



STATUTORY INSTRUMENTS.

S.I. No. 276 of 2019



AQUACULTURE APPEALS (ENVIRONMENTAL IMPACT
ASSESSMENT) (AMENDMENT) REGULATIONS 2019

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Aquaculture Appeals (Environmental Impact Assessment) (Amendment)
Regulations 2019

I, Michael Creed, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 60 of the Fisheries (Amendment) Act 1997 (No. 23 of 1997) and the Sea Fisheries, Foreshore and Dumping at Sea (Transfer of Department Administration and Ministerial Functions) Order 2007 (S.I. No. 707 of 2007) (as adapted by the Agriculture, Fisheries and Food (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 455 of 2011)) 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 hereby make the following regulations:

1. (1) These Regulations may be cited as the Aquaculture Appeals (Environmental Impact Assessment) (Amendment) Regulations 2019.

(2) The Principal Regulations and Regulation 8 may be cited together as the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 and 2019, and shall be construed together as one.

2. In these Regulations “Principal Regulations” means the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. No. 468 of 2012).

3. Regulation 2 of the Principal Regulations is amended –

(a) by substituting for the definition of “Application Regulations” the following:

“Application Regulations’ means the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of 1998);”,

(b) by substituting for the definition of “Council Directive” the following:

“Council Directive’ means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014;”,

(c) by substituting for the definition of “environmental impact assessment” the following:

“EIA Portal’ means the Portal established under Section 172A of the Planning and Development Act 2000;

’environmental impact assessment’ has the same meaning as it has in the Council Directive;”,

¹ O.J. L 26, 28.1.2012, p.1

² O.J. L 124, 25.4.2014, p.1

- (d) by deleting the definition of “environmental impact statement”, and
- (e) by inserting after the definition of “environmental impact assessment” the following:

“‘environmental impact assessment report’ has the same meaning as it has in the Application Regulations;

‘intensive fish farming’ has the same meaning as it has in the Application Regulations.”.

4. The Principal Regulations are amended by substituting “environmental impact assessment report” for “environmental impact statement” in each place where it occurs.

5. The Principal Regulations are amended by inserting after Regulation 2 the following –

“2A. (1) The Board shall, as part of its consideration of an appeal, make a determination on the basis of the information provided by the appellant in accordance with Article 4(4) of the Council Directive, the criteria listed in Annex III of the Directive and the results of any verifications or assessment of the effects on the environment carried out pursuant to other legislation as to whether an environmental impact assessment is required.

(2) The determination and the main reasons for that determination by reference to the relevant criteria listed in Annex III of the Directive shall be made available to the public by placing it on a website maintained by or on behalf of the Board.

(3) Where the Board determines that an environmental impact assessment is not required, the Board shall make available to the public details of any features of the project and measures envisaged by the appellant to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(4) Subject to paragraph (5) the Board shall make its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the appellant has submitted all the information required.

(5) Where the Board cannot make the determination within 90 days, the Board may extend the period to make the determination; in that event, the Board shall inform the appellant in writing of the reasons justifying the extension and of the date when the determination is expected.”.

6. The Principal Regulations are amended in Regulation 3–

- (a) in paragraph (2) by substituting-
 - (i) in subparagraph (a) “Regulation 5(1)(a), (b), (c) or (d)” for “Regulation 5(1)(i) and (ii)”, and
 - (ii) in subparagraph (b) “intensive fish farming” for “aquaculture”,
- (b) by substituting for paragraph (4) and (5) the following-

“(3A) in the event that an environmental impact assessment is required-

- (a) under paragraph (2)(i), or
- (b) where the Minister has determined aquaculture of a class specified in Annex II of the Council Directive would be likely to have significant effects on the environment

the appellant shall Provide a copy of the confirmation notice that the proposed aquaculture subject of the appeal is included on the portal established under Section 172A of the Planning and Development Act 2000.

(4) Where an environmental impact assessment report is to be submitted for the purposes of paragraph (3) -

- (a) if requested by-
 - (i) the applicant for a licence under section 10 of the Fisheries (Amendment) Act 1997 subject of the appeal, or
 - (ii) the Minister

the Board shall issue an opinion on the scope and level of detail of the information to be included in the environmental impact assessment report,

- (b) the applicant referred to in paragraph (a)(i) shall ensure that such report is prepared-
 - (i) by competent experts, and
 - (ii) in accordance with the opinion issued by the Board under paragraph (a), and

- (c) the Board shall ensure that it has access to sufficient expertise to examine the environmental impact assessment report.

(5) The Board shall require the production by any party to the appeal of any additional or supplemental information that it considers necessary to enable it to complete an assessment.”,

- (c) in paragraph (7)-
 - (i) by inserting “, submissions or observations” following “oral hearing”,
 - (ii) in subparagraph (c) by substituting “Application Regulations” for “Aquaculture Regulations”,
- (d) by inserting after paragraph (7) the following:

“(7A) The Board shall satisfy itself that the reasoned conclusion and any of the decisions referred to in Article 8A(3) of the Council Directive is still up to date when determining whether to grant a licence.”,

- (e) in paragraph (10)-
 - (i) by substituting for “shall make the following information available to the applicant and the public” the following:

“shall make the following information available to the applicant and the public by placing it on a website maintained by or on behalf of the Board”,

(ii) by substituting for subparagraph (b) the following:

“(b) the Board’s evaluation of the project’s direct and indirect effects on the factors set out in paragraphs (a) to (d) of Article 3(1) of the Council Directive and the interaction between those factors,”.

7. The Principal Regulations are amended by inserting after Regulation 3 the following—

“4. (1) In considering an appeal the Board may, by written notice under section 46 of the Fisheries (Amendment) Act 1997 (No. 23 of 1997), request a submission or observation from any of the bodies specified in Regulation 10 (1) of the Application Regulations.

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

- (a) the name and address of the appellant,
- (b) the location of the aquaculture to which the appeal relates,
- (c) the nature and extent of the aquaculture,
- (d) the date of receipt by the Board of the appeal, and
- (e) any other information which the Board considers relevant.

5. The Board shall, in respect of an appeal under section 40 of the Fisheries (Amendment) Act 1997, make a decision as respects an environmental impact assessment (or stage thereof) within a reasonable period of time.

6. (1) The Board shall maintain, or have maintained on its behalf, a website, to which the public has access, for the purpose of hosting documents to be made available to members of the public pursuant to Article 6(5) of the Council Directive.

(2) For the purposes of hosting documents referred to in paragraph (1) on a website –

- (a) the Board may request the production of documents pertaining to the appeal in a suitable electronic means, and
- (b) the parties to the appeal shall provide such documents in the electronic format requested.

(3) On receipt of a valid notice of appeal for projects likely to have a significant effect on the environment, the Board shall, as soon as practicable, from-

- (a) where the application was accompanied by an environmental impact assessment report, or

(b) where the application was not accompanied by an environmental impact assessment report, if the Board determines that an environmental impact assessment is required, on receipt of the environmental impact assessment report

send to the EIA portal in electronic form in the manner set out on the portal

(i) a copy of the confirmation notice relating to the application under appeal issued when the application was included on the EIA Portal,

(ii) the reference number of the appeal, and

(iii) the URL to the documents placed on its website relating to the appeal.

7 (1) Where a person has a duty under these regulations, he or she shall perform that duty in an objective manner so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where a person is party to, or has a material interest in, an appeal under these Regulations and that person may be involved in determining the appeal, then the Board shall make appropriate administrative arrangements to ensure there is a functional separation between that person's duties and the relevant appeal."

Transitional Arrangements

8. The Principal Regulations will continue to apply to licence applications received on or before 16 May 2017 without the amendments contained in Regulations 3 to 7 of these Regulations.



GIVEN under my Official Seal,
25 June, 2019.

MICHAEL CREED,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

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

These Regulations amend the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. No. 468 of 2012) for the purposes of giving further effect to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment.

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