



STATUTORY INSTRUMENTS.

S.I. No. 558 of 2010



EUROPEAN COMMUNITIES (FOREST CONSENT AND ASSESSMENT)
REGULATIONS 2010

(Prn. A10/1752)

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EUROPEAN COMMUNITIES (FOREST CONSENT AND ASSESSMENT)
REGULATIONS 2010

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, 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 effect to Council Directive 85/337/EEC of 27 June 1985¹ (as amended by Council Directive 97/11/EC of 3 March 1997² and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003³), insofar as it applies to development consent in respect of forestry, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Communities (Forest Consent and Assessment) Regulations 2010.

Interpretation

2. (1) In these Regulations—

“Act of 1976” means the Wildlife Act 1976 (No. 39 of 1976);

“Act of 2000” means the Wildlife (Amendment) Act 2000 (No. 38 of 2000);

“afforestation” means the conversion of land to a forest;

“applicant” means a person applying for approval under Regulation 3;

“application” means an application for approval made under Regulation 3 in respect of development;

“approval” means an approval under Regulation 6 in respect of development;

“authorised officer” means a person appointed under section 11 of the Forestry Act 1946 (No. 13 of 1946);

“Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁴;

“consultation body” means any of the following:

¹OJ No. L175, 5.7.1985, p.40.

²OJ No. L73, 14.3.1997, p.5.

³OJ No. L156, 25.6.2003, p.17.

⁴OJ No. L20, 26.1.2010, p.7.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th November, 2010.*

- (a) where relevant, a Minister of the Government;
- (b) the Environmental Protection Agency;
- (c) the National Parks and Wildlife Service of the Department of the Environment, Heritage and Local Government;
- (d) Inland Fisheries Ireland;
- (e) the relevant local authority (as defined under section 2 of the Local Government Act 2001 (No. 37 of 2001));
- (f) An Taisce — The National Trust of Ireland;

“decision” means a decision made by the Minister under Regulation 6;

“development” means afforestation or forest road works;

“direction” means a direction by the Minister under Regulation 10(1);

“EIA Directive” means Council Directive 85/337/EEC of 27 June 1985, as amended by—

- (a) Council Directive 97/11/EC of 3 March 1997, and
- (b) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;

“EIS” means an environmental impact statement;

“forest” means land under trees with—

- (a) a minimum area of 0.1 hectare,
- (b) tree crown cover of more than 20 per cent of the total area, or the potential to achieve this cover at maturity,

“forest road” means a road (other than a public road) that serves a forest;

“forest road works” means the construction of a forest road or works ancillary to such construction (whether or not such construction involves the removal of trees), but not where such construction consists of the provision of access to a public road;

“Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992⁵;

“Member State” means a Member State, other than the State, of the European Communities;

“Minister” means the Minister for Agriculture, Fisheries and Food;

⁵OJ No. L206, 22.7.1992, p.7.

“owner” includes—

- (a) the occupier for the time being of the lands,
- (b) the leasehold owner (if any) of the lands, and
- (c) Coillte Teoranta;

“public road” has the meaning assigned to it by the Planning and Development Act 2000 (No. 30 of 2000);

“publish” means publishing on the internet website of the Minister or in such other manner as the Minister may direct;

“sub-threshold development” means—

- (a) where afforestation is concerned — afforestation of fewer than 50 hectares,
or
- (b) where forest road works are concerned — construction of a forest road under 2000 metres in length.

(2) Subject to paragraph (1), a word or expression that is used in these Regulations and is also used in the EIA Directive has, in these Regulations, the same meaning as in that Directive.

PART 2

APPROVAL PROCEDURES

Application for approval

3. (1) A person seeking an approval shall submit an application to the Minister in a manner as the Minister may determine.

(2) An application under paragraph (1) shall contain all material facts relating to the development and include such information including an EIS, as the Minister considers necessary.

(3) The Minister may require satisfactory evidence demonstrating that the applicant is—

- (a) the owner of the lands concerned, or
- (b) acting with the consent of, and on behalf of, the owner,

and suitably qualified to carry out the development.

(4) If an application does not contain the information that the Minister considers necessary or the EIS does not otherwise conform to the requirements, the Minister shall—

- (a) inform the applicant that the application cannot be considered by the Minister,
- (b) indicate the basis on which the application may be considered,
and
- (c) return the application to the applicant, including all particulars, plans, drawings and maps.

Notice to consultation body

4. (1) Where the Minister receives an application and it appears to him or her that the proposed development may—

- (a) cause significant acidification of waters,
- (b) have a significant impact on—
 - (i) nature conservation, or
 - (ii) an archaeological site or feature,
- (c) be situated in an area of special amenity under an order made under section 202 of the Planning and Development Act 2000, or
- (d) is located in or likely to have a significant effect on—
 - (i) a European site within the meaning of Regulation 2(3) of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004),
 - (ii) land established or recognised as a nature reserve under sections 15 or 16 of the Act of 1976, as amended by sections 26 and 27 of the Act of 2000,
 - (iii) land designated as a refuge for flora or fauna under section 17 of the Act of 1976, as amended by section 28 of the Act of 2000,
 - (iv) an area the subject of a notice under section 16(2)(b) of the Act of 2000, or
 - (v) an area designated as a natural heritage area under section 18 of the Act of 2000,

the Minister shall issue a notice in writing to one or more consultation bodies that the Minister believes may have an opinion on the proposed development.

(2) A notice issued under paragraph (1) shall include a copy of the application, the EIS (if any), a map of the site on which the development is proposed and other information that the Minister considers relevant.

(3) Without prejudice to paragraph (1), the Minister may carry out such consultation in relation to an application that he or she considers appropriate.

(4) A consultation body to which a notice under paragraph (1) is sent may submit a submission or observation on the application in writing to the Minister within 4 weeks of the issue of the notice or whatever longer timeframe is set out in the notice and, if additional information is received by the Minister and forwarded to the consultation body, within 4 weeks from the date on which the last information is forwarded.

(5) Where a consultation body to whom a notice or further information is sent under this Regulation fails to make a submission or observation within 4 weeks from the date of the notice or such longer timeframe set out in the notice or further information, the Minister may make a decision without further communication to that body.

Public consultation

5. (1) Where the Minister receives an application he or she shall, before making a decision, publish a notice of the application.

(2) A notice under paragraph (1) shall state—

- (a) the reference number of the application,
- (b) the location, townland and county to which the application relates,
- (c) the nature and extent of the proposed development,
- (d) the nature of possible decisions or, where there is one, the draft decision,
- (e) that any person may make a submission or observation to the Minister within 4 weeks from the date of the notice or whatever longer timeframe appears on the notice,
- (f) where and when the application and documents may be viewed,
- (g) any other details of public participation, and
- (h) any other information that the Minister believes relevant to the application.

(3) The Minister shall make the application available for inspection to the public free of charge, or for purchase at a fee not exceeding the reasonable cost of doing so, a map of the proposed development and any other information or documentation relevant to the application that the Minister has in his or her possession.

(4) The public may make submissions or observations in writing concerning the application to the Minister within 4 weeks from the date of publication or

whatever longer timeframe is set out in the notice, and where additional information is published, at least 4 weeks from the date of the publication of that information.

Decision of Minister on application

6. (1) The Minister, after expiration of the relevant timeframe, may, in whole or in part, approve the application, having regard to the following;

- (a) any information relating to the application furnished by the applicant;
- (b) any written submission or observation received under Regulation 4 or 5;
- (c) the National Forest Standard;
- (d) the Code of Best Forest Practice;
- (e) any relevant environmental guidelines made by a Minister of the Government;
- (f) any relevant policy of a Minister of the Government;
- (g) any acts of the institutions of the European Union, including the Birds Directive and the Habitats Directive;
- (h) the requirements of these Regulations;
- (i) any other legal requirements;
- (j) any other matter that the Minister considers relevant, including the capacity of the applicant to carry out the development.

(2) The Minister may attach such conditions to the approval of a development as he or she considers necessary, including conditions relating to—

- (a) the route and dimensions of the forest road,
- (b) the materials to be used the construction of the forest road,
- (c) the removal of specified trees where necessary,
- (d) species of trees to be planted and where on the site such trees are to be planted,
- (e) water drainage,
- (f) fertilisation,
- (g) management of the flora and fauna on the site, and
- (h) adherence to any relevant conservation objective.

(3) The Minister shall refuse an application if, in his or her opinion—

- (a) the application is incomplete in any material detail,
- (b) the EIS is inadequate,
- (c) the proposed development—
 - (i) fails to comply with any of the matters specified in paragraphs (1)(c) to (j),
 - (ii) is likely to have an adverse impact on human health, or
 - (iii) is likely to have significant adverse impact on—
 - (I) animal or plant health,
 - (II) water quality,
 - (III) an archaeological, historical or cultural site or feature,
 - (IV) an area of special amenity, or
 - (V) nature conservation.

Notification of decision

7. (1) The Minister shall notify the applicant in writing and, subject to paragraph (2), any person who made a submission or observation under Regulation 4 or 5 of—

- (a) the decision to grant or refuse approval and, in the case of a decision to grant approval, any conditions attached to the approval,
- (b) the main reasons and considerations on which the decision to grant or refuse an approval is based, and where conditions are attached to any grant of approval, the reasons for the conditions,
- (c) a description, where necessary, of the main measures to avoid, reduce, and if possible, offset the major adverse effects of the development, and
- (d) the procedure for seeking a review under Regulation 8 of the decision.

(2) The Minister may dispense with the requirement to notify persons other than the applicant under paragraph (1) where—

- (a) a large number of submissions or observations are made as part of an organised campaign,
- (b) the submission or observation made is, in the opinion of the Minister, frivolous or vexatious, or
- (c) it is not possible to readily ascertain the name and address of any person who made a submission or observation.

(3) The Minister shall publish the decision and make available to the public the matters referred to in paragraph (1).

Review of decision

8. (1) The High Court shall be the court of law for the purposes of Article 10a of the EIA Directive.

(2) An application to review a decision shall be made by way of application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

(3) The High Court shall not grant leave in such an application unless the applicant—

- (a) has a sufficient interest in the matter, or
- (b) is a consultation body.

(4) In this Regulation—

“decision” means—

- (a) any decision or purported decision made or purportedly made,
- (b) any action taken or purportedly taken, or
- (c) any failure to take any action;

“sufficient interest” is not limited to an interest in land or other financial interest.

PART 3

UNAUTHORISED DEVELOPMENT

Carrying out development without approval

9. A person shall not carry out work on a development, or cause or permit another person to carry out work on a development other than in accordance with an approval.

Directions in respect of certain work

10. (1) If a development is undertaken in contravention of Regulation 9, the Minister may direct the owner of the land—

- (a) in respect of afforestation, to remove the trees planted,
- (b) in respect of forest road works, to remove the forest road, and
- (c) to restore the land to its condition prior to the commencement of the development within a specified timeframe,

and may attach conditions to the manner in which such removal and restoration is carried out.

- (2) A person shall comply with a direction and any conditions attached.

Minister may enter on land

11. (1) Where the land is unoccupied or the owner does not comply with a direction, the Minister may—

- (a) enter onto the land and remove the trees or the forest road, or
(b) authorise in writing any person to enter in the land and remove the trees during any specified period, not exceeding 12 months.

(2) The Minister shall not be liable for any costs incurred by the owner in complying with a direction.

(3) The owner shall be liable for any costs incurred by the Minister under this Regulation.

PART 4

ENVIROMENTAL IMPACT STATEMENT

EIS: generally

12. (1) Subject to Regulations 13 and 14, where the Minister considers that an EIS is necessary under these Regulations, the applicant shall submit an EIS in respect of the development and ensure that the EIS contains at least the information set out in Schedule 1 and any other information requested by the Minister.

(2) In advance of submitting an EIS, an applicant or a person intending to apply for approval may seek the opinion of the Minister on the information that is to be supplied under paragraph (1).

(3) The Minister shall consult the applicant and the relevant consultation bodies before giving his or her opinion.

(4) The consultation body may, within 4 weeks of notification to it under paragraph (3), give its comments to the Minister.

(5) Where the consultation body fails to submit any comments within the timeframe referred to, the Minister may give his or her opinion without further communication to that body.

(6) Nothing in this Regulation shall preclude the Minister from, at any stage—

- (a) rejecting an EIS or
(b) seeking further information.

(7) The Minister shall, within 4 weeks of the expiry of the period referred to in paragraph (4), give a written opinion to the person who made the request under paragraph (2).

EIS: sub-threshold development

13. Where, in an application for a sub-threshold development, the Minister considers that the proposed development is likely to have significant environmental effects in accordance with the criteria set out in Schedule 2, or where the Minister so requires, the applicant shall submit an EIS and Regulation 12 shall apply.

EIS: exemption

14. (1) At the request of an applicant or a person intending to apply for approval, the Minister may, following—

- (a) consideration of whether another form of assessment would be suitable,
- (b) consultation with the Minister for the Environment, Heritage and Local Government,
- (c) publishing the reasons for granting the exemption, together with information in relation to it, including, where another form of assessment has been carried out, information in relation thereto, and
- (d) informing the European Commission,

exempt the development, in whole or in part, from the requirement to submit an EIS.

(2) An exemption shall not be granted in respect of proposed development if a Member State, having been informed about the proposed development and its likely effects on the environment in that State, has indicated to the Minister that it intends to furnish a submission or observation.

(3) Where the Minister grants an exemption, the Minister may impose such conditions as he or she considers necessary in the exemption.

PART 5

DEVELOPMENT AFFECTING MEMBER STATE

Where development affects Member State

15. Where the Minister considers that a proposed development is likely to have significant effects on the environment in a Member State, or where a Member State considers that the development is likely to have such effects and so requests, the Minister shall, as soon as possible, send to that State—

- (a) a description of the proposed development and any available information on its possible effects on the environment in that State including the EIS (if any), and

- (b) relevant information about the nature of the decision that may be taken in respect of the proposed development,

and shall allow that Member State 4 weeks to indicate whether it wishes to make submissions or observations on the proposed development.

Application of Regulations to public of Member State

16. (1) Where Regulation 15 applies—

- (a) the Minister shall apply Regulation 5 in respect of the public of that Member State, and
- (b) Regulation 7 shall apply to any submissions or observations received from a Member State or the public of that state,

with any necessary modifications.

(2) Where Regulation 15 applies and a decision is subsequently made to approve the application, Regulation 8 shall apply in respect of the public of that Member State with any necessary modifications.

PART 6

ADMINISTRATION

Authorised officers

17. (1) An authorised officer may enter on and survey any land for the purpose of—

- (a) ascertaining whether it is suitable for a development,
- (b) inspecting a development, or
- (c) ensuring compliance with these Regulations.

(2) An authorised officer who enters on any land shall, if so required by the occupier of that land, produce his or her authority to such occupier.

(3) A person shall not obstruct or interfere with an authorised officer in the exercise of any function conferred on him or her by these Regulations.

PART 7

OFFENCES AND PENALTIES

Forgery

18. (1) A person shall not forge, or utter knowing it to be forged—

- (a) an approval,
- (b) information submitted for the purposes of an application,

- (c) a direction,
- (d) an EIS,
- (e) an exemption under Regulation 14, or
- (f) other document purporting to be issued, granted or given under these Regulations,

(in paragraph (3) referred to as “a forged document”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered—

- (a) an approval,
- (b) information submitted for the purposes of an application,
- (c) a direction,
- (d) an EIS,
- (e) an exemption under Regulation 14, or
- (f) other document purporting to be issued, granted or given under these Regulations,

(in paragraph (3) referred to as “an altered document”).

(3) A person shall not, without lawful authority, have in his or her possession a forged document or an altered document.

Offences and penalties

19. (1) A person who contravenes Regulation 9 shall be guilty of an offence and be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(2) A person who contravenes Regulation 10(2), 17(3), or 18(1), (2) or (3) shall be guilty of an offence and be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €25,000.

(3) Where a person has been convicted of an offence under this Regulation in respect of a contravention of Regulation 10(2) and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on summary conviction, to a fine not exceeding €500 for each day on which the offence is so continued or to imprisonment for a term not exceeding 6 months, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 6 months,
- (b) on conviction on indictment, to a fine not exceeding €2,000 for each day on which the offence is so continued, or to imprisonment for a term not exceeding 2 years, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 2 years.

Prosecution of offences

20. Summary proceedings in relation to an offence under these Regulations may be brought and prosecuted by the Minister.

Offence by body corporate

21. If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

PART 8

MISCELLANEOUS

Costs in certain civil proceedings

22. Section 50B (inserted by section 33 of the Planning and Development (Amendment) Act 2010 (No. 30 of 2010)) of the Planning and Development Act 2000 applies to these Regulations.

Revocation

23. Part 5 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations 2001 (S.I. No. 538 of 2001) is revoked.

SCHEDULE 1

Regulation 12

INFORMATION TO BE CONTAINED IN AN ENVIRONMENTAL
IMPACT STATEMENT

1. (a) A description of the proposed development, comprising information about the site and the design and size or scale of the development.
 - (b) The data necessary to identify and assess the main effects which that development is likely to have on the environment.
 - (c) A description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on the following:
 - (i) human beings;
 - (ii) flora;
 - (iii) fauna;
 - (iv) soil;
 - (v) water;
 - (vi) air;
 - (vii) climate;
 - (viii) the landscape;
 - (ix) the interaction between any of the foregoing;
 - (x) material assets;
 - (xi) the cultural heritage.
 - (d) Where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce, and, if possible, remedy those effects.
2. Further information, by way of explanation or amplification of the information referred to in paragraph 1, on the following matters:
 - (a) the physical characteristics of the proposed development, and the land use requirements during the construction and operational phases;
 - (b) the main characteristics of the production processes proposed, including the nature and quantity of the materials to be used;
 - (c) the estimated type and quantity of expected residues and emissions (including pollutants of surface water and groundwater, air, soil and

substrata, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;

- (d) (in outline) the main alternatives (if any) studied by the applicant, appellant or authority and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;
- (e) the likely significant direct and indirect effects (including secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects) on the environment of the proposed development which may result from the following:
 - (i) the use of natural resources;
 - (ii) the emission of pollutants, the creation of nuisances, and the elimination of waste.
- (f) the forecasting methods used to assess any effects on the environment about which information is given under subparagraph (e);
- (g) any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any information mentioned in this paragraph.

SCHEDULE 2

CRITERIA REGARDING SUB-THRESHOLD DEVELOPMENT

1. Characteristics of projects

The characteristics of projects must be considered having regard, in particular, to the following:

- (a) the size of the project;
- (b) the cumulation with other projects;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to the following:

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under the legislation of the State or another Member State;
 - (vi) special protection areas designated by the State or another Member State pursuant to the Habitats Directive or the Birds Directive;
 - (vii) areas in which the environmental quality standards laid down in European Community legislation have already been exceeded;

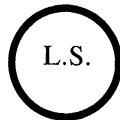
(viii) densely populated areas;

(ix) landscapes of historical, cultural or archaeological significance.

3. Characteristics of the potential impact

The potential significant effects of projects must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to the following:

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact;
- (e) the duration, frequency and reversibility of the impact.



GIVEN under my Official Seal,
14 October 2010.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE.

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

The purpose of these Regulations is to facilitate compliance with Environmental Impact Directive (85/337/EEC) insofar as it applies to forestry development, by providing for a statutory approval system for afforestation and forest road construction projects and providing for EIA for such development if it is likely to have a significant effect on the environment. The Regulations consolidate and amend the provisions of Part 5 of the European Communities (Environment Impact Assessment) (Amendment) Regulations 2001 (S.I. No. 538 of 2001).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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