



Rialtas na hÉireann
Government of Ireland

Post-Enactment Scrutiny Report

Environmental Protection Agency
(Emergency Electricity
Generation)(Amendment) Act
2023

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Prepared by the Department of Environment, Climate and Communications
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Purpose of the Act

The Environmental Protection Agency (Emergency Electricity Generation) (Amendment) Act 2023 (No.6 of 2023) was signed into law by the President on the 10th of March 2023 and commenced in full on the 30th of March 2023 (S.I. 136 of 2023).

The purpose of the Environmental Protection Agency (Emergency Electricity Generation) (Amendment) Act 2023 (**the Act**) is to provide for the Environmental Protection Agency to consider industrial emission licence applications for temporary emergency generation sites in respect of designated developments under the Development (Emergency Electricity Generation) Act 2022.

The Act enables the EPA to consider licence applications from designated developments by providing for:

1. the disapplication of the requirements of the EIA Directive for licence applications only in respect of designated developments on the grounds that they constitute exceptional cases for the purposes of Article 2(4) of the Directive and that the application of the Directive to these projects would adversely affect their delivery.
2. streamlining the process which applies to the consideration of these particular EPA industrial emissions licence applications.

Scope of the Act

The Act was intended to ensure that a second tranche of two emergency generation projects (TEG 2), as noted by the Government in decision S180/20/10/2730 could be brought forward within a timeframe that would enable the consideration of the licence applications by the Agency in good time to facilitate generation to commence in Winter 2023/24 should the licence applications be successful.

The Act provides for the disapplication of the requirements of the EIA Directive solely for licence applications in respect of designated developments on the grounds that they constitute exceptional cases for the purposes of Article 2(4) of the Directive and that the application of the Directive to these projects would adversely affect their delivery.

The Act also provides for the streamlining of the two-stage decision making process under the EPA Act 1992 in respect of designated developments and replacing it with one round of

consultation by the Agency inviting submissions on the application documents before the Agency issued a final decision on the licences.

Policy Objectives

As noted in Government decision S180/20/10/2730 the Commission for the Regulation of Utilities (CRU) concluded there was an urgent need to procure up to 450MW of temporary emergency generation capacity in order to mitigate the security of supply risk for Winter 2023/24. The CRU subsequently issued a direction to EirGrid to procure, as soon as possible, the delivery of c. 450MW of temporary emergency generation for Winter 2023/24 to Winter 2025/26.

To facilitate delivery of this temporary emergency generation capacity identified by the Commission for the Regulation of Utilities (CRU) as urgently required, the Oireachtas passed the Development (Emergency Electricity Generation) Act 2022. This Act provides for the disapplication of the Planning and Development Acts and of requirements under the EIA Directive for designated developments comprising of the installation of up to 450 megawatts of temporary emergency electricity at the specified sites Shannonbridge and Tarbert or at alternative appropriate sites, on the grounds that they constitute exceptional cases for the purposes of Article 2(4) of the Directive and that the application of the Directive to these projects would adversely affect their delivery

These designated developments also require an industrial emissions licence from the Environmental Protection Agency (EPA) to carry out the activity of generating electricity.

The Act formed part of the overall legislative package required to facilitate delivery of temporary emergency generation capacity and to ensure that legal provision was made for the timely consideration of Industrial Emission licence applications under the Environmental Protection Agency Act 1992 in respect of activity involving designated development at Shannonbridge and Tarbert.

The Act provides bespoke arrangements for Industrial Emissions licence applications to the Agency in respect to activity relating to designated development whereby the Agency, upon receipt of a licence application:

1. take into account the assessment of An Bord Pleanála (carried out under the Development (Electricity Emergency Generation) Act 2022) regarding the likely main

- effects of the development on the environment while also undertaking another environmental assessment in accordance with Article 2(4) of the EIA Directive;
2. consider the application from the perspective of the Industrial Emissions Directive and any other obligations under the EPA Act 1992 outside of the EIA Directive;
 3. consult with all parties and with the public in line with obligations under the Aarhus Convention noting that this will be the second time that the public will have an opportunity to make submissions to a competent authority in relation to these specific developments; and
 4. make a decision, in a timely manner, to grant a licence with conditions or refuse the application for a licence from a designated development.

Operation of the Act

➤ SI's under the Act

Section 8 of the Act amends section 89 of the Act of 1992 to enable matters to be prescribed in relation to an 'alternative assessment', procedures for consultation to be carried out by the EPA, and includes a provision that as part of the alternative assessment, the Agency is obliged to assess the impacts (if any) on natural habitats, fauna and flora in accordance with Council Directive 92/43/EEC as amended, including to consider whether there is a derogation for the purpose of Article 16 of that Directive in respect of a designated development.

Accordingly, the Minister introduced regulations under section 89 to allow for this alternative assessment process and one round of consultation to be undertaken by the EPA (the Agency) in the context of its consideration of licence applications in respect of designated developments. The Environmental Protection Agency (Designated Development) (Industrial Emissions) (Licensing) Regulations 2023 (S.I. 186 of 2023) came into effect on the 18th of April 2023.

The Regulations are set out as follows:

- Regulation 1: Citation.
- Regulation 2: Interpretation.
- Regulation 3: Scope.
- Regulation 4: Notice of intention to apply for licence. - This regulation sets out the notice periods which the designated applicant must comply with before making an application for a licence.

- Regulation 5: Notices in newspapers. - Sets out the requirements for the newspaper notice that a designated applicant must publish in advance of submitting an application to the Agency.
- Regulation 6: Site notices. - Sets out the requirements for the site notice that a designated applicant must erect or fix before or upon submitting an application to the Agency.
- Regulation 7: Application for a licence. - Sets out the form and content of an application to the Agency along with the information which should accompany the application.
- Regulation 8: Further notice. - Sets out the procedure for further notice periods if a designated applicant does not comply with the notice provisions of Regulation 4, 5 or 6.
- Regulation 9: Procedure on receipt of an application for a licence. – Sets out the steps which the Agency will take on receipt of an application.
- Regulation 10: Alternative Assessment by the Agency. - Sets out the procedure and factors for consideration when an alternative assessment is being carried out by the Agency
- Regulation 11: Decision on designated applications. - Sets out the information to be included by the Agency in the decision on a designated application
- Regulation 12: Notice to certain bodies. – Sets out a list of bodies to be notified by the Agency on receipt of an application, along with the content of this notice.
- Regulation 13: Agency investigations. – Provides for the Agency to carry out any investigations it deems necessary in order to make a decision on an application
- Regulation 14: Inspection and availability of documents including alternative assessment carried out by the Agency –Provision to make available and to allow inspection by the public, of documents relating to an application. Also outlines the information to be made available.
- Regulation 15: Withdrawal or abandonment of application for a licence. – Sets out procedure around the withdrawal or abandonment of an application.
- Regulation 16: Results of monitoring and evaluations. – Allows for information in relation to the environmental performance of any approved installation to be provided to the Agency on an annual basis. Also outlines that the agency must make this information available publicly upon receipt.

- Regulation 17: Notification and publication of decisions. - Sets out the form and content of the required notification and publication of the decision made by the Agency on an application.
- Regulation 18: Form of Register. – Sets out the form for the Register of licences.
- Regulation 19: Principal Polluting Substances. – Outlines that the Agency shall have regard to the principal polluting substances outlined in the Schedule.
- Regulation 20: Criteria for the determination by the Agency of a relevant person. – Sets out the criteria for the determination by the Agency of a relevant person.
- Regulation 21: Appropriate Assessment. – Sets out further considerations when the Agency is carrying out an alternative assessment.

➤ **Applications for Industrial Emissions Licences**

Industrial Emissions licence applications in respect of the Temporary Emergency Power Generators at both [Shannonbridge](#), Co. Offaly and [Tarbert](#), Co. Kerry were received by the Environmental Protection Agency and were made available for public viewing. The Agency considered both applications and subsequently made a decision on the licence applications. As per normal procedure, the Agency published their decision for both developments allowing appropriate time for submissions to be made in accordance with the regulations. Industrial Emissions licences were granted in respect of the Temporary Emergency Power Generators at both sites.

Both plants are currently under construction. Eight emergency generation units at Shannonbridge will each operate up to 500 hours per annum on distillate oil. In addition, three emergency generation units at Tarbert will each operate up to 500 hours per annum on distillate oil.

Licensing Timelines

The timeframe for decisions on the above-mentioned licence applications were significantly reduced as a result of the Act. The application date for the Shannonbridge project was July 2023 with a decision issuing from the EPA in Nov 2023. The licence application for the Tarbert development was submitted in July 2023 with the decision issuing in Jan 2024.

Conclusion

The Act is largely a technical piece of amending legislation designed to provide that the Agency undertake an alternative assessment as opposed to an Environmental Impact Assessment when considering designated applications, and to provide for a single

consultation period on these licence applications. In the case of designated licence applications, the introduction of the Act has expedited the application process allowing work on these sites to progress in order to ensure security of electricity supply in emergency circumstances over the next number of years.