

Appropriate Assessment Screening Report

CONCERNING PROPOSED PLANNING AND DEVELOPMENT ACT 2000 (EXEMPTED DEVELOPMENT) (NUMBER TO BE CONFIRMED) REGULATIONS, 2021.

To inform screening for Appropriate Assessment under Article 42(2) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended.

3rd December, 2020

1.0 Introduction

Appropriate Assessment (AA) is a process required under Article 6(3) of the EU Habitats Directive. It is transposed in Ireland by the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended, and by Part XAB of the Planning and Development Act 2000, as amended.

All plans and projects that either individually or in combination with other plans, are likely to have a significant effect on any site in the Natura 2000 network (“a European site”), require an appropriate assessment of these effects to determine if they will adversely affect the integrity of these sites.

The screening process scrutinises the plan or project to determine if there are likely significant effects either individually or in combination with other plans, on any site in the Natura 2000 network. These sites include those designated as Special Areas of Conservation or Special Protection Areas. This Screening Report reports the outcome of this analysis of the proposed Planning and Development Act 2000 (Exempted Development) Regulations, 2021.

The guidance which has been taken into account during the screening process includes the following:

- Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitat’s Directive 92/43/EEC (EC Environment Directorate-General, 2019);
- Guidance Document on Article 6(4) of the 'Habitats Directive' 92/43/EEC. Clarification of the Concepts of Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence. Opinion of the European Commission (European Commission, January 2007).
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities. (Department of Environment, Heritage and Local Government, 2010).
- Appropriate Assessment under Article 6 of the Habitats Directive: Guidance for Planning Authorities. Circular NPW 1/10 & PSSP 2/10.
- Assessment of Plans and Projects Significantly Affecting Natura 2000 sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission Environment Directorate-General, 2001).

2.0 Overview and purpose of the proposed Planning and Development Act 2000 (Exempted Development) (Number to be confirmed) Regulations, 2021.

The proposed statutory instrument amends Schedule 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), in Part 1 by expanding the existing Class 20C to include “other Public Buildings”, inserts a new class 20D for temporary buildings and increases the size limit in the existing class 57 (extension of a school, where the school has not been previously extended) and restricts its use to only once.

The overall background to the proposed legislation is the need to keep schools safely open in the light of the COVID-19 pandemic and in order to do so, to maximise the extent of physical distancing by providing additional physical space. This was reflected in the Minister for Education’s *Roadmap for Full Return to School* on July 27 2020.

The proposed amendments to the classes of exempt development will aim to allow schools to expedite and facilitate the deployment of modular accommodation solutions on school sites and to provide additional space to better facilitate physical distancing within schools.

3.0 Identification of European Sites within the potential zone of influence of development associated with the proposed legislation.

The proposed legislation have a national scale of application, but the nature of the legislation is that it will manifest itself in their effects in existing schools and generally in urban locations. Whilst the legislation lacks geographic specificity, the potential zone of influence of the proposed legislation is expected to be relatively small locations on developed land. These are disturbed and heavily modified environments and not likely to support any of the species or habitats that constitute qualifying/conservation interests for European sites.

The process of screening for appropriate assessment focuses on any interaction between the conservation objectives and the effects of implementing the proposed legislation. Since the proposed legislation lacks geographic specificity and are limited in scale and detail, the discussion of the likelihood of any significant effects has been taken at a high-level.

Conservation objectives can be accessed on www.npws.ie and have been considered as part of the screening process but for the purposes of brevity these have not been reproduced.

4.0 Consideration of any likely significant effects on European sites.

Guidance from Ireland¹ and the European Commission² has suggested that the following criteria relating to the nature of the proposal may be used in helping to determine if a proposal is likely to have significant effects. These include:

- size and scale; disturbance).
- land-take;
- distance from the Natura 2000 site or key features of the site;
- resource requirements (water abstraction etc.);
- emissions (disposal to land, water or air);
- excavation requirements; (potential loss of area).
- transportation requirements;
- duration of construction, operation, decommissioning, etc.;
- Other.

Irish guidance (DEHLG, 2010) gives examples of effects that are likely to be significant include the following:

- Any impact on an Annex I habitat
- Causing reduction in the area of the habitat or Natura 2000 site
- Causing direct or indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site
- Causing serious or ongoing disturbance to species or habitats for which the Natura 2000 site is selected (e.g. increased noise, illumination and human activity)
- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site
- Interfering with mitigation measures put in place for other plans or projects

These criteria are particularly suited to screening individual projects, as detail on the receiving environment will be available for analyses. However, in the current case of the proposed legislation, it is not possible to predict if such impacts will occur due to the lack of geographic specificity about the locations and nature of the projects that are referred to.

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¹ Department of the Environment, Heritage and Local Government (DEHLG, (2010) Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities.

https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2009_AA_Guidance.pdf

² European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC

https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf

European Commission (2019) Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC.

https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN_art_6_guide_jun_2019.pdf

The characteristics of the effects of the proposed legislation on the European sites are discussed below.

The proposed legislation does not have any geographic specificity associated with them although the types of developments covered by the exemptions would be taking place within the curtilage of existing schools and/or in other areas of developed land. If any proposed development of this type were to pose likely significant effects on a European site, either on its own or in combination with other plans and projects, then it would require an appropriate assessment. The precise nature of any likely significant effects (or absence thereof) on European sites would be clarified at the stage where a location and scale of such a development proposal would be decided upon. Local planning authorities would also address the likelihood of significant effects when identifying suitable locations for such development types during the review and preparation of their development plans, which may also require AA.

The proposed legislation is not likely to have any transboundary effects due to the small scale and nature of these types of development.

Therefore when considered in isolation, the proposed legislation and its implications for developments of this type, is not considered to pose any likely significant effects on European sites.

5.0 Consideration of in-combination effects.

The proposed legislation is expected to have effect on developed lands and developments of this type are small-scale and localised in terms of their footprint. Development plans for these areas will have undergone their own appropriate assessment and therefore it is reasonable to assume that there will be no likelihood of in-combination effects as all policies and objectives relating to urban developments will have been tested by the AA process. Other relevant plans and programmes that may overlap with the scope of application of the proposed legislation may include:

- Development Plans in the area of the proposed development;
- National Planning Framework;
- National Development Plan.

There is no risk of any combination with any of the strategies listed in the plans above due to the small scale and nature of the proposed changes, that themselves offer no likelihood of significant effects on European sites.

6.0 Conclusions

The purpose of this Report is to present the results of screening the proposed Planning and Development Act 2000 (Exempted Development) (number to be confirmed) Regulations, 2021. The objective of screening is to determine if the proposed legislation is likely to have significant effects on European sites

Following an analysis and evaluation of the relevant information, including in particular, the nature of the changes that could occur as a result of the proposed legislation and its potential relationship with European sites that could result, as well as considering other plans and projects, and applying the precautionary principle, this report recommends that that there is no possibility that the proposed legislation would be likely to have any significant effects on any European sites.

The principle reasons for this conclusion included: the lack of geographic specificity in the nature of the proposed legislation and where such development may take place, it is likely that this would be taking place in highly disturbed modified urban environments.

The Minister for Housing, Local Government and Heritage will rely on this report and its recommendation (as well as any other relevant information) to determine if AA is required or not, in terms of whether the proposed legislation, individually or in combination with other plans or projects, will have a significant effect on any European sites.

This report, as well as the AA screening determination by the Minister, will be available for public display at the Department and on its website.

