



STATUTORY INSTRUMENTS.

S.I. No. 174 of 2021



EUROPEAN UNION (GAS ACT 1976) (ENVIRONMENTAL IMPACT
ASSESSMENT) REGULATIONS 2021

S.I. No. 174 of 2021

EUROPEAN UNION (GAS ACT 1976) (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2021

I, EAMON RYAN, Minister for the Environment, Climate and Communications, 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 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, Council Directive 92/43/EEC of 21 May 1992³ (as amended by Council Directive 97/62/EC of 27 October 1997⁴, Regulation (EC) No 1882/2003 of the European Union and of the Council of 29 September 2003⁵, Council Directive 2006/105/EC of 20 November 2006⁶ and as amended by Act of Accession of Austria, Sweden and Finland⁷, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁸ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁹ (as amended by Directive 2013/17/EU of 13 May 2013¹⁰)), hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Gas Act 1976) (Environmental Impact Assessment) Regulations 2021.

Interpretation

2. (1) In these Regulations “Principal Act” means the Gas Act 1976 (No. 30 of 1976).

(2) A word or expression that is used in these Regulations and that is also used in Directive 2011/92/EU of the European Union 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) has the same meaning in these Regulations as it has in that Directive.

¹ OJ No. L 26, 28.1.2012, p.1

² OJ No. L 124, 25.4.2014, p. 1

³ OJ No. L 206, 22.7.1992, p.7

⁴ OJ No. L 305, 8.11.1997, p.42

⁵ OJ No. L 284, 31.10.2003, p. 1

⁶ OJ No. L 101, 20.12.2006, p. 368

⁷ OJ. No. C 21, 29.8.1994, p. 21

⁸ OJ. No. L236, 23.9.2003, p.33

⁹ OJ No. L 20, 26.1.2010, p. 7

¹⁰ OJ No. L 158, 10.6.2013, p.193

Revocations

3. The Gas Act 1976 (Sections 4 and 40A) Regulations 1990 (S.I. No. 51 of 1990) are revoked.

Amendment of section 2 of Principal Act

4. Section 2 of the Principal Act is amended -

(a) by the insertion of the following definitions:

“ ‘Department’ means the Department of the Environment, Climate and Communications;

‘Environmental Assessment Unit’ has the meaning assigned to it by section 40C;

‘EIA Directive’ means Directive 2011/92/EU of the European Union 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;

‘effects on the environment’ includes, in relation to a proposed pipeline, the effects of the construction and operation of that pipeline on the environment;

‘environmental impact assessment’, in relation to a pipeline which is the subject of application for consent under section 39A(1) or 40(1), means a process in respect of the construction and operation of the pipeline -

(a) consisting of -

(i) the preparation of an environmental impact assessment report in accordance with section 40A(1)(f),

(ii) the carrying out of consultation in accordance with section 40A(2) and, where relevant, section 40A(7),

(iii) the examination by the Commission or the Environmental Assessment Unit, as the case may be, of -

(I) the information presented in the environmental impact assessment report,

(II) any additional information provided in accordance with section 40A(5)(b), and

(III) any relevant information received through consultation under section 40A(2) and, where relevant, under section 40A(7),

(iv) the reaching by the Commission or the Environmental Assessment Unit, as the case

may be, of a reasoned conclusion in accordance with section 40B(5) on the significant effects on the environment of the proposed pipeline, taking into account the results of the examination referred to in subparagraph (iii) and, where appropriate, its own supplementary examination, and

- (v) the integration by the Commission or the Minister, as the case may be, of the reasoned conclusion referred to in subparagraph (iv) into the decision made by the Commission or the Minister, as the case may be, under section 39A(1) or 40(1), as the case may be,

and

- (b) including an examination, analysis and evaluation by the Commission or the Environmental Assessment Unit, as the case may be, under section 40B (5) to identify, describe and assess the direct and indirect significant effects on the environment of the proposed pipeline, including the expected significant effects derived from the vulnerability of the proposed pipeline to risks of major accidents and disasters relevant to it, on -

- (i) population and human health,
- (ii) biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC of 21 May 1992³ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009¹⁰,
- (iii) land, soil, water, air and climate,
- (iv) material assets, cultural heritage and the landscape, and
- (v) the interaction between the factors mentioned in subparagraphs (i) to (iv);

‘environmental impact assessment report’ shall be construed in accordance with section 40A(1)(f);

‘proposed pipeline’ means -

- (a) where an application has been made under section 39A(1) or 40(1) in respect of a pipeline, that pipeline,

or

- (b) where a request has been made under section 40A(1)(bb) in respect of a pipeline, that pipeline;

‘relevant specified bodies’ -

- (a) in relation to a proposed pipeline other than an upstream pipeline, means -
 - (i) all local authorities in whose functional area the proposed pipeline would be situated,
 - (ii) the Commissioners of Public Works in Ireland,
 - (iii) An Taisce,
 - (iv) the Minister,
 - (v) the Minister for Agriculture, Food and the Marine,
 - (vi) the Minister for Housing, Local Government and Heritage,
 - (vii) the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media,
 - (viii) the Minister for Transport,
 - (ix) the Health and Safety Authority,
 - (x) the Environmental Pillar,
 - (xi) the Heritage Council,
 - (xii) Teagasc,
 - (xiii) Inland Fisheries Ireland,
 - (xiv) Inland Waterways Ireland, and
 - (xv) Bord Fáilte, and
- (b) in relation to a proposed pipeline being an upstream pipeline, means -
 - (i) all local authorities contiguous to whose functional area the proposed upstream pipeline would be situated,
 - (ii) An Taisce,
 - (iii) the Minister for Agriculture, Food and the Marine,
 - (iv) the Minister for Housing, Local Government and Heritage,
 - (v) the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media,
 - (vi) the Minister for Transport,
 - (vii) the Health and Safety Authority,
 - (viii) the Sea-Fisheries Protection Agency,
 - (ix) Bord Iascaigh Mhara,
 - (x) the Marine Institute,
 - (xi) the Environmental Pillar,
 - (xii) the Irish Whale and Dolphin Group, and
 - (xiii) the Heritage Council.”,

- (b) by the designation of the section as subsection (1), and
- (c) by the insertion of the following subsection after subsection (1):
 - “(2) (a) A reference in this Act to an Annex is a reference to an Annex to the EIA Directive.
 - (b) A word or expression that is used in this Act that is also used in the EIA Directive has the same meaning in this Act as it has in the Directive.”.

Environmental Impact Assessment Report

5. The Principal Act is amended by the substitution of “environmental impact assessment report” for “environmental impact statement” in each place where it occurs.

Non-Application of certain declarations, Regulations in respect of pipelines where environmental impact assessment, appropriate assessment required

6. The Principal Act is amended by the insertion of the following section after section 39A:

“Non-Application of certain declarations, Regulations in respect of pipelines where environmental impact assessment, appropriate assessment required

- 39B.** (1)(a) A declaration by way of a notice under section 2(6)(b) of the Gas (Amendment) Act 1987 (No. 9 of 1987) in respect of a pipeline shall not apply in respect of a pipeline where an environmental impact assessment or an appropriate assessment is required in respect of that pipeline.
- (b) A declaration by way of a notice under section 2(6)(b) of the Gas (Amendment) Act 1987 in respect of a class of pipelines shall not apply in respect of a pipeline in that class where an environmental impact assessment or an appropriate assessment is required in respect of the pipeline concerned.
- (2) (a) Regulations made under section 12(2) of the Gas (Interim)(Regulation) Act 2002 (No. 10 of 2002) in respect of a pipeline shall not apply in respect of a pipeline where an environmental impact assessment or an appropriate assessment is required in respect of that pipeline.
- (b) Regulations made under section 12(2) of the Gas (Interim) (Regulation) Act 2002 in respect of a class of pipelines shall not apply in respect of a pipeline in that class where an environmental impact assessment or an appropriate assessment is required in respect of the pipeline concerned.”.

Amendment of section 40A of the Principal Act

7. Section 40A of the Principal Act is amended -

(a) in subsection (1) -

(i) by the substitution of the following paragraphs for paragraphs (a) and (b):

“(a) Where an application is made for consent under section 39A(1) or 40(1), as the case may be, in respect of a proposed pipeline that is of a class referred to in Part 1 of Schedule 5 to the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), the proposed pipeline shall be the subject of an environmental impact assessment and, accordingly -

(i) where that proposed pipeline is a pipeline other than an upstream pipeline, the Board or the other person making the application to the Commission for consent under section 39A(1) in respect of that pipeline, shall submit an environmental impact assessment report in respect of construction and operation of that proposed pipeline to the Commission together with the application, and

(ii) where that proposed pipeline is an upstream pipeline, the Board or the other person making the application to the Minister for consent under section 40(1) in respect of that pipeline, shall submit an environmental impact assessment report in respect of the construction and operation of the proposed pipeline to the Minister together with the application.

(b) Where an application is made for consent under section 39A(1) or 40(1), as the case may be, in respect of a proposed pipeline that is of a class referred to in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, the Commission, in the case of an application under section 39A(1), or the Environmental Assessment Unit, in the case of an application under section 40(1), shall determine, in accordance with this section, whether or not the proposed pipeline would be likely to have significant effects on the environment and, where it determines that the proposed pipeline would be likely to have significant effects on the environment, the Commission or the Environmental Assessment Unit, as the case may be, shall direct that the proposed pipeline concerned is to be the subject of an environmental impact assessment and the Board or the other person, as the case may be, shall submit an

environmental impact assessment report in respect of the construction and operation of the proposed pipeline to the Commission or the Environmental Assessment Unit, as the case may be.”,

- (ii) by the insertion of the following paragraphs after paragraph (b):

“(bb) Without prejudice to paragraph (b), the Board or another person wishing to construct a pipeline that -

(i) is of a class referred to in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, and

(ii) is other than an upstream pipeline,

may, in writing, request the Commission to determine, in accordance with this section, whether the pipeline proposed would be likely to have significant effects on the environment and, where such a request is made, the Commission shall determine, in accordance with this section, whether or not the proposed pipeline would be likely to have significant effects on the environment and, where it determines that the proposed pipeline would be likely to have significant effects on the environment, the Commission shall direct that the proposed pipeline is to be the subject of an environmental impact assessment and shall require the Board or the other person to make an application for consent under section 39A(1) to be accompanied by an environmental impact assessment report in respect of the construction and operation of the proposed pipeline.

(bc) For the purpose of enabling the Commission or the Environmental Assessment Unit, as the case may be, to make its determination under paragraph (b) or (bb), the Board or the other person, as the case may be, shall provide the information specified in Annex IIA to the Commission or the Environmental Assessment Unit, as the case may be, taking into account, where relevant, the available results of other relevant assessments of the effects on the environment of the proposed pipeline carried out pursuant to European Union legislation (other than the EIA Directive).

(bd) The information referred to in paragraph (bc) may be accompanied by a description of the features of the proposed pipeline and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”,

- (iii) by the deletion of paragraph (c),

- (iv) by the substitution of the following paragraph for paragraph (d):

“(d) Where a determination is being made under this section, the Commission or the Environmental Assessment Unit, as the case may be, shall make the determination on the basis of the information provided in the application for consent together with the information provided under paragraph (bc) and, where that information is accompanied by the matters referred to in paragraph (bd), those matters, having taken into account -

- (i) the relevant selection criteria specified in Annex III,
- (ii) where relevant, the results of preliminary verifications or assessments of the effects on the environment of the proposed pipeline carried out pursuant to any Act of the Oireachtas or under European Union legislation (other than the EIA Directive), and
- (iii) where the proposed pipeline would be located on, or in, or have the potential to impact on -
 - (I) a European site within the meaning of Regulation 2 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011),
 - (II) land designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000 (No. 38 of 2000),
 - (III) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 (No. 39 of 1976), or
 - (IV) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976,

the likely significant effects on the environment of the proposed pipeline on such site, area or land, as appropriate.”,

- (v) by the insertion of the following paragraphs after paragraph (d):

“(dd) Where the Commission or the Environmental Assessment Unit, as the case may be, determines that a proposed pipeline, being of a class referred to in Part 2 of Schedule 5 to the Planning and Development

Regulations 2001, would be likely to have significant effects on the environment, it shall specify, with reference to the relevant criteria listed in Annex III, the main reasons for that determination.

- (de) Where the Commission or the Environmental Assessment Unit, as the case may be, determines that a proposed pipeline, being of a class referred to in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, is not likely to have significant effects on the environment, it shall specify -
 - (i) with reference to the relevant criteria listed in Annex III, the main reasons for that determination, and
 - (ii) features of the proposed pipeline and measures (if any) proposed by the Board or the other person making the application, as the case may be, to avoid or prevent what would otherwise be significant adverse effects on the environment.
- (df) Where the Commission or the Environmental Assessment Unit, as the case may be, specifies a feature of the proposed pipeline or a measure under paragraph (de)(ii) as a feature or measure relied on in making a determination under this section that an environmental impact assessment is not required in relation to the proposed pipeline, the Commission or the Minister, as the case may be, shall attach to any consent granted in respect of that proposed pipeline, the implementation of the feature or the carrying out of the measure as an environmental condition of that consent.
- (dg) Subject to paragraph (dh), the Commission or the Environmental Assessment Unit, as the case may be, shall make its determination under paragraph (b) or (bb) as soon as possible and, in any event, subject to paragraph (dh), within 90 days from the date on which the Board or the other person making the application has submitted all the information required under paragraph (bc).
- (dh) The Commission or the Environmental Assessment Unit, as the case may be, may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the proposed pipeline, extend the 90 day period referred to in paragraph (dg) in order to make its determination and, in such cases, it shall inform the Board or the other person making the application in writing of the reasons justifying the

extension and of the date when its determination is expected.”,

(vi) by the substitution of the following paragraphs for paragraphs (e) to (g):

“(e) The Commission or the Environmental Assessment Unit, as the case may be, shall -

(i) (I) give written notification to the Board or the other person making the application of its determination under this section and the reasons provided under paragraph (dd) or (de), as the case may be, and

(II) publish -

(A) on a website maintained by it, the determination and the reasons for it, and

(B) in a newspaper circulating in the State or locally, as it considers appropriate, a notice stating that the determination has been made, giving the reasons for that determination and identifying where information in respect of the determination can be found,

and

(ii) where publication is made in accordance with subparagraph (i)(II) -

(I) provide, both on the website and in the newspaper referred to in that subparagraph, information in relation to the procedure available for members of the public to review the substantive and procedural legality of the determination by way of judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), and

(II) identify, on that website and in that newspaper, where practical information on the procedure referred to in clause (I) can be found.

(f) The Board or the other person, as the case may be, shall, when submitting an environmental impact assessment report in respect of the construction and operation of a proposed pipeline in accordance with this section, ensure that that report -

(i) is prepared by competent experts,

- (ii) subject to paragraph (gg), contains the following information:
 - (I) a description of the proposed pipeline comprising information on the site, design, size and other relevant features of the proposed pipeline;
 - (II) a description of the likely significant effects on the environment of the proposed pipeline;
 - (III) a description of any features of the proposed pipeline and of any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment of the proposed pipeline;
 - (IV) a description of the reasonable alternatives studied by the Board or the other person, as the case may be, which are relevant to the proposed pipeline and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects on the environment of the proposed pipeline;
 - (V) a non-technical summary of the information referred to in clauses (I) to (IV);
 - (VI) any additional information specified in Annex IV that is relevant to the specific characteristics of the proposed pipeline or type of proposed pipeline and to the environmental features likely to be affected,
 - and
 - (iii) takes into account the available results of other relevant assessments carried out in respect of the proposed pipeline under European Union legislation with a view to avoiding duplication of assessments.
- (g) Where the Board or the other person, as the case may be, is required to submit an environmental impact assessment report in respect of the construction and operation of a proposed pipeline under this subsection, it may request the Commission or the Environmental Assessment Unit, as the case may be, to give it an opinion on the scope and level of detail

of the information to be included in the environmental impact assessment report, and where it receives such a request, the Commission or the Environmental Assessment Unit, as the case may be, shall consult with the relevant specified bodies and, having taken into account the information provided by the Board or the other person, as the case may be, in particular on the specific characteristics of the proposed pipeline, including the location of the proposed pipeline and its technical capacity, and its likely impact on the environment, shall issue a written opinion on the scope and level of detail of the information to be included by the Board or the other person, as the case may be, in the environmental impact assessment report in accordance with paragraph (f).”,

(vii) by the insertion of the following paragraph after paragraph (g):

“(gg) Where the Commission or the Environmental Assessment Unit, as the case may be, issues an opinion under paragraph (g), the Board or the other person to whom the opinion is issued shall -

- (i) prepare the environmental impact assessment report based on that opinion, and
- (ii) include in the report the information that may reasonably be required by the Commission or the Environmental Assessment Unit, as the case may be, for reaching a reasoned conclusion on the significant effects on the environment of the proposed pipeline, taking into account current knowledge and methods of assessment.”,

and

(viii) by the substitution of the following paragraph for paragraph (h):

“(h) The issuing of an opinion under paragraph (g) shall not prejudice the exercise by the Commission or the Environmental Assessment Unit, as the case may be, of its powers under section 40A (5)(b) to require the Board or the other person to furnish it with specified additional information in relation to the likely effects on the environment of the proposed pipeline.”,

(b) by the substitution of the following subsection for subsection (2):

“(2) Where an environmental impact assessment report has been submitted to the Commission or the Environmental Assessment Unit, as the case may be, in accordance with this section, the Board or the other person shall, as soon as may be,

publish in one or more newspapers circulating in the State, or locally, as it considers appropriate, a notice -

- (a) stating that an application for consent under section 39A(1) or 40(1) has been made,
- (b) stating that the proposed pipeline, including its construction and operation, is subject to an environmental impact assessment and that section 40A(7), where relevant, is applicable,
- (bb) specifying the possible outcomes in respect of the application,
- (c) indicating that -
 - (I) a copy of the application,
 - (II) a copy of the opinion (if any) issued by the Commission or Environmental Assessment Unit, as the case may be, in relation to the environmental impact assessment report,
 - (III) a copy of the environmental impact assessment report, and
 - (IV) any other information available to the Commission or Environmental Assessment Unit, as the case may be, for the purpose of the application,

are available on the website maintained by the Commission or the Department, as the case may be, and also indicating the place where they may be inspected free of charge and copies purchased on the payment of a fee which shall not exceed the reasonable cost of making such copies,

- (d) stating the times and specifying a period, which shall not be less than 30 days in duration, during which the information referred to in subparagraph (c) may be so inspected or purchased,
- (e) stating that during a specified period, which shall not be less than 30 days in duration, submissions may be made in writing to the Commission or the Environmental Assessment Unit, as the case may be, in relation to the likely effects on the environment of the proposed pipeline,
- (f) stating that significant further information (if any) received by the Commission or the Environmental Assessment Unit, as the case may be, including information received under section 40A (5)(b), (if any), shall be published on the website maintained by the Commission or the Department, as the case may be, and will be available for inspection free of charge

at the place referred to in paragraph (c) and that copies may be purchased on the payment of a fee which shall not exceed the reasonable cost of making such copies, and

- (g) stating the address or contact point to which any submissions referred to in paragraph (e) are to be sent.”,

- (c) by the insertion of the following subsections after subsection (2):

“(2A) Where it is required, in accordance with subsection (1), to submit an environmental impact assessment report, the Board or the other person making an application for consent under section 39A(1) or 40(1) shall send to the Commission or the Minister, as the case may be, an electronic version of -

- (i) the notice referred to in subsection (2),
- (ii) the environmental impact assessment report submitted in accordance with this section, and
- (iii) a map of the location of the proposed pipeline in respect of which the application is made to a scale of not less than 1:1000 in relation to built-up areas and 1:2500 in relation to all other areas, or such other scale as may be agreed with the Minister for Housing, Local Government and Heritage in a particular case, and marked so as clearly to identify the proposed pipeline and any associated structure to which the application relates.

(2B) The Commission or Environmental Assessment Unit, as the case may be, shall make an electronic version of the documents specified in subsection (2A) available to the public on its website.

(2C) The Commission or the Environmental Assessment Unit, as the case may be, shall send to the Minister for Housing, Local Government and Heritage, in electronic form, each of the following:

- (a) the name of the applicant for consent under section 39A(1) or 40(1), as the case may be, together with a contact name, email address and telephone number for correspondence;
- (b) a description of the location of the proposed pipeline;
- (c) a description of the proposed pipeline;
- (d) notice that the application for consent has been made to the Commission or the Minister, as the case may be, and that, in respect of an application made to the Minister, the environmental impact assessment in relation to that application will be carried out by the Environmental Assessment Unit;

- (e) a map of the location of the proposed pipeline to a scale of not less than 1:1000 in relation to built-up areas and 1:2500 in relation to all other areas, or such other scale as may be agreed with the Minister for Housing, Local Government and Heritage in a particular case, and marked so as clearly to identify the proposed pipeline and any associated structure to which the application relates;
 - (f) a copy of the notice referred to in subsection (2);
 - (g) notification of the location where information in electronic form that relates to the application, including any determination under subsection (1)(b) or (bb), is available on the website of the Commission or the Department, as the case may be.”
- (d) in subsection (4) -
- (i) by the substitution of “ relevant specified bodies” for “prescribed bodies”,
 - (ii) by the substitution of “a specified period, which shall not be less than 30 days in duration,” for “ the prescribed period”, and
 - (iii) by the substitution of “to the Commission or the Environmental Assessment Unit” for “to the Commission or the Minister for the Marine and Natural Resources”,
- (e) in subsection (5) -
- (i) in paragraph (a) -
 - (I) by the substitution of “during the specified period” for “during the prescribed period”, and
 - (II) by the substitution of “the Commission or the Environmental Assessment Unit” for “the Commission or the Minister for the Marine and Natural Resources”, and
 - (ii) by the substitution of the following paragraphs for paragraphs (b) and (c):
 - “(b) Where an environmental impact assessment report in respect of the construction and operation of a proposed pipeline has been submitted in accordance with this section, the Commission or the Environmental Assessment Unit, as the case may be, may require the Board or the other person, as the case may be, to furnish it with specified additional information in accordance with Annex IV which is directly relevant to reaching a reasoned conclusion on the significant effects on the environment of the proposed pipeline.

- (c) Where significant further information is received by the Commission or the Environmental Assessment Unit on foot of a requirement made under paragraph (b), the Commission or the Environmental Assessment Unit, as the case may be, shall -
 - (i) publish the information on its website, together with a notice stating that during a stated period submissions or observations in relation to that further information may be made in writing to it, and
 - (ii) send to each of the relevant specified bodies a copy of the information and shall inform the specified body concerned that during a stated period the body may make submissions in writing to it in relation to that information.”
- (f) in subsection (6), by the substitution of the following paragraph for paragraph (a):
 - “(a) The Commission or the Minister, as the case may be, may, subject to paragraph (d) and where it is satisfied that exceptional circumstances justify so doing, by order, exempt an application from the requirement to prepare an environmental impact assessment report in respect of the construction and operation of a proposed pipeline where that requirement would adversely affect the purpose of the proposed pipeline.”
- and
- (g) by the deletion of subsections (8) and (8A).

Amendment of section 40B of Principal Act

- 8. Section 40B of the Principal Act is amended -
 - (a) by the deletion of subsection (1),
 - (b) by the substitution of the following subsection for subsection (3):
 - “(3) An environmental impact assessment shall be carried out by the Commission or the Environmental Assessment Unit, as the case may be, in respect of an application for consent under section 39A(1) or 40(1) where the proposed pipeline concerned is -
 - (a) a pipeline referred to in section 40A(1)(a), or
 - (b) a pipeline, other than a pipeline referred to in section 40A(1)(a), which the Commission or the Environmental Assessment Unit has, in accordance with section 40A, determined is likely to have significant effects on the environment and has directed that that proposed pipeline is to be the subject of an environmental impact assessment.”

(c) by the insertion of the following subsection after subsection (3):

“(3A) In carrying out an environmental impact assessment, the Commission or Environmental Assessment Unit, as the case may be, shall -

- (a) ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report, and
- (b) where appropriate, coordinate the assessment with any assessment of the proposed pipeline under the European Communities (Birds and Natural Habitats) Regulations 2011.”,

(d) by the deletion of subsection (4),

(e) by the substitution of the following subsections for subsections (5) and (6):

“(5) In carrying out an environmental impact assessment under this section, the Commission or the Environmental Assessment Unit, as the case may be, shall duly take into account

-

- (a) the particulars submitted with the application including the environmental impact assessment report submitted in accordance with section 40A,
- (b) any additional information furnished under section 40A (5)(b),
- (c) any submissions duly made in relation to the likely effects on the environment of the proposed pipeline, and
- (d) the views of another Member State following consultation, if any, under section 40A(7)(a),

and, having taken those matters into account, shall reach a reasoned conclusion on the significant effects on the environment of the proposed pipeline.

(6) (a) The Commission having reached a reasoned conclusion under subsection (5) or, as the case may be, the Minister, having considered the reasoned conclusion reached by the Environmental Assessment Unit, and being satisfied that the reasoned conclusion remains up to date, may decide -

- (i) to grant consent under section 39A(1) or 40(1), as the case may be, subject to whatever (if any) environmental conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring) that the Commission or the Environmental Assessment Unit, as the case may be, considers

necessary, to avoid, prevent or reduce, or offset significant adverse effects (if any) on the environment, or

- (ii) to refuse to grant consent under section 39A(1) or 40(1), as the case may be.
- (b) Where the Commission or the Minister, as the case may be, decides to grant consent, the Commission or the Minister, as the case may be, shall incorporate into the decision -
- (i) the reasoned conclusion, and
 - (ii) any environmental conditions attached to the consent, a description of any features of the proposed pipeline or measures envisaged to avoid, prevent or reduce and, where possible, offset significant adverse effects on the environment and any appropriate monitoring measures.
- (c) The Commission or the Minister (on the recommendation of the Environmental Assessment Unit), as the case may be, shall attach to a consent granted under section 39A (1) or 40(1), as the case may be, the implementation of any feature, or the carrying out of any measure, envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, and any monitoring measure referred to in paragraph (b)(ii), as an environmental condition of that consent.
- (d) Where the Commission or the Minister, as the case may be, decides to refuse to grant consent under section 39A(1) or 40(1), as the case may be, the decision shall set out the main reasons for that decision.”,
- (f) by the insertion of the following subsection after subsection (6):
- “(6A) The decision of the Commission or the Minister, as the case may be, under subsection (6) shall be made as soon as possible and, in any case, not later than eighteen weeks after -
- (a) the receipt of an environmental impact assessment report submitted in accordance with section 40A(1),
 - (b) the receipt of any further information provided by the applicant in accordance with section 40A(5)(b), or
 - (c) the expiry of the period specified in a notice issued under section 40A(5)(c) for receipt of submissions or observations in relation to further information provided by the applicant in accordance with section 40A(5)(b),

whichever is the later.”,

(g) in subsection (7), by the substitution of “the Environmental Assessment Unit” for “the Minister” in each place it occurs,

(h) by the insertion of the following subsections after subsection (7):

“(7A) The Commission or the Minister, as the case may be, shall promptly notify the Board or other person of the decision made in accordance with subsection (6).

(7B) The notification referred to in subsection (7A) shall state the reasons for the decision to which that notification relates.”,

and

(i) by the substitution of the following subsection for subsection (8):

“(8) The Commission or the Minister, as the case may be, having made a decision in accordance with subsection (6), shall -

(a) promptly publish -

(i) in one or more newspapers circulating in the State or locally, as the Commission or the Minister, as the case may be, considers appropriate, a notice -

(I) stating that a decision in accordance with subsection (6) has been made,

(II) stating whether or not an environmental impact assessment or appropriate assessment, or both, were carried out,

(III) stating that a copy of the decision is available for inspection during specified hours, at a specified place, for a stated period of time, and in electronic form on the website of the Commission or the Department, as the case may be, and

(IV) stating that the decision may be subject to judicial review and providing information as to where practical information concerning the procedures in that regard may be found, and

(ii) on its website, the following:

(I) the decision;

(II) the main reasons and considerations on which the decision is based, including -

(A) information about the public participation process,

- (B) a summary of the results of the consultations and the information gathered pursuant to section 40A and this section (in particular, where a copy of the environmental impact assessment report was sent in accordance with section 40A(7) the result of consultations and the information gathered under that subsection), and
 - (C) a description of how the results referred to in subclause (B) have been incorporated or otherwise addressed;
- (III) where the decision is to grant consent, where the consent is subject to environmental conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), particulars of those conditions,
 - (IV) a statement that a copy of the decision is available for inspection during specified hours, at a specified place, for a stated period of time, and
 - (V) a statement that the decision may be subject to judicial review together with information as to where practical information concerning the procedures in that regard may be found,
- (b) forward to each of the relevant specified bodies a copy of the decision, and
 - (c) where a copy of the environmental impact assessment report was sent in accordance with section 40A(7), forward to the relevant state a copy of the decision.”.

Insertion of new sections into Principal Act

9. The Principal Act is amended by the insertion of the following sections after section 40B:

“Environmental Assessment Unit

40C. (1)(a) The Environmental Assessment Unit means the administrative unit within the Department commonly known by that name.

- (b) In addition to performing the functions conferred on it elsewhere in this Act, and including for the purpose of co-ordinating any assessment by it of a proposed pipeline for the purposes of the EIA Directive or this Act with any assessment of that pipeline required under Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011, the Environmental Assessment Unit shall, in respect of that proposed pipeline, perform the functions of the Minister (including the functions of the Minister as a public authority under those Regulations) in relation to any screening for appropriate assessment or appropriate assessment required under those Regulations.

(2) The Environmental Assessment Unit shall be objective in the performance by it of the functions referred to in subsection (1).

(3) The Environmental Assessment Unit shall, for the purpose of the performance by it of the functions referred to in subsection (1), consult with such independent persons, with relevant expertise, as it considers appropriate.

(4) A person referred to in subsection (3) shall, at the request of the Environmental Assessment Unit in that behalf, provide advice, and where appropriate, make recommendations, to the Environmental Assessment Unit in relation to the performance by it of the functions referred to in subsection (1) and may, for the purpose of providing such advice or making such recommendations or otherwise assisting the Environmental Assessment Unit in the performance of the functions under this Act, issue such reports, as it considers appropriate, to the Environmental Assessment Unit.

(5) The Environmental Assessment Unit shall, in the performance of the functions referred to in subsection (1), have regard to any advice given to it in accordance with subsection (4) and, where a report or recommendations are issued to it in accordance with that subsection, it may adopt the report or follow such recommendations, or both, and where it decides to adopt the report or to follow any recommendations, or both, it may, for stated reasons, do so in whole or in part, with or without modification, where it considers it appropriate to do so.

Compliance with environmental conditions, enforcement etc.

40D. (1) Where the Commission or the Minister, as the case may be, grants consent under section 39A or 40, the Board or the other person to whom the consent has been granted shall comply with the environmental conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), (if any), attached under section 40A (1)(df) or section 40B(6).

(2) It shall be an offence for the Board or the other person to whom the consent has been granted to fail to comply with subsection (1).

(3) Where the Board or the other person to whom the consent has been granted, as the case may be, commits an offence under subsection (2), it shall be liable -

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding Eur 500,000.

Monitoring etc. by Commission, Environmental Assessment Unit, provision of information concerning compliance with environmental conditions etc

40E. (1) The Commission or the Environmental Assessment Unit, as the case may be, shall take all reasonable steps to ensure that the Board or the other person, as the case may be, to whom consent under section 39A or 40 has been granted complies with any environmental conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring) attached to the consent under section 40A(1)(df) or section 40B(6).

(2) The Commission or the Environmental Assessment Unit, as the case may be, shall carry out, or cause to be carried out, monitoring of compliance with environmental conditions attached under section 40A(1)(df) or section 40B(6).

(3) The Commission or the Environmental Assessment Unit, as the case may be, may request a person to whom consent under section 39A or 40 has been granted to furnish, within a stated period, specified information in relation to the compliance by that person with any environmental conditions attached to the consent, in accordance with section 40A (1)(df) or section 40B(6).

(4) A person that fails to comply with a request under subsection (3) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding Eur500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(5) A person that, in response to a request under subsection (3), provides information or makes a statement knowing that information or statement to be false or misleading in a material respect shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding Eur500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

Power to direct action to ensure compliance with condition

40F. (1) The Commission or the Environmental Assessment Unit, as the case may be, having made, or having had made on its behalf, a request for information under section 40E, and having considered any information furnished to it as a result of the making of the request or that has otherwise come into its possession, may issue to the person to whom consent under section 39A

or 40, as the case may be, was granted, the terms of a direction (in this section referred to as “the proposed direction”) that the Commission or the Environmental Assessment Unit, as the case may be, proposes to issue to the person requiring the person to carry out, cause to be carried out, or arrange for the carrying out, within a specified period, such action as the Commission or the Environmental Assessment Unit, as the case may be, considers necessary to ensure that the person complies with the environmental conditions attached to the consent.

(2) The proposed direction shall specify a period within which the person may make observations to the Commission or the Environmental Assessment Unit, as the case may be, in relation to the proposal to make the direction and the person may make such observations within that period accordingly.

(3) After the expiration of the period referred to in subsection (2) and having considered any observations made by the person under that subsection, the Commission or the Environmental Assessment Unit, as the case may be, may decide to confirm, with or without modification, or decide not to confirm, the proposed direction and, in a case where the proposed direction is confirmed, the Commission or the Environmental Assessment Unit, as the case may be, shall issue to the person the direction concerned and the person shall comply with the direction within the period specified in the direction.

(4) A person who fails to comply with a direction under subsection (3) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding Eur500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(5) In imposing any penalty under subsection (4), the Court shall, have regard to the risk or extent of damage to the environment and any remediation required arising from the act or omission constituting the offence.

Offence - furnishing of information, making statement etc

40G. (1)(a) A person who, in relation to an application for consent under section 39A or 40 where the Commission or the Environmental Assessment Unit, as the case may be, is making a determination under section 40A or is carrying out an environmental impact assessment under section 40B, provides information or makes a statement -

- (i) in relation to the application,
- (ii) for the purposes of enabling the determination be made, or
- (iii) in relation to the carrying out of the assessment,

knowing that information or statement to be false or misleading in a material respect, shall be guilty of an offence.

(b) A person who, in response to a request for information under section 40B(5), provides information or makes a statement in relation to the request knowing that information or statement to be false or misleading in a material respect, shall be guilty of an offence.

(2) A person guilty of an offence under *subsection (1)* shall be liable -

(a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding Eur500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

Offence by body corporate

40H. (1) Where an offence under any of sections 40D to 40G is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Appointment of authorised officers

40I. (1) (a) The Minister, on the recommendation of the Environmental Assessment Unit, or the Commission (without prejudice to the powers conferred on it by or under any other Act of the Oireachtas), as the case may be, may appoint such and so many persons as the Minister or the Commission, as the case may be, thinks fit to be authorised officers for the purposes of this Act.

(b) A person appointed to be an authorised officer under this section shall be objective in the performance of his or her functions under this Act.

(2) An authorised officer shall be furnished with a warrant of his or her appointment and shall, when exercising any power conferred on him or her under this Act, if requested by a person affected, provide evidence to the person of his or her appointment as an authorised officer.

(3) An appointment under this section shall cease when -

(i) the Minister, on the recommendation of the Environmental Assessment Unit, or the Commission, as the case may be, revokes it,

- (ii) where the person ceases to be an officer or agent of the Department or the Commission, as the case may be, or
- (iii) where the appointment is for a fixed period, on the expiry of that period.

(4) An authorised officer shall, for the purposes of sections 40D to 40G have power to do any one or more of the following:

- (a) subject to *subsection (7)*, at all reasonable times enter, inspect, examine and search any place where the authorised officer has reasonable grounds for believing that any environmental condition attached to a consent in accordance with section 40B(6) has not been, or is not being, complied with and may for this purpose bring with him or her such other person, including a member of the Garda Síochána, or equipment, as he or she considers appropriate;
- (b) while in or at the place referred to in paragraph (a), may inquire into, search, examine and inspect -
 - (i) any activity, installation, process, procedure or matter at that place,
 - (ii) any plant or vehicle at that place, and
 - (iii) any records relating to any of the foregoing matters, and may require the person in charge to -
 - (I) be present during the examination or inspection or to furnish such records, or both, or
 - (II) procure the attendance of any person whose attendance is within the power of the person in charge to procure, as the authorised officer may require to be in attendance during that examination or inspection, or to procure the furnishing of such records by such person;
- (c) take, without payment, samples of anything found at or near that place or on those lands for the purpose of tests, analysis or examination;
- (d) inspect and take copies of or extracts from any such records or any electronic information system at that place, including in the case of information in a non- legible form, copies of or extracts from such information in a permanent legible form or require that such copies be provided;
- (e) remove from that place and retain such records (including documents stored in a non-legible form) and copies taken and detain the records for such period as the authorised officer reasonably considers to be necessary for further examination or until the conclusion of any legal proceedings;
- (f) where appropriate, install, use and maintain at a place referred to in subparagraph (a) monitoring instruments or systems or take

any measurements or photographs or make any tape, electronic or other recordings that the authorised officer considers necessary for the purposes of any search, examination, inspection or inquiry under this section.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (7) authorising such entry.

(6) Where an authorised officer in the exercise of his or her powers under this section is prevented from entering any place or lands, an application may be made to the District Court under subsection (7) for a warrant authorising such entry.

(7) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information or records required by an authorised officer under this section held in any place or any part thereof or that there is anything at any place or in any part thereof which an authorised officer requires to inspect for the purposes of this Act and that any such inspection is likely to disclose, evidence of a contravention of section 40D, 40E, 40F or 40G, the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officer, a member of the Garda Síochána or such other person as may be appropriate, at any time or times, within one month from the date of issue of the warrant, on production of the warrant if requested, to enter the place or lands, if necessary by the use of reasonable force, and perform the functions conferred on an authorised officer by or under this Act.

(8) An application under subsection (7) shall be made to the judge of the District Court in whose district the lands or place is situated.

(9) A person shall not -

- (a) interfere with an authorised officer, a member of the Garda Síochána or other person in the exercise of the powers conferred on him or her under this section or a warrant under subsection (7),
- (b) without reasonable excuse fail or refuse to comply with a request from or a requirement of or to answer a question asked by an authorised officer pursuant to a power conferred by this Act, or
- (c) make a statement or give information to an authorised officer that the person knows to be false or misleading in a material respect.

(10) A person who contravenes subsection (9) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding Eur500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(11) In this section -

“person in charge” means, in relation to a place, any of the following:

- (a) the owner;
- (b) the person under whose direction and control the activities at that place are being conducted;
- (c) the person whom the authorised officer has reasonable grounds for believing is in control of that place;

“place” means any structure, premises, land or other location (including the sea) or part of such place and includes any container, railway wagon, vessel, aircraft, motor or other vehicle;

“records” includes any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, pictorial or graphic work or other document any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 to 2018) are held, any form (including machine readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing.

Recovery of costs, expenses

40J. Where a person is convicted of an offence under any of sections 40D to 40I, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the Minister or the Commission, as the case may be, the costs and expenses, measured by the court, incurred by the Minister or the Commission, as the case may be, in relation to the investigation, detection and prosecution of the offence.

Summary proceedings

40K. Summary proceedings in relation to an offence under any of sections 40D to 40I, insofar as the offence relates to the construction or operation of an upstream pipeline, may be brought and prosecuted by an authorised officer appointed by the Minister under section 40I.”.

Amendment of section 2 of Gas (Amendment) Act 1987

10. Section 2 of the Gas (Amendment) Act 1987 is amended in subsection (6) (b) by the substitution of “Subject to section 39B(1) of the Principal Act, the Commission may” for “The Commission may”.

Amendment of Electricity Regulation Act 1999

11. The Electricity Regulation Act 1999 is amended in section 6(1) by the substitution of “under this Act and under sections 40D to I of the Gas Act 1976” for “under this Act”.

Amendment of section 12 of Gas (Interim) (Regulation) Act 2002

12. Section 12 of the Gas (Interim) (Regulation) Act 2002 is amended in subsection (2) by the substitution of “Subject to section 39B (2) of the Gas Act 1976, the Commission may” for “The Commission may”.



GIVEN under my Official Seal,
9 April 2021.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,
D02 DR67.

Teil: 076 110 6834
r-post: publications@opw.ie

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2,
D02 DR67.

Tel: 076 110 6834
E-mail: publications@opw.ie

€6.50

