



STATUTORY INSTRUMENTS.

S.I. No. 457 of 2021



EUROPEAN UNION (PLANNING) (HABITATS, BIRDS AND ENVIRONMENTAL IMPACT) (NO. 2) REGULATIONS 2021

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I, DARRAGH O' BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Council Directive 92/43/EEC of 21 May 1992¹, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009², Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011³ and Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014⁴ hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as European Union (Planning) (Habitats, Birds and Environmental Impact) (No. 2) Regulations 2021.

(2) These Regulations shall come into operation on 9 September 2021.

Definitions

2. In these Regulations, "Principal Regulations" means the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), as amended.

Amendment of article 42 of the Principal Regulations

3. Article 42 of the Principal Regulations is amended –

(a) by inserting after paragraph (f) the following paragraph:

“(ff) where the development to which the permission relates is of a class specified in Part 2 of Schedule 5, which proposed extension of the appropriate period does not equal or exceed, as the case may be, a quantity, area or other limit specified in that Schedule, the information specified in Schedule 7A for the purposes of a screening determination,” and

(b) by inserting after paragraph (i) the following paragraph:

“(ia) particulars of the works which are proposed to be carried out pursuant to the permission during the additional period by which the permission is sought to be extended,”.

¹ OJ No. L206 of 27 July 1992, p.7

² OJ No. L20 of 26 January 2010, p.7

³ OJ No. L26 of 28 January 2012, p.1

⁴ OJ No. L124 of 25 April 2014, p.1

Amendment of article 43 of the Principal Regulations

4. Article 43 of the Principal Regulations is amended by inserting after paragraph (a) the following paragraph:

“(aa) particulars of the works which are proposed to be carried out pursuant to the permission during the additional period by which the permission is sought to be further extended.”.

Amendment of article 43A of the Principal Regulations

5. Article 43A of the Principal Regulations (inserted by article 6 of the Planning and Development (Amendment) (No. 3) Regulations 2021) is amended by inserting after paragraph (a) the following paragraph:

“(aa) particulars of the works which are proposed to be carried out pursuant to the permission during the additional period by which the permission is sought to be further extended.”.

Insertion of new articles 44A to 44F

6. The Principal Regulations are amended by inserting after article 44 the following articles:

“Information requirement for deciding if application to extend or extend further the appropriate period requires environmental impact assessment

44A. (1) Where an applicant is submitting to the planning authority the information specified in Schedule 7A, the information shall be accompanied by any further relevant information on the characteristics of the proposed extension of the appropriate period and its likely significant effects on the environment, including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account.

(2) Where an applicant is submitting to the planning authority the information specified in Schedule 7A, the information may be accompanied by a description of the features, if any, of the development which is the subject of the extension application and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment of the development which is the subject of the extension application.

Screening determination of whether application to extend or extend further the appropriate period requires environmental impact assessment

44B. (1) Where –

(a) an application to extend or extend further the appropriate period as respects a particular permission for development of a class specified in Part 2 of Schedule 5, which proposed extension of the appropriate period does not equal or exceed, as the case may be,

a quantity, area or other limit specified in that Schedule, is received by a planning authority, and

- (b) is accompanied by the information specified in Schedule 7A and article 44A or where an applicant submits to the planning authority such information pursuant to a notice issued under article 44(2)(b),

the planning authority shall carry out an examination of, at the least, the nature, size or location of the proposed extension of the appropriate period for the purposes of a screening determination.

- (2) The planning authority shall make a screening determination and—
 - (a) if such determination is that there is no real likelihood of significant effects on the environment arising from the proposed extension of the appropriate period, it shall determine that an EIA would not be required, or
 - (b) if such determination is that there is a real likelihood of significant effects on the environment arising from the proposed extension, it shall determine that the proposed extension of the appropriate period would be likely to have such effects and that an EIA would be required.

Extension of time for making screening determination on application to extend or extend further the appropriate period

44C. (1) Subject to sub-article (2), any screening determination under article 44B shall be notified to the applicant within 8 weeks of receipt of the information specified in Schedule 7A.

(2) Subject to sub-article (3), the planning authority shall not be required to comply with sub-article (1) within the period specified in sub-article (1) where it appears to the planning authority that it would not be possible or appropriate, because of the exceptional circumstances of the proposed extension of the appropriate period (including in relation to the nature, complexity, location or size of such extension) to do so.

(3) Where sub-article (2) applies, the planning authority shall, by notice in writing served on the applicant before the expiration of the period referred to in sub-article (1), inform him or her of the reasons why it would not be possible or appropriate to comply with sub-article (1) within that period and shall specify the date before which the planning authority intends that the screening determination concerned, as the case may be, shall be reached or made, as the case may be.

Matters which must be regarded

44D. (1) The planning authority shall, in making its screening determination on an application to extend or extend further the appropriate period as regards a particular permission under this Chapter whether there is no real likelihood of significant effects on the environment arising from the proposed extension or

there is a real likelihood of significant effects on the environment arising from the proposed extension, have regard to—

- (a) the criteria set out in Schedule 7,
- (b) the information submitted pursuant to Schedule 7A,
- (c) the further relevant information, if any, referred to in article 44A(1) and the description, if any, referred to in article 44A(2),
- (d) the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive, and
- (e) in respect of relevant development which is or would be located on, or in, or have the potential to impact on—
 - (i) a European site,
 - (ii) an area the subject of a notice under section 16 (2)(b) of the Wildlife (Amendment) Act 2000 (No. 38 of 2000),
 - (iii) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,
 - (iv) 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),
 - (v) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976,
 - (vi) a place, site or feature of ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan, draft development plan or draft local area plan, or proposed variation of a development plan, for the area in which the development is proposed, or
 - (vii) a place or site which has been included by the Minister in a list of proposed Natural Heritage Areas published on the National Parks and Wildlife Service website,

the likely significant effects of such development on such site, area, land, place or feature, as appropriate.

(2) The planning authority shall include, or refer to, in its screening determination made on an application to extend or extend further the appropriate period as regards a particular permission, the main reasons and considerations, with reference to the relevant criteria listed in Schedule 7, on which the determination is based

Features or measures incorporated or envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment

44E. (1) Sub-article (2) applies where the screening determination made on an application to extend or extend further the appropriate period as regards a

particular permission is that the proposed extension would not be likely to have significant effects on the environment and the applicant has provided, under article 44A, a description of the features, if any, of such development which is the subject of the extension application and the measures, if any, incorporated or envisaged in the particular permission to avoid or prevent what might otherwise have been significant adverse effects on the environment of the development which is the subject of the extension application.

(2) The planning authority shall specify such features, if any, and such measures, if any, in its screening determination made on an application to extend or extend further the appropriate period as regards a particular permission.

Screening for appropriate assessment

44F. (1) As soon as may be following receipt of an application to extend or extend further the appropriate period as regards a particular permission, in order to ascertain whether an appropriate assessment is required in respect of the proposed extension of the appropriate period, the planning authority shall carry out a screening for appropriate assessment of the proposed extension of the appropriate period to assess, in view of best scientific knowledge, if the proposed extension of the appropriate period, individually or in combination with other plans or projects, would be likely to have a significant effect on a European site.

(2) If on the basis of a screening under sub- article (1) it cannot be excluded, on the basis of objective information, that the proposed extension, individually or in combination with other plans or projects, would have a significant effect on a European site, the planning authority shall determine that an appropriate assessment of the proposed extension would be required.

(3) In carrying out screening for appropriate assessment of a proposed extension, the planning authority may request such information from the applicant as it may consider necessary to enable it to carry out that screening, and may consult with such persons as it considers appropriate and where the applicant does not provide the information within the period specified, or any further period as may be specified by the authority, the application to extend or extend further the appropriate period as regards a particular permission shall be deemed to be withdrawn.”.

Amendment of article 45 of the Principal Regulations

7. Article 45 of the Principal Regulations is amended at sub-article (2) by substituting “assessed, or save where information specified in Schedule 7A is requested pursuant to article 44(2)(b) or where information is required pursuant to article 44F(3).” for “assessed.”.

Amendment of article 46 of the Principal Regulations

8. Article 46 of the Principal Regulations is amended –
- (a) in paragraph (f) by deleting “and”,
 - (b) in paragraph (g) by substituting “refusal,” for “refusal.”, and

- (c) by inserting after paragraph (g) the following paragraphs:
- “(h) any screening determination made under article 44B(2), as the case may be (and, in the latter case, including, or referring to, the description, if any, provided under article 44A(2)),
 - (i) a determination made under article 44F,
 - (j) that the application and decision will be available for inspection, or purchase at a fee not exceeding the reasonable cost of making a copy, at its offices during its public opening hours and on the planning authority’s website,
 - (k) that a person may question the validity of any decision of the planning authority by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with sections 50 and 50A, and
 - (l) where practical information on the review mechanism can be found.”.

Insertion of new article 46A

9. The Principal Regulations are amended by inserting after article 46 the following article:

“Publication of decision by planning authority and availability of documents

46A. A planning authority shall, as soon as may be after making its decision on an application to extend or extend further the appropriate period as regards a particular permission-

- (a) publish the notification referred to in article 46 on its website or in a newspaper circulating in the area where the relevant development is or would be situated, or both on that website and in such newspaper, and
- (b) make the application, including any screening determination made under article 44B(2), as the case may be (and, in the latter case, including the description, if any, provided under article 44A(2)), and a determination made under article 44F, available for inspection, or purchase at a fee not exceeding the reasonable cost of making a copy, at its offices during its public opening hours and on the planning authority’s website.”.

Amendment of article 47 of the Principal Regulations

10. Article 47 of the Principal Regulations is amended in sub-article (4) –

- (a) in paragraph (c) by deleting “and”,
- (b) in paragraph (d) by substituting “made,” for “made.”, and

- (c) by the insertion of the following paragraphs after paragraph (d):
 - “(e) a screening determination made under article 44B(2), as the case may be (and, in the latter case, including, or referring to, the description, if any, provided under article 44A(2)), and
 - (f) a determination made under article 44F.”.

Amendment of article 47B of the Principal Regulations

11. Article 47B of the Principal Regulations is amended-

- (b) by inserting after paragraph (f) the following paragraph:
 - “(ff) where the development to which the permission relates is of a class specified in Part 2 of Schedule 5, which proposed extension of the appropriate period does not equal or exceed, as the case may be, a quantity, area or other limit specified in that Schedule, the information specified in Schedule 7A for the purposes of a screening determination,” and
- (c) by substituting for paragraph (h) the following paragraph:
 - “(h) particulars of the works which are proposed to be carried out pursuant to the permission in the additional period by which the permission is sought to be further extended.”.

Amendment of article 47D of the Principal Regulations

12. Article 47D of the Principal Regulations is amended at sub-article (2) by substituting “assessed, or save where information specified in Schedule 7A is requested pursuant to article 47C(2)(b) or where information is required pursuant to article 47M(3).” for “assessed.”.

Amendment of article 47E of the Principal Regulations

13. Article 47E of the Principal Regulations is amended –

- (a) in paragraph (g) by deleting “and”,
- (b) in paragraph (h) by substitution “refusal,” for “refusal.”, and
- (c) by inserting after paragraph (h) the following paragraphs:
 - “(i) any screening determination made under article 47I(2), as the case may be (and, in the latter case, including, or referring to, the description, if any, provided under article 44H(2)),
 - (j) a determination made under article 47M,
 - (k) that the application and decision will be available for inspection, or purchase at a fee not exceeding the reasonable cost of making a copy, at its offices during its

public opening hours and on the planning authority's website,

- (l) state that a person may question the validity of any decision of the planning authority by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with sections 50 and 50A, and
- (m) identify where practical information on the review mechanism can be found.”.

Amendment of article 47F of the Principal Regulations

14. Article 47F of the Principal Regulations is amended at sub-article (4) –

- (a) in paragraph (d) by deleting “and”,
- (b) in paragraph (e) by substituting “made,” for “made.”
- (c) by inserting after paragraph (e) the following paragraphs:
 - “(f) a screening determination made under article 47I(2), as the case may be (and, in the latter case, including, or referring to, the description, if any, provided under article 47H(2)), and
 - (g) a determination made under article 47M.”.

Insertion of new articles 47G – 47M into the Principal Regulations

15. The Principal Regulations are amended by inserting after article 47F the following articles:

“Publication of decision by planning authority and availability of documents

47G. A planning authority shall, as soon as may be after making its decision on an application under section 42(1A) of the Act -

- (a) publish the notification referred to in article 47E on its website or in a newspaper circulating in the area where the relevant development is or would be situated, or both on that website and in such newspaper, and
- (b) make the application, including any screening determination made under article 47I(2), as the case may be (and, in the latter case, including the description, if any, provided under article 47H(2)), and a determination made under article 47M, available for inspection, or purchase at a fee not exceeding the reasonable cost of making a copy, at its offices during its public opening hours and on the planning authority's website.

Information requirement for deciding if application under section 42(1A) of the Act to extend further the appropriate period requires environmental impact assessment

47H. (1) Where an applicant is submitting to the planning authority the information specified in Schedule 7A, the information shall be accompanied by any further relevant information on the characteristics of the proposed extension and its likely significant effects on the environment, including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account.

(2) Where an applicant is submitting to the planning authority the information specified in Schedule 7A, the information may be accompanied by a description of the features, if any, of the development which is the subject of the extension application and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment of the development which is the subject of the extension application.

Screening determination of whether application under section 42(1A) of the Act to extend further the appropriate period requires environmental impact assessment

47I. (1) Where –

- (a) an application under section 42(1A) of the Act to extend further the appropriate period as respects a particular permission for development of a class specified in Part 2 of Schedule 5, which proposed extension of the appropriate period does not equal or exceed, as the case may be, a quantity, area or other limit specified in that Schedule is received by a planning authority, and
- (b) is accompanied by the information specified in Schedule 7A and article 47H, or where an applicant submits to the planning authority such information pursuant to a notice issued under article 47C(2)(b),

the planning authority shall carry out an examination of, at the least, the nature, size or location of the proposed extension for the purposes of a screening determination.

(2) The planning authority shall make a screening determination and—

- (a) if such determination is that there is no real likelihood of significant effects on the environment arising from the proposed extension, it shall determine that an EIA would not be required, or
- (b) if such determination is that there is a real likelihood of significant effects on the environment arising from the proposed extension, it shall determine that the proposed extension would be likely to have such effects and that an EIA would be required.

Extension of time for making screening determination on application under section 42(1A) of the Act extend further the appropriate period

47J. (1) Subject to sub-article (2), any screening determination under article 47I shall be notified to the applicant within 8 weeks of receipt of the information specified in Schedule 7A.

(2) Subject to sub-article (3), the planning authority shall not be required to comply with sub-article (1) within the period specified in sub-article (1) where it appears to the planning authority that it would not be possible or appropriate, because of the exceptional circumstances of the proposed extension (including in relation to the nature, complexity, location or size of such extension) to do so.

(3) Where sub-article (2) applies, the planning authority shall, by notice in writing served on the applicant before the expiration of the period referred to in sub-article (1), inform him or her of the reasons why it would not be possible or appropriate to comply with sub-article (1) within that period and shall specify the date before which the planning authority intends that the screening determination concerned, as the case may be, shall be reached or made, as the case may be.

Matters which must be regarded

47K. (1) The planning authority shall, in making its screening determination on an application under section 42(1A) of the Act to extend further the appropriate period as regards a particular permission whether there is no real likelihood of significant effects on the environment arising from the proposed extension or there is a real likelihood of significant effects on the environment arising from the proposed extension, have regard to—

- (a) the criteria set out in Schedule 7,
- (b) the information submitted pursuant to Schedule 7A,
- (c) the further relevant information, if any, referred to in article 47H(1) and the description, if any, referred to in article 47H(2),
- (d) the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive, and
- (e) in respect of relevant development which is or would be located on, or in, or have the potential to impact on—
 - (i) a European site,
 - (ii) an area the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000 (No. 38 of 2000),
 - (iii) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,
 - (iv) 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),

- (v) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976,
- (vi) a place, site or feature of ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan, draft development plan or draft local area plan, or proposed variation of a development plan, for the area in which the development is proposed, or
- (vii) a place or site which has been included by the Minister in a list of proposed Natural Heritage Areas published on the National Parks and Wildlife Service website,

the likely significant effects of such development on such site, area, land, place or feature, as appropriate.

(2) The planning authority shall include, or refer to, in its screening determination made on an application under section 42(1A) of the Act to extend further the appropriate period as regards a particular permission, the main reasons and considerations, with reference to the relevant criteria listed in Schedule 7, on which the determination is based.

Features or measures incorporated or envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment

47L. (1) Sub-article (2) applies where the screening determination made on an application under section 42(1A) of the Act to extend further the appropriate period as regards a particular permission is that the proposed extension would not be likely to have significant effects on the environment and the applicant has provided, under article 47H, a description of the features, if any, of the development which is the subject of the extension application and the measures, if any, incorporated or envisaged in the particular permission to avoid or prevent what might otherwise have been significant adverse effects on the environment of the development which is the subject of the extension application.

(2) The planning authority shall specify such features, if any, and such measures, if any, in its screening determination made on an application to extend or extend further the appropriate period as regards a particular permission.

Screening for appropriate assessment

47M. (1) As soon as may be following receipt of an application under section 42(1A) of the Act to extend further the appropriate period as regards a particular permission, in order to ascertain whether an appropriate assessment is required in respect of the proposed extension of the appropriate period, the planning authority shall carry out a screening of the proposed extension of the appropriate period to assess, in view of best scientific knowledge, if the proposed extension of the appropriate period, individually or in combination with other plans or projects, would be likely to have a significant effect on a European site.

(2) If on the basis of a screening under sub- article (1) it cannot be excluded, on the basis of objective information, that the proposed extension, individually

or in combination with other plans or projects, would have a significant effect on a European site, the planning authority shall determine that an appropriate assessment of the proposed extension would be required.

(3) In carrying out screening for appropriate assessment of a proposed extension, the planning authority may request such information from the applicant as it may consider necessary to enable it to carry out that screening, and may consult with such persons as it considers appropriate and where the applicant does not provide the information within the period specified, or any further period as may be specified by the authority, the application to extend or extend further the appropriate period as regards a particular permission shall be deemed to be withdrawn.”.



GIVEN under my Official Seal,
8 September, 2021.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations amend Chapter 3 and 3A of Part 4 of the Planning and Development Regulations 2001, as amended, to provide for procedural matters relating to Environmental Impact Assessment and appropriate assessment in respect of applications to planning authorities under section 42 of the Planning and Development Act 2000, as amended, for an extension or further extension of the appropriate period of certain planning permissions, as the case may be. The Regulations come into force on 9 September 2021.

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