletion of “or” at the end of subparagraph (i) and the substitution of “environment, or” for “environment.” in subparagraph (ii), and
- (ii) the insertion of the following subparagraphs:
 - “(iii) in the case of an application for a licence (other than an application by a licensee for the review of a licence or revised licence under paragraph (b) of subsection (1) of section 90), where the application is in respect of the carrying on of peat extraction, or
 - (iv) in the case of a review, in accordance with subsection (1) of section 90, of a licence or revised licence to carry on peat extraction, where the review relates to a change or extension of the licensed activity and that change or extension -
 - (I) involves an area of 30 hectares or more, or
 - (II) is, in the opinion of the Agency, likely to have significant adverse effects on the environment.”.

Amendment of section 86 of Act of 1992

6. Section 86 of the Act of 1992 is amended -

(a) in paragraph (a) of subsection (1), by the insertion of the following subparagraph:

“(via) in the case of peat extraction, specify requirements to avoid, prevent, reduce and offset any significant adverse effects of such extraction on the environment,”,

(b) the insertion of the following subsection:

“(8A) Where the Agency proposes to attach a condition to a licence or revised licence that would necessitate development of a class referred to in paragraph (2) of Regulation 8H of the Planning and Development Regulations 2001, the Agency -

(a) shall consult with each planning authority in whose functional area the peat extraction (in respect of which the licence or revised licence will apply) will be carried on, and

(b) may attach to the licence or revised licence –

(i) such conditions in respect of the carrying out of such development as may be recommended by any such planning authority for the purpose of ensuring the proper planning and sustainable development of that area, or

(ii) such other conditions as the Agency considers necessary to avoid, prevent, reduce or offset any significant adverse effects of the activity on the environment,”, and

(c) in subsection (9), by the substitution of “subsection (8)(a) or (8A)(a)” for “subsection (8)(a)”.

Amendment of section 87 of Act of 1992

7. Section 87 of the Act of 1992 is amended -

(a) in subsection (1A) -

(i) by the insertion of the following paragraph after paragraph (a) of the definition of “application for permission”:

“(ab) an application for permission for strategic housing development under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016,” and

(ii) by the insertion of the following after paragraph (a) of the definition of “grant of permission”:

“(ab) a grant of permission for strategic housing development under section 9 of the Planning and Development (Housing) and Residential Tenancies Act 2016,”

(b) in subsection (1H), by the insertion of the following paragraph:

“(d) Where an environmental impact assessment report relating to peat extraction is submitted to the Agency in accordance with paragraph (iii) or (iv) of paragraph (d) of subsection (2A) of section 83, the Agency shall -

(i) not later than 2 weeks from the date on which it receives the statement, notify the Minister for Culture, Heritage and the Gaeltacht in writing that the Agency has received an application for a licence and request that Minister to provide the Agency, not later than 6 weeks from the date specified in the notice, such observations (in such form as the Agency may specify) as he or she may have in relation to the application or the environmental impact assessment report accompanying the application,

(ii) have regard to any such observations in the making of a determination in relation to the application, and

(iii) consult with such persons (including the Minister referred to in subparagraph (i)) as the Agency considers appropriate in relation to the potential impact on the environment of the peat extraction to which the application relates.”,

(c) in subsection (2), by the insertion of the following paragraph:

“(ab) in the case of an application to which paragraph (d) of subsection (1H) applies, the Minister for Culture, Heritage and the Gaeltacht in addition to the persons specified in paragraphs (a), (aa), (b), (c) and (d),”,

(d) by the insertion of the following subsection:

“(3C) Notwithstanding subsection (3), the Agency may, in relation to an application referred to in paragraph (d) of subsection (1H), extend the period referred to in subsection (3) by such further period as it considers necessary to enable it to comply with subsection (1H) and, where the Agency so extends the first-mentioned period, it shall notify each of the persons specified in paragraphs (a), (aa), (ab), (b), (c) and (d) of subsection (2) of the extension in writing.”, and

(e) in paragraph (a) of subsection (8), by the insertion of the following subparagraph:

“(iib) the Minister for Culture, Heritage and the Gaeltacht in the case of an application referred to in paragraph (d) of subsection (1H),”.

Amendment of section 90 of Act of 1992

8. Section 90 of the Act of 1992 is amended -

(a) in subsection (1) by the substitution of “Subject to subsection (1A), the Agency -” for “The Agency -”, and

(b) by the insertion of the following subsection:

“(1A) Where an application for a licence is made under subsection (3) of section 82B, a review shall not be undertaken in accordance with subsection (1) in respect of the licence or revised licence in force in relation to the area to which the application relates.”.

Amendment of First Schedule to Act of 1992

9. The First Schedule to the Act of 1992 is amended by the substitution of the following paragraph for paragraph 1.4:

“1.4 Peat extraction.”.

Amendment of section 172 of Planning and Development Act 2000

10. Section 172 of the Planning and Development Act 2000 (No. 30 of 2000) is amended, in subparagraph (ii) of paragraph (a) of subsection (1), by the insertion of “(other than subparagraph (a) of paragraph 2)” after “Part 2”.

Amendment of Planning and Development Regulations 2001

11. The Planning and Development Regulations 2001 (S.I. No. 600 of 2001) are amended -

- (a) in paragraph 11 of “Directions for completing this form” to Form No. 2 (Planning Application Form) in Schedule 3, by the substitution of “Except in the case of peat extraction that would involve an area of 30 hectares or more, an environmental impact assessment report (EIAR)” for “An environmental impact assessment report (EIAR)”, and
- (b) in Part 2 of Schedule 5, by the substitution of the following for subparagraph (a) of paragraph 2:

“(a) Peat extraction that involves an area of 30 hectares.”.



GIVEN under my Official Seal,
16 January 2019

RICHARD BRUTON,
Minister for Communications, Climate Action and
Environment

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434)

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434)

€4.50

