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*Number 6 of 2023*

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**Environmental Protection Agency (Emergency Electricity Generation)  
(Amendment) Act 2023**

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**ENVIRONMENTAL PROTECTION AGENCY (EMERGENCY ELECTRICITY  
GENERATION) (AMENDMENT) ACT 2023**

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[No. 6.]

*Environmental Protection Agency  
(Emergency Electricity Generation) (Amendment) Act 2023.*

[2023.]

ACTS REFERRED TO

Climate Action and Low Carbon Development Act 2015 (No. 46)

Development (Emergency Electricity Generation) Act 2022 (No. 35)

Environmental Protection Agency Act 1992 (No. 7)



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*Number 6 of 2023*

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**ENVIRONMENTAL PROTECTION AGENCY (EMERGENCY ELECTRICITY  
GENERATION) (AMENDMENT) ACT 2023**

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An Act to amend the Environmental Protection Agency Act 1992 to enable the Minister for the Environment, Climate and Communications to provide for arrangements for an alternative form of assessment to be carried out in respect of an application for a licence under Part IV of that Act in relation to designated development within the meaning of the Development (Emergency Electricity Generation) Act 2022 in accordance with Article 2(4) of Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>1</sup> on the assessment of the effects of certain public and private projects on the environment amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>2</sup> and to provide for the information obtained under such assessment to be made available to the public; to provide for co-ordination of the alternative assessment and an appropriate assessment of such activity for the purposes of Council Directive 92/43/EEC of 21 May 1992<sup>3</sup> on the conservation of natural habitats and of wild fauna and flora; and to provide for related matters.

[10th March, 2023]

**Be it enacted by the Oireachtas as follows:**

**Definition**

1. In this Act, “Act of 1992” means the Environmental Protection Agency Act 1992.

**Amendment of section 3 of Act of 1992**

2. Section 3(1) of the Act of 1992 is amended by the insertion of the following definitions:

“ ‘the Act of 2022’ means the Development (Emergency Electricity Generation) Act 2022;

1 OJ No. L26, 28.1.2012, p. 1

2 OJ No. L24, 25.4.2014, p. 1

3 OJ No. L206, 22.7.1992, p. 7

‘designated application’ means an application made to the Agency for a licence under Part IV in relation to designated development, after an application has been made under section 4 of the Act of 2022 to the Minister for the Environment, Climate and Communications for approval under section 7 of that Act to carry out the designated development, and does not include an application made to the Agency—

- (a) for a revised licence under Part IV, or
- (b) by the licensee under section 90(1)(b) for a review of a licence or a revised licence;

‘designated development’ has the same meaning as it has in the Act of 2022;”.

#### **Amendment of Act of 1992 - supply of electricity**

3. The Act of 1992 is amended by the insertion of the following sections after section 82B:

##### **“Exemption under section 5(1) of Act of 2022**

**82C.** The exemption in section 5(1) of the Act of 2022 applies in relation to an application for a licence pursuant to this Part in respect of designated development.

##### **Section 15 of Climate Action and Low Carbon Development Act 2015**

**82D.** Taking into account the exceptional circumstances and the urgent and compelling necessity for securing the supply of electricity in the State set out in the Act of 2022, the Agency, in considering designated applications, shall do so in a manner consistent with the plans, strategy, framework and objectives referred to in section 15(1) of the Climate Action and Low Carbon Development Act 2015 to the extent that it considers practicable, taking particular account of the said exceptional circumstances and urgent and compelling necessity.”.

#### **Amendment of section 83 of Act of 1992**

4. Section 83 of the Act of 1992 is amended—

- (a) in subsection (2A)—

- (i) in paragraph (a), by the insertion of the following definitions:

“ ‘alternative assessment’ has the meaning given to it by section 89(2A);

‘environmental report’ means a report prepared in accordance with Regulation 7 of the Development (Emergency Electricity Generation) Regulations 2022 (S.I. No. 719 of 2022);”.

- (ii) in paragraph (b), by the insertion of “, other than a designated application,” after “an application for a licence”,
  - (iii) in paragraph (ba), by the insertion of “, other than a designated application,” after “an application for a licence”,
  - (iv) in paragraph (c), by the insertion of “, other than a designated application,” after “an application for a licence”,
  - (v) by the insertion of the following paragraphs after paragraph (c):
    - “(ca) An alternative assessment shall be carried out by the Agency in respect of a designated application.
    - “(cb) A person making a designated application shall submit an environmental report to the Agency with the application.”,
  - (vi) in paragraph (d), by the insertion of “, other than a person making a designated application,” after “an applicant for a licence”, and
  - (vii) in paragraph (g), by the insertion of “or, as the case may be, an alternative assessment” after “an environmental impact assessment”,
- and
- (b) in subsection (3)(e)—
    - (i) in subparagraph (i), by the insertion of “or the environmental report (if any)” after “environmental impact assessment report (if any)”,
    - (ii) in subparagraph (ii), by the insertion of “or the environmental report” after “environmental impact assessment report”, and
    - (iii) in subparagraph (iii), by the insertion of “or the environmental report” after “environmental impact assessment report”.

### **Amendment of section 87 of Act of 1992**

#### **5. Section 87 of the Act of 1992 is amended—**

- (a) in subsection (1)(a), by the insertion of “, other than a designated application,” after “where an application”,
- (b) in subsection (1A), in the definition of “application for a licence”, by the insertion of “other than a designated application” after “an application”,
- (c) in subsection (2), by the insertion of “other than a designated application” after “an application for a licence”,
- (d) in subsection (4), by the insertion of “other than a designated application” after “an application for a licence”, and
- (e) in subsection (9A)(a), by the insertion of “, other than a designated application,” after “an application for a licence”.

**Agency may not grant licence in respect of designated development unless Minister has approved designated development**

6. The Act of 1992 is amended by the insertion of the following section after section 87:

**“87A.** The Agency shall not grant a licence under section 83 in respect of designated development unless the Minister has approved the designated development, whether or not subject to conditions, in accordance with section 7 of the Act of 2022.”.

**Amendment of Act of 1992**

7. The Act of 1992 is amended by the insertion of the following sections after section 88:

**“Agency to take alternative assessment into account**

**88A.** (1) Before making a decision under section 83(1) in relation to a designated application the Agency shall take into account the alternative assessment in such manner as the Minister may prescribe for the purpose of ensuring that the objectives of the EIA Directive are met.

(2) The Agency may make any feature of the project or measure envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, and any monitoring measure incorporated into the decision a condition of any licence granted on foot of the decision.

(3) The Agency shall incorporate into a decision in relation to a designated application such documents relating to the alternative assessment as the Minister may prescribe for the purposes of ensuring that the objectives of the EIA Directive are met, including a description of any features of the project or measures envisaged to avoid, prevent or reduce and, where possible, offset the significant adverse effects on the environment and any appropriate monitoring measures that relate to conditions to be attached to the licence to be granted on foot of the decision.

**Notice of decision in relation to designated application**

**88B.** When a decision is taken under section 83(1), in relation to a designated application, to grant or refuse a licence, the Agency shall inform the public, and such persons as may be prescribed in accordance with regulations under section 89, of its decision and shall make available to the public the following information:

(a) the content of the decision and any conditions attached thereto;

(b) the main reasons and considerations on which the decision is based;

(c) any reports referred to in section 83(2A)(g);

- (d) information on the procedures to review the substantive and procedural legality of the decision;
- (e) such other information as the Minister may prescribe.”.

### **Amendment of section 89 of Act of 1992**

8. Section 89 of the Act of 1992 is amended by the insertion of the following subsection after subsection (2):

- “(2A) Without prejudice to the generality of subsection (1), regulations under this section shall make provision for an assessment (in this Part referred to as an ‘alternative assessment’) to be carried out by the Agency in relation to a designated application, in such form and manner as may be prescribed, for the purposes of ensuring that the objectives of the EIA Directive are met.
- (2B) The Minister may prescribe such requirements and such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of an alternative assessment.
- (2C) Regulations for the purposes of subsection (2A) may in particular provide for all or any of the following:
- (a) the time periods within which the Agency is to carry out an alternative assessment;
  - (b) the information, including supplementary or additional information where required, relating to the alternative assessment to be provided to the Agency by a person making a designated application;
  - (c) the manner in which (which may include by electronic means) and the time periods within which, the information referred to in paragraph (b) is to be provided to the Agency;
  - (d) requirements and procedures for consultation and public participation in relation to the alternative assessment and the provision of information obtained under the alternative assessment to the public;
  - (e) the giving of notice, and publication of such notices as may be specified, in respect of the carrying out of the alternative assessment;
  - (f) requirements and procedures for co-ordination of assessments in accordance with subsection (2D);
  - (g) a requirement that, as part of the alternative assessment, the Agency assess the impacts (if any) of the designated development on the species listed in Annex IV of the Council Directive 92/43/EEC of

21 May 1992<sup>4</sup> on the conservation of natural habitats and of wild fauna and flora, amended by Council Directive 97/62/EC of 27 October 1997<sup>5</sup>, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003<sup>6</sup>, Council Directive 2006/105/EC of 20 November 2006<sup>7</sup> and Council Directive 2013/17/EU of 13 May 2013<sup>8</sup> and their breeding sites and resting places and consider whether there is a need for a derogation for the purpose of Article 16 of that Directive in respect of the designated development.

(2D) An alternative assessment shall be co-ordinated with any appropriate assessment of the designated development that is carried out under Part 5 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).”.

### **Short title and commencement**

9. (1) This Act may be cited as the Environmental Protection Agency (Emergency Electricity Generation) (Amendment) Act 2023.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

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4 OJ No. L206, 22.7.1992, p. 7

5 OJ No. L305, 8.11.1997, p. 42

6 OJ No. L284, 31.10.2003, p. 1

7 OJ No. L363, 20.12.2006, p. 368

8 OJ No. L158, 10.6.2013, p. 193