



27 July 2023

To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils

Senior Planners, City and County Councils

An Bord Pleanála

Directors of Regional Assemblies

Office of the Planning Regulator

**Circular Letter: EUIPR 01/2023**

**Planning and Development (Amendment) (No. 2) Regulations 2023 (S.I. 383 of 2023)**

I am directed by Mr Kieran O'Donnell, TD, Minister of State for Planning at the Department of Housing, Local Government and Heritage, to advise you that he has recently made new regulations entitled 'Planning and Development (Amendment) (No.2) Regulations 2023', a copy of which is attached for information.

Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 as amended (the Regulations) lists project types that must undergo screening for Environmental Impact Assessment (EIA). These Regulations amend Part 2 of Schedule 5, to re-insert the project type - *Projects for the restructuring of rural land holdings*, into the planning code.

**Background to why these Regulations are required**

In 2011, a number of amendments were made to the screening thresholds in Part 2 of Schedule 5 of the Regulations, in order to address the judgment in case C-66/06. This judgement found that Ireland's system for screening certain project types under paragraph 1 of annex II of the EIA Directive, which are predominantly agricultural activities, did not comply with the Directive.

Ireland's response to this judgment, in addition to making a number of amendments to Schedule 5 of the Regulations, included the establishment of a new EIA consent regime operated by the Department of Agriculture, Food and the Marine (DAFM) for the project types covered by the judgement.



That consent regime continues to operate for on-farm agricultural type activities, however, a more recent court judgement identified that it is possible for a proposed development moving through the planning system to include an element of removal of field boundaries or re-contouring a field, which amounts to restructuring a rural land holding, but not be an agricultural project. This element of the project would need to be screened for EIA but prior to this Regulation being made neither planning authorities nor An Bord Pleanála had jurisdiction to request that screening.

### ***Judicial Review Case 2021/1009 – Treascon and Clondoolusk***

In November 2021, a local residents association took a judicial review case against a decision of An Bord Pleanála, to grant planning permission to build and operate a solar powered electricity generating power station on a circa 90 hectare site consisting of arrays of solar panels, 40 inverter/transformer stations, underground cable trenches and cables connecting the solar arrays to the inverter stations and subsequently to the proposed on-site transmission infrastructure, internal roads and ancillary works on agricultural land.

The applicants sought, inter alia, a Declaration that the State had failed to properly transpose into the planning code Annex II, paragraph 1(a) of the EIA Directive – *Projects for the restructuring of rural land holdings*.

In considering the implications of this judicial review the Department received legal advice from the Office of the Attorney General recommending that Part 2 of Schedule 5 of the Regulations be amended to re-insert '*Projects for the restructuring of rural landholdings*' as a project type that must be at least screened for EIA under the planning code.

### **What do these new Regulation do?**

S.I. 383 of 2023, attached to this Circular, amends Part 2 of Schedule 5 of the Regulations, by inserting '*Projects for the restructuring of rural landholdings*' as follows :

“(a) Projects for the restructuring of rural land holdings, undertaken as part of a wider proposed development, and not as an agricultural activity that must comply with the European Communities (Environmental Impact Assessment)(Agriculture) Regulations 2011, where the length of field boundary to be removed is above 4 kilometres, or where re-contouring is above 5 hectares, or where the area of lands to be restructured by removal of field boundaries is above 50 hectares.”

This amendment does not affect the EIA consent regime set up by DAFM in 2011 via S.I. 456 of 2011. Farmers, or landowners who wish to restructure their rural landholding will still submit



an application to the Minister for Agriculture for assessment, including any associated EIA requirements.

This amendment will ensure that where a planning authority or the Board is presented with an application for development consent for a project that involves the restructuring of rural landholdings, they will have the jurisdiction to carry out screening for EIA, or full EIA as appropriate, as required by the EIA Directive.

### **Conclusion**

Any queries in relation to this Regulation and its implementation should be directed to:

[euplanningregulation@housing.gov.ie](mailto:euplanningregulation@housing.gov.ie)

Yours sincerely,

A handwritten signature in black ink that reads "Lisa Clifford".

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Lisa Clifford

Principal

EU & International Planning Regulation