



Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Palais des Nations, Room 429-4
CH-1211 GENEVA 10
Switzerland

21 July 2021

Re: Communication ACCC/C/2013/107

Dear Ms Marshall,

Please see below an update on the developments that have taken place since Ireland's progress report on Communication ACCC/C/2013/107 of 1 October 2020 and in response to the Committee's Draft Report of 4 July 2021 as well as comments made by the Observer (Irish Environment Network).

1. As has been previously established, in order to fulfil the requirements of paragraph 95 of the Committee's findings and recommendations on Communication ACCC/C/2013/107, Ireland is required to demonstrate to the Committee that, with regard to Section 42(1)(a)(i) and (ii) of the Planning and Development Act 2000 ("**PDA 2000**")¹ it has:
 - (a) Taken the necessary legislative measures to ensure that permits for activities subject to article 6 of the Convention cannot be extended, except for a minimal duration, without ensuring opportunities for the public to participate in the decision to grant that extension in accordance with article 6(2)–(9) of the Convention; and
 - (b) Taken the necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in paragraph (a) above.

¹ See, [Planning and Development Act 2000](#).



2. Subsequent to these recommendations of the Committee, the Department of Housing, Local Government and Heritage stated their intention, in their letter of 10 June 2021, to progress the Commencement Order required to bring into effect Section 28(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (“**PDHRTA 2016**”),² as amended by Section 57 of the Planning and Development (Amendment) Act 2018 (“**PDAA 2018**”),³ which would in turn amend Section 42(1) of the PDA 2000.
3. This Order will be made alongside the promulgation and bringing into effect of additional amendments to Section 42(1) PDA 2000 made by means of Ministerial Regulations which would prohibit extensions of duration where a development requires an Environmental Impact Assessment (“**EIA**”) and/or Appropriate Assessment (“**AA**”) at the point of application for such an extension.
4. In its draft report the Committee noted that additional information has been provided by the Observer in May and July 2021 regarding the progress of these amendments, their sufficiency and additional legislative matters.
5. Further to the comments of the Committee in the draft report, and the additional information provided by the Observer, Ireland is pleased to provide further information on the progress in respect of Section 42(1) PDA 2000.

² See, [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#).

³ See, [Planning and Development \(Amendment\) Act 2018](#).



Commencement of Section 28(1)

6. It is intended that the Commencement Order which will commence Section 28(1) PDHRTA 2016, as amended by Section 57(1) PDAA 2018, will be submitted to the Minister for Housing, Local Government and Heritage for signature in the coming weeks, subject to final drafting.
7. Commencement of this section will take place in conjunction with a number of other legislative amendments, including those outlined below.
8. The Observer's apprehension that the Department intends to delay the commencement of Section 28(1) PDHRTA 2016 until 31st December 2021 (and that the associated amendment of Section 42 PDA 2000 will necessarily be delayed until 2022) is entirely unfounded.



Proposed amendments to Section 42

- ***Proposed European Union (Planning) (Environmental Impact and Habitats) Regulations 2021***

9. The text of the draft European Union (Planning) (Environmental Impact and Habitats) Regulations 2021 has been prepared. It is intended that the Minister will promulgate same to coincide with commencement of Section 28(1) PDHRTA 2016, and that they will have immediate effect.
10. These draft Ministerial Regulations, which are subject to final drafting, will amend Section 42 PDA 2000 to replace Section 42(1)(a)(i)(II) PDA 2000 (as will be introduced upon commencement of Section 28(1) PDHRTA 2016, as amended by Section 57(1) PDAA 2018) to provide that an application of extension of duration under Section 42 PDA 2000 will from promulgation of the regulations be subject to a requirement that:

“A planning authority shall not extend the appropriate period under this Section in relation to a permission if an environmental impact assessment or an appropriate assessment would be required in relation to the proposed extension.”

11. Text to the same effect will, upon commencement of Section 7 of the Planning and Development (Amendment) Act 2021 (“**PDA 2021**”),⁴ be inserted as Section 42(1B)(i) PDA 2000 for the period to 31 December 2023.⁵

⁴ See, [Planning and Development \(Amendment\) Act 2021](#). At Bill stage, the title of this Act was the Planning and Development (No. 3) Bill 2021, and was referred to as such by the Observer.

⁵ Upon commencement of Section 7 PDAA 2021, Section 42(1B) PDA 2000 will provide that “*the authority shall only so extend that period where the authority - (i) is satisfied that an environmental impact assessment or an appropriate assessment would not be required in relation to the proposed extension of the appropriate period,*”.



12. Consequently, once these provisions are in operation, where an EIA or AA would be required in relation to the proposed extension at the point of application for extension (i.e. under EIA/AA obligations at that time), the extension application must be refused. In order to continue the development, the developer would need to apply for planning permission, including necessary EIA and/or AA procedures, which is subject to public participation. These provisions, once commenced, will address the concerns of the Committee at paragraph 27 of its Draft Report.

- ***Proposed amendments to the Planning & Development Regulations 2001***⁶

13. Additional amendments to the Planning and Development Regulations 2001 (“**PDR 2001**”) are also being prepared. These amendments will be promulgated and will come into effect at the same time as the commencement of section 28(1) PDHRTA 2016 and the European Union (Planning) (Environmental Impact and Habitats) Regulations 2021.

14. These amendments will provide for EIA and AA screening for all Section 42 PDA 2000 applications for extension and further extension applications in the PDR 2001 by way of amendments at Chapters 3 and 3A of Part 4..

15. The amendments will also provide for the publication of EIA and AA screening determinations made in respect of Section 42 PDA 2000 extension applications.

16. We note the Committee’s concern at paragraph 26 of its Draft Report that Section 42(1)(a) PDA 2000 as amended may permit certain projects which are subject to Article 6 of the Convention (but not to EIA/AA requirements) to be extended without undergoing public participation:

⁶ See, [Planning and Development Regulations 2001](#).



- Part 2, Schedule 5 to the PDR 2001 transposes Annex II of the EIA Directive into national law, and goes beyond that Directive in giving more specific details on development classes than Annex II of the EIA Directive;
- In accordance with paragraph 2.4 of the *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment* (August 2018), it is intended to review the thresholds of some Part 2, Schedule 5 PDR 2001 projects with a view to setting, where appropriate -
 - revised upper national thresholds for mandatory EIA,
 - lower thresholds below which no determination will be required (clarifying what is not significant in terms of environmental effects),

with projects falling between these thresholds requiring screening;

- Notwithstanding delays caused by the Covid-19 pandemic to scheduled work, this work is being progressed by the Department of Housing;
- Following public consultation, amendments to the above effect will be adopted;
- Ireland will be pleased to address further the Committee's queries in this regard upon adoption of these amendments.



Additional Issues Raised by the Observer

17. We note additional comments raised by the Observer on additional sections of the PDA 2000 and, in particular on Section 42B PDA 2000 as inserted by Section 7 PDAA 2021.
18. **Just as the Committee has noted at paragraphs 13 and 15 of its Draft Report in respect of other new allegations raised by the Observer, the allegations raised by the Observer on 6 July 2021 are outside scope of the within Communication and of the Committee's recommendations contained in paragraph 95 of its findings. Accordingly, we do not address them in any detail.**
19. The PDAA 2021 was enacted on 10 July 2021 and all provisions, except Section 7, were commenced 16 July 2021 as they did not require supplementary regulations. Section 7 is due to be commenced in the coming weeks, subject to final drafting, to coincide with supplementary amendments to the PDR 2001 to facilitate the making of such applications.
20. Section 42B PDA 2000 will have effect from the date of commencement of Section 7 PDAA 2021 to 31 December 2023. During that period, it will construe Section 42 as if Section 42(1B) PDA 2000 were inserted after Section 42(1A) PDA 2000.
21. Contrary to the contentions of the Observer, it is denied that Section 42(1B) PDA 2000 as inserted by Section 7 PDAA 2021 will constitute an alternative to securing an extension compliant with Article 6.
22. Rather, an extension of duration under any of the avenues under Section 42 PDA 2000 (including the temporary subsection (1B) introduced by Section 7 PDAA 2021) will not be permissible where an EIA or AA is required in relation to an application for extension of permission.



23. Section 42(1B) PDA 2000 will provide a temporary provision allowing applications for further extensions of planning permissions which have already availed of an extension under Section 42(1) PDA 2000, or otherwise under Section 42(1A) PDA 2000, in circumstances where no further extension is permissible.
24. Under Section 42(1B) PDA 2000, where an application is made to a planning authority for a further extension, setting out the reasons why a development cannot be reasonably completed within the appropriate period as already extended, the planning authority shall further extend that period by an additional period of up to 2 years or until 31 December 2023, whichever first occurs, subject to restrictions or conditions set out below.
25. Therefore a grant of an extension will be expressly subject to the planning authority being satisfied of the following, *inter alia*, that:
- the development has commenced;⁷
 - substantial works have been carried out;⁸
 - the extension is required to enable the development to be completed; and,⁹
 - an EIA or AA would not be required in relation to the proposed extension.¹⁰
26. This temporary measure is addressed towards permitting the completion of projects the completion and/or commencement of which have been delayed as a result of the closure of construction activity, since the onset of the Covid-19 pandemic in early 2020 and most recently from 8 January 2021 through May 2021, which reflects the most recent mandatory closure of non-essential

⁷ Section 42(1)(a)(i)(I).

⁸ Section 42(1)(a)(i)(III).

⁹ Section 42(1).

¹⁰ Section 42(1)(a)(i)(II).



constructions sites. A possible further extension of up to two years or until 31 December 2023, which ever first occurs, has thus been provided for, on a case-by-case basis, in order to ameliorate this disruption and the associated delays caused by the impact of Covid-19 on supply chains, and the availability of personnel.



Conclusions

27. Ireland notes the Committee's acknowledgement at paragraph 31 of its constructive engagement in the Committee's follow-up on the Committee's Findings.
28. Ireland welcomes the Committee's consideration at paragraphs 25 and 28 of its Report that section 42(1)(a) PDA 2000, once commenced, will mark significant progress.
29. Ireland is making every endeavour to expedite the requisite legislation to satisfy the Committee's Recommendations at paragraph 95 of the Committee's findings and expressed in its Draft Report, in particular at paragraphs 26, 27 and 29.
30. We will supply the Committee with such legislation upon promulgation, including the following legislation referred to above:
 - European Union (Planning) (Environmental Impact and Habitats) Regulations 2021;
 - Proposed Amendments to the PDR 2001;
 - Commencement Orders for Section 28(1) PDHRTA 2016 and Section 7 PDAA 2021.
31. Ireland is pleased to agree to the Committee's proposed recommendations at paragraph 34 of its Draft Report.

I would be grateful if you could confirm receipt.

Yours sincerely



A handwritten signature in dark ink, appearing to read 'Orlagh K.', enclosed within a thin black rectangular border.

Orlagh Kehoe
National Focal Point - Aarhus Convention