



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

15 October 2021

Re: Communication ACCC/C/2013/107

Dear Ms Marshall

1. We refer to Ireland's progress report on Communication ACCC/C/2013/107 of 21 July 2021, which discussed in detail the legislative amendments proposed to address and bring Ireland into compliance with paragraph 95 of the Committee's findings and recommendations on communication ACCC/C/2013/107.

Recently enacted legislation

2. At paragraph 30 of the said progress report, we indicated that we intended to supply the Committee with copies of intended legislation following their promulgation. In this regard, we enclose herewith copies of:
 - The Planning and Development (Housing) and Residential Tenancies Act 2016 (Section 28(1)) (Commencement) Order 2021 (No. 455 of 2021) (**Appendix 1**);
 - The European Union (Planning) (Habitats, Birds and Environmental Impact) Regulations 2021 (No. 456 of 2021) (**Appendix 2**);
 - The European Union (Planning) (Habitats, Birds and Environmental Impact) (No. 2) Regulations 2021 (No. 457 of 2021) (**Appendix 3**);
 - The Planning and Development (Amendment) Act 2001 (Commencement) (No. 2) Order 2021 (No. 458 of 2021) (**Appendix 4**); and



- The Planning and Development (Amendment) (No. 3) Regulations 2021 (No. 459 of 2021) (**Appendix 5**).
3. For convenience, we attach the Law Reform Commission's consolidated version of section 42 of the Planning and Development Act 2000 (**Appendix 6**),¹ as amended on 9 September by the various instruments. A consolidated version of the Planning and Development Regulations 2001, as amended, will be made available on the Department's website as soon as possible, and will be furnished to the Committee.
 4. We also attach Planning Circular Letter EUIPR 01/2021 (**Appendix 7**) which outlines in detail the package of amendments introduced on 9 September. As you will see, the purpose of the measures outlined in the Circular is twofold: to introduce the changes relevant to the present Communication; and to address specific Covid-related temporary provisions.

General legislative changes

5. Section 28(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended by section 57(1) of the Planning and Development (Amendment) Act 2018, was commenced on 9 September, alongside additional amendments to section 42 of the Planning and Development Act 2000 and the Planning and Development Regulations 2001.
6. The key changes introduced by section 28(1) of the 2016 Act, as commenced, include:
 - The deletion of section 42(1)(a)(ii) of the Planning and Development Act 2000. This change removes the possibility of a developer obtaining an extension of the duration of a planning permission for a development which has not been commenced or, in respect of which, substantial works have not been carried out. This provision is to encourage the commencement of development such as housing development;

¹ <https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true>



- The amendment of section 42(4) of the Planning and Development Act 2000 to provide that up to two extensions of the appropriate period of a planning permission can be made (provided the combined duration of both extensions does not exceed five years). This will facilitate planning authorities to interrogate applications for extension of duration in order to establish the likely 'build out time' for completion of the developments and therefore consider granting extensions to planning permissions of less than five years.
7. The European Union (Planning) (Habitats, Birds and Environmental Impact) Regulations 2021 has further amended section 42 of the Planning and Development Act 2000 by deleting section 42(1)(a)(i)(II)² (as inserted by the commenced section 28(1) of the 2016 Act) and replaces this requirement with the insertion of a new subsection (8) into section 42 of the Planning and Development Act 2000. Section 42(8) states that a planning authority shall not extend the appropriate period under section 42 in relation to a permission if an Environmental Impact Assessment (“EIA”) or Appropriate Assessment (“AA”) would be required in relation to the proposed extension.
 8. Finally, the European Union (Planning) (Habitats, Birds and Environmental Impact) (No.2) Regulations 2021 amended Chapter 3 and 3A of the Planning and Development Regulations 2001 to introduce EIA and AA screening procedures in respect of all extension of duration applications, including further extension applications, and to set out additional publication requirements of screening determinations made to facilitate transparency in this process.
 9. In particular, AA screening and EIA screening (for extension applications that do not equal/exceed the EIA thresholds) shall now be required for all applications for extension of duration, including applications for further extensions under section 42(1B) (which will be discussed below). In the case of EIA screening this will

² Section 42(1)(a)(i)(II) of the Planning and Development Act 2000, as would have been inserted by s28(1) of the 2016 Act, would have provided that a planning authority must be satisfied that an EIA and/or AA was not or were not required before the original planning permission was granted.



require applicants for extension of duration to provide environmental information, as set out in Schedule 7A of the Planning and Development Regulations 2001, to the planning authority. These Regulations have been introduced to align the Planning and Development Regulations with the EIA and Habitats Directives.

Specific temporary measures related to the Covid-19 pandemic

10. Apart from the general legislative changes discussed above, the legislation appended at Appendices 4 and 5 introduces specific time-limited changes directed at mitigating disruption caused by the Covid-19 pandemic.
11. The Planning and Development (Amendment) Act 2001 (Commencement) (No. 2) Order 2021 (No. 458 of 2021) commenced section 7 of the Planning and Development (Amendment) Act 2021. Section 7 of the 2021 Act inserted new sections 42B and 42(1B) into the Planning and Development Act 2000. The combined effect of these sections is to modify section 42 of the 2000 Act by allowing for extensions of the appropriate period of planning permissions by an additional period of two years or until 31 December, 2023, whichever first occurs. This is essentially a temporary measure in light of disruption caused by the Covid-19 pandemic and applies to extant permissions as well as permissions which expired between 8 January 2021 and 8 September 2021.
12. In order to grant a Section 42B extension, a planning authority **must** be satisfied that:
 - The development has commenced;
 - Substantial works have been carried out; and
 - An EIA and/or an AA are **not** required for the proposed extension.
13. In line with the new sections 42B and 42(1B), the Planning and Development (Amendment) (No. 3) Regulations 2021 amended Chapter 3 of the Planning and Development Regulations 2001 to set out details of the application procedures for further extensions under section 42(1B). These procedures include the requirement that such applications for extension of duration of permission, which have not



expired, shall be made within a year before expiry and the need to include the following additional detail in an application for further extension:

- the additional period being requested;
- when the development will be completed;
- the expiry date of the permission;
- particulars of substantial works carried out or to be carried out before expiry; and,
- a statement setting out reasons why the development cannot be reasonably completed within the duration.



Conclusion

14. Ireland submits that the above-mentioned legislative measures resolve the matters highlighted in paragraph 95 of the Committee's findings and recommendations on communication ACCC/C/2013/107.

15. The measures collectively ensure that permits for activities subject to Article 6 of the Convention cannot be extended by way of section 42 of the Planning and Development Act 2000.

I would be grateful if you could confirm receipt.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Orlagh K.', is enclosed in a light grey rectangular box.

Orlagh Kehoe
National Focal Point -
Aarhus Convention