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STATUTORY INSTRUMENTS.

S.I. No. 743 of 2021

EUROPEAN UNION (RAILWAY ORDERS) (ENVIRONMENTAL
IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2021

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EUROPEAN UNION (RAILWAY ORDERS) (ENVIRONMENTAL
IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2021

I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) 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. These Regulations may be cited as the European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021.

2. In these Regulations -

“Act of 2001” means the Transport (Railway Infrastructure) Act 2001 (No. 55 of 2001) and

“Act of 2006” means the Planning and Development (Strategic Infrastructure) Act 2006 (No. 27 of 2006).

3. Section 2 of the Act of 2001 is amended -

(a) in section 2(1) (as amended by section 49(a) of the Act of 2006) -

(i) by the deletion of the definition of “environmental impact statement”,

(ii) by the insertion of the following definition after the definition of “CIÉ”:

“ ‘designated body’ means an authority designated by the Minister under section 39A;”,

(iii) by the insertion of the following definitions after the definition of “driving”:

“ ‘EIA Directive’ means Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011³ on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014⁴;

¹ OJ No. L 26, 28.1.2012, p. 1

² OJ No. L 124, 25.4.2014, p. 1

³ OJ No. L 26, 28.1.2012, p. 1

⁴ OJ No. L 124, 25.4.2014, p. 1

'environmental impact assessment', in relation to proposed railway works, means a process -

(a) consisting of -

- (i) the preparation of an environmental impact assessment report by the applicant in accordance with section 39,
- (ii) the carrying out of consultation required by or under this Part,
- (iii) the examination by the Board of -
 - (I) the information presented in the environmental impact assessment report,
 - (II) any further information provided by the applicant under section 41 and, where applicable, section 47D, and
 - (III) any relevant information received through consultation under section 40, section 41 and, where applicable, section 47D,
- (iv) the reaching of a reasoned conclusion by the Board in accordance with section 42B on the significant effects of the proposed railway works on the environment, taking into account the results of the examination referred to in subparagraph (iii) and, where appropriate, its own supplementary examination, and
- (v) the integration by the Board of its reasoned conclusion into its decision under section 43,

and

(b) including an examination, analysis and evaluation by the Board under sections 42B and 43 in order to identify, describe and assess, in the light of each individual case, the direct and indirect significant effects of the proposed railway works, including significant effects derived from the vulnerability of the activity to risks of major accidents and disasters relevant to it, on -

- (i) population and human health,
- (ii) biodiversity, with particular attention to species and habitats protected under

Council Directive 92/43/EEC of 21 May 1992⁵ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁶,

- (iii) land, soil, water, air and climate,
- (iv) material assets, cultural heritage and the landscape, and
- (v) the interaction between the factors mentioned in subparagraphs (i) to (iv);

‘environmental impact assessment report’ shall be construed in accordance with section 39(1) and (2);”

and

- (b) by the insertion of the following subsection after subsection (2):
 “(3) A word or expression that is used in this section or in Part 3 and that is also used in the EIA Directive has the same meaning as it has in that Directive.”.

4. The Act of 2001 is amended by the substitution of “environmental impact assessment report” for “environmental impact statement” in each place that it occurs.

5. Section 37 (as amended by section 46(2) of the Dublin Transport Authority Act 2008 (No. 15 of 2008)) of the Act of 2001 is amended -

- (a) in subsection (3)(e), by the substitution of “a report on” for “a statement of”, and
- (b) by the insertion of the following subsection after subsection (4):
 “(5) An application under subsection (1) shall be accompanied by an electronic version of each of the documents referred to in subsection (3) including the application itself.”.

6. Section 39 (as inserted by section 49(b) of the Act of 2006) of the Act of 2001 is amended -

- (a) by the substitution of the following subsection for subsection (1):
 “(1) The applicant shall ensure that an environmental impact assessment report -
 (a) is prepared by competent experts,
 (b) subject to subsection (3), contains -

⁵ OJ No. L 206, 22.7.1992, p. 7

⁶ OJ No. L 20, 26.1.2010, p. 7

- (i) a description of the proposed railway works comprising information on the site, design, size and other relevant features of the proposed works,
 - (ii) a description of the likely significant effects of the proposed railway works on the environment,
 - (iii) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment,
 - (iv) a description of any features of the proposed railway works, and of any measures envisaged, to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,
 - (v) a description of the reasonable alternatives studied by the applicant which are relevant to the proposed railway works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the railway works on the environment, and
 - (vi) a summary in non-technical language of the above information,
 - and
 - (c) takes into account the available results of other relevant assessments under European Union or national legislation with a view to avoiding duplication of assessments.”,
- (b) by the substitution of the following subsection for subsection (2):
- “(2) The applicant shall further ensure that an environmental impact assessment report, in addition to and by way of explanation or amplification of the specified information referred to in subsection (1), contains any additional information specified in Annex IV to the EIA Directive relevant to the specific characteristics of the particular railway works, or type of railway works, proposed and to the environmental features likely to be affected.”,
- (c) in subsection (3) -
- (i) by the substitution of the following paragraph for paragraph (a):
- “(a) If a person, before applying to the Board for a railway order, so requests, the Board shall, after consulting the person and any designated body and taking into account the information provided by the person, in

particular on the specific characteristics of the proposed railway works, including its location and technical capacity, and its likely impact on the environment, issue an opinion on the scope, and level of detail, of the information to be included by the person in the environmental impact assessment report in accordance with subsections (1) and (2).”,

- (ii) by the insertion of the following paragraph after paragraph (a):

“(aa) Where the Board issues an opinion under paragraph (a) the applicant shall -

- (i) prepare the environmental impact assessment report referred to in subsection (1) based on that opinion, and
- (ii) include in the report the information that may reasonably be required for reaching a reasoned conclusion in accordance with section 42B on the significant effects of the proposed railway works on the environment, taking into account current knowledge and methods of assessment.”,

and

- (iii) in paragraph (b), by the substitution of “to furnish it with specified additional information in relation to the likely effects” for “to furnish further information in relation to the effects”,

and

- (d) by the insertion of the following subsection after subsection (3):

“(3A) The Board shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.”.

7. The Act of 2001 is amended by the insertion of the following section after section 39:

“Designated bodies

39A. The Minister for Transport shall designate, by notice published on the website of the Department of Transport, either in general terms or on a case-by-case basis, the authorities likely to be concerned by any proposed railway works by reason of their specific environmental responsibilities or local and regional competences.”.

8. Section 40 (as amended by the European Communities (Public Participation) Regulations 2010 (S.I. No. 352/2010)) of the Act of 2001 is amended -

- (a) in subsection (1)(a) by the insertion of "and make available electronically in such manner," after "which is or are easily accessible to the public,"
- (b) in section (1)(b) -
 - (i) by the insertion of "and make available electronically in such manner as may be appointed by the Board" after "in the area to which the order relates",
 - (ii) by the substitution of the following subparagraph for paragraph (i):
 - "(i) indicating that an application will be made for an order and specifying the types of decision the Board may make under section 43 in relation to the application,"
 - (iii) by the insertion of the following subparagraph after subparagraph (i):
 - "(ia) indicating that the proposed railway works covered by the draft order are subject to an environmental impact assessment procedure,"
 - (iv) in subparagraph (ii) by the substitution of "at least 6 weeks" for "6 weeks" and by the insertion of "and made available electronically" after "deposited",
 - (v) in subparagraph (iii), by the insertion of "the Board is the competent authority responsible for taking the decision whether or not to grant the order, from which relevant information can be obtained and to which comments or questions can be submitted, and that" after "stating that",
 - (vi) by the substitution of the following subparagraph for subparagraph (iv):
 - "(iv) stating that the draft order and accompanying documents are available to be viewed electronically and at the places appointed by the Board under paragraph (a) and that a copy of, or extract from, the draft order and accompanying documents may be purchased on payment of a fee not exceeding the reasonable cost of making such copy or extract,"
- (c) in section (1)(c) by the insertion of ", on any designated body" after "on the Minister",

and
- (d) by the insertion of the following subsection after subsection (4):
 - "(5) The Board shall make an electronic version of the documents specified in section 37(3) and made available by the applicant under this section available electronically on the Board's website."

9. The Act of 2001 is amended by the insertion of the following section after section 40:

“Notification to Minister for Housing, Planning and Local Government

40A. As soon as practicable after receiving an application for a railway order, the Board shall send to the Minister for Housing, Planning and Local Government each of the following:

- (a) the name of the applicant together with a contact name, email address and phone number for correspondence;
- (b) a description of the location of the proposed railway works;
- (c) a description of the proposed railway works;
- (d) notice that the Board is the competent authority to which the application has been made;
- (e) a map of the location of the proposed railway works marked so as to identify clearly the land or structure to which the application relates;
- (f) an electronic version of the notice referred to in section 40;
- (g) notification of the location where information in electronic form that relates to the application is available on the Board’s website.”

10. Section 41 (inserted by section 49(b) of the Act of 2006) of the Act of 2001 is amended -

- (a) in subsection (1), by the insertion of “including any additional information specified in Annex IV to the EIA Directive which is directly relevant to reaching a reasoned conclusion on the significant effects of the proposed railway works on the environment” after “further information in relation to the proposed railway works”,
- (b) in subsection (2)(a) -
 - (i) in subparagraph (i), by the insertion of “and make available electronically in such manner as may be appointed by the Board,” after “each of the places appointed by the Board,” and
 - (ii) in subparagraph (ii), by the insertion of “and make available electronically in such manner as may be appointed by the Board” after “in the area to which the order relates”,
 and
- (c) by the insertion of the following subsections after subsection (4):

“(5) Where the Board requires the applicant to publish a notice in accordance with subsection (2)(a) the applicant shall provide the Board with an electronic version of that notice.

- (6) The Board shall make an electronic version of -
 - (a) the notice referred to in subsection (5),
 - (b) the additional information referred to in subsection (1), and
 - (c) any submissions it receives in relation to the further information,
 available on the Board's website."

11. The Act of 2001 is amended by the insertion of the following section after section 42:

"Coordinated assessments

42A. In carrying out an environmental impact assessment in respect of an application made under section 37 the Board shall, where appropriate, co-ordinate the assessment with any assessment under Council Directive 92/43/EEC of 21 May 1992⁷ or Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁸.

Reasoned conclusion

42B. Whenever an application is made under section 37, before deciding whether or not to grant the order to which the application relates, the Board shall –

- (a) duly take into account -
 - (i) the environmental impact assessment report submitted under section 37, and any revised environmental impact assessment report submitted under section 47D,
 - (ii) any additional information furnished to it under section 41 and, where applicable, any information submitted on foot of a notice under section 47D(4),
 - (iii) any submissions or observation made in relation to the likely significant effects on the environment of the activity to which the application relates duly made to it –
 - (I) under section 40(3) or 41(4), and not withdrawn, or
 - (II) by an authority referred to in section 40(1)(c) or (e),
 - (III) on foot of a request under section 47D(1) or a notice under section 47D(6).
- (b) consider any other evidence that it has obtained under this Part in relation to the likely significant effects on the environment of the activity to which the application relates, and

⁷ OJ No. L 206, 22.7.1992, p. 7

⁸ OJ No. L 20, 26.1.2010, p. 7

- (c) taking into account the results of the examination referred to in paragraphs (a) and (b), reach a reasoned conclusion on the significant effects on the environment of the activity to which the application relates.”.

12. Section 43 (inserted by section 49(b) of the Act of 2006) of the Act of 2001 is amended -

- (a) in subsection (1), by the deletion of paragraphs (d), (e) and (f),
- (b) by the substitution of the following subsection for subsection (2):

“(2) After considering the matters referred to in subsection (1), having taken into account its reasoned conclusion under section 42B(c) and being satisfied that that reasoned conclusion remains up-to-date, the Board -

- (a) if it is of opinion that the application should be granted, shall make an order authorising the applicant to construct, maintain, improve and, subject to section 11(7) in the case of the Agency, operate the railway or the railway works specified in the order or any part thereof, in such manner and subject to such conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies in the order, or
- (b) if it is of opinion that the application should not be granted, refuse to make the order to which the application relates,

and the Board shall furnish the applicant with a copy of the order or, as the case may be, the decision to refuse to grant the order.”,

- (c) by the insertion of the following subsections after subsection (2):

“(2A) A railway order shall include -

- (a) the reasoned conclusion referred to in section 42B,
- (b) any environmental conditions, including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring, to which the authorisation is subject, and
- (c) a description of any features of the proposed railway works, or any measures envisaged, to avoid, prevent or reduce, or offset significant adverse effects on the environment.

(2B) A decision to refuse to grant the order to which the application relates shall include the main reasons for the refusal.”,

- (d) by the substitution of the following subsection for subsection (3):

“(3) As soon as may be after making a decision under subsection (2), the Board shall -

- (a) publish in at least 2 newspapers circulating in the area to which the application for the order relates and in electronic form on the Board’s website, a notice stating -
 - (i) that the Board has made or, as the case may be, refused to grant, the proposed railway order,
 - (ii) the main reasons and considerations on which the decision to grant or refuse to grant the order is based, including -
 - (I) information about the public participation process,
 - (II) a summary of the results of the consultations and the information gathered pursuant to section 40 (in particular, where a copy of the environmental impact assessment report was sent in accordance with section 40(1)(e), the results of consultations and the information gathered under section 40(4)), section 41 and, where applicable, section 47D, and,
 - (III) a description of how the results referred to in clause (II) have been incorporated or otherwise addressed,
 - (iii) where the railway order was subject to conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), modifications, restrictions or requirements relating to the environment, particulars of those conditions, modifications, restrictions or requirements,
 - (iv) that a copy of the railway order, or as the case may be the decision to refuse to grant the order, is available for inspection and purchase at a cost not exceeding the reasonable cost of making such copies during specified hours, at a specified place, for a specified period of time, and in electronic form on the Board’s website, and
 - (v) that practical information regarding the judicial review procedures by which a person may seek to question the validity of a determination by

the Board on a proposed railway order can be found on the Board's website,

- (b) forward to each of the designated bodies a copy of the railway order or, as the case may be, the decision to refuse to grant the order under subsection (2)(b),
and
- (c) give notice to the prescribed authority in Northern Ireland of its decision in a case where a copy of the environmental statement has been sent to that authority in accordance with section 40(1)(e).”,

and

- (e) in subsection (6), by the substitution of “condition, modification, restriction or requirement” for “condition, restriction or requirement”.

13. The Act of 2001 is amended by the insertion of the following sections after section 43:

“Interpretation – sections 43B to 43F

43A. In sections 43B to 43F -

‘environmental condition’, in relation to a railway order, means any condition, modification, restriction or requirement to which a railway order is subject that relates to -

- (a) features of the railway works or measures envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, or
- (b) the monitoring of significant adverse effects on the environment (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring).

Duty to notify, and to comply with modification and conditions of approval

43B. (1) Where the Board makes a railway order, the person to whom the railway order is granted shall notify the Minister of any environmental conditions and each railway undertaking shall comply with such conditions.

(2) A railway undertaking that fails to comply with this section shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or

- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

Minister to ensure compliance with modifications and conditions

43C. Where the Minister receives a notification under section 43B(1) the Minister shall take all reasonable steps to ensure that each railway undertaking complies with the environmental conditions.

Power to request information regarding compliance with modification or condition

43D. (1) Where the Minister has been notified of an environmental condition the Minister may request a railway undertaking to furnish, within a specified period, specified information in relation to the railway undertaking's compliance with the environmental condition, and that railway undertaking shall comply with such a request.

(2) A request under subsection (1) by the Minister may include a request for information relating to -

- (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring,
- (b) the manner in which samples and measurements are taken and analyses are carried out,
- (c) the equipment being used for the purposes of taking such samples and measurements, or of carrying out such analyses, and
- (d) the results of any monitoring carried out.

(3) A railway undertaking that fails to comply with a request under subsection (1) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

Power to carry out assessment of railway undertaking's compliance with environmental condition

43E. (1) Where the Minister has been notified of an environmental condition under section 43B(1) the Minister may, having notified a railway undertaking of his or her intention to do so, carry out an

assessment of the railway undertaking's compliance with the environmental condition.

(2) During the course of an assessment under subsection (1) the railway undertaking shall comply with any request, made by the Minister for the purposes of that assessment, to -

- (a) furnish information, records or reports or the results of any monitoring by the railway undertaking in relation to the railway undertaking's compliance with the environmental condition, or
- (b) afford to the Minister access to any land, premises or structure occupied by the railway undertaking, for the purposes of assessing the railway undertaking's compliance with the environmental condition.

(3) A railway undertaking that fails to comply with a request under subsection (2) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

Power to direct action to ensure compliance with environmental condition

43F. (1) The Minister having made a request under section 43D, or carried out an assessment under section 43E, and considered any information furnished to him or her, or that has otherwise come into his or her possession as a result of the request or assessment, may issue to the railway undertaking to whom the request was made the terms of a direction (in this section referred to as 'the proposed direction') that the Minister proposes to issue to the railway undertaking, requiring the railway undertaking, within a specified period, to carry out, cause to be carried out, or arrange for, such action as the Minister considers necessary for the purposes of section 43C to ensure that that the railway undertaking complies with the environmental condition.

(2) The proposed direction shall specify a period within which the railway undertaking may make observations to the Minister in relation to the proposal to make the direction (and the railway undertaking may make such observations within that period accordingly).

(3) After the expiration of the period referred to in subsection (2) and having considered any observations made by the railway undertaking under that subsection, the Minister may confirm, with or without modification, or decide not to confirm the proposed direction and, in a case where the proposal is confirmed, the Minister shall accordingly

issue to the railway undertaking the direction concerned and the railway undertaking shall comply with the direction within the period specified in the direction.

(4) A railway undertaking that fails to comply with a direction under subsection (3) shall be guilty of an offence and shall be liable -

- (a) on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

(5) In imposing any penalty under subsection (4) the court shall, in particular, have regard to the risk or extent of damage to the environment and any remediation required arising from the act or omission constituting the offence.”.

14. Section 47D (inserted by section 50 of the Act of 2006) is amended -

(a) in subsection (6) (inserted by section 50 of the of the Act of 2006) -

(i) in paragraph (a), by the insertion of “, and make available electronically in such manner as may be appointed by the Board,” after “in which the proposed railway works would be situate”, and

(ii) by the substitution of “information or report” for “information or statement” in each place that it occurs,

and

(b) by the insertion of the following subsection after subsection (6):

“(6A)The Board shall make -

(a) any information, submission, observation, record or alteration to the terms of an application proposed by the Board under subsection (4), that contains significant data in relation to the likely effects on the environment of the proposed railway works,

(b) any notice, any information in relation to the terms of an application or order as altered and any revised environmental impact assessment report, referred to in subsection (6)(a),

available electronically on the Board’s website.”.



GIVEN under my Official Seal,
20 December, 2021.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

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

The purpose of these Regulations is to give further effect to transposition of *EU Directive 2011/92/EU as amended by Directive 2014/52/EU on the assessment of the effects of certain public private projects on the environment* (the EIA Directive) by amending the Transport (Railway Infrastructure) Act 2001. An Environmental Impact Assessment Report (EIAR) must be prepared in respect of proposed railway works and must accompany each application for a Railway Order that is made to An Bord Pleanála (the Board).

The amendments made to the Act transpose the EIA Directive to set out the type of information to be included in the EIAR, provisions for the dissemination of the EIAR both to the public and to the authorities that are designated by the Minister for Transport for consultation. The amendments set out the statutory functions of the Board and its powers for consideration and decision making. Under a new provision the Minister for Transport shall designate, by Notice, the authorities likely to be concerned by proposed railway works and for the publication of the Notice on the website of the Department of Transport. The transposition amendments to the Act also include new provisions on persons to whom a Bridge Order has been granted to inform the competent authority of, and comply with, environmental conditions in a Bridge Order. The competent authority has power to monitor that environmental conditions are being complied with and to enforce compliance if this is not the case.

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