



Number 35 of 2022

Development (Emergency Electricity Generation) Act 2022



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[No. 35.] *Development (Emergency Electricity Generation) Act 2022.*

[2022.]

ACTS REFERRED TO

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

Planning and Development Act 2000 (No. 30)



Number 35 of 2022

DEVELOPMENT (EMERGENCY ELECTRICITY GENERATION) ACT 2022

An Act to provide for emergency measures for electricity generation development to ameliorate and protect security of supply of electricity in the State because exceptional circumstances have arisen in the market for that supply and further because of the situation in Ukraine; for disapplication of the Planning and Development Act 2000 for the purpose of such development; for such development to be exempt from the provisions of Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011¹ 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 2014², in accordance with Article 2(4) of that Directive; for application of arrangements for the alternative assessment of such development for the purposes of that Directive and the appropriate assessment of such development for the purposes of Council Directive 92/43/EEC of 21 May 1992³ on the conservation of natural habitats and of wild fauna and flora, and for the co-ordination of such assessments; and to provide for related matters. [29th October, 2022]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“applicant” means an applicant under *section 4* for an approval under *section 7*;

“Board” means An Bord Pleanála;

“designated development” means development designated by *section 2(1)*;

“Environmental Impact Assessment Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011⁴ 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 2014⁵;

“generating station” means a station for the generation of electricity;

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
4 OJ No. L26, 28.1.2012, p.1
5 OJ No. L24, 25.4.2014, p.1

“Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992⁶ on the conservation of natural habitats and of wild fauna and flora, amended by Council Directive 97/62/EC of 27 October 1997⁷, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003⁸, Council Directive 2006/105/EC of 20 November 2006⁹ and Council Directive 2013/17/EU of 13 May 2013¹⁰;

“Minister” means Minister for the Environment, Climate and Communications;

“prescribed” means prescribed by regulations made by the Minister;

“Regulations of 2011” means the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

Designation of development

2. (1) Development comprising of the installation of up to 450 megawatts of temporary emergency electricity generation plant, site development and works ancillary to that installation, and the operation of the plant, intended to be located at two separate sites at Shannonbridge and Tarbert generating stations or at alternative appropriate sites, which development is required urgently for the purpose of ensuring and protecting security of electricity supply by Winter of 2023 to 2024, is hereby designated for the purposes of this Act, in particular *section 5*.
- (2) The designated development may include part of the development referred to in *subsection (1)*, or the carrying out of that development on a phased basis.
- (3) The designated development is a project not likely to have significant effects on the environment in a Member State other than the State or a state that is party to the United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland), on 25 February 1991.

Disapplication of Planning and Development Act 2000 to designated development

3. None of the provisions of the Planning and Development Act 2000 shall apply to the designated development.

Application to Minister

4. EirGrid, or any other person, may apply to the Minister, in accordance with the requirements of this Act and such procedures as may be prescribed, for approval under *section 7* to carry out the designated development.

6 OJ No. L206, 22.7.1992, p.7

7 OJ No. L305, 8.11.1997, p. 42

8 OJ No. L284, 31.10.2003, p. 1

9 OJ No. L363, 20.12.2006, p. 368

10 OJ No. L158, 10.6.2013, p. 193

Arrangements for Environmental Impact Assessment

5. (1) Without prejudice to the generality of *section 3*, the designated development shall be exempt from the provisions of the Environmental Impact Assessment Directive on the basis that the designated development is an exceptional case for the purposes of Article 2(4) of that Directive and the application of those provisions would adversely affect the purpose, referred to in *section 2(1)*, of the designated development.
- (2) On receiving an application under *section 4*, the Minister shall arrange for an assessment of the designated development, in such form and manner as may be prescribed, to be carried out by the Board for the purposes of this section and for the purpose of ensuring that the objectives of the Environmental Impact Assessment Directive are met.
- (3) An assessment of the designated development by the Board under *subsection (2)* shall be co-ordinated with any appropriate assessment of the designated development that is carried out under Part 5 of the Regulations of 2011, as applied by *section 6*.

Arrangements for Appropriate Assessment

6. (1) On receiving an application under *section 4*, the Minister shall arrange for an assessment of the designated development to be carried out by the Board in accordance with Part 5 of the Regulations of 2011, subject to any modifications as to process as may be prescribed for the purposes of this Act, and Part 5 of those Regulations shall apply in respect of the designated development subject to such modifications.
- (2) The Board shall, as part of the assessments referred to in *section 5(2)* and *subsection (1)*, assess the impacts (if any) of the designated development on the species listed in Annex IV of the Habitats Directive 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 and whether such a derogation ought to be granted, and may make a recommendation to the Minister in relation to such need and grant.

Decision of Minister

7. (1) The Minister may, having considered an application made to him or her under *section 4* for an approval under this section, having taken into account the assessments carried out by the Board under *sections 5(2)* and *6(1)* and any conditions recommended by the Board arising from those assessments, including but not limited to conditions relating to mitigation measures, and having regard to the purpose referred to in *section 2(1)*—
- (a) approve the designated development,
- (b) refuse to approve the designated development, or
- (c) approve the designated development subject to such conditions as he or she considers appropriate, including but not limited to conditions relating to mitigation measures.

- (2) An approval under *subsection (1)(a)* or *(c)* may, further to a recommendation made by the Board under *section 6(2)*, include a derogation for the purpose of Article 16 of the Habitats Directive in respect of the designated development and the Minister shall inform the Minister for Housing, Local Government and Heritage of any such derogation, if granted, and such derogation shall be included in a report provided to the European Commission under Regulation 54(6) of the Regulations of 2011.
- (3) Before making a decision under *subsection (1)(a)* or *(c)*, the Minister shall give notice to the European Commission stating that the designated development is exempt from the provisions of the Environmental Impact Assessment Directive in accordance with *subsection (1)* of *section 5*, of the reasons for the exemption as specified in that subsection, and of the carrying out of an assessment under *section 5(2)*, together with a copy of any information made available to the members of the public in relation to that assessment.
- (4) Notice of a decision of the Minister under *subsection (1)(a)* or *(c)* and of the reasons for the decision, and stating that the designated development is exempt from the provisions of the Environmental Impact Assessment Directive in accordance with *subsection (1)* of *section 5* and the reasons for the exemption as specified in that subsection, shall, as soon as may be, be published in *Iris Oifigiúil*, on a website maintained by or on behalf of the Minister and in at least one daily newspaper published in the State.

Requirement to comply with approval

8. The designated development shall be carried out in accordance with an approval under *paragraph (a)* or *(c)* of *section 7(1)*.

Regulations for purpose of Act

9. (1) The Minister may prescribe such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of this Act.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide for all or any of the following:
 - (a) the form and manner in which an application under *section 4* for an approval under *section 7* shall be made, including by electronic means;
 - (b) the information, including additional information, to be provided by an applicant to the Minister in relation to the application and the form and manner in which it is to be provided;
 - (c) the information, including reports and technical assessments, relating to the assessments referred to in *sections 5(2)* and *6(1)* to be provided to the Minister or the Board by an applicant;
 - (d) the manner in which the information referred to in *paragraphs (b)* and *(c)* shall be provided by the Minister to the Board;

- (e) procedures for public participation and the provision of information obtained under the assessments referred to in *sections 5(2) and 6(1)* to the public;
 - (f) procedures for co-ordination of assessments in accordance with *section 5(3)*;
 - (g) the period within which the Board is to carry out the assessments referred to in *sections 5(2) and 6(1)*;
 - (h) procedures in relation to the making of a recommendation by the Board under *section 6(2)* and the granting of a derogation by the Minister under *section 7(2)*;
 - (i) procedures for managing an application for a variation of the designated development referred to in an application under *section 4* before an approval is granted by the Minister under *section 7* or a variation of the approval after it has been granted.
- (3) Regulations under this section may contain such incidental, supplementary, consequential or transitional provisions as appear to the Minister to be necessary for the purposes of the regulations.
- (4) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Section 15 of Climate Action and Low Carbon Development Act 2015

10. Taking into account the exceptional circumstances and the urgent and compelling necessity for securing the supply of electricity in the State, the Minister and the Board, in performing their functions under this Act, 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 they consider practicable, taking particular account of the said exceptional circumstances and urgent and compelling necessity.

Expenses

11. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Short title and commencement

12. (1) This Act may be cited as the Development (Emergency Electricity Generation) Act 2022.
- (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.