

STRATEGIC ENVIRONMENTAL ASSESSMENT SCREENING REPORT

CONCERNING PROPOSED PLANNING AND DEVELOPMENT (AMENDMENT) REGULATIONS 2019

To inform a determination under Article 9 of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations, 2004 (S.I. 435 of 2011), as amended.

20th December 2019

1.0 Introduction

Strategic Environmental Assessment (SEA), in accordance with the EU SEA Directive (2001/42/EC), is a process for evaluating, at the earliest appropriate stage, the environmental quality and consequences of plan or programme initiatives by statutory bodies. The purpose is to ensure that the environmental consequences of plans and programmes are assessed both during their preparation and prior to adoption. The SEA process also gives interested parties an opportunity to comment on the environmental impacts of the proposed plan or programme and to be kept informed during the decision making process.

This report considers the proposed legislation in the context of the potential requirement to carry out a full SEA and therefore considers whether the proposed legislation, would or would not be likely to have significant effects on the environment (please refer to the enclosed proposed legislation, dated 2/12/2019). The competent authority (in this case, the Minister for Housing, Planning and Local Government) proposes to approve new planning legislation and in so doing the competent authority must decide whether the legislation would or would not be likely to have significant effects on the environment and that, in so doing, the competent authority will take account of relevant criteria set out in Schedule 1 of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations, 2004 (S.I. 435 of 2011), as amended. The analysis of the proposed legislation in the context of the criteria in Schedule 1 is presented in Section 4 of this Report.

This Report as well as submissions/ observations from the environmental authorities will be taken into consideration before finalisation of the SEA screening process and the publication of an SEA determination by the Minister, pursuant to S.I. 435 of 2004, as amended.

2.0 Overview and purpose of the proposed Planning and Development (Amendment) Regulations 2019

The proposed statutory instrument inserts a new class, Class 59, of exemptions in Part 1 of Schedule 2, entitled 'Exempted Development – General', to the Principal Regulations for certain works undertaken by or on behalf of, the Commissioners, of development within a port operated

by a state port company. These exemptions will facilitate the provision of necessary temporary or permanent port infrastructure.

The proposed exemptions are for works relating to:

- The construction or erection of an extension of a port operational building within a port.
- The construction, erection or alteration of visual navigation aids on the ground including docking guidance, signage, inset and elevated port lighting or apparatus necessary for the safe navigation of ships and vehicles, within a port.
- The construction or erection of an extension to loading or unloading areas, or vehicle queuing or parking areas within a port.
- The construction, erection or alteration of security fencing and gates, security cameras and signage and other measures connected with the security of a port infrastructure within a port.
- The erection or alteration of directional locational or warning signs within a port.
- The construction, extension, alteration or removal of roads and related signage and ancillary safety barriers used for the movement of vehicles and equipment within a port.

The exemptions shall not apply if either EIA or AA is required as per section 4(4) of the Planning and Development Act 2000, as amended. Note the exemptions shall also be subject to further restrictions in Article 9 of the Planning and Development Regulations.

These Regulations provide an interpretation of the terms 'port', 'port operational building' and 'state port authority' for the purposes of Part 2 (Exempted Development) of the Planning Regulations.

As no specific port exemptions currently exist, it is proposed that these Regulations would provide for an additional classes of exempted development to facilitate the provision of necessary temporary or permanent port infrastructure.

The Regulations would enable any future port-related works covered by the proposed exemption to be carried out without the need for further emergency orders, subject to normal limitations including that the proposed development does not require environmental impact assessment or appropriate assessment.

The Regulations will facilitate the efficient delivery of any incremental minor works required in relation to infrastructure required for customs, sanitary and phytosanitary and health checks and controls in Dublin and Rosslare Ports arising from Brexit.

The proposed exemptions are broadly similar to those provided for airports under Class 32 of the Planning and Development Regulations 2001.

As can be seen from the summary above, it is considered that the proposed exemptions for Ports are reasonable and appropriate to the essential services that may be required as a result of Brexit. It will enable minor works to be undertaken, without the requirement to obtain permission.

The exemptions being proposed are subject to certain specific limitations and are also subject to general restrictions that apply to exemptions as set out in the Act or the Principal Regulations. Where an exemption does not apply to works proposed to be undertaken at a Port, then planning permission must be sought.

In addition, it should be noted that the exemptions only remove the requirement to obtain planning permission. It does not remove any other obligations or the need to comply with other relevant codes e.g. compliance with an EPA licence or obtaining a road opening licence would still be required.

3.0 Procedural Requirements for Screening for SEA

The European Directive (2001/42/EC) on the Assessment of the Effects of Certain Plans and Programmes on the Environment (the SEA Directive), was transposed into national legislation in Ireland by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. 435/2004) and the Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. 436/2004), as amended.

The SEA Directive requires that certain plans and programmes, prepared by statutory bodies, which are likely to have a significant impact on the environment, be subject to the SEA process.

Applying Article 9(1) of S.I. 435, as amended by S.I. 200 of 2011, verifies the statutory requirement for SEA:

“an environmental assessment shall be carried out for all plans and programmes

*(a which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism and **town and country planning or land use**, and which set the framework for future development consent of projects listed in Annexes I and II to the Environmental Impact Assessment Directive, or*

(b) which are not directly connected with or necessary to the management of a European site but, either individually or in combination with other plans, are likely to have a significant effect on any such site.”

The proposed Statutory Instrument (“the proposed S.I.”) falls under the category of “land-use”. Whilst the implications of the proposed S.I. are to determine the types of proposals that require formal planning consent and those which may be exempt, it does not provide any strict rules or criteria that would be included in the consent process itself. The implications of the proposed S.I. will be that certain projects proposals do not require a consent. Projects that would require formal environmental impact assessment or appropriate assessment under the relevant EU Directives as transposed in Ireland, would not be exempt from requiring consent.

Article 3(3) of the SEA Directive states:

“Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.”

Article 3(3) of the Directive is transposed into Irish law by Article 9(2) of S.I.435 of 2004, as amended, as follows:

“A plan or programme referred to in sub-article (1) which determines the use of a small area at local level or a minor modification to a plan or programme referred to in sub-article (1) shall require an environmental assessment only where the competent authority determines that it is likely to have significant effects on the environment and, for this purpose, the competent authority shall make any necessary determination.”

It would be reasonable to take the position that the text as drafted, would have the effect that it “determines the use of a small area at local level” and therefore a full SEA may not be required if it is determined that it will not be likely to have significant effects on the environment. Furthermore, of note, the power given to the Minister to make regulations pertaining to exempted developments in Section 4(2) of the 2000 Act also states at section 4(2)(a)(i) that the power arises, as in this case, where the Minister is of the opinion that the class of development should be exempted development for the purposes of this Act because “... by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development”.

Following the completion of the period of consultation with the environmental authorities, the Minister (DHPLG) will then complete the screening of the proposed S.I. for the need to undertake SEA.

The SEA Screening process itself requires a consideration of the criteria in Schedule 1 of S.I. 435 of 2004. The record of this consideration is contained within this draft SEA Screening Report as far it applies to the current text of the proposed S.I. Following the completion of the Screening Report after the conclusion of the four-week period, the Minister will issue a (screening) determination and make it available to the public for inspection during office hours and on the Department’s website and also notify the environmental authorities which were notified previously.

S.I. 435 of 2004 contains a mandatory requirement to consult the relevant environmental authorities as part of the SEA Screening process. In this regard Article 9(5) of S.I. 435 of 2004 states that the following bodies must be given notice:

- Environmental Protection Agency;
- Minister for Culture, Heritage and the Gaeltacht (functions transferred from Minister for Environment, Heritage and Local Government/ Minister for Housing, Planning and Local Government to Minister for Culture, Heritage and the Gaeltacht by S.I. 192 of 2011);
- Minister for Communications, Climate Action and Environment; and
- Minister for Agriculture, Food and the Marine.

4.0 Consideration of the SEA screening criteria in Schedule 1 of S.I. 435 of 2004

This draft Screening Report includes a consideration of the criteria set out in Schedule 1 of S.I. 435 of 2004. These qualitative criteria are used to assist in the determination as to whether the proposed S.I. is likely to have significant effects on the environment.

Criteria 1. The characteristics of the plan or programme, or modification to a plan or programme, having regard, in particular, to

— *the degree to which the plan or programme, or modification to a plan or programme, sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources.*

The proposed S.I. has a restricted geographic application and will apply to specific proposals of a certain scale and nature. It is limited to proposed developments at ports managed by state port companies. The locations will therefore include Rosslare, Drogheda, Dublin, Shannon Foynes, Cork and Waterford. The proposed S.I. sets the framework for the consent for proposals of a defined scale and nature. Certain scales and types of proposed development will not require planning consent. The characteristics of the effects of these exempted developments on the environment are discussed below. All of the types of development that are deemed to be exempt from planning consent would be regarded to be small in scale and are additions or modifications to within highly-disturbed environments.

Examples include (but are limited to):

- extension of a port operational building below a specific scale or size,
- the construction, erection or alteration of visual navigation aids necessary for the safe navigation of ships and vehicles, within a port,
- The construction, erection or alteration of security fencing and gates, security cameras and signage and other measures connected with the security of a port infrastructure within a port;
- The construction, extension, alteration or removal of roads and related signage and ancillary safety barriers used for the movement of vehicles and equipment within a port.

— *the degree to which the plan or programme, or modification to a plan or programme, influences other plans including those in a hierarchy.*

The proposed S.I. will not operate within any specific hierarchy and will be directly implemented by application at the project-scale. The S.I. does not require any other plan or programme for their implementation.

— *the relevance of the plan or programme, or modification to a plan or programme, for the integration of environmental considerations in particular with a view to promoting sustainable development*

The proposed S.I. does not have a strong relevance for the integration of environmental considerations. The proposed S.I. would be implemented in the context of primary legislative requirements (Planning and Development Act 2000, as amended) which state that the list of exempt developments are deemed not to be exempt from planning consent where an environmental impact assessment or an appropriate assessment is required, thereby ensuring that environmental issues are integrated into the consent process.

— *environmental problems relevant to the plan or programme, or modification to a plan or programme,*

The proposed S.I. will be taking place in locations close to the marine environment. Current general environmental problems and influences in the marine-terrestrial (urban) interface include poor water quality caused by terrestrial (sewage, sediment, agricultural run-off) and marine sources (shipping,

aquaculture, marine aggregate extraction), noise (including underwater noise) and visual disturbance from port operations, habitat degradation and loss from pollution and reclamation, noise and light spill and geomorphological issues caused by sea-level rise and climate change. The types of proposed development covered by the proposed S.I. are not of a scale that would be likely to give rise to any of these types of environmental problems. All would be carried out within the existing port infrastructure.

— *the relevance of the plan or programme, or modification to a plan or programme, for the implementation of European Union legislation on the environment (e.g. plans and programmes linked to waste management or water protection).*

The proposed S.I. has no direct relevance.

Criteria 2: Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

— *the probability, duration, frequency and reversibility of the effects,*

The extension size limits for exempted development are relatively small and will be taking place within existing port infrastructure so the risk of any likely significant effects on the environment are minimal. Similarly, proposed exemptions for fencing, signage and navigational aids are all small-scale and limited in terms of size and period of disruption during their installation.

— *the cumulative nature of the effects,*

Potential for several small extensions to buildings and roads but all will be taking place within existing port infrastructure so the risk of any likely significant effects on the environment are minimal. Installation of signage, fencing and navigational aids are also regarded to be minimal interventions in the existing disturbed environment, even at a cumulative scale.

— *the transboundary nature of the effects,*

Not likely to have any transboundary effects due to the small scale and context of working within existing port infrastructure. There are no consequences on the volume or nature of offshore activity as a result of the proposed works covered by the proposed S.I.

— *the risks to human health or the environment (e.g. due to accidents),*

No significant additional risk to health or the environment. Proposed developments that would themselves require EIA or AA would not be subject to the proposed exemptions.

— *the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),*

The proposed S.I. limits the exemption from planning consent to small scale changes to existing port operational buildings, small interventions such as signage and navigational aids, fencing and internal roads within ports. These features will result in negligible change to the receiving environment.

— *the value and vulnerability of the area likely to be affected due to:*

(a) special natural characteristics or cultural heritage,

(b) exceeded environmental quality standards or limit values,

(c) intensive land-use,

— *the effects on areas or landscapes which have a recognised national, European Union or international protection status.*

Whilst almost all of the Ports that may be affected by the proposed S.I. are surrounded by ecologically-important sites in the Natura 2000 network (Rosslare being the exception), the small scale and benign nature of the works and the location being within already disturbed areas means that there will be no significant effects on the environment. Similarly, any structures of architectural value and areas of landscape importance will not be affected. Any proposals that may require EIA or AA as a result of a risk to the relevant environmental features will not be covered by the proposed exemptions and will be scrutinised as part of the planning consent process.

5.0 Conclusions

The purpose of this Report is to present the results of the SEA screening of the Planning and Development (Amendment) Regulations 2019. The objective of screening is to determine if the proposed S.I. is likely to have significant effects on the environment. It was regarded that the proposed S.I. required screening, since the implication of it being implemented “*determines the use of a small area at local level*” as per Article 9(2) of S.I. 435 of 2004. The screening process therefore applied the criteria in Schedule 1 of S.I. 435 of 2004 to determine if the proposed S.I. would be likely to have significant effects on the environment.

The outcome and recommendation of this SEA Screening Report is that the proposed S.I. is not likely to have any significant effects on the environment and does not require further assessment in the form an SEA. The principle reasons for this conclusion was that the types of activities that will be exempt from planning consent will all be small in scale and restricted to taking place within existing port infrastructure, which are already disturbed and heavily-modified environments. In addition, any proposals that would require EIA or AA will not be exempt from planning consent, so any residual environmental effects can be addressed by these assessment regimes.

You are therefore invited to note that a submission or observation on behalf of one of the statutory environmental authorities identified by S.I. 435 of 2004, as amended, in relation to whether the proposed S.I. would or would not be likely to have significant effects on the environment, may be made to DHPLG (Environmental Planning Policy Unit) no later than 4 weeks from the date of the attached notice (under Article 9(2)) by the 17th January 2020.

This Report as well as submissions/ observations from the statutory environmental authorities will be taken into consideration before finalisation of the SEA screening process and the publication of an SEA determination by the Minister.