An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage

To: An Bord Pleanála Directors of Planning Services,
City and County Councils

CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
Directors of Regional Assemblies
Office of the Planning Regulator

Circular Letter: EUIPR 07/2022

23 December 2022

European Union (Planning and Development Act 2000) (Habitats and Environmental Impact Assessment) Regulations 2022

A Chara

I am writing to inform you that the European Union (Planning and Development Act 2000) (Habitats and Environmental Impact Assessment) Regulations 2022 (S.I. No 708 of 2022) were signed on 20 December 2022 by Mr Darragh O'Brien, T.D., Minister of Housing, Local Government and Heritage, and came into immediate effect.

The Regulations, which are made under Section 3 of the European Communities Act 1972, amend the Planning and Development Act 2000 (PDA) to:

- give further effect to Article 1(3) of the Environmental Impact Assessment Directive;
- give further effect to Article 6(3) of the Habitats Directive; and
- align the Planning and Development Act with the Environmental Protection Agency Act.

Article 1(3) of the Environmental Impact Assessment Directive
Sections 181(2A) of the PDA is amended to facilitate a Minister of the Government granting an exemption to a development (the subject of a Section 181(2) Order) from the requirement to apply for approval or to submit an environmental impact assessment

report to An Bord Pleanála. The development must have the response to a civil emergency as its sole purpose and the Minister must be satisfied that the application of sections 181(2A) to (2AA) would have an adverse effect on the response to the civil emergency. Notice of any exemption provided must be published in Iris Oifigiúil and one daily newspaper.

Section 181B of the PDA is amended to facilitate a Minister of the Government granting an exemption to a development (the subject of Regulations under Section 181(1)) from the requirement to apply for approval or to submit an environmental impact assessment report to An Bord Pleanála. The development must have the response to a civil emergency as its sole purpose and the Minister must be satisfied that the application of sections 181A to 181C would have an adverse effect of the response to the civil emergency. Notice of any exemption provided must be published in Iris Oifigiúil and one daily newspaper.

Sections 181B(2)(d) and 181B(4)(d) of the PDA are deleted. This removes the exemption previously provided to the Minister for Defence, from the requirement to screen for Appropriate Assessment for projects whose sole purpose is national defence. The Habitats Directive does not provide for such an exemption.

Article 6(3) of Habitats Directive

Article 6(3) of the Habitats Directive provides that *'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'*

Sections 181(2T), 181(2W), 181A and 181C are amended to ensure that the transposition provisions in relation to the test for screening for Appropriate Assessment is consistent with Article 6(3) of the Habitats Directive i.e. the screening test applies to 'likely significant effects' rather than 'adverse effects'.

Environmental Protection Agency Act

Section 173A is amended, following recent amendments to the Environmental Protection Agency Act and the amendments above, to align the Planning and Development Act with the Environmental Protection Agency Act and to continue the facilitation of interaction between An Bord Pleanála, the Environmental Protection Agency (EPA) and applicants where an Environmental Impact Assessment is required for a development and an EPA licence is also required for the relevant activity.

Where a Section 181(2)(a) Order has been made (and an EPA licence is also required for the activity) the EPA is required to consult with An Bord Pleanála regarding the EIA carried out in respect of a proposed development. The purpose of amendments under Section 173A is to give authority to all parties to correspond in respect of the EIA and obliges An Bord Pleanála to respond to a request for further information.

Interpretation

Please be advised that the above summary of the new legislative provisions, has been prepared by the Department for ease of reference only and does not purport to be a legal interpretation of the legislation, which is a matter for planning authorities or the Board, as the case may be, in the first instance, and ultimately a matter for the Courts.

Please find a copy of the *European Union (Planning and Development Act 2000) (Environmental Impact & Habitats Assessment) Regulations 2022* enclosed at Appendix 1 for information. The Regulations are also available to view or download on the electronic Irish Statute Book (http://www.irishstatutebook.ie) .

Any queries in relation to this Circular letter should be emailed to euplanningregulation@housing.gov.ie.

Is mise, le meas,

Lisa Clifford

Principal Officer

EU & International Planning Regulation