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*Number 30 of 2000*

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**PLANNING AND DEVELOPMENT ACT 2000**

**REVISED**

**Updated to 27 December 2012**

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This Revised Act is an administrative consolidation of the *Planning and Development Act 2000*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Europol Act 2012 (53/2012)*, enacted 26 December 2012, and all statutory instruments up to and including *Finance (Local Property Tax) Act 2012 (Specified Date) Order 2012 (S.I. No. 589 of 2012)*, made 27 December 2012, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to [revisedacts@lawreform.ie](mailto:revisedacts@lawreform.ie).





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**Introduction**

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

**Related legislation**

**Planning and Development Acts 2000 to 2011:** this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 1(4)). The Acts in this group are:

- *Planning and Development Act 2000* (30/2000)
- *Local Government Act 2001* (37/2001), ss. 2, 5(3) and Schedule 4 (in so far as they relate to the Act of 2000) and s. 247
- *Planning and Development (Amendment) Act 2002* (32/2002), Parts 2 and 3
- *Housing (Miscellaneous Provisions) Act 2004* (43/2004), s. 2
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006)
- *Water Services Act 2007* (30/2007), ss. 1(6) and 114
- *Harbours (Amendment) Act 2009* (26/2009), ss. 7(1) and (2) and 21(3)
- *Compulsory Purchase Orders (Extension of Time Limits) Act 2010* (17/2010)
- *Planning and Development (Amendment) Act 2010* (30/2010), other than Part 3
- *Environment (Miscellaneous Provisions) Act 2011* (20/2011), Part 5

**Roads Acts 1993 to 2007:** This Act is one of a group of Acts included in this collective citation, to be read together as one (*Roads Act 2007*, s. 14(2)). The Acts in the group are:

- *Roads Act 1993* (14/1993)
- *Roads Act 1998* (23/1998) (not amended)
- *Planning and Development Act 2000* (30/2000), s. 215 and Part XX
- *Local Government Act 2001* (37/2001), ss. 81 and 245
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 51
- *Roads Act 2007* (34/2007), other than ss. 12 and 13

**Annotations**

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at [www.lawreform.ie/annotations](http://www.lawreform.ie/annotations).

### **Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### **Acts which affect or previously affected this revision**

- *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* (37/2012)
- *Financial Emergency Measures in the Public Interest (Amendment) Act 2011* (39/2011)
- *Environment (Miscellaneous Provisions) Act 2011* (20/2011)
- *Planning and Development (Amendment) Act 2010* (30/2010)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Compulsory Purchase Orders (Extension of Time Limits) Act 2010* (17/2010)
- *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010)
- *Public Transport Regulation Act 2009* (37/2009)
- *National Asset Management Agency Act 2009* (34/2009)
- *Land And Conveyancing Law Reform Act 2009* (27/2009)
- *Harbours (Amendment) Act 2009* (26/2009)
- *Housing (Miscellaneous Provisions) Act 2009* (22/2009)
- *Dublin Transport Authority Act 2008* (15/2008)
- *Roads Act 2007* (34/2007)
- *Water Services Act 2007* (30/2007)
- *Prisons Act 2007* (10/2007)
- *Energy (Miscellaneous Provisions) Act 2006* (40/2006)
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006)
- *Grangegorman Development Agency Act 2005* (21/2005)
- *Housing (Miscellaneous Provisions) Act 2004* (43/2004)
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- *Protection of the Environment Act 2003* (27/2003)
- *Local Government (No. 2) Act 2003* (17/2003)
- *Planning and Development (Amendment) Act 2002* (32/2002)
- *Minister For the Environment and Local Government (Performance of Certain Functions) Act 2002* (24/2002)
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- *Waste Management Act 1996* (10/1996)
- *Roads Act 1993* (14/1993)

All Acts up to and including *Europol Act 2012* (53/2012), enacted 26 December 2012, were considered in the preparation of this revision.

### **Statutory instruments which affect or previously affected this revision**

- *Planning and Development Act 2000 (Designation of Strategic Development Zone: North Lotts and Grand Canal Dock) Order 2012* (S.I. No. 530 of 2012)

- *European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) (No. 2) Regulations 2012* (S.I. No. 457 of 2012)
- *European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012* (S.I. No. 419 of 2012)
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- *European Union (Substitute Consent) Regulations 2011* (S.I. No. 609 of 2011)
- *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011* (S.I. No. 584 of 2011)
- *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011)
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- *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011)
- *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011)
- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011)
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- *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010)
- *Planning and Development (Regional Planning Guidelines) Regulations 2009* (S.I. No. 100 of 2009)
- *Planning and Development (Amendment) Regulations 2008* (S.I. No. 256 of 2008)
- *Planning and Development Regulations 2008* (S.I. No. 235 of 2008)
- *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007)
- *Planning and Development Act 2000 (Certification of Fairground Equipment) (Amendment) Regulations 2007* (S.I. No. 590 of 2007)
- *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007)
- *European Communities (Access to Information on the Environment) Regulations 2007* (S.I. No. 133 of 2007)
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- *Planning and Development Regulations 2005* (S.I. No. 364 of 2005)
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- *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No. 435 of 2004)
- *Planning and Development Act 2000 (Commencement) Order 2003* (S.I. No. 450 of 2003)
- *Planning and Development Act, 2000 (Certification of Fairground Equipment) Regulations 2003* (S.I. No. 449 of 2003)
- *European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003* (S.I. No. 306 of 2003)
- *Planning and Development (Regional Planning Guidelines) Regulations 2003* (S.I. No. 175 of 2003)
- *Planning and Development Regulations 2003* (S.I. No. 90 of 2003)

- *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002)
- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 356 of 2002)
- *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002)
- *Planning and Development (No. 2) Regulations 2002* (S.I. No. 149 of 2002)
- *Planning and Development Regulations 2002* (S.I. No. 70 of 2002)
- *Planning and Development Regulations 2001* (S.I. No. 600 of 2001)
- *Planning and Development Act 2000 (Commencement) (No. 3) Order 2001* (S.I. No. 599 of 2001)
- *Planning and Development (Appointment of Chairperson and Ordinary Members of an Board Pleanála) Regulations 2001* (S.I. No. 336 of 2001)
- *Planning and Development Act 2000 (Commencement) (No. 2) Order 2001* (S.I. No. 335 of 2001)
- *Planning and Development Act 2000 (Designation of Strategic Development Zone - Clonmagadden Valley, Navan) Order 2001* (S.I. No. 274 of 2001)
- *Planning and Development Act 2000 (Designation of Strategic Development Zone - Hansfield, Blanchardstown) Order 2001* (S.I. No. 273 of 2001)
- *Planning and Development Act 2000 (Designation of Strategic Development Zone - Adamstown, Lucan) Order 2001* (S.I. No. 272 of 2001)
- *Planning and Development (Licensing of Outdoor Events) Regulations 2001* (S.I. No. 154 of 2001)
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- *Local Government (Planning and Development) General Policy Directive (Shopping) 1998 (Revocation Order) 2001* (S.I. No. 1 of 2001)
- *Planning and Development Act 2000 (Commencement) (No. 2) Order 2000* (S.I. No. 449 of 2000)
- *Planning and Development Regulations 2000* (S.I. No. 350 of 2000)
- *Planning and Development Act 2000 (Commencement) Order 2000* (S.I. No. 349 of 2000)

All statutory instruments up to and including *Finance (Local Property Tax) Act 2012 (Specified Date) Order 2012* (S.I. No. 589 of 2012), made 27 December 2012, were considered in the preparation of this revision.



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**PLANNING AND DEVELOPMENT ACT 2000**

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2000

Water Supplies Act, 1942	1942, No. 1
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Number 30 of 2000

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**PLANNING AND DEVELOPMENT ACT 2000**

**REVISED**

**Updated to 27 December 2012**

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AN ACT TO REVISE AND CONSOLIDATE THE LAW RELATING TO PLANNING AND DEVELOPMENT BY REPEALING AND RE-ENACTING WITH AMENDMENTS THE LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999; TO PROVIDE, IN THE INTERESTS OF THE COMMON GOOD, FOR PROPER PLANNING AND SUSTAINABLE DEVELOPMENT INCLUDING THE PROVISION OF HOUSING; TO PROVIDE FOR THE LICENSING OF EVENTS AND CONTROL OF FUNFAIRS; TO AMEND THE ENVIRONMENTAL PROTECTION AGENCY ACT, 1992, THE ROADS ACT, 1993, THE WASTE MANAGEMENT ACT, 1996, AND CERTAIN OTHER ENACTMENTS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [28<sup>th</sup> August, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Annotations**

**Modifications (not altering text):**

- C1** Act included in collective citation and construction *Planning and Development Acts 2000 to 2011* (23.08.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s 1(4), S.I. No. 433 of 2011.

**Short title, collective citations and construction.**

1.— ...

(4) The Planning and Development Acts 2000 to 2010 and Part 5 may be cited together as the Planning and Development Acts 2000 to 2011 and shall be read together as one.

...

Acts included or previously included in the collective citation:

- *Environment (Miscellaneous Provisions) Act 2011* (20/2011) (23.08.2011) by s. 1(4), S.I. No. 433 of 2011.
- *Compulsory Purchase Orders (Extension of Time Limits) Act 2010* (17/2010) (7.07.2010) by s. 2(2), commenced on enactment.
- *Planning and Development (Amendment) Act 2010* (30/2010), other than Part 3, (19.08.2010) by s. 1(2), S.I. No. 405 of 2010.
- *Harbours (Amendment) Act 2009* (26/2009), ss. 7(1), (2) and 21(3), (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s. 21(3), commenced on enactment.
- *Water Services Act 2007* (30/2007), ss. 1(6) and 114, (31.12.2007) by s. 1(6), S.I. No. 846 of 2007.
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006) (17.10.2006) by s. 1(2), S.I. No. 525 of 2006.



- *Housing (Miscellaneous Provisions) Act 2004* (43/2004) (21.12.2004), s. 2, by s. 3(3), commenced on enactment.
- *Planning and Development (Amendment) Act 2002* (32/2002) (24.12.2002), Parts 2 and 3, by s. 1(2), commenced on enactment.
- *Local Government Act 2001* (37/2001) (9.10.2001), ss. 2, 5(3) and sch. 4 (in so far as they relate to the Act of 2000) and s. 247, by s. 1(7), S.I. No. 458 of 2001.
- *Planning and Development Act 2000* (30/2000) (9.10.2001), by *Local Government Act 2001* (37/2001), s. 1(7), S.I. No. 458 of 2001.

**C2** Act included in collective citation and construction *Roads Acts 1993 to 2007* (11.07.2007) by *Roads Act 2007* (34/2007), s. 14(2), commenced on enactment.

**Short title, collective citation and construction.**

**14.— ...**

(2) The *Roads Acts 1993 to 2001*, section 215 and Part XX of the *Planning and Development Act 2000*, section 51 of the *Planning and Development (Strategic Infrastructure) Act 2006* and this Act (other than sections 12 and 13 ) may be cited together as the *Roads Acts 1993 to 2007* and are to be read as one.

Acts included or previously included in the collective citation:

- *Roads Act 2007* (34/2007), excluding ss. 12 and 13, (11.07.2007) by s. 14(2), commenced on enactment.
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 51, (11.07.2007), by *Roads Act 2007* (34/2007), s. 14(2), commenced on enactment.
- *Planning and Development Act 2000* (30/2000), s. 215 and Part XX, (11.07.2007) by *Roads Act 2007* (34/2007), s. 14(2), commenced on enactment.
- *Local Government Act 2001* (37/2001), ss. 81 and 245 (1.01.2002), by s. 1(3), S.I. No. 588 of 2001.
- *Roads (Amendment) Act 1998* (23/1998), excluding s. 7, (1.07.1998) by s. 9(2), commenced on enactment.
- *Roads Act 1993* (14/1993) (1.07.1998) by *Roads (Amendment) Act 1998* (23/1998), s. 9(2), commenced on enactment.

Application of Act restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(4), (5) and (6), commenced on enactment.

**Certain development approvals under Part XI of Planning and Development Act 2000.**

**22.— ...**

(4) Nothing in section 182C or any other provision of the Act of 2000 shall be read as meaning that, notwithstanding the permission granted under section 34 of the Act of 2000 in respect of that terminal before such commencement, a permission—

(a) under section 34 or 37G of the Act of 2000, and

(b) granted after the commencement of the amendments of that Act made by the Act of 2006,

is required, either in circumstances generally or in the circumstances referred to in subsection (5), in respect of the terminal referred to in subsection (6).

(5) The circumstances mentioned in subsection (4) are that an application is made under section 182C in relation to a development which, if it is carried out, will consist of the alteration or modification of the terms of the strategic gas infrastructure development referred to in subsection

(6) other than the terms of that development that comprise the terminal referred to in that subsection.

(6) The terminal mentioned in subsections (4) and (5) is a terminal comprised in a strategic gas infrastructure development (within the meaning of the Act of 2000) the pipeline comprised in which development has been the subject of a consent referred to in subsection (3)(iii)(l).

- C3** Application of Act retracted by *Environmental Protection Agency Act 1992* (7/1992), s. 99F(1) as substituted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 15, S.I. No. 393 of 2004.

**Application of other Acts.**

**99F.**—(1) Notwithstanding section 34 of the Act of 2000, or any other provision of that Act, where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under section 34 of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of—

- (a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or
- (b) controlling emissions related to or following the cessation of the operation of the activity.

...

- C4** Powers and functions in relation to Act transferred (10.07.2002) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 356 of 2002), arts. 3, 4(1) and sch. part 1.

3. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 4 of this Order are transferred to the Department of the Environment and Local Government.

(2) References to the Department of Community, Rural and Gaeltacht Affairs contained in any Act or instrument made thereunder and relating to any administration and business transferred by paragraph (1) of this Article shall, on and after the commencement of this Order, be construed as references to the Department of the Environment and Local Government.

4. (1) The functions vested in the Minister for Community, Rural and Gaeltacht Affairs —

- (a) by or under any of the instruments or the provisions of the enactments mentioned in Part 1 of the Schedule to this Order,
- (b) under the Regulations mentioned in Part 2 of that Schedule, and ...

are transferred to the Minister for the Environment and Local Government.

...

Schedule Part 1

Enactments and provisions of enactments, functions under which are transferred from the Minister for Community, Rural and Gaeltacht Affairs to the Minister for the Environment and Local Government

...

Planning and Development Act 2000 (No. 30 of 2000) (in so far as it relates to or refers to the Minister for Community, Rural and Gaeltacht Affairs (except section 33 (3)(c)))

...

Part 2

Regulations, functions under which are transferred from the Minister for Community, Rural and Gaeltacht Affairs to the Minister for the Environment and Local Government

Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 ) (in so far as they relate to or refer to the Minister for Community, Rural and Gaeltacht Affairs (except Article 28 (1)(n) Article 82 (3)(m), Article 121 (1)(m) and Article 179 (2)(p)))

...

- C5** Application of Act restricted (23.12.2001) by *Transport (Railway Infrastructure) Act 2001* (55/2001), s. 39(4), commenced on enactment.

**Environmental impact statement.**

**39.— ...**

(4) The European Communities (Environmental Impact Assessment) Regulations, 1989 to 2000, and the Local Government (Planning and Development) Regulations, 1994 to 2000, and the Act of 2000 and any regulation made thereunder in relation to environmental impact assessment shall not apply to anything done under an order made under this Act.

**Editorial Notes:**

- E1** Provision made (12.07.2004) to ensure measures are taken to secure appropriate provision for the management of waste by planning authorities and An Bord Pleanála in performing their functions under collectively cited *Planning and Development Acts 2000 to 2002* by *Waste Management Act 1996* (10/1996), s. 10D as inserted by *Protection of the Environment Act 2003* (27/2003), s. 26, S.I. No. 393 of 2004.
- E2** Functions under Act made subject to presumption of corruption (9.07.2001) by *Prevention of Corruption (Amendment) Act 2001* (27/2001), s. 4(1) and (2)(c), commenced on enactment.

## PART I

### PRELIMINARY AND GENERAL

Short title. **1.—** This Act may be cited as the Planning and Development Act, 2000.

**F1** [Legal acts of the European Union given effect to by this Act.

**1A.—** Effect or further effect, as the case may be, is given by this Act to an act specified in the Table to this section, adopted by an institution of the European Union or, where appropriate, to part of such an act.

#### TABLE

Council Directive 75/440 EEC of 16 June 1975<sup>1</sup> concerning the quality required of surface water intended for the abstraction of drinking water in the Member States

Council Directive 79/409/EEC of 2 April 1979<sup>2</sup> on the conservation of wild birds

Environmental Impact Assessment Directive

Council Directive 91/271/EEC of 21 May 1991<sup>3</sup> concerning urban waste-water treatment

Habitats Directive

Major Accidents Directive

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000<sup>4</sup> establishing a framework for Community action in the field of water policy

<sup>1</sup> O.J. No. L194, 25.7.1975 p. 26-31

<sup>2</sup> O.J. No. L103, 25.4.1979 p. 1-18

<sup>3</sup> O.J. No. L135, 30.5.1991 p. 40-52

<sup>4</sup> O.J. No. L327, 22.12.2000 p. 1

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001<sup>5</sup> on the assessment of the effects of certain plans and programmes on the environment

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003<sup>6</sup> on public access to environmental information and repealing Council Directive 90/313/EC

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003<sup>7</sup> providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006<sup>8</sup> on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community

Birds Directive]

#### Annotations

#### Amendments:

- F1** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 3, S.I. No. 405 of 2010.

Interpretation. **2.—** (1) In this Act, except where the context otherwise requires—

“acquisition of land” shall be construed in accordance with *section 213(2)*, and cognate words shall be construed accordingly;

“the Act of 1919” means the Acquisition of Land (Assessment of Compensation) Act, 1919;

“the Act of 1934” means the Town and Regional Planning Act, 1934;

“the Act of 1963” means the Local Government (Planning and Development) Act, 1963;

“the Act of 1976” means the Local Government (Planning and Development) Act, 1976;

“the Act of 1982” means the Local Government (Planning and Development) Act, 1982;

“the Act of 1983” means the Local Government (Planning and Development) Act, 1983;

“the Act of 1990” means the Local Government (Planning and Development) Act, 1990;

“the Act of 1992” means the Local Government (Planning and Development) Act, 1992;

<sup>5</sup> O.J. No. L197, 21.7.2001 p. 30

<sup>6</sup> O.J. No. L41, 14.2.2003 p. 26

<sup>7</sup> O.J. No. L156, 25.6.2003 p. 17

<sup>8</sup> O.J. No. L64 4.3.2006 p. 52

“the Act of 1993” means the Local Government (Planning and Development) Act, 1993;

“the Act of 1998” means the Local Government (Planning and Development) Act, 1998;

“the Act of 1999” means the Local Government (Planning and Development) Act, 1999;

F2[‘Act of 2001’ means the Transport (Railway Infrastructure) Act 2001;

‘Act of 2006’ means the Planning and Development (Strategic Infrastructure) Act 2006;

‘Act of 2007’ means the Water Services Act 2007;

‘Act of 2008’ means the Dublin Transport Authority Act 2008;

‘Act of 2010’ means the Planning and Development (Amendment) Act 2010;]

F2[‘adaptation to climate change’ means the taking of measures to manage the impacts of climate change;]

“advertisement” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for the purpose of advertisement, announcement or direction;

“advertisement structure” means any structure which is a hoarding, scaffold, framework, pole, standard, device or sign (whether illuminated or not) and which is used or intended for use for exhibiting advertisements or any attachment to a building or structure used for advertising purposes;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

F2[‘allotment’ means an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family;]

“alteration” includes—

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

F2[‘anthropogenic’ in relation to greenhouse gas emissions means those emissions that result from or are produced by human activity or intervention;]

“appeal” means an appeal to the Board;

F2[‘appropriate assessment’ shall be construed in accordance with section 177R;]

“architectural conservation area” shall be construed in accordance with *section 81(1)*;

“area of special planning control” shall be construed in accordance with *section 85(8)*;

“attendant grounds”, in relation to a structure, includes land lying outside the curtilage of the structure;

F3[‘Birds Directive’ means Directive 2009/147/EC<sup>9</sup> of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds;]

“Board” means An Board Pleanála;

“chairperson” means the chairperson of the Board,

“Commissioners” means the Commissioners of Public Works in Ireland;

“company”, except in *section 149(5)*, means a company within the meaning of section 2 of the Companies Act, 1963, or a company incorporated outside the State;

F2[‘core strategy’ shall be construed in accordance with section 10 (inserted by section 7 of the Planning and Development (Amendment) Act 2010);]

F4[...]

“dangerous substance” has the meaning assigned to it by the Major Accidents Directive;

“deputy chairperson” means the deputy chairperson of the Board;

“development” has the meaning assigned to it by *section 3*, and “develop” shall be construed accordingly;

“development plan” means a development plan under *section 9(1)*;

F5[‘DTA’ means Dublin Transport Authority;]

F2[‘electronic form’ means information that is generated, communicated, processed, sent, received, recorded, stored or displayed by electronic means and is capable of being used to make a legible copy or reproduction of that communicated information but does not include information communicated in the form of speech and such electronic means includes electrical, digital, magnetic, optical electro-magnetic, biometric, photonic and any other form of related technology;]

“endangered” means exposed to harm, decay or damage, whether immediately or over a period of time, through neglect or through direct or indirect means;

“enforcement notice” means an enforcement notice under *section 154*;

F2[‘Environmental impact assessment’ has the meaning given to it by section 171A;

‘Environmental Impact Assessment Directive’ means F6[Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment];]

“environmental impact statement” means a statement of the effects, if any, which proposed development, if carried out, would have on the environment F7[and shall include the information specified in Annex IV of Council Directive No. 2011/92/EU];

F3[‘European site’ has the meaning given to it by section 177R of Part XAB;]

“exempted development” has the meaning specified in *section 4*;

“exhibit”, in relation to an advertisement, includes affix, inscribe, print, paint, illuminate and otherwise delineate;

“existing establishment” has the meaning that it has in the Major Accidents Directive;

“fence” includes a hoarding or similar structure but excludes any bank, wall or other similar structure composed wholly or mainly of earth or stone;

<sup>9</sup> O.J.No. 20, 26.1.2010 p 7-25

F2[‘flood risk assessment’ means an assessment of the likelihood of flooding, the potential consequences arising and measures, if any, necessary to manage those consequences;]

“functional area” means, in relation to a planning authority—

(a) in the case of the council of a county, its administrative county, excluding any borough or urban district,

(b) in the case of any other planning authority, its administrative area;

“functions” includes powers and duties;

“Gaeltacht” means the Gaeltacht within the meaning of the Ministers and Secretaries (Amendment) Act, 1956;

F5[‘Greater Dublin Area’ (‘GDA’) has the meaning assigned to it by *section 3* of the *Dublin Transport Authority Act 2008*;]

“habitable house” means a house which—

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied;

F3[‘Habitats Directive’ means Council Directive 92/43/EEC<sup>10</sup> of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, amended by Corrigendum to Council Directive 92/43/EEC<sup>11</sup> of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora amended by Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded<sup>12</sup>; Council Directive 97/62/EC<sup>13</sup> of 27 October 1997 adapting to technical and scientific progress Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded<sup>14</sup>, and Council Directive 2006/105/EC<sup>15</sup> of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania;]

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

F2[‘housing strategy’ means a strategy included in a development plan under *section 94*;]

<sup>10</sup> O.J.No.L206, 22.7.1992, p. 7

<sup>11</sup> O.J.No.L 176, 20.7.1993, p 29-30

<sup>12</sup> O.J. No. C241, 29.8.1994, p 21

<sup>13</sup> O.J.No.L305, 8.11.1997, p 42-65

<sup>14</sup> O.J. No. 236, 23.9.2003, p. 33

<sup>15</sup> O.J. No.L363, 20.12.2006, p 368-408 and O.J. L 059, 8.3.1996, p.63

“integrated pollution control licence” means a licence under Part IV of the Environmental Protection Agency Act, 1992;

“land” includes any structure and any land covered with water (whether inland or coastal);

F2[‘landscape’ has the same meaning as it has in Article 1 of the European Landscape Convention done at Florence on 20 October 2000;]

“local area plan” means a local area plan under *section 18*;

“local authority” means a local authority for the purposes of the Local Government Act, 1941;

“major accident” has the meaning assigned to it by the Major Accidents Directive;

F3[‘Major Accidents Directive’ means Council Directive 96/82/EC of 9 December 1996<sup>16</sup> amended by Directive 2003/105/EC of the European Parliament and Council of 16 December 2003<sup>17</sup>;]

“manager” means—

- (a) with respect to the corporation of a county borough, the manager for the purpose of the Acts relating to the management of the county borough, and
- (b) with respect to the council of a county, the corporation of a borough or an urban district council, the manager for the purposes of the County Management Acts, 1940 to 1994;

F8[“mine” means an excavation or system of excavations made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals;

“minerals” includes stone, slate, clay, gravel, sand and other natural deposits except peat;]

“Minister” means the Minister for the Environment and Local Government;

F9[‘National Spatial Strategy’ means the ‘National Spatial Strategy: 2002 – 2020’ published by the Government on 28 November 2002, or any document published by the Government which amends or replaces that Strategy;]

F2[‘Natura 2000 network’ has the meaning assigned to it by Article 3, paragraph 1 of the Habitats Directive;

‘Natura impact statement’ shall be construed in accordance with section 177T;

‘Natura impact report’ shall be construed in accordance with section 177T;]

“new establishment” has the meaning that it has in the Major Accidents Directive;

“occupier”, in relation to a protected structure or a proposed protected structure, means—

- (a) any person in or entitled to immediate use or enjoyment of the structure,
- (b) any person entitled to occupy the structure, and
- (c) any other person having, for the time being, control of the structure;

<sup>16</sup> O.J. No. L10, 14.1.1997 p. 13

<sup>17</sup> O.J.No. L345, 31.12.2003 p.97-105



F10[‘operator’ in relation to a quarry means a person who at all material times is in charge of the carrying on of quarrying activities at a quarry or under whose direction such activities are carried out;]

“ordinary member” means a member of the Board other than the chairperson;

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

“party to an appeal or referral” means the planning authority and any of the following persons, as appropriate—

- (a) the appellant,
- (b) the applicant for any permission in relation to which an appeal is made by another person (other than a person acting on behalf of the appellant),
- (c) in the case of a referral under *section 5*, the person making the referral, and any other person notified under *subsection (2)* of that section,
- (d) in the case of a referral under *section 34(5)*, the applicant for the permission which was granted,
- (e) in the case of a referral under *section 37(5)*, the person who made the application for permission which was returned by the planning authority,
- (f) any person served or issued by a planning authority with a notice or order, or copy thereof, under *sections 44, 45, 46, 88 and 207*,

F11[(ff) in the case of a referral under *section 57(8)*, the person making the referral,]

- (g) in the case of a referral under *section 96(5)*, a prospective party to an agreement under *section 96(2)*,
- (h) in the case of an appeal under *section 169*, the development agency,
- (i) in the case of a referral under *section 193*, the person by whom the application for permission for erection of the new structure was made,
- (j) the applicant for a licence under *section 254* in relation to which an appeal is made by another person (other than a person acting on behalf of the appellant),

and “party” shall be construed accordingly;

F12[‘permission’ means a permission granted under *section 34 or 37G*, as appropriate;]

“permission regulations” means regulations under *section 33, 172(2) or 174*;

F3[‘planning application’ means an application to a planning authority, or the Board, as the case may be, in accordance with permission regulations for permission for the development of land required by those regulations;]

“planning authority” means—

- (a) in the case of a county, exclusive of any borough or urban district therein, the council of the county,
- (b) in the case of a county or other borough, the corporation of the borough, and
- (c) in the case of an urban district, the council of the urban district,

and references to the area of the planning authority shall be construed accordingly and shall include the functional area of the authority;

“prescribed” means prescribed by regulations made by the Minister and “prescribe” shall be construed accordingly;

“proposed protected structure” means a structure in respect of which a notice is issued under *section 12(3)* or under *section 55* proposing to add the structure, or a specified part of it, to a record of protected structures, and, where that notice so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

“protected structure” means—

- (a) a structure, or
- (b) a specified part of a structure,

which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

“protection”, in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part;

“public place” means any street, road, seashore or other place to which the public have access whether as of right or by permission and whether subject to or free of charge;

“public road” has the same meaning as in the Roads Act, 1993;

F13[“quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—

- (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;
- (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;
- (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;
- (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.]

“record of protected structures” means the record included under *section 51* in a development plan;

F14[‘referral’ means a referral to the Board under *section 5, 34(5), 37(5), 57, 96(5) or 193(2);*]

“regional authority” means a body established in accordance with *section 43* of the Local Government Act, 1991;

“regional planning guidelines” means regional planning guidelines made under *Chapter III of Part II*;

“register” means the register kept under *section 7*;

F5[‘regional authorities within the GDA’ means the Dublin Regional Authority and the Mid-East Regional Authority;]

“registering authority” means a registering authority within the meaning of the Registration of Title Act, 1964;

“reserved function” means—

(a) with respect to the council of a county or an elective body for the purposes of the County Management Acts, 1940 to 1994, a reserved function for the purposes of those Acts, and

(b) with respect to the corporation of a county borough, a reserved function for the purposes of the Acts relating to the management of the county borough;

“risk” has the meaning assigned to it by the Major Accidents Directive;

“road” has the same meaning as in the Roads Act, 1993;

“seashore” has the same meaning as in the Foreshore Act, 1933;

F2[‘service connection’ has the meaning given to it by section 2 of the Act of 2007;

‘settlement hierarchy’ has the meaning given to it by section 10(2C) (inserted by section 7 of the Act of 2010);]

“shares” includes stock and “share capital” shall be construed accordingly;

“special amenity area order” means an order confirmed under *section 203*;

“State authority” means—

(a) a Minister of the Government, or

(b) the Commissioners;

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

F2[‘strategic development zone’ has the meaning given to it by section 165;]

F12[‘strategic downstream gas pipeline’ means any proposed gas pipeline, other than an upstream gas pipeline, which is designed to operate at 16 bar or greater, and is longer than 20 kilometres in length;

F2[‘strategic environmental assessment’ means an assessment carried out in accordance with regulations made under section 10(5), 13(12), 19(4), 23(3), or 168(3) as the case may be;]

‘strategic gas infrastructure development’ means any proposed development comprising or for the purposes of a strategic downstream gas pipeline or a strategic

upstream gas pipeline, and associated terminals, buildings and installations, whether above or below ground, including any associated discharge pipe;

‘strategic infrastructure development’ means—

- (a) any proposed development in respect of which a notice has been served under section 37B(4)(a),
- (b) any proposed development by a local authority referred to in section 175(1) or 226(6),
- F15[(c) any proposed development referred to in section 181A(1) which has been identified as likely to have significant effects on the environment in accordance with regulations made under section 176,]
- (d) any proposed development referred to in section 182A(1),
- (e) any proposed strategic gas infrastructure development referred to in section 182C(1),
- (f) any scheme or proposed road development referred to in section 215,
- (g) any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the *Planning and Development (Strategic Infrastructure) Act 2006*), or
- F16[(h) any compulsory acquisition of land referred to in section 214, 215A, 215B or 215C, being an acquisition related to development specified in any of the preceding paragraphs of this definition;]

‘Strategic Infrastructure Division’ means the division of the Board referred to in section 112A(1);

‘strategic upstream gas pipeline’ means so much of any gas pipeline proposed to be operated or constructed—

- (a) as part of a gas production project, or
- (b) for the purpose of conveying unprocessed natural gas from one or more than one such project to a processing plant or terminal or final coastal landing terminal,

as will be situate in the functional area or areas of a planning authority or planning authorities;]

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
  - (i) the interior of the structure,
  - (ii) the land lying within the curtilage of the structure,
  - (iii) any other structures lying within that curtilage and their interiors, and
  - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

F2[‘substitute consent’ has the meaning given to it by section 177A;]

“substratum of land” means any subsoil or anything beneath the surface of land required—

(a) for the purposes of a tunnel or tunnelling or anything connected therewith,  
or

(b) for any other purpose connected with a scheme within the meaning of the  
Roads Act, 1993;

“Transboundary Convention” means the United Nations Economic Commission for  
Europe Convention on Environmental Impact Assessment in a Transboundary Context,  
done at Espoo (Finland), on 25 February, 1991;

F5[‘transport strategy’ has the meaning assigned to it by section 12 of the Dublin  
Transport Authority Act 2008;]

“traveller” means a traveller within the meaning of section 2 of the Housing (Traveller  
Accommodation) Act, 1998;

“unauthorised development” means, in relation to land, the carrying out of any  
unauthorised works (including the construction, erection or making of any unauthorised  
structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of  
a permission for development granted under Part IV of the Act of 1963 or  
deemed to be such under section 92 of that Act F17[or under section 34 or  
37G of this Act], being a permission which has not been revoked, or which  
exists as a result of the carrying out of exempted development (within the  
meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October  
1964, being a use which is a material change in use of any structure or other land and  
being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963  
or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the  
Act of 1963 F17[or under section 34 or 37G of this Act], being a permission  
which has not been revoked, and which is carried out in compliance with that  
permission or any condition to which that permission is subject;

“unauthorised works” means any works on, in, over or under land commenced on or  
after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963  
or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the  
Act of 1963 F17[or under section 34 or 37G of this Act], being a permission  
which has not been revoked, and which is carried out in compliance with that  
permission or any condition to which that permission is subject;

“use”, in relation to land, does not include the use of the land by the carrying out of  
any works thereon;

“warning letter” means a notification in writing under section 152(1);

“waste licence” means a waste licence under Part V of the Waste Management Act,  
1996;

“works” includes any act or operation of construction, excavation, demolition,  
extension, alteration, repair or renewal and, in relation to a protected structure or  
proposed protected structure, includes any act or operation involving the application

or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

(2) In this Act—

(a) a reference to a section, Schedule, Chapter or Part is to a section, Schedule, Chapter or Part of this Act, unless it is indicated that reference to some other enactment is intended, and

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) In this Act, a reference to the carrying out of development on behalf of a State authority shall, where that authority is a Minister of the Government, be construed as including a reference to the carrying out of development by the Commissioners on behalf of the Minister.

(4) A reference in this Act to contravention of a provision includes, where appropriate, a reference to refusal or failure to comply with that provision.

(5) A reference in this Act to performance of functions includes a reference to the exercise of powers and the performance of duties.

(6) A reference in this Act to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) The doing of anything that is required under this Act to be done by resolution shall be a reserved function.

#### Annotations

##### Amendments:

- F2** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 4(c), S.I. No. 405 of 2010.
- F3** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 4(b), S.I. No. 405 of 2010.
- F4** Deleted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 4(a), S.I. No. 405 of 2010.
- F5** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 81, S.I. No. 574 of 2009.
- F6** Substituted (31.10.2012) by *European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012* (S.I. No. 419 of 2012), reg. 2(a)(i).
- F7** Inserted (31.10.2012) by *European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012* (S.I. No. 419 of 2012), reg. 2(a)(ii).
- F8** Inserted (15.11.2011) by *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011* (S.I. No. 584 of 2011), reg. 3.
- F9** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 6(a), S.I. No. 525 of 2006.
- F10** Inserted (15.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 16, S.I. No. 474 of 2011.
- F11** Inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 6(a), commenced on enactment.

- F12** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 6(b) and (c), S.I. No. 684 of 2006.
- F13** Substituted (15.11.2011) by *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011)*, reg. 3.
- F14** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002 (32/2002)*, s. 6(b), commenced on enactment.
- F15** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (S.I. No. 473 of 2011)*, reg. 3.
- F16** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009 (26/2009)*, s. 7(2)(a), commenced on enactment.
- F17** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 6(d), S.I. No. 684 of 2006.

**Editorial Notes:**

- E3** Previous affecting provision: definition of quarry inserted (15.09.2011) by *Environmental (Miscellaneous Provisions) Act 2011 (20/2011)*, s. 16, S.I. No. 474 of 2011; substituted as per F-note above.

Development.

**3.—(1)** In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Exempted development.

**4.—(1)** The following shall be exempted developments for the purposes of this Act—

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

(b) development by the council of a county in its functional area, exclusive of any borough or urban district;

(c) development by the corporation of a county or other borough in that borough;

- (d) development by the council of an urban district in that district;
  - (e) development consisting of the carrying out by the corporation of a county or other borough or the council of a county or an urban district of any works required for the construction of a new road or the maintenance or improvement of a road;
  - (f) development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;
  - (g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;
  - (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;
  - F18[(i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;]
  - F19[(ia) development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road) or works ancillary to such road development, where the road serves forests and woodlands;]
  - (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;
  - (k) development consisting of the use of land for the purposes of a casual trading area (within the meaning of the Casual Trading Act, 1995);
  - (l) development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced F19[or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.]
- (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—
- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or
  - (ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).



(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in *subsection (1)*, or

(b) development which, having regard to any regulations under *subsection (2)*, is exempted development for the purposes of this Act.

F18[(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.]

(5) Before making regulations under this section, the Minister shall consult with any other State authority where he or she or that other State authority considers that any such regulation relates to the functions of that State authority.

#### Annotations

#### Amendments:

**F18** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 17(a)(i) and (b), S.I. No. 474 of 2011, subject to transitional provision in s. 17(2).

**F19** Inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 17(a)(ii) and (iii), S.I. No. 474 of 2011, subject to transitional provision in s. 17(2).

#### Modifications (not altering text):

**C6** Application of Act restricted (23.12.2001) by *Transport (Railway Infrastructure) Act 2001* (55/2001), s. 38, commenced on enactment.

#### Exempted development.

**38.**—Each of the following shall be exempted development for the purposes of the Act of 2000—

(a) development consisting of the carrying out of railway works, including the use of the railway works or any part thereof for the purposes of the operation of a railway, authorised by the Minister and specified in a railway order or of any incidental or temporary works connected with such development;

(b) development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order.

**Editorial Notes:**

- E4** Power pursuant to section exercised (8.09.2011) by *Planning and Development (Amendment) (No. 2) Regulations 2011* (S.I. No. 454 of 2011).
- E5** Power pursuant to section exercised (10.07.2008) by *Planning and Development (Amendment) Regulations 2008* (S.I. No. 256 of 2008).
- E6** Power pursuant to section exercised (2.07.2008) by *Planning and Development Regulations 2008* (S.I. No. 235 of 2008).
- E7** Power pursuant to subs. (2) exercised (28.02.2007) by *Planning and Development Regulations 2007* (S.I. No. 83 of 2007).
- E8** Power pursuant to section exercised (14.07.2005) by *Planning and Development Regulations 2005* (S.I. No. 364 of 2005).
- E9** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E10** Previous affecting provision: similar amendments to those made by 2011 Act made by *Planning and Development (Amendment) Act 2010* (30/2010), s. 5, not commenced, subsequently repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Declaration and referral on development and exempted development.

**5.—(1)** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject to *paragraph (b)*, a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under *subsection (1)*, and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under *subsection (1)* to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.

(c) A planning authority may also request persons in addition to those referred to in *paragraph (b)* to submit information in order to enable the authority to issue the declaration on the question.

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under *subsection (2)(a)* may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

(b) Without prejudice to *subsection (2)*, in the event that no declaration is issued by the planning authority, any person who made a request under *subsection (1)* may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under *subsection (2)*.

(4) Notwithstanding *subsection (1)*, a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any partic-

ular case, is or is not development or is or is not exempted development to be decided by the Board.

(5) The details of any declaration issued by a planning authority or of a decision by the Board on a referral under this section shall be entered in the register.

(6) (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(b) The Board may charge a specified fee, not exceeding the cost of making the copy, for the purchase of a copy of the record referred to in *paragraph (a)*.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

(d) A copy of the said record shall, at the request of a member of a planning authority, be given to that member by the manager of the planning authority concerned.

(7) A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

F20[(8)(a) The Minister for Arts, Heritage and the Gaeltacht may apply to the Board under this subsection, without charge, for a determination as to whether an activity requiring the consent of that Minister—

(i) F21[pursuant to a notification under Regulation 4(2) of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) or pursuant to a direction under Regulation 28(1) or 29(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011)] or under regulations made under the European Communities Act 1972 for the purpose of giving further effect to the Birds Directive or the Habitats Directive by designating a site as a special area of conservation or as a special protection area, or

(ii) under section 19 of the Wildlife (Amendment) Act 2000,

comprises development which is not exempted development, and the Board shall make such determination as soon as may be and shall inform that Minister of its determination and the reasons for the determination.

(b) An application from the Minister for Arts, Heritage and the Gaeltacht under this subsection shall include the following:

(i) a copy of the application for consent;

(ii) any other relevant information submitted with the application for consent;

(iii) the reasons why that Minister considers that the activity may not be exempted development;

(iv) the opinion of that Minister as to whether an appropriate assessment is required, and the reasons for that opinion;

(v) the opinion of that Minister as to whether the development is likely to have significant effects on a European site or an area designated as a Natural Heritage Area under section 18 of the Wildlife (Amendment) Act 2000 and the reasons for that opinion, having regard to the purposes for which the site was designated.

(c) The Board may seek additional information from—

(i) the applicant for consent, or

(ii) the Minister for Arts, Heritage and the Gaeltacht,

and where this is not provided within the period specified, or any further period as may be specified by the Board, the Board shall not make a determination on the matter and the application of that Minister under this subsection shall be deemed to be withdrawn and the Board shall inform that Minister accordingly.

(d) In paragraph (a)(i) “special area of conservation” and “special protection area” have the same meaning as they have in section 177R.]

#### Annotations

#### Amendments:

**F20** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 4.

**F21** Substituted (15.11.2011) by *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011* (S.I. No. 584 of 2011), reg. 4.

#### Editorial Notes:

**E11** Previous affecting provision: subs. (8)(a)(i) inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 4, amended as per F-note above.

Power of examination, investigation and survey. **6.**—A planning authority and the Board shall each have all such powers of examination, investigation and survey as may be necessary for the performance of their functions in relation to this Act or to any other Act.

Planning register. **7.**—(1) A planning authority shall keep a register for the purposes of this Act in respect of all land within its functional area, and shall make all such entries and corrections therein as may be appropriate in accordance with *subsection (2)*, and the other provisions of this Act and the regulations made under this Act.

(2) A planning authority shall enter in the register—

F22[(a) particulars of any application made to it under this Act for permission for development, for retention of development, for substitute consent including for leave to apply for substitute consent, or for outline permission for development (including the name and address of the applicant, the date of receipt of the application and brief particulars of the development or retention forming the subject of the application),]

F22[(b) where an environmental impact statement, remedial environmental impact statement, Natura impact statement or remedial Natura impact statement was submitted in respect of an application, an indication of this fact,

(bb) where applicable, the outcome of—

(i) a determination as to whether an environmental impact assessment is required, or

(ii) screening for appropriate assessment,]

(c) where a development, to which an application relates, comprises or is for the purposes of an activity in respect of which an integrated pollution control licence or a waste management licence is required, or a licence under the

- Local Government (Water Pollution) Act, 1977, is required in respect of discharges from the development, a statement as to that requirement,
- (d) where the development to which the application relates would materially affect a protected structure or is situated in an area declared to be an area of special amenity under *section 202*, an indication of this fact,
  - (e) the complete decision of the planning authority in respect of any such application, including any conditions imposed, and the date of the decision,
  - (f) the complete decision on appeal of the Board in respect of any such application, including any conditions imposed, and the date of the decision,
  - (g) where the requirements of *section 34(6)* in regard to the material contravention of the development plan have been complied with, a statement of this fact,
  - (h) particulars of any declaration made by a planning authority under *section 5* or any decision made by the Board on a referral under that section,
  - (i) particulars of any application made under *section 42* to extend the appropriate period of a permission,
  - (j) particulars of any decision to revoke or modify a permission in accordance with *section 44*,
  - (k) particulars under *section 45* of any order, of any decision on appeal or of any acquisition notice for compulsory acquisition of land for open space,
  - (l) particulars of any notice under *section 46* requiring removal or alteration of any structure, or requiring discontinuance of any use or the imposition of conditions on the continuance thereof, including the fact of its withdrawal, if appropriate,
  - (m) particulars of any agreement made under *section 47* for the purpose of restricting or regulating the development or use of the land,
  - (n) particulars of any declaration issued by the planning authority under *section 57*, including the details of any review of the declaration,
  - (o) particulars of any declaration issued by the planning authority under *section 87*, including the details of any review of the declaration,
  - (p) particulars of any notice under *section 88* in respect of land in an area of special planning control, including, where such notice is withdrawn, the fact of its withdrawal,
  - (q) particulars of any certificate granted under *section 97*,
  - (r) particulars of any warning letter issued under *section 152*, including the date of issue of the letter and the fact of its withdrawal, if appropriate,
  - (s) the complete decision made under *section 153* on whether an enforcement notice should issue, including the date of the decision,
- F23[(sa) particulars of any enforcement notice issued under section 177O;]
- (t) particulars of any enforcement notice issued under *section 154*, including the date of the notice and the fact of its withdrawal or that it has been complied with, if appropriate,
- F24[(tt) particulars of any development referred to in section 179(4)(b),]
- (u) particulars of any statement prepared under *section 188* concerning a claim for compensation under this Act,

- (v) particulars of any order under *section 205* requiring the preservation of any tree or trees, including the fact of any amendment or revocation of the order,
- (w) particulars of any agreement under *section 206* for the creation of a public right of way over land,
- (x) particulars of any public right of way created by order under *section 207*,
- F23[(xa) particulars of any notice given under *section 177B*, decision of the Board under *section 177D*, or *177K*, or direction served under *section 177J* or *177L*,]
- (y) particulars of any information relating to the operation of a quarry provided in accordance with *section 261*, and
- (z) any other matters as may be prescribed by the Minister.

(3) The planning authority shall make the entries and corrections as soon as may be after the receipt of any application, the making of any decision or agreement or the issue of any letter, notice or statement, as appropriate.

(4) The register shall incorporate a map for enabling a person to trace any entry in the register.

(5) The planning authority may keep the information on the register, including the map incorporated under *subsection (4)*, in a form in which it is capable of being used to make a legible copy or reproduction of any entry in the register.

(6) (a) The register shall be kept at the offices of the planning authority and shall be available for inspection during office hours.

(b) The Minister may prescribe additional requirements in relation to the availability for inspection by members of the public of the register.

(7) Every document purporting to be a copy of an entry in a register maintained by a planning authority under this section and purporting to be certified by an officer of the planning authority to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify or that he or she was such an officer, be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be a true copy of the entry and to be evidence of the terms of the entry.

(8) Evidence of an entry in a register under this section may be given by production of a copy thereof certified pursuant to this section and it shall not be necessary to produce the register itself.

(9) Where an application is made to a planning authority for a copy under this section, the copy shall be issued to the applicant on payment by him or her to the planning authority of the specified fee in respect of each entry.

#### Annotations

#### Amendments:

- F22** Substituted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 6(a) and (b), S.I. No. 475 of 2011.
- F23** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 6(c) and (d), S.I. No. 475 of 2011.
- F24** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 7, S.I. No. 525 of 2006.

Obligation to give information to local authority.

8.—(1) A local authority may, for any purpose arising in relation to its functions under this Act or any other enactment, by notice in writing require the occupier of any structure or other land or any person receiving, whether for himself or herself or for another, rent out of any structure or other land to state in writing to the authority, within a specified time not less than 2 weeks after being so required, particulars of the estate, interest, or right by virtue of which he or she occupies the structure or other land or receives the rent, as the case may be, and the name and address (so far as they are known to him or her) of every person who to his or her knowledge has any estate or interest in, or right over, or in respect of, the structure or other land.

(2) Every person who is required under this section to state in writing any matter or thing to a local authority and either fails so to state the matter or thing within the time appointed under this section or, when so stating any such matter or thing, makes any statement in writing which is to his or her knowledge false or misleading in a material respect, shall be guilty of an offence.

## PART II

### PLANS AND GUIDELINES

#### CHAPTER I

##### *Development Plans*

Obligation to make development plan.

9.—(1) Every planning authority shall every 6 years make a development plan.

(2) Subject to *subsection (3)*, a development plan shall relate to the whole functional area of the authority.

(3) (a) A planning authority which is a county borough corporation, a borough corporation or an urban district council may, with the agreement of one or more planning authorities which are adjoining county councils, or on the direction of the Minister shall, make a single development plan for the area and the environs of the county borough, borough or urban district, as the case may be.

(b) Where it is proposed to make a development plan under *paragraph (a)*, the planning authorities concerned shall make whatever arrangements they see fit to prepare the plan including the carrying out of the requirements of this Chapter as a joint function of the authorities concerned (and this Chapter shall be construed accordingly) except that where decisions are reserved to the members of the planning authorities concerned the decisions must be made by the members of each authority concerned subject to any agreement which those authorities may make for the resolution of differences between any such reserved decisions.

(4) In making a development plan in accordance with this Chapter, a planning authority shall have regard to the development plans of adjoining planning authorities and shall co-ordinate the objectives in the development plan with the objectives in the plans of those authorities except where the planning authority considers it to be inappropriate or not feasible to do so.

(5) In making a development plan in accordance with this Chapter, a planning authority shall take into account any significant likely effects the implementation of the plan may have on the area of any adjoining planning authority having regard in particular to any observations or submissions made by the adjoining authority.

(6) A development plan shall in so far as is practicable be consistent with such national plans, policies or strategies as the Minister determines relate to proper planning and sustainable development.

F25[(6A) Each planning authority within the GDA shall ensure that its development plan is consistent with the transport strategy of the DTA.]

(7) (a) The Minister may require 2 or more planning authorities to co-ordinate the development plans for their areas generally or in respect of specified matters and in a manner specified by the Minister.

(b) Any dispute between the planning authorities in question arising out of the requirement under *paragraph (a)* shall be determined by the Minister.

#### Annotations

#### Amendments:

**F25** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008 (15/2008)*, s. 82, S.I. No. 574 of 2009.

Content of development plans.

**10.**—(1) A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question.

F26[(1A) The written statement referred to in subsection (1) shall include a core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Spatial Strategy and regional planning guidelines.

(1B) A planning authority shall prepare a core strategy, other than where subsection (1C) applies, as soon as practicable and in any event not later than a period of one year after the making of regional planning guidelines under Chapter III which affect the area of the development plan, and shall accordingly vary the development plan under section 13 to include the core strategy.

(1C) Where a period of more than 4 years has expired since the making of the development plan when regional planning guidelines under Chapter III which affect the area of the development plan are made, the planning authority shall prepare a core strategy for inclusion in the new development plan under section 11 and 12.

(1D) The written statement referred to in subsection (1) shall also include a separate statement which shows that the development objectives in the development plan are consistent, as far as practicable, with the conservation and protection of the environment.]

(2) Without prejudice to the generality of *subsection (1)*, a development plan shall include objectives for—

(a) the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses), where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated;

F27[(b) the provision or facilitation of the provision of infrastructure including—  
(i) transport, energy and communication facilities,



- (ii) water supplies and waste water services (regard having been had to the water services strategic plan for the area made in accordance with the Water Services Act 2007),
  - (iii) waste recovery and disposal facilities (regard having been had to the waste management plan for the area made in accordance with the Waste Management Act 1996), and
  - (iv) any ancillary facilities or services;]
- (c) the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites which may be prescribed for the purposes of this paragraph;
- F26[(ca) the encouragement, pursuant to Article 10 of the Habitats Directive, of the management of features of the landscape, such as traditional field boundaries, important for the ecological coherence of the Natura 2000 network and essential for the migration, dispersal and genetic exchange of wild species;
- (cb) the promotion of compliance with environmental standards and objectives established—
- (i) for bodies of surface water, by the European Communities (Surface Waters) Regulations 2009;
  - (ii) for groundwater, by the European Communities (Groundwater) Regulations 2010;
- which standards and objectives are included in river basin management plans (within the meaning of Regulation 13 of the European Communities (Water Policy) Regulations 2003);]
- (d) the integration of the planning and sustainable development of the area with the social, community and cultural requirements of the area and its population;
- (e) the preservation of the character of the landscape where, and to the extent that, in the opinion of the planning authority, the proper planning and sustainable development of the area requires it, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest;
- (f) the protection of structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest;
- (g) the preservation of the character of architectural conservation areas;
- (h) the development and renewal of areas in need of regeneration;
- (i) the provision of accommodation for travellers, and the use of particular areas for that purpose;
- (j) the preservation, improvement and extension of amenities and recreational amenities;
- (k) the control, having regard to the provisions of the Major Accidents Directive and any regulations, under any enactment, giving effect to that Directive, of—
- (i) siting of new establishments,
  - (ii) modification of existing establishments, and

- (iii) development in the vicinity of such establishments,  
for the purposes of reducing the risk, or limiting the consequences, of a major accident;
- F28[(l) the provision, or facilitation of the provision, of services for the community including, in particular, schools, crèches and other education and childcare facilities;
- (m) the protection of the linguistic and cultural heritage of the Gaeltacht including the promotion of Irish as the community language, where there is a Gaeltacht area in the area of the development plan;
  - (n) the promotion of sustainable settlement and transportation strategies in urban and rural areas including the promotion of measures to—
    - (i) reduce energy demand in response to the likelihood of increases in energy and other costs due to long-term decline in non-renewable resources,
    - (ii) reduce anthropogenic greenhouse gas emissions, and
    - (iii) address the necessity of adaptation to climate change;in particular, having regard to location, layout and design of new development;
  - (o) the preservation of public rights of way which give access to seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, which public rights of way shall be identified both by marking them on at least one of the maps forming part of the development plan and by indicating their location on a list appended to the development plan, and
  - (p) landscape, in accordance with relevant policies or objectives for the time being of the Government or any Minister of the Government relating to providing a framework for identification, assessment, protection, management and planning of landscapes and developed having regard to the European Landscape Convention done at Florence on 20 October 2000.]
- F26[(2A) Without prejudice to the generality of subsection (1A), a core strategy shall—
- (a) provide relevant information to show that the development plan and the housing strategy are consistent with the National Spatial Strategy and regional planning guidelines,
  - (b) take account of any policies of the Minister in relation to national and regional population targets,
  - (c) in respect of the area in the development plan already zoned for residential use or a mixture of residential and other uses, provide details of—
    - (i) the size of the area in hectares, and
    - (ii) the proposed number of housing units to be included in the area,
  - (d) in respect of the area in the development plan proposed to be zoned for residential use or a mixture of residential and other uses, provide details of—
    - (i) the size of the area in hectares,
    - (ii) how the zoning proposals accord with national policy that development of land shall take place on a phased basis,
  - (e) provide relevant information to show that, in setting out objectives regarding retail development contained in the development plan, the planning

- authority has had regard to any guidelines that relate to retail development issued by the Minister under section 28,
- (f) in respect of the area of the development plan of a county council, set out a settlement hierarchy and provide details of—
- (i) whether a city or town referred to in the hierarchy is designated as a gateway or hub for the purposes of the National Spatial Strategy,
  - (ii) other towns referred to in the hierarchy,
  - (iii) any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to towns and cities referred to in the hierarchy,
  - (iv) any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets that apply to the areas or classes of areas not included in the hierarchy,
  - (v) projected population growth of cities and towns in the hierarchy,
  - (vi) aggregate projected population, other than population referred to in subparagraph (v), in—
    - (I) villages and smaller towns with a population of under 1,500 persons, and
    - (II) open countryside outside of villages and towns,
  - (vii) relevant roads that have been classified as national primary or secondary roads under section 10 of the Roads Act 1993 and relevant regional and local roads within the meaning of section 2 of that Act,
  - (viii) relevant inter-urban and commuter rail routes, and
  - (ix) where appropriate, rural areas in respect of which planning guidelines relating to sustainable rural housing issued by the Minister under section 28 apply,
- (g) in respect of the development plan of a city or a town council, provide details of—
- (i) the city or town centre concerned,
  - (ii) the areas designated for significant development during the period of the development plan, particularly areas for which it is intended to prepare a local area plan,
  - (iii) the availability of public transport within the catchment of residential or commercial development, and
  - (iv) retail centres in that city or town centre.

(2B) The information referred to in subparagraphs (vii) to (ix) of paragraph (f) and in paragraph (g) shall also be represented in the core strategy by a diagrammatic map or other such visual representation.

(2C) In subsection (2A)(f) 'settlement hierarchy' means a rank given by a planning authority to a city or town in the area of its development plan, with a population that exceeded 1,500 persons in the census of population most recently published before the making by the planning authority of the hierarchy, and given on the basis of—

- (a) its designation as a gateway city or town or as a hub town, as the case may be, under the National Spatial Strategy,

(b) the assessment by the planning authority of—

- (i) the proposed function and role of the city or town, which assessment shall be consistent with any regional planning guidelines in force, and
- (ii) the potential for economic and social development of the city or town, which assessment shall be in compliance with policy directives of the Minister issued under section 29, have regard to guidelines issued by the Minister under section 28, or take account of any relevant policies or objectives of the Government, the Minister or any other Minister of the Government, as the case may be.]

(3) Without prejudice to *subsection (2)*, a development plan may indicate objectives for any of the purposes referred to in the *First Schedule*.

(4) The Minister may prescribe additional objectives for the purposes of *subsection (2)* or for the purposes of the *First Schedule*.

F29[(5) The Minister may, for the purposes of giving effect to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (No. 2001/42/EC, O.J. No. L 197, 21 July 2001 P. 0030-0037), by regulations make provision in relation to consideration of the likely significant effects on the environment of implementing a development plan.]

F26[(5A) Where required, a strategic environmental assessment or an appropriate assessment of a draft development plan shall be carried out.]

(6) Where a planning authority proposes to include in a development plan any development objective the responsibility for the effecting of which would fall on another local authority, the planning authority shall not include that objective in the plan except after consultation with the other local authority.

(7) A development plan may indicate that specified development in a particular area will be subject to the making of a local area plan.

(8) There shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan.

F26[(9) Nothing in this section shall affect the existence or validity of any public right of way.

(10) No objective included in a development plan under this section shall be construed as affecting the power of a local authority to extinguish a public right of way under section 73 of the Roads Act 1993.]

#### Annotations

#### Amendments:

**F26** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 7(a), (b)(i), (c), (d) and (e), S.I. No. 477 of 2010.

**F27** Substituted (31.12.2007) by *Water Services Act 2007* (30/2007), s. 114(a), S.I. No. 846 of 2007.

**F28** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 7(b)(ii), S.I. No. 477 of 2010.

**F29** Substituted (14.07.2004) by *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No. 435 of 2004), reg. 4.

**Editorial Notes:**

- E12** Power pursuant to subs. (5) exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011).
- E13** Power pursuant to subs. (5) exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).
- E14** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Preparation of  
draft develop-  
ment plan.

**11.—(1)** Not later than 4 years after the making of a development plan, a planning authority shall give notice of its intention to review its existing development plan and to prepare a new development plan for its area.

**F30[(1A)]** The review of the existing development plan and preparation of a new development plan under this section by the planning authority shall be strategic in nature for the purposes of developing—

(a) the objectives and policies to deliver an overall strategy for the proper planning and sustainable development of the area of the development plan, and

(b) the core strategy,

and shall take account of the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.]

(2) A notice under *subsection (1)* shall be given to the Minister, any prescribed authorities, any adjoining planning authorities, the Board, any relevant regional authority and any town commissioners and city and county development boards within the functional area of the authority and shall be published in one or more newspapers circulating in the area to which the development plan relates and shall—

(a) state that the planning authority intends to review the existing development plan and to prepare a new development plan,

**F31[(b)]** indicate that submissions or observations regarding objectives and policies to deliver an overall strategy for the proper planning and sustainable development of the area of the development plan may be made in writing to the planning authority within a specified period (which shall not be less than 8 weeks),

(b) indicate that children, or groups or associations representing the interests of children, are entitled to make submissions or observations under paragraph (b),

(bc) state that the planning authority intends to review the zoning of the area of the development plan for the purposes referred to in subsection (1A)(a) and (b) and indicate that requests or proposals for zoning of particular land for any purpose shall not be considered at this stage.]

(c) indicate the time during which and the place or places where any background papers or draft proposals (if any) regarding the review of the existing plan and the preparation of the new development plan may be inspected.

(3) (a) As soon as may be after giving notice under this section of its intention to review a development plan and to prepare a new development plan, a planning authority shall take whatever additional measures it considers necessary to consult with the general public and other interested bodies.

(b) Without prejudice to the generality of *paragraph (a)*, a planning authority shall hold public meetings and seek written submissions regarding all or any

- aspect of the proposed development plan and may invite oral submissions to be made to the planning authority regarding the plan.
- (c) In addition to *paragraphs (a) and (b)*, a planning authority shall take whatever measures it considers necessary to consult with the providers of energy, telecommunications, transport and any other relevant infrastructure and of education, health, policing and other services in order to ascertain any long-term plans for the provision of the infrastructure and services in the area of the planning authority and the providers shall furnish the necessary information to the planning authority.
- (4) (a) Not later than 16 weeks after giving notice under *subsection (1)*, the manager of a planning authority shall prepare a report on any submissions or observations received under *subsection (2) or (3)* and the matters arising out of any consultations under *subsection (3)*.
- (b) A report under *paragraph (a)* shall—
- (i) list the persons or bodies who made submissions or observations under this section as well as any persons or bodies consulted by the authority,
- F31[(ii) summarise the issues raised in the submissions and during the consultations, where appropriate, but shall not refer to a submission relating to a request or proposal for zoning of particular land for any purpose.]
- (iii) give the opinion of the manager to the issues raised, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area, and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, and
- (iv) state the manager's recommendations on the policies to be included in the draft development plan.
- F32[(bb) In the case of each planning authority within the GDA, a report under *paragraph (a)* shall summarise the issues raised and the recommendations made by the DTA in a report prepared in accordance with section 31B and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the draft development plan.]
- F30[(bc) A report under *paragraph (a)* shall summarise the issues raised and recommendations made by the relevant regional authority in a report prepared in accordance with section 27A (inserted by *section 17 of the Act of 2010*) and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the draft development plan.]
- (c) A report under *paragraph (a)* shall be submitted to the members of the planning authority, or to a committee of the planning authority, as may be decided by the members of the authority, for their consideration.
- (d) Following the consideration of a report under *paragraph (c)*, the members of the planning authority or of the committee, as the case may be, may issue directions to the manager regarding the preparation of the draft development plan, F31[and any such directions shall be strategic in nature, consistent with the draft core strategy, and shall take account of] the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, and the manager shall comply with any such directions.
- (e) Directions under *paragraph (d)* shall be issued not later than 10 weeks after the submission of a report in accordance with *paragraph (c)*.

(f) In issuing directions under *paragraph (d)*, the members shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates.

(5) (a) The manager shall, not later than 12 weeks following the receipt of any directions under *subsection (4)(d)*, prepare a draft development plan and submit it to the members of the planning authority for their consideration.

(b) The members of a planning authority shall, as soon as may be, consider the draft development plan submitted by the manager in accordance with *paragraph (a)*.

(c) Where the draft development plan has been considered in accordance with *paragraph (b)*, it shall be deemed to be the draft development plan, unless, within 8 weeks of the submission of the draft development plan under *paragraph (a)*, the planning authority, by resolution, amends that draft development plan.

#### Annotations

##### Amendments:

**F30** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 8(a) and (c)(ii), S.I. No. 477 of 2010.

**F31** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 8(b), (c)(i) and (iii), S.I. No. 477 of 2010.

**F32** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 83, S.I. No. 574 of 2009.

##### Editorial Notes:

**E15** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E16** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).

**E17** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).

**E18** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E19** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E20** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000), revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Making of development plan.

**12.—(1)** Where the draft development plan has been prepared in accordance with *section 11*, the planning authority shall within 2 weeks of the period referred to in *section 11(5)(c)*—

(a) send notice and a copy of the draft development plan to the Minister, F33[**the Board, the relevant regional authority, the prescribed authorities**], any town commissioners in the area and any city or county development boards in the area, F34[... ] and

(b) publish notice of the preparation of the draft in one or more newspapers circulating in its area.

- (2) A notice under *subsection (1)* shall state that—
- (a) a copy of the draft may be inspected at a stated place or places and at stated times during a stated period of not less than 10 weeks (and the copy shall be kept available for inspection accordingly), and
  - (b) written submissions or observations with respect to the draft made to the planning authority within the stated period will be taken into consideration before the making of the plan.
- (3) (a) Where the draft includes any provision relating to any addition to or deletion from the record of protected structures, the planning authority shall serve on each person who is the owner or occupier of the proposed protected structure or the protected structure, as the case may be, a notice of the proposed addition or deletion, including the particulars.
- (b) A notice under *paragraph (a)* shall state—
- (i) that a copy of the proposed addition or deletion may be inspected at a stated place or places and at stated times during a stated period of not less than 10 weeks (and the copy shall be kept available for inspection accordingly),
  - (ii) that written submissions or observations with respect to the proposed addition or deletion made to the planning authority within the stated period will be taken into consideration before the making of the addition or deletion,
  - (iii) whether or not the proposed addition or deletion was recommended by the Minister for Arts, Heritage, Gaeltacht and the Islands, and
  - (iv) that, if the proposed addition or deletion was recommended by the Minister for Arts, Heritage, Gaeltacht and the Islands, the planning authority shall forward to that Minister for his or her observations a copy of any submission or observation made under *subparagraph (ii)* (and any such observations shall be taken into consideration accordingly).
- (4) (a) Not later than 22 weeks after giving notice under *subsection (1)* and, if appropriate, *subsection (3)*, the manager of a planning authority shall prepare a report on any submissions or observations received under *subsection (2)* or *(3)* and submit the report to the members of the authority for their consideration.
- (b) A report under *paragraph (a)* shall—
- (i) list the persons or bodies who made submissions or observations under this section,
  - F33[(ii) summarise the following from the submissions or observations made under this section:
    - (I) issues raised by the Minister; and
    - (II) thereafter, issues raised by other bodies or persons,]
  - (iii) give the response of the manager to the issues raised, taking account of any directions of the members of the authority or the committee under *section 11(4)*, the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives of the Government or of any Minister of the Government and, if appropriate, any observations made by the Minister for Arts, Heritage, Gaeltacht and the Islands under *subsection (3)(b)(iv)*.



F35[(bb) In the case of each planning authority within the GDA, a report under paragraph (a) shall summarise the issues raised and the recommendations made by the DTA in its written submission prepared in accordance with section 31C and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the development plan.]

F36[(bc) A report under paragraph (a) shall summarise the issues raised and recommendations made by the relevant regional authority in its written submission prepared in accordance with section 27B (inserted by section 18 of the Act of 2010) and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the development plan.]

(5) (a) The members of a planning authority shall consider the draft plan and the report of the manager under subsection (4).

F36[(aa) Following consideration of the draft plan and the report of the manager under paragraph (a) where a planning authority, after considering a submission of, or observation or recommendation from the Minister made to the authority under this section or from a regional authority made to the authority under section 27B, decides not to comply with any recommendation made in the draft plan and report, it shall so inform the Minister or regional authority, as the case may be, as soon as practicable by notice in writing which notice shall contain reasons for the decision.]

(b) The consideration of a draft plan and the manager's report under paragraph (a) shall be completed within 12 weeks of the submission of the manager's report to the members of the authority.

(6) Where, following the consideration of the draft development plan and the manager's report, it appears to the members of the authority that the draft should be accepted or amended, subject to subsection (7), they may, by resolution, accept or amend the draft and make the development plan accordingly.

F33[(7) (a) Subject to paragraphs (aa) and (ae) in a case where the proposed amendment would, if made, be a material alteration of the draft concerned, the planning authority shall, not later than 3 weeks after the passing of a resolution under subsection (6), publish notice of the proposed amendment in at least one newspaper circulating in its area and send notice and a copy of the proposed amendment to the Minister, the Board and the prescribed authorities.]

F36[(aa) The planning authority shall determine if a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, is or are required to be carried out as respects one or more than one proposed material alteration of the draft development plan.

(ab) The manager, not later than 2 weeks after a determination under paragraph (aa) shall specify such period as he or she considers necessary following the passing of a resolution under subsection (6) as being required to facilitate an assessment referred to in paragraph (aa).

(ac) The planning authority shall publish notice of the proposed material alteration, and where appropriate in the circumstances, the making of a determination that an assessment referred to in paragraph (aa) is required, in at least one newspaper circulating in its area.

(ad) The notice referred to in paragraph (ac) shall state—

(i) that a copy of the proposed material alteration and of any determination by the authority that an assessment referred to in paragraph (aa) is required may be inspected at a stated place or places and at stated times,

and on the authority's website, during a stated period of not less than 4 weeks (and that copies will be kept for inspection accordingly), and

(ii) that written submissions or observations with respect to the proposed material alteration or an assessment referred to in paragraph (aa) and made to the planning authority within a stated period shall be taken into account by the authority before the development plan is made.

(ae) The planning authority shall carry out an assessment referred to in paragraph (aa) of the proposed material alteration of the draft development plan within the period specified by the manager.]

F33[(b) A notice under paragraph (a) or (ac) (inserted by section 9 of the Act of 2010)] shall state that—

(i) a copy of the proposed amendment of the draft development plan may be inspected at a stated place and at stated times during a stated period of not less than 4 weeks (and the copy shall be kept available for inspection accordingly), and

(ii) written submissions or observations with respect to the proposed amendment of the draft made to the planning authority within the stated period shall be taken into consideration before the making of any amendment.

(8) (a) Not later than 8 weeks after giving notice under subsection (7), the manager of a planning authority shall prepare a report on any submissions or observations received under that subsection and submit the report to the members of the authority for their consideration.

(b) A report under paragraph (a) shall—

(i) list the persons or bodies who made submissions or observations under this section,

(ii) summarise the issues raised by the persons or bodies in the submissions,

(iii) give the response of the manager to the issues raised, taking account of the directions of the members of the authority or the committee under section 11(4), the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.

(9) (a) The members of a planning authority shall consider the amendment and the report of the manager under subsection (8).

(b) The consideration of the amendment and the manager's report under paragraph (a) shall be completed not later than 6 weeks after the submission of the manager's report to the members of the authority.

F33[(10) (a) The members of the authority shall, by resolution, having considered the manager's report, make the plan with or without the proposed amendment that would, if made, be a material alteration, except that where they decide to accept the amendment they may do so subject to any modifications to the amendments as they consider appropriate, which may include the making of a further modification to the alteration and paragraph (c) shall apply in relation to any further modification.]

(b) The requirements of subsections (7) to (9) shall not apply in relation to modifications made in accordance with paragraph (a).

F36[(c) A further modification to the alteration—

(i) may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,

(ii) shall not be made where it relates to—

(I) an increase in the area of land zoned for any purpose, or

(II) an addition to or deletion from the record of protected structures.]

(11) In making the development plan under *subsection (6) or (10)*, the members shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

(12) (a) Where a planning authority makes a development plan, it shall publish a notice of the making of the plan in at least one newspaper circulating in its area.

(b) A notice under this subsection shall state that a copy of the plan is available for inspection at a stated place or places (and the copy shall be kept available for inspection accordingly).

(c) In addition to the requirements of *paragraphs (a) and (b)*, a planning authority shall send a copy of the development plan to the Minister, the prescribed authorities, any adjoining planning authorities, the Board, any town commissioners and city and county development boards within its area.

(13) As soon as may be after making an addition to or a deletion from the record of protected structures under this section, a planning authority shall serve on the owner and on the occupier of the structure concerned a notice of the addition or deletion, including the particulars.

F33[(14) (a) Notwithstanding any other provision of this Part, where a planning authority fails to make a development plan within a period referred to in paragraph (b), the manager shall make the plan provided that so much of the plan as had been agreed by the members of the planning authority shall be included as part of the plan as made by the manager.

(b) The period referred to in paragraph (a) is—

(i) not more than 2 years from the giving of notice under section 11(1), or

(ii) where subsection (7)(aa) (inserted by *section 9 of the Act of 2010*) applies—

(I) not more than 2 years and 4 weeks, or

(II) if appropriate in the circumstances, such longer period than 2 years and 4 weeks as is specified under subsection (7)(ab) (inserted by *section 9 of the Act of 2010*) by the manager as being required to facilitate an assessment referred to in subsection (7)(aa).]

(15) When considering the draft development plan, or amendments thereto, a planning authority may invite such persons as it considers appropriate to make oral submissions regarding such plan or amendment.

(16) A person shall not question the validity of the development plan by reason only that the procedures as set out under *subsections (3) to (5) of section 11 and F37[subsections (1), (4), (5), (6), (7), (8) and (9)]* of this section were not completed within the time required under the relevant subsection.

(17) A development plan made under this section shall have effect 4 weeks from the day that it is made.

**Annotations****Amendments:**

- F33** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 9(a), (b)(i), (d)(i), (e)(i) and (f), S.I. No. 477 of 2010.
- F34** Deleted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(a), S.I. No. 458 of 2001.
- F35** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 84, S.I. No. 574 of 2009.
- F36** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 9(b)(ii), (c), (d)(ii), (d)(iii) and (e)(ii), S.I. No. 477 of 2010.
- F37** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 7, commenced on enactment.

**Modifications (not altering text):**

- C7** Functions in relation to making a recommendation to which subs. (3)(b)(iii) applies, and to making observations to which subs. (3)(b)(iv) applies, transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12(3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

## Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

## Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001);

...

**Editorial Notes:**

- E21** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).
- E22** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).
- E23** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).
- E24** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E25** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E26** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994* (17/1994), ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002).
- E27** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002).
- E28** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000), revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Variation of  
development  
plan.

**13.—(1)** A planning authority may at any time, for stated reasons, decide to make a variation of a development plan which for the time being is in force.

(2) Where a planning authority proposes to make a variation in a development plan, it shall—

(a) send notice and copies of the proposed variation of the development plan to the Minister, F38[the Minister for Arts, Heritage and the Gaeltacht,] F39[the Board, the relevant regional authority, and, where appropriate,] to any adjoining planning authority, the prescribed authorities, any town commissioners and city and county development boards within the area of the development plan,

(b) publish notice of the proposed variation of the development plan in one or more newspapers circulating in that area.

(3) A notice under subsection (2) shall state—

(a) the reason or reasons for the proposed variation,

(b) that a copy of the proposed variation may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks

- (and the copy of the draft variation shall be kept available for inspection accordingly), and
- (c) that written submissions or observations with respect to the proposed variation made to the planning authority within the said period will be taken into consideration before the making of the variation.
- (4) (a) Not later than 8 weeks after giving notice under *subsection (2)(b)*, the manager of a planning authority shall prepare a report on any submissions or observations received under that subsection and shall submit the report to the members of the authority for their consideration.
- (b) A report under *paragraph (a)* shall—
- (i) list the persons or bodies who made submissions or observations under this section,
- F39[(ii) summarise the following from the submissions or observations made under this section:
- (I) issues raised by the Minister, and
- (II) thereafter, issues raised by other bodies or persons,]
- (iii) give the response of the manager to the issues raised, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.
- F40[(bb) In the case of each planning authority within the GDA, a report under *paragraph (a)* shall summarise the issues raised and the recommendations made by the DTA in its written submission prepared in accordance with section 31D and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the proposed variation.]
- F41[(bc) A report under *paragraph (a)* shall summarise the issues raised and recommendations made by the relevant regional authority in its written submission prepared in accordance with section 27C (inserted by *section 19 of the Act of 2010*) and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the development plan.]
- (5) (a) The members of a planning authority shall consider the proposed variation and the report of the manager under *subsection (4)*.
- F41[(aa) Following consideration of the proposed variation and the report of the manager under *paragraph (a)* where a planning authority, after considering a submission of, or observation or recommendation from the Minister made to the authority under this section or from a regional authority made to the authority under section 27C, decides not to comply with any recommendation made in the proposed variation and report, it shall so inform the Minister or regional authority, as the case may be, as soon as practicable by notice in writing which notice shall contain reasons for the decision.]
- (b) The consideration of the variation and the manager's report under *paragraph (a)* shall be completed not later than 6 weeks after the submission of the manager's report to the members of the authority.
- F39[(6) (a) Subject to *paragraphs (aa)* and *(ae)*, the members of the authority, having considered the proposed variation and manager's report may, as they consider appropriate, by resolution, make the variation which would, if made, be a material alteration, with or without further modification or they may

refuse to make it and paragraph (c) shall apply in relation to any further modification.

(aa) The planning authority shall determine if a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, is or are required to be carried out as respects one or more than one proposed modification that would, if made, be a material alteration of the variation of the development plan.

(ab) The manager shall, not later than 2 weeks after a determination under paragraph (aa), specify such period as he or she considers necessary following the determination as being required to facilitate an assessment referred to in paragraph (aa).

(ac) The planning authority shall publish notice of the proposed material alteration, and where appropriate in the circumstances, the making of a determination that an assessment referred to in paragraph (aa) is required, in at least one newspaper circulating in its area.

(ad) The notice referred to in paragraph (ac) shall state—

(i) that a copy of the proposed material alteration and of any determination by the authority that an assessment referred to in paragraph (aa) is required may be inspected at a stated place or places and at stated times, and on the authority's website, during a stated period of not less than 4 weeks (and that copies will be kept for inspection accordingly), and

(ii) that written submissions or observations with respect to the proposed material alteration or an assessment referred to in paragraph (aa) and made to the planning authority within a stated period shall be taken into account by the authority before the variation of the development plan is made.

(ae) The planning authority shall carry out an assessment referred to in paragraph (aa) of the proposed material alteration of the draft development plan within the period specified by the manager.]

(b) The requirements of *subsections (2) to (5)* shall not apply in relation to modifications made in accordance with *paragraph (a)*.

F41[(c) A further modification to the variation—

(i) may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,

(ii) shall not be made where it refers to—

(I) an increase in the area of land zoned for any purpose, or

(II) an addition to or deletion from the record of protected structures.]

(7) In making a variation under this section, the members of the authority shall be restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

(8) (a) Where a planning authority makes a variation in a development plan, it shall publish a notice of the making of the variation in at least one newspaper circulating in its area.

(b) A notice under this subsection shall state that a copy of the development plan as varied is available for inspection at a stated place or places (and the copy shall be kept available for inspection accordingly).

(c) In addition to the requirements of *paragraphs (a) and (b)*, a planning authority shall send a copy of the variation to the Minister, F38[*the Minister for Arts, Heritage and the Gaeltacht,*] F39[*the Board, the relevant regional authority and,*] where appropriate, to the prescribed authorities, any adjoining planning authorities, any town commissioners and city and county development boards within its area.

(9) When considering a variation of a development plan in accordance with this section, a planning authority may invite such persons as it considers appropriate to make oral submissions regarding the variation.

(10) A person shall not question the validity of a variation in a development plan by reason only that the procedures as set out in this section were not completed within the time required.

(11) A variation made to a development plan shall have effect from the day that the variation is made.

F42[*(12) The Minister may, for the purposes of giving effect to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (No. 2001/42/EC, O.J. No. L 197, 21 July 2001 P. 0030 - 0037), by regulations make provision in relation to consideration of the likely significant effects on the environment of implementing a variation of a development plan.*]

F43[*(13) An appropriate assessment of a draft variation of a development plan shall be carried out in accordance with Part XAB.*]

#### Annotations

##### Amendments:

- F38** Inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011 (20/2011)*, s. 18, S.I. No. 474 of 2011.
- F39** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 10(a), (b)(i), (d)(i) and (e), S.I. No. 477 of 2010.
- F40** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008 (15/2008)*, s. 85, S.I. No. 574 of 2009.
- F41** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 10(b)(ii), (c) and (d)(ii), S.I. No. 477 of 2010.
- F42** Inserted (14.07.2004) by *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004)*, reg. 5.
- F43** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 10(f), S.I. No. 475 of 2011.

##### Editorial Notes:

- E29** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011 (S.I. No. 476 of 2011)*.
- E30** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011 (S.I. No. 262 of 2011)*.
- E31** Power pursuant to subs. (12) exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011 (S.I. No. 201 of 2011)*.



- E32** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).
- E33** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E34** Power pursuant to subs. (12) exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).
- E35** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E36** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000), revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Public rights of way in development plans.

**14.—(1)** Where a planning authority proposes to include, for the first time, a provision in a development plan relating to the preservation of a specific public right of way, it shall serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists.

(2) A notice served under *subsection (1)* shall state that—

- (a) the planning authority proposes to include a provision in the development plan relating to the preservation of the public right of way,
- (b) written submissions or observations regarding the proposal may be made to the planning authority within a stated period of not less than 6 weeks and that the submissions or observations will be taken into consideration by the planning authority, and
- (c) where, following consideration of any submissions or observations received under *paragraph (b)*, the planning authority considers that the provision should be adopted, or adopted subject to modifications, a right of appeal to the Circuit Court exists in relation to such provision.

(3) The members of a planning authority, having considered the proposal and any submissions or observations made in respect of it, may, by resolution as they consider appropriate, recommend the inclusion of the provision in the development plan, with or without modifications, or may recommend against its inclusion and any person on whom notice has been served under *subsection (1)* shall be notified of the recommendation accordingly and a copy of such notice shall be published in at least one newspaper circulating in the area.

(4) Any person who has been notified of the recommendation of the planning authority under *subsection (3)* may, before the expiration of the 21 days next following the notification, appeal to the Circuit Court against the inclusion in the development plan of the proposed provision, and the Court, if satisfied that no public right of way exists, shall so declare and the provision shall accordingly not be included.

(5) (a) The taking of an appeal under *subsection (4)* shall not prejudice the making of a development plan under *section 12* except in regard to the inclusion of the proposed provision which is before the Court.

(b) Where a development plan has been made under *section 12* and the Court, having considered an appeal under *subsection (4)*, decides that the public right of way exists, the proposed provision under this section shall be deemed to be part of the development plan.

(6) Where any existing development plan contains any provision relating to the preservation of a public right of way, the provision may be included in any subsequent development plan without the necessity to comply with this section.

(7) (a) Nothing in this section shall affect the existence or validity of any public right of way which is not included in the development plan.

(b) The inclusion of a public right of way in a development plan shall be evidence of the existence of such a right unless the contrary is shown.

General duty of planning authority to secure objectives of development plan.

**15.—**(1) It shall be the duty of a planning authority to take such steps within its powers as may be necessary for securing the objectives of the development plan.

(2) The manager of a planning authority shall, not more than 2 years after the making of a development plan, give a report to the members of the authority on the progress achieved in securing the objectives referred to in *subsection (1)*.

Copies of development plans.

**16.—**(1) A planning authority shall make available for inspection and purchase by members of the public copies of a development plan and of variations of a development plan and extracts therefrom.

(2) A planning authority shall make available for inspection and purchase by members of the public copies of a report of a manager of a planning authority prepared under *sections 11(4), 12(4) and (8) and 13(4)* and extracts therefrom.

(3) Copies of the development plan and of variations of a development plan and reports of the manager referred to in *subsection (2)* and extracts therefrom shall be made available for purchase on payment of a specified fee not exceeding the reasonable cost of making a copy.

Evidence of development plans.

**17.—**(1) A document purporting to be a copy of a part or all of a development plan and to be certified by an officer of a planning authority as a correct copy shall be evidence of the plan or part, unless the contrary is shown, and it shall not be necessary to prove the signature of the officer or that he or she was in fact such an officer.

(2) Evidence of all or part of a development plan may be given by production of a copy thereof certified in accordance with this subsection and it shall not be necessary to produce the plan itself.

## CHAPTER II

### *Local Area Plans*

Local area plans.

**18.—**(1) F44[Subject to section 19(2B) (inserted by section 12 of the Act of 2010) a planning authority may at any time], and for any particular area within its functional area, prepare a local area plan in respect of that area.

(2) Two or more planning authorities may co-operate in preparing a local area plan in respect of any area which lies within the combined functional area of the authorities concerned.

(3) (a) When considering an application for permission under *section 34*, a planning authority, or the Board on appeal, shall have regard to the provisions of any local area plan prepared for the area to which the application relates, and the authority or the Board may also consider any relevant draft local plan which has been prepared but not yet made in accordance with *section 20*.

(b) When considering an application for permission, a planning authority, or the Board on appeal, shall also have regard to any integrated area plan (within

the meaning of the Urban Renewal Act, 1998) for the area to which the application relates.

(4) (a) A local area plan prepared under this section shall indicate the period for which the plan is to remain in force.

(b) A local area plan may remain in force in accordance with *paragraph (a)* notwithstanding the variation of a development plan or the making of a new development plan affecting the area to which the local area plan relates except that, where any provision of a local area plan conflicts with the provisions of the development plan as varied or the new development plan, the provision of the local area plan shall cease to have any effect.

(5) F44[Subject to section 19(2B) (inserted by section 12 of the Act of 2010) a planning authority may at any time] amend or revoke a local area plan.

(6) A planning authority may enter into an arrangement with any suitably qualified person or local community group for the preparation, or the carrying out of any aspect of the preparation, of a local area plan.

#### Annotations

#### Amendments:

**F44** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 11, S.I. No. 477 of 2010.

Application and content of local area plans.

**19.—**(1) (a) A local area plan may be prepared in respect of any area, including a Gaeltacht area, or an existing suburb of an urban area, which the planning authority considers suitable and, in particular, for those areas which require economic, physical and social renewal and for areas likely to be subject to large scale development within the lifetime of the plan.

(b) A local area plan shall be made in respect of an area which—

(i) is designated as a town in the most recent census of population, other than a town designated as a suburb or environs in that census,

(ii) has a population in excess of F45[5,000], and

(iii) is situated within the functional area of a planning authority which is a county council.

F46[(bb) Notwithstanding paragraph (b), a local area plan shall be made in respect of a town with a population that exceeded 1,500 persons (in the census of population most recently published before a planning authority makes its decision under subparagraph (i)) except where—

(i) the planning authority decides to indicate objectives for the area of the town in its development plan under section 10(2), or

(ii) a local area plan has already been made in respect of the area of the town or objectives for that area have already been indicated in the development plan under section 10(2).]

F45[(c) Subject to paragraphs (d) and (e), notwithstanding section 18(5), a planning authority shall send a notice under section 20(3)(a)(i) of a proposal to make, amend or revoke a local area plan and publish a notice of the proposal under section 20(3)(a)(ii) at least every 6 years after the making of the previous local area plan.

- (d) Subject to paragraph (e), not more than 5 years after the making of the previous local area plan, a planning authority may, as they consider appropriate, by resolution defer the sending of a notice under section 20(3)(a)(i) and publishing a notice under section 20(3)(a)(ii) for a further period not exceeding 5 years.
- (e) No resolution shall be passed by the planning authority until such time as the members of the authority have:
- (i) notified the manager of the decision of the authority to defer the sending and publishing of the notices, giving reasons therefor, and
  - (ii) sought and obtained from the manager—
    - (I) an opinion that the local area plan remains consistent with the objectives and core strategy of the relevant development plan,
    - (II) an opinion that the objectives of the local area plan have not been substantially secured, and
    - (III) confirmation that the sending and publishing of the notices may be deferred and the period for which they may be deferred.
- (f) Notification of a resolution under paragraph (d) shall be published by the planning authority in a newspaper circulating in the area of the local area plan not later than 2 weeks after the resolution is passed and notice of the resolution shall be made available for inspection by members of the public during office hours of the planning authority and made available in electronic form including by placing the notice on the authority's website.]

F47[(2) A local area plan shall be consistent with the objectives of the development plan F46[, its core strategy, and any regional planning guidelines that apply to the area of the plan] and shall consist of a written statement and a plan or plans which may include—

- (a) objectives for the zoning of land for the use solely or primarily of particular areas for particular purposes, or
- (b) such other objectives in such detail as may be determined by the planning authority for the proper planning and sustainable development of the area to which it applies, including F46[the objective of development of land on a phased basis and,] detail on community facilities and amenities and on standards for the design of developments and structures.]

F48[(2A) Each planning authority within the GDA shall ensure that its local area plans are consistent with the transport strategy of the DTA.]

F46[(2B) Where any objective of a local area plan is no longer consistent with the objectives of a development plan for the area, the planning authority shall as soon as may be (and in any event not later than one year following the making of the development plan) amend the local area plan so that its objectives are consistent with the objectives of the development plan.]

(3) The Minister may provide in regulations that local area plans shall be prepared in respect of certain classes of areas or in certain circumstances and a planning authority shall comply with any such regulations.

F49[(4) The Minister may, for the purposes of giving effect to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (No. 2001/42/EC, O.J. No. L 197, 21 July 2001 P. 0030 - 0037), by regulations make provision in relation to consideration of the likely significant effects on the environment of implementing a local area plan.]

F50[(5) An appropriate assessment of a draft local area plan shall be carried out in accordance with Part XAB.

(6) There shall be no presumption in law that any land zoned in a particular local area plan shall remain so zoned in any subsequent local area plan.]

#### Annotations

##### Amendments:

- F45** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 12(a)(i) and (iii), S.I. No. 477 of 2010.
- F46** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 12(a)(ii), (b) and (c), S.I. No. 477 of 2010.
- F47** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 8, commenced on enactment.
- F48** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 86, S.I. No. 574 of 2009.
- F49** Substituted (14.07.2004) by *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No. 435 of 2004), reg. 6.
- F50** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 12(d), S.I. No. 475 of 2011.

##### Editorial Notes:

- E37** Power pursuant to subs. (4) exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011).
- E38** Power pursuant to subs. (4) exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).

Consultation and adoption of local area plans.

**20.**—(1) A planning authority shall take whatever steps it considers necessary to F51[consult the Minister and the public before] preparing, amending or revoking a local area plan including consultations with any local residents, public sector agencies, non-governmental agencies, local community groups and commercial and business interests within the area.

(2) A planning authority shall consult údarás na Gaeltachta before making, amending or revoking a local area plan under *subsection (3)* for an area which includes a Gaeltacht area.

(3) (a) The planning authority shall, as soon as may be after consideration of any matters arising out of consultations under *subsections (1)* or *(2)* but before making, amending or revoking a local area plan—

(i) send notice of the proposal to make, amend or revoke a local area F51[plan to the Minister, the Board] and to the prescribed authorities (and, where applicable, it shall enclose a copy of the proposed plan or amended plan),

(ii) publish a notice of the proposal in one or more newspapers circulating in its area.

(b) A notice under *paragraph (a)* shall state—

(i) that the planning authority proposes to make, amend or revoke a local area plan,

- (ii) that a copy of the proposal to make, amend or revoke the local area plan and (where appropriate) the proposed local area plan, or proposed amended plan, may be inspected at such place or places as are specified in the notice during such period as may be so stated (being a period of not less than 6 weeks),
- (iii) that submissions or observations in respect of the proposal made to the planning authority during such period will be taken into consideration in deciding upon the proposal.
- F52[(iv) that children, or groups or associations representing the interests of children, are entitled to make submissions or observations under subparagraph (iii).]
- (c) (i) Not later than 12 weeks after giving notice under *paragraph (b)*, the manager of a planning authority shall prepare a report on any submissions or observations received pursuant to a notice under that paragraph and shall submit the report to the members of the planning authority for their consideration.
- (ii) A report under *subparagraph (i)* shall—
- (I) list the persons who made submissions or observations,
  - (II) summarise the issues raised by the persons in the submissions or observations,
  - (III) contain the opinion of the manager in relation to the issues raised, and his or her recommendations in relation to the proposed local area plan, amendment to a local area plan or revocation of a local area plan, as the case may be, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.
- F53[(cc) In the case of each planning authority within the GDA, a report under subparagraph (c)(i) shall summarise the issues raised and the recommendations made by the DTA in a report prepared in accordance with section 31E and outline the recommendations of the manager in relation to the manner in which those issues and recommendations should be addressed in the proposed local area plan.]
- F54[(d) (i) The members of a planning authority shall consider the proposal to make, amend or revoke a local area plan and the report of the manager under paragraph (c).
- (ii) Following consideration of the manager's report under subparagraph (i), the local area plan shall be deemed to be made, amended or revoked, as appropriate, in accordance with the recommendations of the manager as set out in his or her report, 6 weeks after the furnishing of the report to all the members of the authority, unless the planning authority, by resolution—
- F51[(I) subject to paragraphs (e) to (r), decides to make or amend the plan otherwise than as recommended in the manager's report, or]
- (II) decides not to make, amend or revoke, as the case may be, the plan.
- F51[(e) Where, following consideration of the manager's report, it appears to the members of the authority that the draft local area plan should be altered, and the proposed alteration would, if made be a material alteration of the draft local area plan concerned, subject to paragraphs (f) and (j), the planning authority shall, not later than 3 weeks after the passing of a resolution under

- paragraph (d)(ii) (inserted by section 9 of the Act of 2002), publish notice of the proposed material alteration in one or more newspapers circulating in its area, and send notice of the proposed material alteration to the Minister, the Board and the prescribed authorities (enclosing where the authority considers it appropriate a copy of the proposed material alteration).
- (f) The planning authority shall determine if a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, is or are required to be carried out as respects one or more than one proposed material alteration of the draft local area plan.
- (g) The manager shall, not later than 2 weeks after a determination under paragraph (f) specify such period as he or she considers necessary following the passing of a resolution under paragraph (d)(ii) as being required to facilitate an assessment referred to in paragraph (f).
- (h) The planning authority shall publish notice of the proposed material alteration, and where appropriate in the circumstances, the making of a determination that an assessment referred to in paragraph (f) is required, in at least one newspaper circulating in its area.
- (i) The planning authority shall cause an assessment referred to in paragraph (f) to be carried out of the proposed alteration of the local area plan within the period specified by the manager.
- (j) A notice under paragraph (e) or (h) as the case may be shall state that—
- (i) a copy of the proposed material alteration of the draft local area plan may be inspected at a stated place and at stated times during a stated period of not less than 4 weeks (and the copy shall be kept available for inspection accordingly), and
  - (ii) written submissions or observations with respect to the proposed material alteration of the draft local area plan may be made to the planning authority within the stated period and shall be taken into consideration before the making of any material alteration.
- (k) Not later than 8 weeks after publishing a notice under paragraph (e) or (h) as the case may be, or such period as may be specified by the manager under paragraph (g), the manager shall prepare a report on any submissions or observations received pursuant to a notice under that paragraph and submit the report to the members of the authority for their consideration.
- (l) A report under paragraph (k) shall—
- (i) list the persons who made submissions or observations under paragraph (j)(ii),
  - (ii) summarise the issues raised by the persons in the submissions or observations,
  - (iii) contain the opinion of the manager in relation to the issues raised, and his or her recommendations in relation to the proposed material alteration to the draft local area plan, including any change to the proposed material alteration as he or she considers appropriate, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.
- (m) The members of the authority shall consider the proposed material alteration of the draft local area plan and the report of the manager under paragraph (k).

- (n) Following consideration of the manager's report under paragraph (m), the local area plan shall be made or amended as appropriate by the planning authority by resolution no later than a period of 6 weeks after the report has been furnished to all the members of the authority with all, some or none of the material alterations as published in accordance with paragraph (e) or (h) as the case may be.
- (o) Where the planning authority decides to make or amend the local area plan or change the material alteration of the plan by resolution as provided in paragraph (n)—
- (i) paragraph (p) shall apply in relation to the making of the resolution, and
- (ii) paragraph (q) shall apply in relation to any change to the material alteration proposed.
- (p) It shall be necessary for the passing of the resolution referred to in paragraph (n) that it shall be passed by not less than half of the members of the planning authority and the requirements of this paragraph are in addition to, and not in substitution for, any other requirements applying in relation to such a resolution.
- (q) A further modification to the material alteration—
- (i) may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,
- (ii) shall not be made where it refers to—
- (I) an increase in the area of land zoned for any purpose, or
- (II) an addition to or deletion from the record of protected structures.
- (r) When performing their functions under this subsection, the members of the planning authority shall be restricted to considering the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.]]

(4) The Minister may make regulations or issue guidelines in relation to the preparation of local area plans.

F52[(4A) A local area plan made under this section shall have effect 4 weeks from the day that it is made.]

(5) A planning authority shall send a copy of any local area plan made under this Chapter to any bodies consulted under *subsection (1), (2) or (3)*, the Board and, where appropriate, any prescribed body.

#### Annotations

#### Amendments:

- F51** Substituted and inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 13(a), (b)(i), (iii) and (iv), S.I. No. 477 of 2010.
- F52** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 13(b)(ii) and (c), S.I. No. 477 of 2010.
- F53** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 87, S.I. No. 574 of 2009.



**F54** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 9, commenced on enactment.

**Editorial Notes:**

**E39** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E40** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).

**E41** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E42** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E43** Previous affecting provision: subs. (3)(d)(ii)(I) substituted and subs. (3)(e)-(i) inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 9, commenced on enactment; substituted as per F-note above.

**E44** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

### CHAPTER III

#### *Regional Planning Guidelines*

Power to make regional planning guidelines.

**F55**[**21.—(1) A regional authority—**

(a) may—

(i) after consultation with the planning authorities within its region, or

(ii) in the case of the regional authorities within the GDA, after consultation with the planning authorities within their regions and the DTA,

or

(b) shall, at the direction of the Minister,

make regional planning guidelines.

(2) Regional planning guidelines may be made for a whole region or for one or more parts of a region, but shall, in the case of the GDA, be made jointly by the regional authorities within the GDA.]

(3) (a) The Minister may direct one or more regional authorities to make regional planning guidelines in respect of the combined area of the regional authorities involved or in respect of any particular part or parts of the area which lie within the area of those regional authorities.

(b) Where it is proposed to make regional planning guidelines, the regional authorities concerned shall make whatever arrangements they see fit to prepare the guidelines, including the carrying out of the functions of this Chapter as a joint function of the authorities concerned, and this Chapter shall be construed accordingly.

(4) Notwithstanding any other provision of this Act, the strategic planning guidelines for the greater Dublin area prepared for Dublin Corporation, Dún Laoghaire-Rathdown County Council, Fingal County Council, Kildare County Council, Meath County Council,

South Dublin County Council, Wicklow County Council and the Department of the Environment and Local Government in conjunction with the Dublin Regional Authority and the Mid-East Regional Authority published on 25 March, 1999, shall have effect as if made under this Part.

(5) The Minister may make regulations concerning the making of regional planning guidelines and related matters.

#### Annotations

#### Amendments:

**F55** Substituted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 88, S.I. No. 574 of 2009.

#### Editorial Notes:

**E45** Power pursuant to section exercised (25.03.2009) by *Planning and Development (Regional Planning Guidelines) Regulations 2009* (S.I. No. 100 of 2009).

**E46** Power pursuant to section exercised (1.05.2003) by *Planning and Development (Regional Planning Guidelines) Regulations 2003* (S.I. No. 175 of 2003).

Co-operation of planning authorities with regional authority.

**22.**—(1) Where a regional authority intends to make regional planning guidelines in accordance with *section 24*, or to review existing guidelines under *section 26*, it shall, as soon as may be, consult with all the planning authorities within the region (or part thereof, as the case may be) in order to make the necessary arrangements for making the guidelines.

(2) (a) A planning authority shall assist and co-operate with a regional authority in making arrangements for the preparation of regional planning guidelines and in carrying out the preparation of the guidelines.

(b) The provision of assistance under *paragraph (a)* shall include the provision of financial assistance, the services of staff and the provision of accommodation, where necessary, and the regional authorities and planning authorities shall agree on such matters based on the proportion of the population of the area for which the regional planning guidelines are prepared resident in the functional areas of the planning authorities concerned.

(c) In the absence of agreement under *paragraph (b)*, a regional authority may request the relevant planning authorities to provide assistance under this section, and the request shall be based on the proportion of the population of the area for which the regional planning guidelines are prepared resident in the functional areas of the planning authorities concerned, and a planning authority shall not refuse a reasonable request for assistance.

Content and objectives of regional planning guidelines.

**23.**—F56[(1) (a) The objective of regional planning guidelines shall be to support the implementation of the National Spatial Strategy by providing a long-term strategic planning framework for the development of the region for which the guidelines are prepared which shall be consistent with the National Spatial Strategy.]

(b) The planning framework referred to in *paragraph (a)* shall consider the future development of the region for which the guidelines are prepared for a period of not less than 12 years and not more than 20 years.

(2) The guidelines shall address, for the whole of the region to which the guidelines relate, in accordance with the principles of proper planning and sustainable development, the following matters—

F56[(a) any policies or objectives for the time being of the Government or any Minister for the Government, or any policies contained in the National Spatial Strategy in relation to national and regional population targets;]

(b) economic and employment trends;

(c) the location of industrial and commercial development;

(d) transportation, including public transportation;

(e) water supply and waste water-facilities;

(f) waste disposal;

(g) energy and communications networks;

(h) the provision of educational, health care, retail and other community facilities;

(i) the preservation and protection of the environment and its amenities, including the archaeological, architectural and natural heritage;

F56[(j) landscape, in accordance with relevant policies or objectives for the time being of the Government or any Minister of the Government relating to providing a framework for identification, assessment, protection, management and planning of landscapes and developed having regard to the European Landscape Convention done at Florence on 20 October 2000;

(k) the promotion of sustainable settlement and transportation strategies in urban and rural areas, including the promotion of measures to reduce anthropogenic greenhouse gas emissions and address the necessity of adaptation to climate change;

(l) such other matters as may be prescribed.]

F57[(3) The Minister may, for the purposes of giving effect to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (No. 2001/42/EC, O.J. No. L 197, 21 July 2001 P. 0030 - 0037), by regulations make provision in relation to consideration of the likely significant effects on the environment of implementing regional planning guidelines.]

F58[(3A) An appropriate assessment of draft regional planning guidelines shall be carried out in accordance with Part XAB.]

(4) (a) When making regional planning guidelines the regional authority shall take account of the proper planning and sustainable development of the whole of the region to which the guidelines relate, the statutory obligations of any local authority in the region and any relevant policies or objectives for the time being of the Government or of any Minister of the Government, including any national plans, policies or strategies specified by the Minister to be of relevance to the determination of strategic planning policies.

(b) When making regional planning guidelines which affect the Gaeltacht, the regional authority shall have regard to the need to protect the linguistic and cultural heritage of the Gaeltacht.

F59[(c) When making regional planning guidelines the regional authorities within the GDA shall ensure that the guidelines are consistent with the transport strategy of the DTA.]

(5) Without prejudice to the generality of subsections (2) and (3), the Minister may issue guidelines on the content of regional planning guidelines and regional authorities shall have regard to those guidelines.

**Annotations****Amendments:**

- F56** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 14(a) and (b), S.I. No. 477 of 2010.
- F57** Substituted (14.07.2004) by *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No. 435 of 2004), reg. 7.
- F58** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 14(c), S.I. No. 475 of 2011.
- F59** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 89, S.I. No. 574 of 2009.

**Modifications (not altering text):**

- C8** “National Spatial Strategy: 2002—2020” declared to be of relevance to the determination of strategic planning policies under subs. (4)(a) (1.05.2003) by *Planning and Development (Regional Planning Guidelines) Regulations 2003* (S.I. No. 175 of 2003), reg. 4.

**Specification of National Spatial Strategy as being of relevance to strategic planning policies.**

4. In accordance with the provisions of section 23 (4)(a) of the Act, the “National Spatial Strategy: 2002 — 2020” published by Government on 28 November 2002 is hereby specified to be of relevance to the determination of strategic planning policies.

**Editorial Notes:**

- E47** Power pursuant to subs. (3) exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011).
- E48** Power pursuant to section exercised (25.03.2009) by *Planning and Development (Regional Planning Guidelines) Regulations 2009* (S.I. No. 100 of 2009).
- E49** Power pursuant to subs. (3) exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).
- E50** Power pursuant to section exercised (1.05.2003) by *Planning and Development (Regional Planning Guidelines) Regulations 2003* (S.I. No. 175 of 2003).

Consultation regarding regional planning guidelines.

**24.—(1)** As soon as may be after agreeing any necessary arrangements under *section 21*, a regional authority shall give notice of its intention to make the regional planning guidelines.

(2) A notice under *subsection (1)* shall be given to the Minister, the Board, the prescribed authorities and any town commissioners in the area and shall be published in one or more newspapers circulating in the region for which the regional planning guidelines are prepared and shall—

(a) state that the regional authority intends to make regional planning guidelines,

(b) indicate the matters to be considered in the guidelines, having regard to *section 23*,

(c) indicate that submissions regarding the making of the regional planning guidelines may be made in writing to the regional authority within a specified period (which shall not be less than 8 weeks).

(3) A regional authority shall consider any submissions received under *subsection (2)* before preparing the draft regional planning guidelines.

(4) When a regional authority prepares the draft of the regional planning guidelines it shall, as soon as may be—

- (a) send notice and copies of the draft guidelines to the Minister, the Board, the prescribed authorities and any town commissioners in its area, and
- (b) publish notice of the preparation of the draft in one or more newspapers circulating in its area.

(5) A notice under *subsection (4)* shall state—

- (a) that a copy of the draft guidelines may be inspected at a stated place or places and at stated times during a stated period of not less than 10 weeks (and the copy shall be kept available for inspection accordingly), and
- (b) that written submissions or observations with respect to the draft made to the regional authority within the stated period will be taken into consideration before the guidelines are adopted.

F60[(5A) When the regional authorities within the GDA prepare the draft of the regional planning guidelines they shall include a statement in that draft on the actions being taken or proposed to ensure effective integration of transport and land use planning, including in particular—

- (a) a statement explaining how the regional authorities propose to address the matters identified in the report of the DTA prepared in accordance with section 31F, and
- (b) where the regional authorities do not propose to address, or propose to only partially address, any matter identified in the report of the DTA prepared in accordance with section 31F, a statement of the reasons for that course of action.]

F61[(5B) When a regional authority (other than the regional authorities within the GDA) prepares the draft of the regional planning guidelines it shall include a statement in that draft on the actions being taken or proposed to ensure effective integration of transport and land use planning, including in particular—

- (a) a statement explaining how it proposes to address the matters identified in the report of the DTA prepared in accordance with section 31FF, and
- (b) where it does not propose to address, or proposes to only partially address, any matter identified in the report of the DTA prepared in accordance with section 31FF, a statement of the reasons for that course of action.]

F62[(6) (a) Subject to paragraphs (b) and (e), following consideration of submissions or observations under subsection (5), and subject to section 25, the regional authority shall, subject to any amendments that it considers necessary, make the regional planning guidelines.

- (b) The regional authority shall determine if a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, is or are required to be carried out as respects one or more than one proposed material amendment of the draft regional planning guidelines.
- (c) The director of the regional authority, not later than 2 weeks after a determination under paragraph (b) shall specify such period as he or she considers necessary as being required to facilitate an assessment referred to in paragraph (b).
- (d) The regional authority shall publish notice of any proposed material amendment, and where appropriate in the circumstances, the making of a determination that a strategic environmental assessment or an appropriate assess-

ment or both such assessments, as the case may be, is or are required, in at least one newspaper circulating in its area.

(e) The notice referred to in paragraph (d) shall state—

(i) that a copy of any proposed material amendment and of any determination by the authority that an assessment referred to in paragraph (b) is required may be inspected at a stated place or places and at stated times, and on the authority's website, during a stated period of not less than 4 weeks (and that copies will be kept for inspection accordingly), and

(ii) that written submissions or observations with respect to the proposed material amendment or an assessment referred to in paragraph (b) and made to the regional authority within a stated period shall be taken into account by the authority before the regional planning guidelines are adopted.

(f) The regional authority shall carry out an assessment referred to in paragraph (b) of the proposed material amendment of the draft regional planning guidelines within the period specified by the director of the regional authority.

(6A) Following the consideration of submissions or observations under subsection (6), and subject to section 25, the regional authority shall make the regional planning guidelines with or without the proposed material amendments, subject to any minor modifications considered necessary.

(6B) A minor modification referred to in subsection (6A) may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site.]

(7) (a) Where a regional authority makes regional planning guidelines, it shall publish a notice of the making of the guidelines in at least one newspaper circulating in the functional area of each planning authority in the region for which the guidelines are prepared.

(b) A notice under this subsection shall state that a copy of the guidelines is available for inspection at a stated place or places (and the copy shall be kept available for inspection accordingly).

#### Annotations

#### Amendments:

**F60** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 90, S.I. No. 574 of 2009.

**F61** Inserted (4.01.2010) by *Public Transport Regulation Act 2009* (37/2009), s. 44(1)(a), S.I. No. 575 of 2009.

**F62** Substituted and inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 15, S.I. No. 477 of 2010.

#### Editorial Notes:

**E51** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E52** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).

**E53** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).

- E54** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E55** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E56** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000), revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Procedure for making regional planning guidelines.

**25.—(1)** As part of the consultation between a regional authority and the relevant planning authorities under *section 22*, the authorities concerned shall agree on a procedure for preparing and making the regional planning guidelines under *section 24*.

(2) Matters to be considered under *subsection (1)* shall include the establishment of committees to oversee and consider preparation of the guidelines.

(3) The authorities concerned shall agree on the membership of the committees under *subsection (2)* and shall also agree on the roles of those committees in preparing the draft guidelines, considering submissions or observations under *section 24*, and drawing up reports in respect of the guidelines.

F63[(3A) When the regional authorities in the GDA make regional planning guidelines they shall include in the guidelines a statement on the actions being taken or proposed to ensure effective integration of transport and land use planning, including in particular—

- (a) a statement explaining how the regional authorities propose to address the matters identified in the report of the DTA prepared in accordance with section 31G, and
- (b) where the regional authorities do not propose to address, or propose only to partially address, any matter identified in the report of the DTA prepared in accordance with section 31G, a statement of the reasons for that course of action.]

F64[(3B) When a regional authority (other than the regional authorities within the GDA) makes regional planning guidelines it shall include in the guidelines a statement on the actions being taken or proposed to ensure effective integration of transport and land use planning, including in particular—

- (a) a statement explaining how it proposes to address the matters identified in the report of the DTA prepared in accordance with section 31GG, and
- (b) where it does not propose to address, or proposes only to partially address, any matter identified in the report of the DTA prepared in accordance with section 31GG, a statement of the reasons for that course of action.]

(4) The making of regional planning guidelines under *section 24(6)* shall be a matter for the members of the regional authority concerned, following the consideration of any report or reports from the committees referred to in *subsection (2)*.

(5) The Minister may make regulations, or issue guidelines, with regard to the procedures to be adopted under this section, including the number, functions and membership of any committees set up in accordance with *subsection (2)*.

**Annotations****Amendments:**

**F63** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 91, S.I. No. 574 of 2009.

**F64** Inserted (4.01.2010) by *Public Transport Regulation Act 2009* (37/2009), ss. 44(1)(b), S.I. No. 575 of 2009.

Review of regional planning guidelines.

**26.**—(1) Where a regional authority has made regional planning guidelines, it shall, not later than 6 years after the making of such guidelines and not less than once in every period of 6 years thereafter, review such guidelines and when so reviewing, it may revoke the guidelines or make new regional planning guidelines.

(2) Before a regional authority revokes guidelines referred to in *subsection (1)* (other than for the purpose of making new regional planning guidelines), it shall consult with the planning authorities within its region.

(3) Where the regional authority makes new guidelines, it shall follow the procedures laid down in *sections 22, 24 and 25*.

(4) Where new guidelines are made under *subsection (1)*, they shall supersede any previous regional planning guidelines for the relevant area.

Regional planning guidelines and development plans.

**27.**—F65[(1) A planning authority shall ensure, when making a development plan or a local area plan, that the plan is consistent with any regional planning guidelines in force for its area.]

(2) The Minister may, by order, determine that planning authorities shall comply with any regional planning guidelines in force for their area, or any part thereof, when preparing and making a development plan, or may require in accordance with *section 31* that an existing development plan comply with any regional planning guidelines in force for the area.

(3) An order under *subsection (2)* may relate to regional planning guidelines generally, or one or more specified guidelines, or may relate to specific elements of those guidelines.

(4) Following the making of regional planning guidelines for their area, planning authorities shall review the existing development plan and consider whether any variation of the development plan is necessary in order to achieve the objectives of the regional planning guidelines.

(5) For the purposes of this section, a planning authority may have, but shall not be obliged to have, regard to any regional planning guidelines after 6 years from the making of such guidelines.

F66[(6) The Minister may make regulations concerning matters of procedure and administration to be adopted by a regional authority in the performance of its functions relating to the preparation of a draft development plan, making of a development plan or variation of a development plan, as the case may be.]

**Annotations****Amendments:**

**F65** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 16(a), S.I. No. 477 of 2010.



**F66** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 16(b), S.I. No. 477 of 2010.

**F67** [Report of regional authority for preparation of draft development plan.]

**27A.—** (1) Where a regional authority receives a notice from a planning authority under section 11(1) it shall prepare submissions or observations for the purposes of section 11(2).

(2) Submissions or observations made by a regional authority under section 11(2) shall contain a report on matters that, in the opinion of the regional authority, require consideration by the planning authority concerned in making the development plan.

(3) The submissions or observations and report of the regional authority shall include, but shall not be limited to, recommendations regarding each of the following matters as respects the area to which the development plan relates:

(a) any policies or objectives for the time being of the Government or any Minister of the Government in relation to national and regional population targets, and the best distribution of residential development and related employment development with a view to—

(i) promoting consistency as far as possible, between housing, settlement and economic objectives in the draft development plan and core strategy and the regional planning guidelines, and

(ii) assisting in drafting the core strategy of the draft development plan;

(b) the objectives of providing physical, economic or social infrastructure in a manner that promotes balanced regional development;

(c) planning for the best use of land having regard to location, scale and density of new development to benefit from investment of public funds in transport infrastructure and public transport services; and

(d) collaboration between the planning authority and the regional authority in respect of integrated planning for transport and land use, in particular in relation to large scale developments and the promotion of sustainable transportation strategies in urban and rural areas, including the promotion of measures to reduce anthropogenic greenhouse gas emissions and address the necessity of adaptation to climate change.

(4) One or more regional authorities, who have been directed by the Minister to make regional planning guidelines for the purpose of section 21(3) in relation to a combined area of the regional authorities or in respect of any particular part or parts of the area which lie within the area of those regional authorities, shall make joint submissions or observations and issue a joint report for the purpose of this section, in respect of the combined area or particular part or parts of the area concerned and shall send a copy of the joint submissions or observations and joint report to the Minister.]

#### Annotations

#### Amendments:

**F67** Inserted (30.11.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 17, S.I. No. 477 of 2010.

F68 [Role of regional authority in making of development plan.]

**27B.—** (1) Where a regional authority receives a notice from a planning authority under section 12(1) it shall prepare submissions and observations for the purposes of section 12(2).

(2) Submissions or observations made by the regional authority under subsection (1) shall contain a report which shall state whether, in the opinion of that authority, the draft development plan, and, in particular, its core strategy, are consistent with the regional planning guidelines in force for the area of the development plan.

(3) Where the opinion of the regional authority stated in the submissions or observations made and the report issued is that the draft development plan and its core strategy are not consistent with the regional planning guidelines, the submissions, observations and report shall include recommendations as to what amendments, in the opinion of the regional authority, are required in order to ensure that the draft development plan and its core strategy are so consistent.

(4) The regional authority shall send a copy of the submission or observations and the report to the Minister.

(5) One or more regional authorities, who have been directed by the Minister to make regional planning guidelines for the purpose of section 21(3) in relation to a combined area of the regional authorities or in respect of any particular part or parts of the area which lie within the area of those regional authorities, shall make joint submissions or observations and issue a joint report for the purpose of this section, in respect of the combined area or particular part or parts of the area concerned and shall send a copy of the joint submissions or observations and joint report to the Minister.]

#### Annotations

#### Amendments:

**F68** Inserted (30.11.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 18, S.I. No. 477 of 2010.

F69 [Role of regional authority in variation of development plan.]

**27C.—** (1) Where a regional authority receives a notice from a planning authority under section 13(1) it shall prepare submissions and observations for the purposes of section 13(2).

(2) Submissions or observations made by the regional authority under subsection (1) shall contain a report which shall state whether, in the opinion of that authority, the draft variation of the development plan, and, in particular, its core strategy, are consistent with the regional planning guidelines in force for the area of the development plan.

(3) Where the opinion of the regional authority stated in the submissions or observations made and the report issued is that the proposed variation of the development plan and its core strategy are not consistent with the regional planning guidelines, the submissions and observations and report shall include recommendations as to what amendments, in the opinion of the regional authority, are required in order to ensure that the proposed variation to the development plan and its core strategy are so consistent.

(4) The regional authority shall send a copy of the report to the Minister.

(5) One or more regional authorities, who have been directed by the Minister to make regional planning guidelines for the purpose of section 21(3) in relation to a combined area of the regional authorities or in respect of any particular part or parts of the area which lie within the area of those regional authorities, shall make joint submissions or observations and issue a joint report for the purpose of this section, in respect of the combined area or particular part or parts of the area concerned and

shall send a copy of the joint submissions or observations and joint report to the Minister.]

#### Annotations

#### Amendments:

- F69** Inserted (30.11.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 19, S.I. No. 477 of 2010.

## CHAPTER IV

### *Guidelines and Directives*

Ministerial guidelines.

**28.**—(1) The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions.

**F70**[(1A) Without prejudice to the generality of subsection (1) and for the purposes of that subsection a planning authority in having regard to the guidelines issued by the Minister under that subsection, shall—

- (a) consider the policies and objectives of the Minister contained in the guidelines when preparing and making the draft development plan and the development plan, and
- (b) append a statement to the draft development plan and the development plan which shall include the information referred to in subsection (1B).

(1B) The statement which the planning authority shall append to the draft development plan and the development plan under subsection (1A) shall include information which demonstrates—

- (a) how the planning authority has implemented the policies and objectives of the Minister contained in the guidelines when considering their application to the area or part of the area of the draft development plan and the development plan, or
- (b) if applicable, that the planning authority has formed the opinion that it is not possible, because of the nature and characteristics of the area or part of the area of the development plan, to implement certain policies and objectives of the Minister contained in the guidelines when considering the application of those policies in the area or part of the area of the draft development plan or the development plan and shall give reasons for the forming of the opinion and why the policies and objectives of the Minister have not been so implemented.]

(2) Where applicable, the Board shall have regard to any guidelines issued to planning authorities under *subsection (1)* in the performance of its functions.

(3) Any planning guidelines made by the Minister and any general policy directives issued under section 7 of the Act of 1982 prior to the commencement of this Part and still in force immediately before such commencement shall be deemed to be guidelines under this section.

(4) The Minister may revoke or amend guidelines issued under this section.

(5) The Minister shall cause a copy of any guidelines issued under this section and of any amendment or revocation of those guidelines to be laid before each House of the Oireachtas.

(6) A planning authority shall make available for inspection by members of the public any guidelines issued to it under this section.

(7) The Minister shall publish or cause to be published, in such manner as he or she considers appropriate, guidelines issued under this section.

#### Annotations

#### Amendments:

**F70** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 20, S.I. No. 477 of 2010.

#### Editorial Notes:

**E57** Power pursuant to section exercised (2.01.2001) by *Local Government (Planning and Development) General Policy Directive (Shopping) 1998 (Revocation Order) 2001 (S.I. No. 1 of 2001)*.

Ministerial policy directives.

**29.—(1)** The Minister may, from time to time, issue policy directives to planning authorities regarding any of their functions under this Act and planning authorities shall comply with any such directives in the performance of their functions.

(2) Where applicable, the Board shall also comply with any policy directives issued to planning authorities under *subsection (1)* in the performance of its functions.

(3) The Minister may revoke or amend a policy directive issued under this section.

(4) Where the Minister proposes to issue, amend or revoke a policy directive under this section, a draft of the directive, amendment or revocation shall be laid before both Houses of the Oireachtas and the policy directive shall not be issued, amended or revoked, as the case may be, until a resolution approving the issuing, amending or revocation of the policy directive has been passed by each House.

(5) The Minister shall cause a copy of any policy directive issued under this section to be laid before each House of the Oireachtas.

(6) A planning authority shall make available for inspection by members of the public any policy directive issued to it under this section.

(7) The Minister shall publish or cause to be published, in such manner as he or she considers appropriate, policy directives issued under this section.

Limitation on Ministerial power.

**F71[30.—(1)** Notwithstanding section 28 or 29 and subject to subsection (2), the Minister shall not exercise any power or control in relation to any particular case with which a planning authority or the Board is or may be concerned **F72[save as provided for by sections 177X, 177Y, 177AB and 177AC].**

(2) Subsection (1) shall not affect the performance by the Minister of functions transferred (whether before or after the passing of the Minister for the Environment and Local Government (Performance of Certain Functions) Act, 2002) to him or her from the Minister for Community, Rural and Gaeltacht Affairs by an order under section 6(1) of the Ministers and Secretaries (Amendment) Act, 1939.]

**Annotations****Amendments:**

- F71** Substituted (3.07.2002) by *Minister For the Environment and Local Government (Performance of Certain Functions) Act 2002* (24/2002), s. 1, commenced on enactment.
- F72** Inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 19, S.I. No. 474 of 2011.

**Modifications (not altering text):**

- C9** Powers and functions in relation to Act transferred (10.07.2002) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 356 of 2002), arts. 3, 4(1) and sch. part 1.

3. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 4 of this Order are transferred to the Department of the Environment and Local Government.

(2) References to the Department of Community, Rural and Gaeltacht Affairs contained in any Act or instrument made thereunder and relating to any administration and business transferred by paragraph (1) of this Article shall, on and after the commencement of this Order, be construed as references to the Department of the Environment and Local Government.

4. (1) The functions vested in the Minister for Community, Rural and Gaeltacht Affairs —

(a) by or under any of the instruments or the provisions of the enactments mentioned in Part 1 of the Schedule to this Order,

(b) under the Regulations mentioned in Part 2 of that Schedule, and ...

are transferred to the Minister for the Environment and Local Government.

...

## Schedule Part 1

Enactments and provisions of enactments, functions under which are transferred from the Minister for Community, Rural and Gaeltacht Affairs to the Minister for the Environment and Local Government

...

Planning and Development Act 2000 (No. 30 of 2000) (in so far as it relates to or refers to the Minister for Community, Rural and Gaeltacht Affairs (except section 33 (3)(c)))

...

## Part 2

Regulations, functions under which are transferred from the Minister for Community, Rural and Gaeltacht Affairs to the Minister for the Environment and Local Government

Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 ) (in so far as they relate to or refer to the Minister for Community, Rural and Gaeltacht Affairs (except Article 28 (1)(n) Article 82 (3)(m), Article 121 (1)(m) and Article 179 (2)(p)))

...

Ministerial directions regarding development plans.

**F73[31.— (1) Where the Minister is of the opinion that—**

(a) a planning authority, in making a development plan, a variation of a development plan, or a local area plan (in this section referred to as a 'plan') has ignored, or has not taken sufficient account of submissions or observations made by the Minister to the planning authority under section 12, 13 or 20,

(b) in the case of a plan, the plan fails to set out an overall strategy for the proper planning and sustainable development of the area,

(c) the plan is not in compliance with the requirements of this Act, or

(d) if applicable, having received a submission prepared under section 31C or 31D (inserted by section 95 of the Act of 2008) that a plan of a planning authority in the Greater Dublin Area (GDA) is not consistent with the transport strategy of the National Transport Authority,

the Minister may in accordance with this section, for stated reasons, direct a planning authority to take such specified measures as he or she may require in relation to that plan.

(2) Where the Minister issues a direction under this section the planning authority, notwithstanding anything contained in Chapter I or II of this Part, shall comply with that direction and the Manager or elected members shall not exercise a power or perform a function conferred on them by this Act in a manner that contravenes the direction so issued.

(3) Before he or she issues a direction under this section, the Minister shall issue a notice in writing to a planning authority no later than 4 weeks after a plan is made.

(4) The notice referred to in subsection (3) shall, for stated reasons, inform the planning authority of—

(a) the forming of the opinion referred to in subsection (1),

(b) the intention of the Minister to issue a direction (a draft of which shall be contained in the notice) to the planning authority to take certain measures specified in the notice in order to ensure that the plan is in compliance with the requirements of this Act and, in the case of a plan, sets out an overall strategy for the proper planning and sustainable development of the area,

(c) those parts of the plan that by virtue of the issuing of the notice under this subsection shall be taken not to have come into effect, been made or amended under subsection (6), and

(d) if applicable, requiring the planning authority to take measures specified in the notice to ensure that the plan is in compliance with the transport strategy of the Dublin Transport Authority.

(5) The Minister shall furnish a copy of the notice referred to in subsection (3) to the manager and Cathaoirleach of the planning authority, where there are regional planning guidelines in force for the area of the planning authority, to the regional planning authority concerned and, where relevant, to the Dublin Transport Authority.

(6) (a) Notwithstanding section 12(17), 13(11) or 20(4A), a plan shall not have effect in accordance with those sections in relation to a matter contained in the plan which is referred to in a notice under subsection (3).

(b) If a part of a plan proposed to be replaced under section 12, 13 or 20 contains a matter that corresponds to any matter contained in that plan which is referred to in a notice under subsection (3), that part shall not, save where subsection (17) applies, cease to have effect in respect of that matter.

(7) No later than 2 weeks after receipt of the notice issued by the Minister under subsection (3), the manager of the planning authority shall publish notice of the draft direction in at least one newspaper circulating in the area of the development plan or local area plan, as the case may be, which shall state—

(a) the reasons for the draft direction,

(b) that a copy of the draft direction may be inspected at such place or places as are specified in the notice during such period as may be so stated (being a period of not more than 2 weeks), and

(c) that written submissions or observations in respect of the draft direction may be made to the planning authority during such period and shall be taken into consideration by the Minister before he or she directs the planning authority pursuant to this section.

(8) No later than 4 weeks after the expiry of the period referred to in subsection (7)(b), the manager shall prepare a report on any submissions or observations received under subsection (7)(c) which shall be furnished to the Minister and the elected members of the planning authority.

(9) The report referred to in subsection (8) shall—

- (a) summarise the views of any person who made submissions or observations to the planning authority,
- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority,
- (c) summarise the views of and recommendations (if any) made by the regional authority,
- (d) make recommendations in relation to the best manner in which to give effect to the draft direction.

(10) The elected members of the planning authority may make a submission to the Minister in relation to the notice issued by him or her under subsection (3) at any time up to the expiry of the period of time referred to in subsection (7)(b).

(11) The Minister shall consider the report furnished under subsection (8) and any submissions made to him or her under subsection (10) and—

- (a) where he or she believes that no material amendment to the draft direction is required, or that further investigation is not necessary in order to clarify any aspect of the report or submissions, he or she may decide, no later than 3 weeks after the date of receipt of the report under subsection (8), for stated reasons—
  - (i) to issue the direction referred to in subsection (4)(b) with or without minor amendments, or
  - (ii) not to issue the direction referred to in subsection (4)(b),

or

(b) where he or she believes that—

- (i) a material amendment to the draft direction may be required, or
- (ii) further investigation is necessary in order to clarify any aspect of the report furnished under subsection (8) or submissions made under subsection (10), or
- (iii) it is necessary for any other reason,

he or she may, for stated reasons, appoint an inspector no later than 3 weeks after the date of receipt of the report under subsection (8).

(12) The inspector appointed under subsection (11)(b) shall be a person who, in the opinion of the Minister, has satisfactory experience and competence to perform the functions required of him or her pursuant to this section and shall be independent in the performance of his or her functions.

(13) The inspector appointed under subsection (11)(b) having regard to the stated reasons for his or her appointment—

- (a) shall review the draft direction, the report furnished under subsection (8) and submissions made under subsection (10),
- (b) shall consult with the manager and elected members of the planning authority,
- (c) may consult with the regional authority and persons who made submissions under subsection (7)(c), and
- (d) shall no later than 3 weeks after he or she was appointed, furnish a report containing recommendations to the Minister.

(14) Copies of the report of the inspector referred to in subsection (13)(d) shall be furnished as quickly as possible by the Minister to the manager and elected members of the planning authority, the regional authority and persons who made submissions under subsection (7)(c).

(15) The persons who have been furnished with the report of the inspector referred to in subsection (13)(d) may make a submission to the Minister in relation to any matter referred to in the report no later than 10 days after the receipt by them of the report.

(16) No later than 3 weeks (or as soon as may be during such period extending that 3 week period as the Minister may direct) after receipt of the report of the inspector referred to in subsection (13)(d), or any submissions made to him or her under subsection (15), the Minister, having considered the report, recommendations or submissions, as the case may be, shall decide for stated reasons—

- (a) to issue the direction referred to in subsection (4)(b),
- (b) not to issue the direction referred to in subsection (4)(b), or
- (c) to issue the direction referred to in subsection (4)(b), which has been amended by the Minister to take account of any of the matters referred to in subparagraphs (i) or (ii) as the Minister considers appropriate:
  - (i) recommendations contained in the report of the inspector referred to in subsection (13)(d); or
  - (ii) any submissions made pursuant to subsection (15).

(17) The direction issued by the Minister under subsection (16) is deemed to have immediate effect and its terms are considered to be incorporated into the plan, or, if appropriate, to constitute the plan.

(18) The Minister shall cause a copy of a direction issued under subsection (16) to be laid before each House of the Oireachtas.

(19) As soon as may be after a direction is issued to a planning authority under subsection (16), the planning authority shall make the direction so issued available for inspection by members of the public, during office hours of the authority, at the offices of the authority, and may also make the direction available by placing it on the authority's website or otherwise in electronic form.

(20) The Minister shall publish or cause to be published in such manner as he or she considers appropriate directions issued under subsection (16).]

#### Annotations

#### Amendments:

- F73** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 21, S.I. No. 477 of 2010.



**Editorial Notes:**

**E58** Previous affecting provision: subs. (1A) inserted and subs. (4) substituted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 92, S.I. No. 574 of 2009; substituted as per F-note above.

**F74** [Insertion of new section 31A into Act of 2000 (ministerial directions regarding regional planning guidelines).

**31A.—** (1) Where the Minister is of the opinion that—

- (a) a regional authority, or authorities, as the case may be, in making the regional planning guidelines has ignored, or has not taken sufficient account of submissions or observations made by the Minister to the regional authority or authorities under section 24 or 26,
- (b) the regional planning guidelines fail to provide a long-term strategic planning framework for the development of the region or regions, as the case may be, in respect of which they are made, in accordance with the principles of proper planning and sustainable development,
- (c) the regional planning guidelines are not in compliance with the requirements of this Act, or
- (d) if applicable, in relation to a regional authority or authorities whose regional area or part thereof is in the Greater Dublin Area (GDA) that the guidelines are not consistent with the transport strategy of the National Transport Authority,

the Minister may, in accordance with this section, for stated reasons direct a regional authority or authorities, as the case may be, to take such specified measures as he or she may require in relation to that plan.

(2) Where the Minister issues a direction under this section the regional authority or regional authorities, as the case may be, notwithstanding anything contained in Chapter III of this Part, shall comply with that direction and the Manager or members shall not exercise a power or perform a function conferred on them by this Act in a manner that contravenes the direction so issued.

(3) Before he or she issues a direction under this section, the Minister shall issue a notice in writing to a regional authority or regional authorities, as the case may be, not later than 4 weeks after the guidelines are made.

(4) The notice referred to in subsection (3) shall, for stated reasons, inform the regional authority or regional authorities, as the case may be, of—

- (a) the forming of the opinion referred to in subsection (1),
- (b) the intention of the Minister to issue a direction (a draft of which shall be contained in the notice) to the regional authority, or authorities, as the case may be, to take certain measures specified in the notice in order to ensure that the regional planning guidelines are in compliance with the requirements of this Act and to provide a long-term strategic planning framework for the development of the region, or regions, as the case may be, in accordance with the principles of proper planning and sustainable development,
- (c) the part of the regional planning guidelines that by virtue of the issuing of the notice shall be taken not to have come into effect, and
- (d) if applicable, requiring the regional authority or authorities, as the case may be, to take measures specified in the notice to ensure that the plan is in compliance with the transport strategy of the National Transport Authority.

(5) The Minister shall furnish a copy of the notice referred to in subsection (3) to the regional authority, or authorities, as the case may be, and the National Transport Authority.

(6) (a) Notwithstanding anything contained in Chapter III, or any matter prescribed thereunder, regional planning guidelines shall not have effect in accordance with that Chapter in relation to a matter contained in the guidelines which is referred to in a notice under subsection (3).

(b) If a part of guidelines proposed to be replaced under section 26 contains a matter that corresponds to any matter contained in those guidelines which are referred to in a notice under subsection (3), that part shall not, save where subsection (17) applies, cease to have effect in respect of that matter.

(7) No later than 2 weeks after receipt of the notice issued by the Minister under subsection (3), the director of the regional authority, or authorities, as the case may be, shall publish notice of the draft direction in at least one newspaper circulating in the area of the regional authority, or authorities, as the case may be, which shall state—

(a) the reasons for the draft direction,

(b) that a copy of the draft direction may be inspected at such place or places as are specified in the notice during such period as may be so stated (being a period of not more than 2 weeks), and

(c) that written submissions or observations in respect of the draft direction may be made to the regional authority, or authorities, as the case may be, during such period and shall be taken into consideration by the Minister before he or she directs the regional authority, or authorities, as the case may be, pursuant to this section.

(8) No later than 4 weeks after the expiry of the period referred to in subsection (7)(b), the director shall prepare a report on any submissions or observations received under subsection (7)(c) which shall be furnished to the Minister and the members of the regional authority, or authorities, as the case may be.

(9) The report referred to in subsection (8) shall—

(a) summarise the views of any person who made submissions or observations to the regional authority, or authorities, as the case may be,

(b) summarise the views of and recommendations (if any) made by the members of the regional authority, or authorities, as the case may be,

(c) make recommendations in relation to the best manner in which to give effect to the draft direction.

(10) The members of the regional authority, or authorities, as the case may be, may make a submission to the Minister in relation to the notice issued by him or her under subsection (3) at any time up to the expiry of the period of time referred to in subsection (7)(b).

(11) The Minister shall consider the report furnished under subsection (8) and any submissions made to him or her under subsection (10) and—

(a) where he or she believes that no material amendment to the draft direction is required, or that further investigation is not necessary in order to clarify any aspect of the report or submissions, he or she may decide, no later than 3 weeks after the date of receipt of the report under subsection (8), for stated reasons—

(i) to issue the direction referred to in subsection (4)(b) with or without minor amendments, or

(ii) not to issue the direction referred to in subsection (4)(b),

or

(b) where he or she believes that—

- (i) a material amendment to the draft direction may be required, or
- (ii) further investigation is necessary in order to clarify any aspect of the report furnished under subsection (8) or submissions made under subsection (10), or
- (iii) it is necessary for any other reason,

he or she may, for stated reasons, appoint an inspector no later than 3 weeks after the date of receipt of the report under subsection (8).

(12) The inspector appointed under subsection (11)(b) shall be a person who, in the opinion of the Minister, has satisfactory experience and competence to perform the functions required of him or her pursuant to this section and shall be independent in the performance of his or her functions.

(13) The inspector appointed under subsection (11)(b) having regard to the stated reasons for his or her appointment—

- (a) shall review the draft direction, the report furnished under subsection (8) and submissions made under subsection (10),
- (b) shall consult with the regional authority, or authorities, as the case may be,
- (c) may consult with persons who made submissions under subsection (7)(c), and
- (d) shall no later than 3 weeks after he or she was appointed, furnish a report containing recommendations to the Minister.

(14) Copies of the report of the inspector referred to in subsection (13)(d) shall be furnished as quickly as possible by the Minister to the regional authority, or authorities, as the case may be, and persons who made submissions under subsection (7)(c).

(15) The persons who have been furnished with the report of the inspector referred to in subsection (13)(d) may make a submission to the Minister in relation to any matter referred to in the report no later than 10 days after the receipt by them of the report.

(16) No later than 3 weeks (or as soon as may be during such period extending that 3 week period as the Minister may direct) after receipt of the report of the inspector referred to in subsection (13)(d), or any submissions made to him or her under subsection (15), the Minister, having considered the report, recommendations or submissions, as the case may be, shall decide for stated reasons—

- (a) to issue the direction referred to in subsection (4)(b),
- (b) not to issue the direction referred to in subsection (4)(b), or
- (c) to issue the direction referred to in subsection (4)(b), which has been amended by the Minister to take account of any of the matters referred to in subparagraphs (i) or (ii) as the Minister considers appropriate:
  - (i) recommendations contained in the report of the inspector referred to in subsection (13)(d); or
  - (ii) any submissions made pursuant to subsection (15).

(17) The direction issued by the Minister under subsection (16) is deemed to have immediate effect and its terms are considered to be incorporated into the regional planning guidelines, or, if appropriate, to constitute the guidelines.

(18) The Minister shall cause a copy of a direction issued under subsection (16) to be laid before each House of the Oireachtas.

(19) As soon as may be after a direction is issued to a Regional authority or authorities, as the case may be, the authority or authorities shall make the direction so issued available for inspection by members of the public, during office hours of the authority, at the offices of the authority, and may also make the direction available by placing it on the authority's website or otherwise in electronic form.

(20) The Minister shall publish or cause to be published in such manner as he or she considers appropriate directions issued under subsection (16).]

#### Annotations

#### Amendments:

**F74** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 22, S.I. No. 477 of 2010.

#### Editorial Notes:

**E59** Previous affecting provision: section amended (4.01.2010) by *Public Transport Regulation Act 2009* (37/2009), s. 44(1)(c), S.I. No. 575 of 2009; substituted as per F-note above.

**E60** Previous affecting provision: section inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 93, S.I. No. 574 of 2009; substituted as per F-note above.

## F75[PART IIA

### DTA AND LAND USE PROVISIONS.

DTA role in preparation of draft development plan.

**31B.**— (1) Where a notice is received by the DTA under section 11(2) it shall prepare and submit to the relevant planning authority a report on the issues which, in its opinion, should be considered by the planning authority in the review of its existing development plan and the preparation of a new development plan.

(2) The report under subsection (1) shall address, but shall not be limited to—

- (a) the transport investment priorities for the period of the development plan,
- (b) the scope, if any, to maximise the performance of the transport system by effective land use planning,
- (c) recommendations regarding the optimal use, location, pattern and density of new development taking account of its transport strategy, and
- (d) recommendations on the matters to be addressed in the development plan to ensure the effective integration of transport and land use planning.]

#### Annotations

#### Amendments:

**F75** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

F76[DTA role in making of development plan.

**31C.**— (1) Where a notice is received by the DTA under section 12(1) it shall, as part of any written submission on the draft development plan, state whether, in its view, the draft development plan is—

- (a) consistent with its transport strategy, or

(b) not consistent with its transport strategy and in such case what amendments to the draft plan it considers necessary to achieve such consistency.

(2) The DTA shall send copies of a submission prepared under this section to the Minister and the Minister for Transport.]

**Annotations**

**Amendments:**

**F76** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

**F77**[DTA role in variation of development plan.

**31D.**— (1) Where a notice is received by the DTA under section 13(2) it shall, as part of any written submission on the proposed variation, state whether, in its view, the proposed variation is—

(a) consistent with its transport strategy, or

(b) not consistent with its transport strategy and in such case what amendments to the proposed variation it considers necessary to achieve such consistency.

(2) The DTA shall send copies of a submission prepared under this section to the Minister and Minister for Transport.]

**Annotations**

**Amendments:**

**F77** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

**F78**[DTA role in the making, amending or revoking of local area plans by planning authorities.

**31E.**— (1) Where a notice is received by the DTA under section 20(3)(a)(i), it shall prepare and submit to the relevant planning authority a report on the issues which, in its opinion, should be considered by the planning authority in making, amending or revoking a local area plan.

(2) The report under subsection (1) shall address, but shall not be limited to—

(a) the transport investment priorities for the period of the local area plan,

(b) the scope, if any, to maximise the performance of the transport system by effective land use planning,

(c) recommendations regarding the optimal use, location, pattern and density of new development taking account of its transport strategy, and

(d) recommendations on the matters to be addressed in the local area plan to ensure the effective integration of transport and land use planning.]

**Annotations**

**Amendments:**

**F78** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

F79 [Co-operation of DTA with regional authorities.]

**31F.—** (1) Where the regional authorities within the GDA intend to make regional planning guidelines in accordance with section 24, or to review existing guidelines under section 26, they shall, as soon as may be, consult with the DTA in order to make the necessary arrangements for making the guidelines.

(2) The DTA shall assist and co-operate with the regional authorities in the GDA in making arrangements for the preparation of regional planning guidelines and in carrying out the preparation of the guidelines.

(3) (a) In carrying out its function under subsection (2), the DTA shall prepare and submit to the regional authorities, within 6 weeks of the commencement of consultation under subsection (1), a report on the issues which, in its opinion, should be considered by the regional authorities in making regional planning guidelines.

(b) The report prepared under paragraph (a) shall address, but shall not be limited to—

- (i) the transport investment priorities for the period of the regional planning guidelines,
- (ii) the scope, if any, to maximise the performance of the transport system by effective land use planning,
- (iii) recommendations regarding the optimal use, location, pattern and density of new development taking account of its transport strategy, and
- (iv) recommendations on the matters to be addressed in the regional planning guidelines to ensure effective integration of transport and land use planning.]

#### Annotations

#### Amendments:

**F79** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

**F80**[**31FF.—** (1) Where a regional authority (other than the regional authorities within the GDA) intends to make regional planning guidelines in accordance with section 24, or to review existing guidelines under section 26, it shall, as soon as may be, consult with the DTA in order to make the necessary arrangements for making the guidelines.

(2) The DTA shall assist and co-operate with the regional authority in making arrangements for the preparation of regional planning guidelines and in carrying out the preparation of the guidelines.

(3) In carrying out its functions under subsection (2), the DTA shall prepare and submit to the regional authority, within 6 weeks of the commencement of consultation under subsection (1), a report on the issues which, in its opinion, should be considered by the regional authority in making regional planning guidelines.]

#### Annotations

#### Amendments:

**F80** Inserted (4.01.2010) by *Public Transport Regulation Act 2009* (37/2009), s. 44(1)(d), S.I. No. 575 of 2009.

**F81**[DTA role in preparation of draft regional planning guidelines.]

**31G.—** (1) Where a notice is received by the DTA under section 24(4) it shall, as part of any written submission on the draft regional planning guidelines, state whether, in its view, the draft regional planning guidelines are—

(a) consistent with its transport strategy, or

(b) not consistent with its transport strategy and in such case what amendments to the draft guidelines it considers necessary to achieve such consistency.

(2) The DTA shall send copies of a submission prepared under this section to the Minister and Minister for Transport.]

**Annotations**

**Amendments:**

**F81** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

**F82**[**31GG.—** (1) Where a notice is received by the DTA under section 24(4) from a regional authority (other than the regional authorities within the GDA) the DTA shall, as part of any written submission on the draft regional planning guidelines, state whether, in its view, the matters raised by it in its report under section 31FF are—

(a) satisfactorily addressed in the draft regional planning guidelines, or

(b) not satisfactorily addressed in the draft regional planning guidelines.

(2) Where in the context of subsection (1)(b) the DTA makes a submission, it shall indicate what amendments to the draft regional planning guidelines it considers should be made to ensure effective integration of transport and land use planning.

(3) The DTA shall send copies of a submission prepared under this section to the Minister and Minister for Transport.]

**Annotations**

**Amendments:**

**F82** Inserted (4.01.2010) by *Public Transport Regulation Act 2009* (37/2009), s. 44(1)(e), S.I. No. 575 of 2009.

**F83**[Request by DTA for Minister to issue guidelines or policy directives.]

**31H.—** The DTA may, in relation to its functions, request the Minister to issue guidelines under section 28 or a policy directive under section 29 to a planning authority within the GDA.]

**Annotations**

**Amendments:**

**F83** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

F84[Requirement for transport impact assessment for certain classes of development.

**31I.**— (1) The Minister may, in respect of the GDA and following consultation with the DTA, make regulations specifying—

(a) classes of development, including strategic infrastructure development, requiring the submission of a transport impact assessment in respect of applications for development, and

(b) the format and content of a transport impact assessment.

(2) Regulations under subsection (1) may require that a transport impact assessment demonstrate that the proposed development in respect of which the assessment has been prepared would be consistent with the transport strategy of the DTA.

(3) Before granting permission for a development which requires a transport impact assessment under regulations made under subsection (1), a planning authority shall satisfy itself that the applicant has demonstrated that the proposed development would be consistent with the transport strategy of the DTA.

(4) In this section ‘transport impact assessment’ means a report outlining what additional transport impacts a particular proposed development will generate and how it will integrate into existing transport patterns.]

#### Annotations

#### Amendments:

**F84** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

F85[Transport strategy and planning process.

**31J.**— In any case in the GDA where—

(a) a planning or local authority, a regional or State authority or An Bord Pleanála is carrying out any relevant function under or transferred by Part II, X, XI or XIV, or

(b) a planning authority or An Bord Pleanála is carrying out any relevant function under any other Act,

the transport strategy of the DTA shall be a consideration material to the proper planning and sustainable development of the area or areas in question.]

#### Annotations

#### Amendments:

**F85** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 95, S.I. No. 574 of 2009.

## PART III

### CONTROL OF DEVELOPMENT

#### Annotations

#### Modifications (not altering text):

**C10** Application of Part III restricted by *Water Services Act 2007* (30/2007), s. 36(20), not commenced as of 27.12.2012.



**Water services strategic plan.**

36.— ...

(20) An application for permission under Part III of the Planning and Development Act 2000 shall not be refused by a planning authority or the Board solely on the ground that the development to which the application relates is not specifically referred to in the water services strategic plan in force in relation to the functional area of the planning authority if the planning authority or the Board, as the case may be, considers the development will facilitate the achievement of the objectives of that water services strategic plan.

...

- C11** Application of Part III extended (31.12.2007) by *Water Services Act 2007* (30/2007), s. 55(4) and 61(5), S.I. No. 846 of 2007.

**Connection to a water supply.**

55.— ...

(4) Without prejudice to subsection (5), where a water services authority is also the relevant planning authority, the grant of a permission under Part III of the Act of 2000 in relation to a structure to which this section applies may, if it is indicated in the permission, include the agreement of the water services authority to the connection of that structure to its waterworks for the purposes of this section, subject to such conditions as the water services authority may require, consistent with its functions under this section.

...

**Waste water connections.**

61.— ...

(5) Without prejudice to subsection (6), where a water services authority is also the relevant planning authority, the grant of a permission under Part III of the Act of 2000 in relation to a structure to which this section applies may, if it is indicated in the permission, include the agreement of the water services authority to the connection of that structure to its waste water works for the purposes of this section, subject to such conditions as the water services authority may require consistent with its powers under this section.

...

- C12** Provision for consideration of waste management under Part made by *Waste Management Act 1996* (10/1996), s. 22(10D) as inserted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 26(2)(d), S.I. No. 393 of 2004.

**Waste management plans.**

22.— ...

(10D) (a) In performing their functions under the Planning and Development Acts 2000 to 2002, and, in particular, their functions under Part III and sections 175 and 179 of the Planning and Development Act 2000, planning authorities and An Bord Pleanála shall ensure that such measures as are reasonably necessary are taken to secure appropriate provision for the management of waste (and, in particular, recyclable materials) within developments, including the provision of facilities for the storage, separation and collection of such waste (and, in particular, such materials) and the preparation by the appropriate persons of suitable plans for the operation of such facilities.

(b) The Minister may issue guidelines as to the steps that may be taken to comply with this subsection.

- C13** Application of Part restricted by *Environmental Protection Agency Act 1992* (7/1992), s. 86(11) as substituted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 15, S.I. No. 393 of 2004.

**Conditions attached to a licence.**

86.— ...

(8) Where a permission under section 34 of the Act of 2000 has been granted or an application has been made for such permission in relation to development comprising or for the purposes of an activity, the Agency—

(a) may consult with the planning authority in whose functional area the activity is or will be situate in relation to any development which is necessary to give effect to any conditions to be attached to a licence or revised licence and which the Agency considers is not the subject of a permission or an application for a permission under section 34 of the Act of 2000, and

(b) may attach to the licence or revised licence such conditions related to the above-mentioned development as may be specified by the planning authority for the purposes of the proper planning and sustainable development of the area or stricter conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of emissions.

...

(11) Notwithstanding the requirements of Part III of the Act of 2000, works consisting of, or incidental to, the carrying out of development referred to in paragraph (a) of subsection (8) in respect of which conditions have been attached under paragraph (b) of that subsection to the licence or revised licence concerned shall be exempted development within the meaning, and for the purposes, of the Act of 2000.

**C14** Provision for consideration of development plan under Part made (8.07.2003) by *Digital Hub Development Agency Act 2003 (23/2003)*, s. 9(5), commenced on enactment.

**Development plan.**

9.— ...

(5) Dublin City Council and An Bord Pleanála shall, in deciding any application or in determining any application on appeal for permission under Part III of the Planning and Development Act 2000 in respect of development in the digital hub area, consider anything relevant contained in the development plan.

...

General obligation to obtain permission.

**32.—(1)** Subject to the other provisions of this Act, permission shall be required under this Part—

(a) in respect of any development of land, not being exempted development, and

(b) in the case of development which is unauthorised, for the retention of that unauthorised development.

(2) A person shall not carry out any development in respect of which permission is required by *subsection (1)*, except under and in accordance with a permission granted under this Part.

Regulations regarding applications for permission.

**33.—(1)** The Minister shall by regulations provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for permission for the development of land.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for the following—

(a) requiring the submission of information in respect of applications for permission for the development of land;

(b) requiring any applicants to publish any specified notices with respect to their applications;

(c) enabling persons to make submissions or observations on payment of the prescribed fee and within a prescribed period;

- (d) requiring planning authorities to acknowledge in writing the receipt of submissions or observations;
  - (e) requiring any applicants to furnish to any specified persons any specified information with respect to their applications;
  - (f) requiring planning authorities to—
    - (i) (I) notify prescribed authorities of such proposed development or classes of development as may be prescribed, or
    - (II) consult with them in respect thereof,
    - and
    - (ii) give to them such documents, particulars, plans or other information in respect thereof as may be prescribed;
  - (g) requiring any applicants to submit any further information with respect to their applications (including any information as to any estate or interest in or right over land) or information regarding any effect on the environment which the development may have;
  - (h) enabling planning authorities to invite an applicant to submit to them revised plans or other drawings modifying, or other particulars providing for the modification of, the development to which the application relates and, in case the plans, drawings or particulars are submitted to a planning authority in response to such an invitation, enabling the authority in deciding the application to grant a permission for the relevant development as modified by all or any of the plans, drawings or particulars;
  - (i) requiring the production of any evidence to verify any particulars of information given by any applicants;
  - (j) requiring planning authorities to furnish to the Minister and to any other specified persons any specified information with respect to applications and the manner in which they have been dealt with;
  - (k) requiring planning authorities to publish or give notice of their decisions in respect of applications for permission, including the giving of notice thereof to prescribed bodies and to persons who made submissions or observations in respect of such applications;
  - (l) requiring an applicant to submit specified information to the planning authority with respect to development, or any class of development, carried out by a person to whom *section 35(7)* applies pursuant to a permission granted to the applicant or to any other person under this Part or under Part IV of the Act of 1963.
- (3) (a) Regulations under this section may, for the purposes of securing the attainment of an objective included in a development plan pursuant to *section 10(2)(m)*, require any applicant for permission to provide the planning authority with such information, in respect of development (including development of a particular class) that the applicant proposes to carry out in a Gaeltacht area, as it may specify.
- (b) A requirement to which *paragraph (a)* applies may relate to development belonging to a particular class.
  - (c) Before making regulations containing a requirement to which *paragraph (a)* applies the Minister shall consult with the Minister for Arts, Heritage, Gaeltacht and the Islands.

(4) Regulations under this section may make additional or separate provisions in regard to applications for outline permission within the meaning of *section 36*.

#### Annotations

#### Modifications (not altering text):

**C15** Functions under subs. (3)(c) and regulations transferred (1.06.2011) by *Irish Language, Gaeltacht and the Islands (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 2011* (S.I. No. 216 of 2011), regs. 2 and 3.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of Community, Equality and Gaeltacht Affairs contained in any Act or any instrument made thereunder and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The functions vested in the Minister for Community, Equality and Gaeltacht Affairs under—  
(a) section 33 (3)(c) of the Planning and Development Act 2000 (No. 30 of 2000), and  
(b) the Planning and Development Regulations 2001 (S.I. No. 600 of 2001),  
are transferred to the Minister for Tourism, Culture and Sport.

#### Editorial Notes:

**E61** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E62** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).

**E63** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E64** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).

**E65** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Permission for  
development.

#### 34.—(1) Where—

(a) an application is made to a planning authority in accordance with permission regulations for permission for the development of land, and

(b) all requirements of the regulations are complied with,

the authority may decide to grant the permission subject to or without conditions, or to refuse it.

**F86[(1A) Where an application to a planning authority is required to have been accompanied by an Environmental Impact Statement:**

(a) The planning authority shall cause to be published in one or more newspapers circulated in the area and/or by electronic means, a notice informing the public of such a decision of the planning authority.

(b) The notice shall state that the applicant and any person who made submissions or observations in writing to the planning authority in relation to the planning

- application in accordance with section 37(1) may appeal such a decision to the Board.
- (c) The notice shall further state that a person may question the validity of any decision of the planning authority by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with section 50.
- (d) The notice shall further state that a person may question the validity of any decision on an appeal by the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with section 50.
- (e) The notice shall identify where practical information on the appeal and review mechanisms can be found.]
- (2) (a) When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to—
- (i) the provisions of the development plan,
  - (ii) the provisions of any special amenity area order relating to the area,
  - (iii) any European site or other area prescribed for the purposes of *section 10(2)(c)*,
  - (iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government,
  - (v) the matters referred to in *subsection (4)*, and
  - (vi) any other relevant provision or requirement of this Act, and any regulations made thereunder.
- (b) In considering its decision in accordance with *paragraph (a)*, a planning authority shall consult with any other planning authority where it considers that a particular decision by it may have a significant effect on the area of that authority, and the authority shall have regard to the views of that other authority and, without prejudice to the foregoing, it shall have regard to the effect a particular decision by it may have on any area outside its area (including areas outside the State).
- (c) F87[Subject to section 99F of the Environmental Protection Agency Act 1992,] and section 54 (as amended by *section 257* of this Act) of the Waste Management Act, 1996, where an application under this section relates to development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, a planning authority shall take into consideration that the control of emissions arising from the activity is a function of the Environmental Protection Agency.
- (3) A planning authority shall, when considering an application for permission under this section, have regard to—
- (a) in addition to the application itself, any information relating to the application furnished to it by the applicant in accordance with the permission regulations,
  - (b) any written submissions or observations concerning the proposed development made to it in accordance with the permission regulations by persons or bodies other than the applicant.
- (4) Conditions under *subsection (1)* may, without prejudice to the generality of that subsection, include all or any of the following—

- F88[(a) conditions for regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant if the imposition of such conditions appears to the planning authority—
- (i) to be expedient for the purposes of or in connection with the development authorised by the permission, or
  - (ii) to be appropriate, where any aspect or feature of that adjoining, abutting or adjacent land constitutes an amenity for the public or a section of the public, for the purposes of conserving that amenity for the public or that section of the public (and the effect of the imposition of conditions for that purpose would not be to burden unduly the person in whose favour the permission operates);]
- (b) conditions for requiring the carrying out of works (including the provision of facilities) which the planning authority considers are required for the purposes of the development authorised by the permission;
- (c) conditions for requiring the taking of measures to reduce or prevent—
- (i) the emission of any noise or vibration from any structure or site comprised in the development authorised by the permission which might give reasonable cause for annoyance either to persons in any premises in the neighbourhood of the development or to persons lawfully using any public place in that neighbourhood, or
  - (ii) the intrusion of any noise or vibration which might give reasonable cause for annoyance to any person lawfully occupying any such structure or site;
- (d) conditions for requiring provision of open spaces;
- (e) conditions for requiring the planting, maintenance and replacement of trees, shrubs or other plants or the landscaping of structures or other land;
- (f) conditions for requiring the satisfactory completion within a specified period, not being less than 2 years from the commencement of any works, of the proposed development (including any roads, open spaces, car parks, sewers, watermains or drains or other public facilities), where the development includes the construction of 2 or more houses;
- (g) conditions for requiring the giving of adequate security for satisfactory completion of the proposed development;
- (h) conditions for determining the sequence and timing in which and the time at which works shall be carried out;
- (i) conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management);
- (j) conditions for the maintenance, until taken in charge by the local authority concerned, of roads, open spaces, car parks, sewers, watermains or drains and other public facilities or, where there is an agreement with the local authority in relation to such maintenance, conditions for maintenance in accordance with the agreement;
- (k) conditions for requiring the provision of such facilities for the collection or storage of recyclable materials for the purposes of the proposed development;
- (l) conditions for requiring construction and demolition waste to be recovered or disposed of in such a manner and to such extent as may be specified by the planning authority;

- (m) conditions for requiring the provision of roads, including traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities;
- (n) conditions for requiring the removal of any structures authorised by the permission, or the discontinuance of any use of the land so authorised, at the expiration of a specified period, and the carrying out of any works required for the re-instatement of land at the expiration of that period;
- (o) conditions in relation to appropriate naming and numbering of, and the provision of appropriate signage for, the proposed development;
- (p) conditions for requiring, in any case in which the development authorised by the permission would remove or alter any protected structure or any element of a protected structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest—
  - (i) the preservation by a written and visual record (either measured architectural drawings or colour photographs and/or audio-visual aids as considered appropriate) of that structure or element before the development authorised by the permission takes place, and
  - (ii) where appropriate, the architectural salvaging of any element, or the re-instatement of any element in a manner specified by the authority;
- (q) conditions for regulating the hours and days during which a business premises may operate.

(5) The conditions under *subsection (1)* may provide that points of detail relating to a grant of permission may be agreed between the planning authority and F88[the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination].

(6) (a) In a case in which the development F89[concerned would contravene materially the development plan or local area plan], a planning authority may, notwithstanding any other provision of this Act, decide to grant permission under this section, provided that the following requirements are complied with before the decision is made, namely—

- (i) notice in the prescribed form of the intention of the planning authority to consider deciding to grant the permission shall be published in at least one daily newspaper circulating in its area and the notice shall specifically state which objective of the development plan would be materially contravened by granting this permission,

F89[(ii) copies of the notice shall be given to each of the following—

- (I) the applicant,
- (II) a prescribed body which has been notified of the application by the planning authority, and
- (III) any person who has made a submission or observation in writing in relation to the development to which the application relates,]

- (iii) any submission or observation as regards the making of a decision to grant permission and which is received by the planning authority not later than 4 weeks after the first publication of the notice shall be duly considered by the F89[authority]

- F90[(*iiia*) not later than 6 weeks from the publication of the notice under subparagraph (i), the manager shall prepare a report for the planning authority advising the authority of his or her opinion regarding the compliance or otherwise of the proposed development under any relevant Ministerial guidelines under section 28 or any relevant policies or objectives of the Government or Minister of the Government or with any regional planning guidelines and the report shall be considered by the authority before a resolution is passed under subparagraph (iv), and]
- (iv) a resolution shall be passed by the authority requiring that a decision to grant permission be made.
- (b) It shall be necessary for the passing of a resolution referred to in *paragraph (a)* that the number of the members of the planning authority voting in favour of the resolution is not less than three-quarters of the total number of the members of the planning authority or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient, and the requirement of this paragraph is in addition to and not in substitution for any other requirement applying in relation to such a resolution.
- (c) Where—
- (i) notice is given pursuant to F91[*section 140 of the Local Government Act, 2001*], of intention to propose a resolution which, if passed, would require the manager to decide to grant permission under this section, and
- (ii) the manager is of the opinion that the development concerned would contravene materially the development plan,
- he or she shall, within one week of receiving the notice, make, by order, a declaration stating his or her opinion (a copy of which shall be furnished by him or her to each of the signatories of the notice) and thereupon the provisions of *subparagraphs (i), (ii) and (iii) of paragraph (a)* shall apply and have effect and shall operate to cause the notice to be of no further effect.
- (d) If a resolution referred to in *subparagraph (iv) of paragraph (a)* is duly passed, the manager shall decide to grant the relevant permission.
- (7) Notwithstanding F91[*section 140 of the Local Government Act, 2001*]—
- (a) the notice specified in F91[*subsection (3)*] of that section shall, in the case of a resolution under that section relating to a decision of a planning authority under this section or *section 42*, be signed—
- (i) if the land concerned is situated in a single local electoral area, by not less than three-quarters of the total number of the members who stand elected to the authority for that area, or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient, and
- (ii) if the land concerned is situated in more than one local electoral area, by not less than three-quarters, as respects each such area, of the total number of the members of the authority who stand elected for that area, or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient,
- and
- (b) it shall be necessary for the passing of a resolution under that section relating to a decision referred to in *paragraph (a)* that the number of the members voting in favour of the resolution is not less than three-quarters of the total number of members of the authority, or where the number so obtained is



not a whole number, the whole number next below the number so obtained shall be sufficient.

(8) (a) Subject to paragraphs (b), (c), (d) and (e), where—

- (i) an application is made to a planning authority in accordance with the permission regulations for permission under this section, and
- (ii) any requirements of those regulations relating to the application are complied with,

a planning authority shall make its decision on the application within the period of 8 weeks beginning on the date of receipt by the planning authority of the application.

F92[(b) Where a planning authority, within 8 weeks of the receipt of a planning application, serves notice in accordance with the permission regulations requiring the applicant to give to the authority further information or to produce evidence in respect of the application, the authority shall make its decision on the application as follows:

- (i) within 4 weeks of the notice being complied with, or
- (ii) if in relation to further information given or evidence produced in compliance with the notice, the planning authority—
  - (I) considers that it contains significant additional data which requires the publication of a notice by the applicant in accordance with the permission regulations, and
  - (II) gives notice accordingly to the applicant,

within 4 weeks beginning on the day on which notice of that publication is given by the applicant to the planning authority.

(c) Where, in the case of a planning application accompanied by an environmental impact statement or a Natura impact statement, a planning authority serves a notice referred to in paragraph (b), the authority shall make its decision as follows:

- (i) within 8 weeks of the notice being complied with, or
- (ii) if in relation to further information given or evidence produced in compliance with the notice, the planning authority—
  - (I) considers that it contains significant additional data which requires the publication of a notice by the applicant in accordance with the permission regulations, and
  - (II) gives notice accordingly to the applicant,

within 8 weeks beginning on the day on which notice of that publication is given by the applicant to the planning authority,]

F93[(ca) Where an environmental impact statement is submitted to a planning authority under section 172(1C), or where a Natura impact statement is submitted to a planning authority under section 177T (5), the planning authority shall make its decision on the application as follows—

- (i) within 8 weeks commencing on the date on which the environmental impact statement or Natura impact statement, as the case may be, and a copy of the relevant public notice required in accordance with regulations under this Act, is received by the planning authority, or

- (ii) where a planning authority, within 8 weeks of the receipt of an environmental impact statement submitted under section 172(1C) or a Natura impact statement under section 177T(5), serves notice in accordance with regulations under this Act requiring the applicant to give to the authority further information in relation to the environmental impact statement or Natura impact statement, as the case may be—
- (I) within 4 weeks of the notice being complied with, or
- (II) if in relation to further information given, the planning authority considers that it contains significant additional data which requires the publication of a notice by the applicant in accordance with regulations under this Act, and gives notice accordingly to the applicant, within 4 weeks beginning on the day on which notice of that publication is given by the applicant to the planning authority.]
- (d) Where a notice referred to in *subsection (6)* is published in relation to the application, the authority shall make its decision within the period of 8 weeks beginning on the day on which the notice is first published.
- (e) Where, in the case of an application for permission for development that—
- (i) would be likely to increase the risk of a major accident, or
- (ii) is of such a nature as to be likely, if a major accident were to occur, and, having regard to all the circumstances, to cause there to be serious consequences,
- a planning authority consults, in accordance with the permission regulations, with a prescribed authority for the purpose of obtaining technical advice regarding such risk or consequences, the authority shall make a decision in relation to the application within 4 weeks beginning on the day on which the technical advice is received.
- F94[(f) (i) Where a planning authority has failed to make a decision in relation to an application within the period specified in paragraph (a), (b), (c), (d) or (e) as appropriate (referred to in this paragraph as the ‘first period’) and becomes aware, whether through notification by the applicant or otherwise, that it has so failed, the authority shall proceed to make the decision notwithstanding that the first period has expired.
- (ii) Where a planning authority fails to make a decision within the first period, it shall pay the appropriate sum to the applicant.
- (iii) Where a planning authority fails to make a decision within a period of 12 weeks after the expiry of the first period a decision (referred to in this paragraph as the ‘deemed decision’) of the planning authority to grant the permission shall be regarded as having been given on the last day of that period of 12 weeks.
- (iv) Any person, who has made submissions or observations in writing in relation to the planning application to the planning authority, may at any time within the period of 4 weeks after the expiry of the period of 12 weeks referred to in subparagraph (iii), appeal the deemed decision.
- (v) Subparagraphs (i) to (iv) shall not apply where there is a requirement under Part X or Part XAB to carry out an environmental impact assessment, a determination whether an environmental impact assessment is required, or an appropriate assessment, in respect of the development relating to which the authority has failed to make a decision.
- (vi) Where the planning authority has failed to make a decision in relation to development where an environmental impact assessment, a determination whether an environmental impact assessment is required, or an

appropriate assessment is required within the first period and becomes aware, whether through notification by the applicant or otherwise, that it has so failed—

(I) the authority shall proceed to make the decision notwithstanding that the first period has expired,

(II) where a planning authority fails to make a decision within the first period, it shall pay the appropriate sum to the applicant,

(III) provided that no notice under paragraph (b) or (c) was served on the applicant prior to the expiry of the first period, where a planning authority proceeds to make a decision under clause (I) in relation to an application, it may serve notice on the applicant, requiring the applicant to give to the authority further information or to produce evidence in respect of the application under paragraph (b) or (c), and paragraph (b) or (c) shall apply to such notice subject to any necessary modifications,

(IV) subject to service of a notice under paragraph (b) or (c) in accordance with clause (III), where a planning authority fails to make a decision before the expiry of the period of 12 weeks beginning on the day immediately after the day on which the first period expires, the authority shall, subject to clause (V), pay the appropriate sum to the applicant, and shall pay a further such sum to the applicant where it fails to make a decision before the expiry of each subsequent period of 12 weeks beginning immediately after the preceding 12 week period,

(V) not more than 5 payments of the appropriate sum shall be made by a planning authority to an applicant in respect of the failure by the authority to make a decision in relation to an application,

(VI) where a planning authority makes a decision in relation to an application more than one year after the expiration of the first period the authority, before making the decision—

(A) notwithstanding that notice has been previously published in relation to the application, shall require the applicant to publish additional such notice concerning the planning application in accordance with the permission regulations (and the planning authority shall refund the costs of so publishing to the applicant),

(B) notwithstanding that notice of the application has previously been given to prescribed bodies, shall give additional such notice in accordance with the permission regulations, and

(C) notwithstanding anything contained in paragraph (b) or (c), or that the authority has previously been given further information or evidence under those paragraphs may require the applicant to give to the authority further information or to produce evidence in respect of the application as the authority requires and paragraph (b) or (c), as appropriate, shall apply to such additional request subject to any necessary modifications,

and the planning authority shall consider any submissions made in accordance with the Regulations following on such additional notices, or additional further information or evidence produced under this clause.

(vii) Any payment or refund due to be paid under this paragraph shall be paid as soon as may be and in any event not later than 4 weeks after it becomes due.

(viii) In this paragraph, 'appropriate sum' means a sum which is equal to the lesser amount of 3 times the prescribed fee paid by the applicant to the planning authority in respect of his or her application for permission or €10,000.]

(9) Where, within the period of 8 weeks beginning on the date of receipt by the planning authority of the application, the applicant for a permission under this section gives to the planning authority in writing his or her consent to the extension of the period for making a decision under *subsection (8)*, the period for making the decision shall be extended for the period consented to by the applicant.

(10) (a) A decision given under this section or *section 37* and the notification of the decision shall state the main reasons and considerations on which the decision is based, and where conditions are imposed in relation to the grant of any permission the decision shall state the main reasons for the imposition of any such conditions, provided that where a condition imposed is a condition described in *subsection (4)*, a reference to the paragraph of *subsection (4)* in which the condition is described shall be sufficient to meet the requirements of this subsection.

(b) Where a decision by a planning authority under this section or by the Board under *section 37* to grant or to refuse permission is different, in relation to the granting or refusal of permission, from the recommendation in—

(i) the reports on a planning application to the manager (or such other person delegated to make the decision) in the case of a planning authority, or

(ii) a report of a person assigned to report on an appeal on behalf of the Board,

a statement under *paragraph (a)* shall indicate the main reasons for not accepting the recommendation in the report or reports to grant or refuse permission.

(11) (a) Where the planning authority decides under this section to grant a permission—

(i) in case no appeal is taken against the decision, it shall make the grant as soon as may be after the expiration of the period for the taking of an appeal,

(ii) in case an appeal or appeals is or are taken against the decision, it shall not make the grant unless, as regards the appeal or, as may be appropriate, each of the appeals—

(I) it is withdrawn, or

(II) it is dismissed by the Board pursuant to *section 133* or *138*, or

(III) in relation to it a direction is given to the authority by the Board pursuant to *section 139*, and, in the case of the withdrawal or dismissal of an appeal or of all such appeals, as may be appropriate, it shall make the grant as soon as may be after such withdrawal or dismissal and, in the case of such a direction, it shall make the grant, in accordance with the direction, as soon as may be after the giving by the Board of the direction.

(b) Where the Board decides on appeal under *section 37* to grant a permission, it shall make the grant as soon as may be after the decision.

F89[(12) A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it

was commenced the application would have required that one or more than one of the following was carried out—

- (a) an environmental impact assessment,
- (b) a determination as to whether an environmental impact assessment is required, or
- (c) an appropriate assessment.

(12A) For the purposes of subsection (12), if an application for permission had been made in respect of the following development before it was commenced, the application shall be deemed not to have required a determination referred to at subsection (12)(b):

- (a) development within the curtilage of a dwelling house, for any purpose incidental to the enjoyment of the dwelling house as a dwelling house;
- (b) modifications to the exterior of a building.

(12B) Where a planning authority refuses to consider an application for permission under subsection (12) it shall return the application to the applicant, together with any fee received from the applicant in respect of the application, and shall give reasons for its decision to the applicant.

(12C) Subject to subsections (12) and (12A), an application for development of land in accordance with the permission regulations may be made for the retention of unauthorised development, and this section shall apply to such an application, subject to any necessary modifications.]

(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development.

#### Annotations

#### Amendments:

- F86** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(a).
- F87** Substituted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 61, S.I. No. 393 of 2004.
- F88** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 8(1) and (2), S.I. No. 525 of 2006.
- F89** Substituted (23.03.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 23(a)(i)-(iii) and (c), S.I. No. 132 of 2011.
- F90** Inserted (23.03.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 23(a)(iv), S.I. No. 132 of 2011.
- F91** Substituted (1.01.2002) by *Local Government Act 2001* (37/2001), s. 5(3) and sch. 4, S.I. No. 588 of 2001.
- F92** Substituted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 23(b)(i), S.I. No. 475 of 2011.
- F93** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 5.
- F94** Substituted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 23(b)(ii), S.I. No. 475 of 2011.

**Modifications (not altering text):**

- C16** Construction of reference to 'planning authority' under subs. (4)(m) extended (31.12.2007) by *Water Services Act 2007* (30/2007), s. 55(5)(b), S.I. No. 846 of 2007.

**Connection to a water supply.**

55. — ...

(5) ...

- (b) For the purposes of the application of section 34(4)(m) of the Act of 2000 to this subsection, a reference to a planning authority shall be deemed to include a reference to a water services authority.

...

- C17** Construction of reference to 'planning authority' under subs. (4)(m) extended (31.12.2007) by *Water Services Act 2007* (30/2007), s. 61(6)(b), S.I. No. 846 of 2007.

**Waste water connections.**

61. — ...

(6) ...

- (b) For the purposes of the application of section 34(4)(m) of the Act of 2000 to this subsection, a reference to a planning authority shall be deemed to include a reference to a water services authority.

...

- C18** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), regs. 41(1) and 43(1).

**Limitation of Act of 2000**

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

- (a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or

- (b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

**Consideration of proposals by planning authorities and An Bord Pleanála**

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

- C19** Application of subs. (8) restricted (11.07.2007) by *Roads Act 2007* (34/2007), s. 8(4), commenced on enactment.

**Declaration of motorways.**

8. — ...

(4) Notwithstanding any other enactment, neither a planning authority or An Bord Pleanála shall decide to grant or grant planning permission nor shall a decision by such be regarded as having been given under section 34(8) of the Planning and Development Act 2000 in respect of the developments referred to in section 46 of the Principal Act in respect of a national road or a proposed road development for the construction of a national road declared to be a motorway under subsection (1).

- C20** Application of section retracted by *Environmental Protection Agency Act 1992* (7/1992), s. 99F(1) and (9) as substituted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 15, S.I. No. 393 of 2004.

**Application of other Acts.**

**99F.**—(1) Notwithstanding section 34 of the Act of 2000, or any other provision of that Act, where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under section 34 of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of—

(a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or

(b) controlling emissions related to or following the cessation of the operation of the activity.

...

(9) Without prejudice to the preceding subsections, where a licence or revised licence under this Part is granted in relation to an activity and—

(a) a permission under section 34 of the Act of 2000, or

(b) a lease under the Minerals Development Acts 1940 to 1999,

has been granted in respect of the same activity or in relation to development for the purposes of it, any conditions attached to that permission or contained in that lease, as the case may be, shall, so far as they are for the purposes of the prevention, elimination, limitation, abatement or reduction of emissions to the environment, cease to have effect.

- C21** Application of subs. (6) and (8) restricted by *Waste Management Act 1996* (10/1996), s. 22(10B) as inserted (17.07.2001) by *Waste Management (Amendment) Act 2001* (36/2001), s. 4, commenced on enactment.

**Waste management plans.**

22.— ...

(10B) (a) Where a planning authority proposes to grant permission under Part III of the Planning and Development Act, 2000, for development which is consistent with the provisions (including any objectives contained therein) of, and is necessary for the proper implementation of, the waste management plan in force in relation to the authority's functional area, but, in the opinion of the manager of the authority, would contravene materially any other objective of the development plan in force in relation to that area, the manager shall—

(i) publish notice of the intention of the authority to grant the permission in one or more newspapers circulating in that area,

(ii) give a copy of the notice to the applicant for permission and to any person who has made a submission or observation in writing in relation to the development to which the application relates in accordance with any regulations made under the Planning and Development Act, 2000.

- (b) Any submission or observation in writing in relation to the making of a decision to grant the permission concerned which is received by the planning authority not later than 4 weeks after the publication of the notice in accordance with paragraph (a) shall be considered by the manager of the authority.
- (c) Following consideration of any submissions or observations received in accordance with paragraph (b), the manager of the planning authority may, subject to, and in accordance with, the provisions of the Planning and Development Act, 2000 (apart from the amendments of them effected by this section), decide to grant the permission, with or without conditions, or to refuse the permission.
- (d) Section 34(6) of the Planning and Development Act, 2000, shall not apply to applications for permission referred to in paragraph (a).
- (e) Notwithstanding section 34(8) of the Planning and Development Act, 2000, where a notice referred to in paragraph (a) is published in relation to an application for permission for development, the manager of the planning authority concerned shall make his or her decision in relation to the application within the period of 8 weeks beginning on the day on which the notice is first published.

...

**Editorial Notes:**

- E66** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E67** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Refusal of planning permission for past failures to comply.

F95[35.—(1) Where, having regard to—

- (a) any information furnished pursuant to regulations made under section 33(2)(f),
- (b) any information available to the planning authority concerning development carried out by a person to whom this section applies pursuant to a permission (in this section referred to as a 'previous permission') granted to the applicant or to any other person under this Part or Part IV of the Act of 1963,
- (c) any information otherwise available to the planning authority concerning a substantial unauthorised development, or
- (d) any information concerning a conviction for an offence under this Act,

the planning authority is satisfied that a person to whom this section applies is not in compliance with a previous permission or with a condition to which the previous permission is subject, has carried out a substantial unauthorised development, or has been convicted of an offence under this Act, the authority may form the opinion—

- (i) that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such permission if granted or with a condition to which such permission if granted would be subject, and
- (ii) that accordingly planning permission should not be granted to the applicant concerned in respect of that development.]

(2) In forming its opinion under subsection (1), the planning authority shall only consider those failures to comply with any previous permission, or with any condition to which that permission is subject, that are of a substantial nature.

(3) An opinion under this subsection shall not be a decision on an application for permission for the purposes of this Part.



F96[F95](4) If the planning authority considers that there are good grounds for its being able to form the opinion under subsection (1) in relation to an application for permission in respect of the development concerned and, accordingly, to exercise the power under subsection (5) to refuse that permission, it shall serve a notice in writing on the applicant to that effect and that notice shall—

- (a) specify the non compliance with a previous permission or condition of a previous permission, substantial unauthorised development, or conviction for an offence under this Act, as the case may be, that the authority intends to take into consideration with regard to the proposed exercise of that power, and
- (b) invite the applicant to make submissions to the authority within a period specified in the notice as to why the applicant considers that the authority should not exercise that power (whether because the applicant contends that the views of the authority in relation to the failure to comply by the applicant or any other person to whom this section applies with any previous permission, or any condition to which it is subject, the carrying out of substantial unauthorised development or conviction for an offence under this Act, as the case may be, are incorrect or that there are not good grounds for forming the opinion under subsection (1)).]

(5) If the planning authority, having considered any submissions made to it in accordance with a notice under subsection (4), proceeds to form the opinion under subsection (1) in relation to the application concerned it shall decide to refuse to grant the permission concerned and notify the applicant accordingly.

(6) The applicant may, within 8 weeks from the receipt of that notification, notwithstanding sections 50 and 50A, apply, by motion on notice to the planning authority, to the High Court for an order annulling the planning authority's decision and, on the hearing of such application, the High Court may, as it considers appropriate, confirm the decision of the authority, annul the decision and direct the authority to consider the applicant's application for planning permission without reference to the provisions of this section or make such other order as it thinks fit.

(6A) If, in pursuance of subsection (6), the High Court directs the planning authority to consider the applicant's application for planning permission without reference to the provisions of this section, the planning authority shall make its decision on the application within the period of 8 weeks from the date the order of the High Court in the matter is perfected but this subsection is subject to the provisions of section 34(8) as applied to the foregoing case by subsection (6B).

(6B) For the purposes of the foregoing case the provisions of section 34(8) shall apply with the following modifications:

- (a) in paragraph (a) of section 34(8), after "paragraphs (b), (c), (d) and (e)", there shall be inserted "and section 35(6A)";
- (b) for the reference in paragraph (b) of section 34(8) to "8 weeks of the receipt of a planning application" there shall be substituted "8 weeks of the date the order of the High Court in the matter is perfected";
- (c) in paragraph (f) of section 34(8), after "paragraph (a), (b), (c), (d) or (e)", there shall be inserted ", the period specified in section 35(6A) or, as the case may be, the period specified in paragraph (b), (c), (d) or (e) as that paragraph is applied by virtue of section 35(6B)"; and
- (d) any other necessary modifications.

(6C) No appeal shall lie to the Board from a decision of a planning authority to refuse to grant planning permission under subsection (5).]

(7) In this section, "a person to whom this section applies" means—

- (a) the applicant for the permission concerned,
- (b) a partnership of which the applicant is or was a member and which, during the membership of that applicant, F95[carried out a development pursuant to a previous permission, carried out a substantial unauthorised development or has been convicted of an offence under this Act,]
- (c) in the case where the applicant for permission is a company—
- (i) the company concerned is related to a company (within the meaning of section 140(5) of the Companies Act, 1990) which F95[carried out a development pursuant to a previous permission, carried out a substantial unauthorised development or has been convicted of an offence under this Act,] or
- (ii) the company concerned is under the same control as a company which carried out a development referred to in *subsection (1)(b)*, where “control” has the same meaning as in section 26(3) of the Companies Act, 1990,
- or
- (d) a company which F95[carried out a development pursuant to a previous permission, carried out a substantial unauthorised development or has been convicted of an offence under this Act,] which company is controlled by the applicant—
- (i) where “control” has the same meaning as in section 26(3) of the Companies Act, 1990, or
- (ii) as a shadow director within the meaning of section 27(1) of the Companies Act, 1990.

**Annotations****Amendments:**

**F95** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 24, S.I. No. 477 of 2010.

**F96** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 9, S.I. No. 525 of 2006.

**Editorial Notes:**

**E68** Previous affecting provision: subs. (4) inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 9, S.I. No. 525 of 2006, substituted as per F-note above.

Outline permission.

**36.—(1)** An application under *section 34* may be made to a planning authority in accordance with the permission regulations for outline permission for the development of land.

(2) Where outline permission is granted under *section 34*, that permission shall not operate to authorise the carrying out of any development to which the outline permission relates until a subsequent permission has been granted under that section.

(3) (a) Where outline permission has been granted by a planning authority, any subsequent application for permission must be made not later than 3 years beginning on the date of the grant of outline permission, or such longer period, not exceeding 5 years, as may be specified by the planning authority.

(b) The outline permission shall cease to have effect at the end of the period referred to in *paragraph (a)* unless the subsequent application for permission is made within that period.

(c) *Sections 40, 41 and 42* shall not apply to the grant of an outline permission.

(4) Where an application for permission is made to a planning authority consequent on the grant of outline permission, the planning authority shall not refuse to grant permission on the basis of any matter which had been decided in the grant of outline permission, provided that the authority is satisfied that the proposed development is within the terms of the outline permission.

(5) No appeal may be brought to the Board under *section 37* against a decision of a planning authority to grant permission consequent on the grant of outline permission in respect of any aspect of the proposed development which was decided in the grant of outline permission.

(6) In this section, "outline permission" means permission granted in principle under *section 34* for the development of land subject to a subsequent detailed application for permission under that section.

Appeal to Board. **37.—**(1) (a) An applicant for permission and any person who made submissions or observations in writing in relation to the planning application to the planning authority in accordance with the permission regulations and on payment of the appropriate fee, may, at any time before the expiration of the appropriate period, appeal to the Board against a decision of a planning authority under *section 34*.

(b) Subject to *paragraphs (c) and (d)*, where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given; and *subsections (1), (2), (3) and (4) of section 34* shall apply, subject to any necessary modifications, in relation to the determination of an application by the Board on appeal under this subsection as they apply in relation to the determination under that section of an application by a planning authority.

(c) *Paragraph (b)* shall be construed and have effect subject to *sections 133, 138 and 139*.

(d) In *paragraph (a) and subsection (6)*, "the appropriate period" means the period of four weeks beginning on the day of the decision of the planning authority.

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section*

28, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.
- (c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of *section 34(10)*, indicate in its decision the main reasons and considerations for contravening materially the development plan.

(3) Subject to *section 141(2)*, the provisions of *subsection (1)* authorising appeals to be made before the expiration of the appropriate period within the meaning of that subsection shall be construed as including a provision that an appeal received by the Board after the expiration of the appropriate period shall be invalid as not having been made in time.

- (4) (a) Notwithstanding *subsection (1)*, where in accordance with the permission regulations any prescribed body is entitled to be given notice of any planning application, that body shall be entitled to appeal to the Board before the expiration of the appropriate period within the meaning of that subsection where the body had not been sent notice in accordance with the regulations.
- (b) The Board may dismiss any appeal made under *paragraph (a)* where it considers the body concerned was not entitled to be sent notice of the planning application in accordance with the permission regulations.

F97[(c) Notwithstanding *subsection (1)*, a body or organisation referred to in *paragraph (d)* shall be entitled to appeal to the Board against a decision by a planning authority on an application for development (being development in respect of which an environmental impact statement was required to be submitted to the planning authority in accordance with *section 172*) before the expiration of the appropriate period within the meaning of that subsection.

(d) The body or organisation mentioned in *paragraph (c)* is a body or organisation (not being a State authority, a public authority or a governmental body or agency)—

- (i) the aims or objectives of which relate to the promotion of environmental protection,
- (ii) which has, during the period of 12 months preceding the making of the appeal, pursued those aims or objectives, and
- (iii) which satisfies such additional requirements (if any) as are prescribed under *paragraph (e)*.

(e) The Minister may prescribe additional requirements which a body or organisation of the foregoing kind must satisfy in order to make an appeal under *paragraph (c)*, being requirements of a general nature and for the purposes of promoting transparency and accountability in the operation of such organisations, including requirements—

- (i) in relation to its membership,
- (ii) that the pursuit of its aims or objectives be otherwise than for profit,
- (iii) in relation to the possession of a specified legal personality and the possession of a constitution or rules,

- (iv) that the area of environmental protection to which its aims or objectives relate is relevant to the class of matter into which the decision, the subject of the appeal, falls.
- (f) The Board may dismiss any appeal made under paragraph (c) where it considers that the body or organisation concerned does not satisfy the requirements of paragraph (d)(i), (ii) or (iii).]
- (5) (a) No application for permission for the same development or for development of the same description as an application for permission for development which is the subject of an appeal to the Board under this section shall be made before—
- (i) the Board has made its decision on the appeal,
  - (ii) the appeal is withdrawn, or
  - (iii) the appeal is dismissed by the Board pursuant to *section 133* or *138*.
- (b) Where an application for permission referred to in *paragraph (a)* is made to a planning authority, the planning authority shall notify the applicant that the application cannot be considered by the planning authority and return the application and any other information submitted with the application in accordance with the permission regulations, and any fee paid.
- (c) A dispute as to whether an application for permission is for the same development or is for development of the same description as an application for permission which is the subject of an appeal to the Board may be referred to the Board for determination.
- (6) (a) Notwithstanding *subsection (1)(a)*, a person who has an interest in land adjoining land F98[in respect of which a decision to grant permission has been made] may, within the appropriate period and on payment of the appropriate fee, apply to the Board for leave to appeal against a decision of the planning authority under *section 34*.
- (b) An application under *paragraph (a)* shall state the name and address of the person making the application, the grounds upon which the application is made, and a description of the person's interest in the land.
- (c) The Board shall, within one week from the receipt of an application under *paragraph (a)*, require, by notice in writing, the planning authority concerned to submit to the Board copies of the materials referred to in *subparagraph (i)* of *section 128(a)*, the report referred to in *subparagraph (ii)* of that section, and the decision and notification referred to in *subparagraph (iii)* of that section and the planning authority shall comply with such requirement within one week from the date of receiving the notice.
- (d) The Board, or any member or employee of the Board duly authorised by the Board in that behalf, shall, where an applicant under this subsection shows that—
- (i) the development F98[in respect of which a decision to grant permission has been made] will differ materially from the development as set out in the application for permission by reason of conditions imposed by the planning authority to which the grant is subject, and
  - (ii) that the imposition of such conditions will materially affect the applicant's enjoyment of the land or reduce the value of the land,
- within 4 weeks from the receipt of the application grant the applicant leave to appeal against the decision of the planning authority under *subsection (1)*.

- (e) The Board shall notify in writing the applicant and the planning authority of a decision to grant or refuse an application under this subsection within 3 days from its making.
- (f) A person to whom leave to appeal has been granted under this subsection shall bring the appeal within 2 weeks from the receipt of the notification under *paragraph (e)*.
- (g) Notwithstanding *section 34(11)(a)(i)*, where an application is made under this subsection a planning authority shall not make a grant of permission unless the application is refused.
- (h) Where leave to appeal is granted under this subsection, *subsection (2) of section 126* shall apply subject to the modification that the reference therein to 18 weeks shall be construed as a reference to 14 weeks.
- (i) Where leave to appeal is granted under this section, a planning authority that has complied with *paragraph (c)* shall, in respect of the appeal, be deemed to have complied with the requirements of *section 128*.

**Annotations****Amendments:**

- F97** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 10, S.I. No. 525 of 2006.
- F98** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002 (32/2002)*, s. 10, commenced on enactment.

**Modifications (not altering text):**

- C22** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007)*, regs. 41(1) and 43(1).

**Limitation of Act of 2000**

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

- (a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or
- (b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

**Consideration of proposals by planning authorities and An Bord Pleanála**

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of

waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

**F99**[Board's jurisdiction in relation to certain planning applications.

**37A.—** (1) An application for permission for any development specified in the Seventh Schedule (inserted by the Planning and Development (Strategic Infrastructure) Act 2006) shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority.

(2) That condition is that, following consultations under section 37B, the Board serves on the prospective applicant a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the following paragraphs, namely—

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate,
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional planning guidelines in force in respect of the area or areas in which it would be situate,
- (c) the development would have a significant effect on the area of more than one planning authority.

(3) In subsection (2) 'prospective applicant' means the person referred to in section 37B(1).]

**F100**[(4) (a) Notwithstanding subsection (1), where an application for permission is being made in relation to a development specified in the Seventh Schedule that is located in a strategic development zone, the applicant may elect to make the application to the planning authority under section 34 and regulations made thereunder.

(b) Section 170 shall apply to an application made under paragraph (a).

(c) Section 37B shall not apply to an application made under paragraph (a).]

#### Annotations

#### Amendments:

**F99** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

**F100** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 25, S.I. No. 477 of 2010.

**F101**[Discussions with Board before making of application.

**37B.—** (1) A person who proposes to apply for permission for any development specified in the Seventh Schedule shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) Such a person is referred to subsequently in this section and in sections 37C and 37D as a 'prospective applicant'.

(3) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

- (a) whether the proposed development would, if carried out, fall within one or more of paragraphs (a) to (c) of section 37A(2),

- (b) the procedures involved in making a planning application and in considering such an application, and
- (c) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.
- (4) Where, following consultations under this section, the Board is of the opinion that the proposed development would, if carried out—
- (a) fall within one or more of paragraphs (a) to (c) of section 37A(2), it shall serve a notice in writing on the prospective applicant stating that it is of that opinion, or
- (b) not fall within any of those paragraphs, it shall serve a notice in writing on the prospective applicant stating that it is of that opinion.
- (5) A notice under subsection (4)(b) shall include a statement that the prospective applicant's application for permission, if it is proceeded with, must be made to the appropriate planning authority (and such an application, if it is proceeded with, shall be made to that planning authority accordingly).
- (6) The Board shall serve a copy of a notice under subsection (4)(a) or (b), as the case may be, on the appropriate planning authority.
- (7) No application for permission in respect of a development referred to in subsection (1) shall be made to a planning authority unless or until a notice is served under subsection (4)(b) in relation to the development.
- (8) In this section 'appropriate planning authority' means whichever planning authority would, but for the enactment of section 3 of the Planning and Development (Strategic Infrastructure) Act 2006, be the appropriate planning authority to deal with the application referred to in subsection (1).]

**Annotations****Amendments:**

**F101** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

**F102**[Section 37B: supplemental provisions.

**37C.—** (1) A prospective applicant shall, for the purposes of consultations under section 37B, supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(2) The holding of consultations under section 37B shall not prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act and cannot be relied upon in the formal planning process or in legal proceedings.

(3) The Board shall keep a record in writing of any consultations under section 37B in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any planning application in respect of the proposed development relates.

(4) The Board may consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under section 37B in relation to a proposed development.]



**Annotations****Amendments:**

**F102** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

**F103** [Opinion by Board on information to be contained in environmental impact statement.]

**37D.—** (1) Where a notice has been served under section 37B(4)(a) in relation to proposed development, a prospective applicant may request the Board to give to him or her an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact statement in relation to the development.

(2) On receipt of such a request the Board shall—

(a) consult with the requester and such bodies as may be specified by the Minister for the purpose, and

(b) comply with the request as soon as is practicable.

(3) A prospective applicant shall, for the purposes of the Board's complying with a request under this section, supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(4) The provision of an opinion under this section shall not prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act and cannot be relied upon in the formal planning process or in legal proceedings.]

**Annotations****Amendments:**

**F103** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

**Editorial Notes:**

**E69** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).

**E70** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**F104** [Application to Board.]

**37E.—** (1) An application for permission for development in respect of which a notice has been served under section 37B(4)(a) shall be made to the Board and shall be accompanied by an environmental impact statement in respect of the proposed development.

(2) The Board may refuse to deal with any application made to it under this section where it considers that the application for permission or the environmental impact statement is inadequate or incomplete, having regard in particular to the permission regulations and any regulations made under section 177 or to any consultations held under section 37B.

(3) Before a person applies for permission to the Board under this section, he or she shall—

- (a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—
- (i) stating that—
    - (I) the person proposes to make an application to the Board for permission for the proposed development,
    - (II) an environmental impact statement has been prepared in respect of the proposed development, and
    - (III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,
  - (ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the environmental impact statement may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),
  - (iii) inviting the making, during such period, of submissions and observations to the Board relating to—
    - (I) the implications of the proposed development for proper planning and sustainable development, and
    - (II) the likely effects on the environment of the proposed development,if carried out, and
  - (iv) specifying the types of decision the Board may make, under section 37G, in relation to the application,
- (b) send a prescribed number of copies of the application and the environmental impact statement to the planning authority or authorities in whose area or areas the proposed development would be situated,
- (c) send a prescribed number of copies of the application and the environmental impact statement to any prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—
- (i) the implications of the proposed development for proper planning and sustainable development, and
  - (ii) the likely effects on the environment of the proposed development,
- if carried out, and
- (d) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.

(4) The planning authority for the area (or, as the case may be, each planning authority for the areas) in which the proposed development would be situated shall, within 10 weeks from the making of the application to the Board under this section (or such longer period as may be specified by the Board), prepare and submit to the Board a report setting out the views of the authority on the effects of the proposed development on the environment and the proper planning and sustainable develop-

ment of the area of the authority, having regard in particular to the matters specified in section 34(2).

(5) The manager of a planning authority shall, before submitting any report in relation to a proposed development to the Board under subsection (4), submit the report to the members of the authority and seek the views of the members on the proposed development.

(6) The members of the planning authority may, by resolution, decide to attach recommendations specified in the resolution to the report of the authority; where the members so decide those recommendations (together with the meetings administrator's record) shall be attached to the report submitted to the Board under subsection (4).

(7) In subsection (6) 'the meetings administrator's record' means a record prepared by the meetings administrator (within the meaning of section 46 of the Local Government Act 2001) of the views expressed by the members on the proposed development.

(8) In addition to the report referred to in subsection (4), the Board may, where it considers it necessary to do so, require the planning authority or authorities referred to in that subsection or any planning authority or authorities on whose area or areas it would have a significant effect to furnish to the Board such information in relation to the effects of the proposed development on the proper planning and sustainable development of the area concerned and on the environment as the Board may specify.]

#### Annotations

#### Amendments:

**F104** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

#### Modifications (not altering text):

**C23** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), regs. 41(1) and 43(1).

#### Limitation of Act of 2000

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

- (a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or
- (b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

#### Consideration of proposals by planning authorities and An Bord Pleanála

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the

Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

**Editorial Notes:**

**E71** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

F105[Section 37E: supplemental provisions.

**37F.—** (1) Before determining any application for permission under section 37E the Board may, at its absolute discretion and at any time—

- (a) require the applicant for permission to submit further information, including a revised environmental impact statement,
- (b) indicate that it is considering granting permission, subject to the applicant for permission submitting revised particulars, plans or drawings in relation to the development,
- (c) request further submissions or observations from the applicant for permission, any person who made submissions or observations, or any other person who may, in the opinion of the Board, have information which is relevant to the determination of the application,
- (d) without prejudice to subsections (2) and (3), make any information relating to the application available for inspection, notify any person or the public that the information is so available and, if it considers appropriate, invite further submissions or observations to be made to it within such period as it may specify, or
- (e) hold meetings with the applicant for permission or any other person—
  - (i) where it appears to the Board to be expedient for the purpose of determining the application, or
  - (ii) where it appears to the Board to be necessary or expedient for the purpose of resolving any issue with the applicant for permission or any disagreement between the applicant and any other party, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where an applicant submits a revised environmental impact statement to the Board in accordance with subsection (1)(a) or otherwise submits further information or revised particulars, plans or drawings in accordance with subsection (1), which, in the opinion of the Board, contain significant additional information on the effect of the proposed development on the environment to that already submitted, the Board shall—

- (a) make the information, particulars, plans or drawings, as appropriate, available for inspection,
- (b) give notice that the information, particulars, plans or drawings are so available, and
- (c) invite further submissions or observations to be made to it within such period as it may specify.

(3) Where the Board holds a meeting in accordance with subsection (1)(e), it shall keep a written record of the meeting and make that record available for inspection.

(4) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(e).

(5) Before making a decision under section 37G in respect of proposed development comprising or for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may request the Environmental Protection Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development.

(6) When making its decision under section 37G on the application the Board shall have regard to the observations, if any, received from the Environmental Protection Agency within the period specified under subsection (5).

(7) The Board may, at any time after the expiration of the period specified in a notice under section 37E(3)(a) for making submissions or observations, make its decision under section 37G on the application.

(8) The making of observations by the Environmental Protection Agency under this section shall not prejudice any other function of the Agency.]

#### Annotations

#### Amendments:

**F105** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 3, S.I. No. 684 of 2006.

**F106**[Decision by Board on application under section 37E.

**37G.**— (1) When making a decision in respect of a proposed development for which an application is made under section 37E, the Board may consider any relevant information before it or any other matter to which, by virtue of this Act, it can have regard.

(2) Without prejudice to the generality of subsection (1), the Board shall consider—

(a) the environmental impact statement submitted under section 37E(1), any submissions or observations made, in response to the invitation referred to in section 37E(3), within the period referred to in that provision, the report (and the recommendations and record, if any, attached to it) submitted by a planning authority in accordance with section 37E(4), any information furnished in accordance with section 37F(1) and any other relevant information before it relating to—

(i) the likely consequences of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the development, and

(ii) the likely effects on the environment of the proposed development,

(b) any report or recommendation prepared in relation to the application in accordance with section 146, including the report of the person conducting any oral hearing of the proposed development and the written record of any meeting referred to in section 37F(3),

(c) the provisions of the development plan or plans for the area,

(d) the provisions of any special amenity area order relating to the area,

- (e) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (f) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (g) the matters referred to in section 143,
- (h) any relevant provisions of this Act and of any regulations made under this Act.

(3) The Board may, in respect of an application under section 37E for permission—

(a) decide—

- (i) to grant the permission, or
- (ii) to make such modifications to the proposed development as it specifies in its decision and grant permission in respect of the proposed development as so modified, or
- (iii) to grant permission in respect of part of the proposed development (with or without specified modifications of it of the foregoing kind),

or

(b) decide to refuse to grant the permission,

and a decision to grant permission under paragraph (a)(i), (ii) or (iii) may be subject to or without conditions.

(4) Where an application under section 37E relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board shall not, where it decides to grant permission, subject that permission to conditions which are for the purposes of—

- (a) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or
- (b) controlling emissions related to or following the cessation of the operation or the activity.

(5) Where an application under section 37E relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may, in respect of that development, decide to refuse a grant of permission under this section, where the Board considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development will be situated.

(6) The Board may decide to grant a permission for development, or any part of a development, under this section even if the proposed development, or part thereof, contravenes materially the development plan relating to any area in which it is proposed to situate the development.

(7) Without prejudice to the generality of the Board's powers to attach conditions under subsection (3) the Board may attach to a permission for development under this section—

- (a) a condition with regard to any of the matters specified in section 34(4),
- (b) a condition requiring the payment of a contribution or contributions of the same kind as the appropriate planning authority could require to be paid under section 48 or 49 (or both) were that authority to grant the permission

(and the scheme or schemes referred to in section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions),

(c) a condition requiring the applicant to submit further information to it or any other local or state authority, as the Board may specify before commencing development, or

(d) a condition requiring—

(i) the construction or the financing, in whole or in part, of the construction of a facility, or

(ii) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(8) A condition attached pursuant to subsection (7)(d) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the permission operates of the benefits likely to accrue from the grant of the permission.

(9) In subsection (7)(b) 'appropriate planning authority' means whichever planning authority would, but for the enactment of *section 3* of the Planning and Development (Strategic Infrastructure) Act 2006, be the appropriate planning authority to grant the permission referred to in this section.

(10) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situated and the person carrying out the development; if that authority or those authorities and that person cannot agree on the matter the matter may be referred to the Board for determination.

(11) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section or sections 37H to 37J to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

#### Annotations

#### Amendments:

**F106** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

F107[Section 37G: supplemental provisions.

**37H.—** (1) The Board shall send a copy of a decision under section 37G to the applicant, to any planning authority in whose area the development would be situated and to any person who made submissions or observations on the application for permission.

F108[(1A) (a) The Board shall cause to be published in one or more newspapers circulated in the area a notice informing the public of a decision under section 37G.

(b) The notice shall state that a person may question the validity of any such decision by the Board by way of an application for judicial review, under

Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), in accordance with section 50.

(c) The notice shall identify where practical information on the review mechanism can be found.]

(2) A decision given under section 37G and the notification of the decision shall state—

(a) the main reasons and considerations on which the decision is based,

(b) where conditions are imposed in relation to the grant of any permission, the main reasons for the imposition of any such conditions, and

F109[(c) the sum due to be paid to the Board towards the costs incurred by the Board of—

(i) conducting consultations entered into by an applicant under section 37B,

(ii) compliance by the Board with a request by an applicant for an opinion of the Board under section 37D, or

(iii) determining an application under section 37E,

and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which sums the Board may, by virtue of this subsection, require to be paid).]

(3) A reference to costs in subsection (2)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(4) A grant of permission under section 37G shall be made as soon as may be after the making of the relevant decision but shall not become operative until any requirement made under subsection (2)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(5) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement made under subsection (2)(c) the Board, the authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.

(6) A person shall not be entitled solely by reason of a permission under section 37G to carry out any development.]

#### Annotations

#### Amendments:

**F107** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

**F108** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(b).

**F109** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 26, S.I. No. 405 of 2010.



**Editorial Notes:**

- E72** Previous affecting provision: subs. (2)(c) inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 3, S.I. No. 684 of 2006, substituted as per F-note above.

**F110**[Regulations.

**37I.—** (1) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of—

- (a) consultations under section 37B,
- (b) the giving of an opinion under section 37D,
- (c) applications for permission under section 37E, and
- (d) decisions under section 37G.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) make provision for matters of procedure in relation to the making of an application under section 37E, including the giving of public notice and the making of applications in electronic form, and
- (b) make provision for matters of procedure relating to the making of observations by the Environmental Protection Agency under section 37F(5) and matters connected therewith.]

**Annotations****Amendments:**

- F110** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 3, S.I. No. 684 of 2006.

**Editorial Notes:**

- E73** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).
- E74** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).
- E75** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**F111**[Objective of the Board in relation to applications under section 37E.

**37J.—** (1) It shall be the duty of the Board, having regard to the special importance of applications relating to development that may fall within section 37A(2), to ensure that—

- (a) consultations held on foot of a request under section 37B are completed, and
- (b) a decision under section 37G on an application made under section 37E is made,

as expeditiously as is consistent with proper planning and sustainable development and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the holding of those consultations or the making of that decision.

(2) Without prejudice to the generality of subsection (1) and subject to subsections (3) to (6), it shall be the objective of the Board to ensure that a decision under section 37G on an application made under section 37E is made—

- (a) within a period of 18 weeks beginning on the last day for making submissions or observations in accordance with the notice referred to in section 37E(3)(a), or
- (b) within such other period as the Minister may prescribe either generally or in respect of a particular class or classes of matter.

(3) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of the matter with which the Board is concerned, to determine the matter within the period referred to in paragraph (a) or (b) of subsection (2) as the case may be, the Board shall, by notice in writing served on the applicant for permission, any planning authority involved and any other person who submitted submissions or observations in relation to the matter before the expiration of that period, inform the authority and those persons of the reasons why it would not be possible or appropriate to determine the matter within that period and shall specify the date before which the Board intends that the matter shall be determined.

(4) Where a notice has been served under subsection (3), the Board shall take all such steps as are open to it to ensure that the matter is determined before the date specified in the notice.

(5) The Minister may by regulations vary the period referred to in subsection (2)(a) either generally or in respect of a particular class or classes of applications referred to in section 37E, where it appears to him or her to be necessary, by virtue of exceptional circumstances, to do so and, for so long as the regulations are in force, this section shall be construed and have effect in accordance therewith.

(6) Where the Minister considers it to be necessary or expedient that a certain class or classes of application under section 37E that are of special strategic, economic or social importance to the State be determined as expeditiously as is consistent with proper planning and sustainable development, he or she may give a direction to the Board that priority be given to the determination of applications of the class or classes concerned, and the Board shall comply with such a direction.

(7) The Board shall include in each report made under section 118 a statement of the number of matters which the Board has determined within a period referred to in paragraph (a) or (b) of subsection (2) and such other information as to the time taken to determine such matters as the Minister may direct.]

#### Annotations

#### Amendments:

**F111** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 3, S.I. No. 684 of 2006.

**F112**[Nuclear installations: no development in respect of them authorised.

**37K.**— Nothing in this Act shall be construed as enabling the authorisation of development consisting of an installation for the generation of electricity by nuclear fission.]

**Annotations****Amendments:**

**F112** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 3, S.I. No. 684 of 2006.

Availability of documents relating to planning applications.

**38.—(1)** Where a planning authority gives its decision in respect of a planning application the following documents shall be made available within 3 working days for inspection and purchase by members of the public during office hours F113[at the offices of the authority and may also be made available by the authority by placing the documents on the authority's website or otherwise in electronic form]:

- (a) a copy of the planning application and of any particulars, evidence, environmental impact statement, other written study or further information received or obtained by the authority from the applicant in accordance with regulations under this Act;
- (b) a copy of any submissions or observations in relation to the planning application which have been received by the authority;
- (c) a copy of any report prepared by or for the authority in relation to the planning application;
- (d) a copy of the decision of the authority in respect of the planning application and a copy of the notification of the decision given to the applicant; and
- (e) a copy of any documents relating to a contribution or other matter referred to in section 34 (5).

F114[(1A) Details of any telephone numbers of the applicant or addresses for communication with the applicant in electronic form provided by or on behalf of the applicant shall be taken not to be part of the planning application and shall not be made available by a planning authority to members of the public.]

(2) Without prejudice to the Freedom of Information Act, 1997, and the European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998 (S.I. No. 125 of 1998), and any regulations amending those regulations, F115[and the Data Protection Acts 1988 and 2003] the documents referred to under *subsection (1)* shall be available for inspection for a period of not less than 7 years after the making of the decision by the authority.

(3) Any document referred to in *paragraphs (a) and (b) of subsection (1)* which is received or obtained by a planning authority shall be made available for inspection and purchase by members of the public F116[during office hours of the authority from as soon as may be after receipt of the document until a decision is made on the application and may also be made available by the authority by placing the documents on the authority's website or otherwise in electronic form.]

(4) Copies of documents under this section shall be available for purchase on payment of a specified fee not exceeding the reasonable cost of making such a copy.

(5) At the end of the period for the availability of documents referred to in *subsection (2)*, a planning authority shall retain at least one original copy of each of those documents in a local archive in accordance with section 65 of the Local Government Act, 1994 .

(6) The Minister may prescribe additional requirements in relation to the availability for inspection by members of the public of documents relating to planning applications.

(7) This section shall apply in respect of any application made to a planning authority after the commencement of this section.

#### Annotations

#### Amendments:

**F113** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 27(a), S.I. No. 477 of 2010.

**F114** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 27(b), S.I. No. 477 of 2010.

**F115** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 11, S.I. No. 525 of 2006.

**F116** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 27(c), S.I. No. 477 of 2010.

#### Modifications (not altering text):

**C24** Application of section and regulations made thereunder restricted (1.05.2007) by *European Communities (Access to Information on the Environment) Regulations 2007* (S.I. No. 133 of 2007), reg. 4(2)(a).

#### Scope

4. (1) These Regulations apply to environmental information other than, subject to sub-article (2), information that, under any statutory provision apart from these Regulations, is required to be made available to the public, whether for inspection or otherwise.

(2) Notwithstanding—

(a) section 38 of the Planning and Development Act 2000 (No. 30 of 2000) and any regulations made thereunder,

...

environmental information held by, or on behalf of, a public authority shall be made available in accordance with these Regulations.

Supplemental provisions as to grant of permission.

**39.—**(1) Where permission to develop land or for the retention of development is granted under this Part, then, except as may be otherwise provided by the permission, the grant of permission shall enure for the benefit of the land and of all persons for the time being interested therein.

(2) Where permission is granted under this Part for a structure, the grant of permission may specify the purposes for which the structure may or may not be used, and in case the grant specifies use as a dwelling as a purpose for which the structure may be used, the permission may also be granted subject to a condition specifying that the use as a dwelling shall be restricted to use by persons of a particular class or description and that provision to that effect shall be embodied in an agreement under *section 47*.

(3) (a) Where permission to develop land is granted under this Part for a limited period only, nothing in this Part shall be construed as requiring permission to be obtained thereunder for the resumption, at the expiration of that period, of the use of the land for the purpose for which it was normally used before the permission was granted.

(b) In determining for the purposes of this subsection the purposes for which land was normally used before the grant of permission, no account shall be taken of any use of the land begun in contravention of this Part.

(4) Notwithstanding anything in this Part, permission shall not be required under this Part, in the case of land which, on 1 October, 1964, was normally used for one purpose and was also used on occasions, whether at regular intervals or not, for any other purpose, for the use of the land for that other purpose on similar occasions after 1 October, 1964.

Limit of duration  
of permission.

**40.**—(1) Subject to *subsection (2)*, a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—

- (a) in case the development to which the permission relates is not commenced during that period, the entire development, and
- (b) in case the development is commenced during that period, so much of the development as is not completed within that period.

(2) (a) *Subsection (1)* shall not apply—

- (i) to any permission for the retention on land of any structure,
- (ii) to any permission granted either for a limited period only or subject to a condition which is of a kind described in *section 34(4)(n)*,
- (iii) in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission, or
- (iv) in the case of a development comprising a number of buildings of which only some have been completed, in relation to the provision of roads, services and open spaces included in the relevant permission and which are necessary for or ancillary or incidental to the completed buildings.

(b) *Subsection (1)* shall not affect—

- (i) the continuance of any use, in accordance with a permission, of land,
- (ii) where a development has been completed (whether to an extent described in *paragraph (a)* or otherwise), the obligation of any person to comply with any condition attached to the relevant permission whereby something is required either to be done or not to be done.

(3) F117[In this section and sections 42 and 42A,], “the appropriate period” means—

- (a) in case in relation to the permission a period is specified pursuant to *section 41*, that period, and
- (b) in any other case, the period of five years beginning on the date of the grant of permission.

#### Annotations

#### Amendments:

**F117** Substituted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 238 and sch. 3, part 8, item 1, S.I. No. 545 of 2009.

Power to vary appropriate period.

**41.**—Without prejudice to the powers conferred on them by this Part to grant a permission to develop land for a limited period only, in deciding to grant a permission under F118[[section 34, 37 or 37G](#)], a planning authority or the Board, as may be appropriate, may, having regard to the nature and extent of the relevant development and any other material consideration, specify the period, being a period of more than 5 years, during which the permission is to have effect, and in case the planning authority F119[[or the Board](#)] exercises, or refuses to exercise, the power conferred on it by this section, the exercise or refusal shall be regarded as forming part of the relevant decision of the authority or the Board under F118[[section 34, 37 or 37G](#)].

#### Annotations

#### Amendments:

**F118** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 12(a), S.I. No. 684 of 2006.

**F119** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 12(b), S.I. No. 684 of 2006.

Power to extend appropriate period.

**F120**[**42.**— (1) On application to it in that behalf a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with:

(a) either—

(i) the authority is satisfied that—

(I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,

(II) substantial works were carried out pursuant to the permission during that period, and

(III) the development will be completed within a reasonable time,

or

(ii) the authority is satisfied—

(I) that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission,

(II) that there have been no significant changes in the development objectives in the development plan or in regional development objectives in the regional planning guidelines for the area of the planning authority since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area,

(III) that the development would not be inconsistent with the proper planning and sustainable development of the area having regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section, and

(IV) where the development has not commenced, that an environmental impact assessment, or an appropriate assessment, or both of those assessments, if required, was or were carried out before the permission was granted.

(b) the application is in accordance with such regulations under this Act as apply to it,

(c) any requirements of, or made under those regulations are complied with as regards the application, and

(d) the application is duly made prior to the end of the appropriate period.

(2) In extending the appropriate period under subsection (1) a planning authority may attach conditions requiring the giving of adequate security for the satisfactory completion of the proposed development, and/or may add to or vary any conditions to which the permission is already subject under section 34(4)(g).

(3) (a) Where an application is duly made under this section to a planning authority and any requirements of, or made under, regulations under section 43 are complied with as regards the application, the planning authority shall make its decision on the application as expeditiously as possible.

(b) Without prejudice to the generality of paragraph (a), it shall be the objective of the planning authority to ensure that it shall give notice of its decision on an application under this section within the period of 8 weeks beginning on—

(i) in case all of the requirements referred to in paragraph (a) are complied with on or before the day of receipt by the planning authority of the application, that day, and

(ii) in any other case, the day on which all of those requirements stand complied with.

(4) A decision to extend an appropriate period shall be made once and once only under this section and a planning authority shall not further extend the appropriate period.

(5) Particulars of any application made to a planning authority under this section and of the decision of the planning authority in respect of the application shall be recorded on the relevant entry in the register.

(6) Where a decision to extend is made under this section, section 40 shall, in relation to the permission to which the decision relates, be construed and have effect, subject to, and in accordance with, the terms of the decision.

(7) Notwithstanding subsection (1) or (4), where a decision to extend an appropriate period has been made by a planning authority prior to the coming into operation of this section, the planning authority, where an application is made to it in that behalf prior to the expiration of the period by which the appropriate period was extended, may further extend the appropriate period provided that each of the following requirements is complied with—

(i) an application is made in that behalf in accordance with regulations under section 43,

(ii) any requirements of, or made under, the regulations are complied with as regards the application, and

(iii) the authority is satisfied that the relevant development has not been completed due to circumstances beyond the control of the person carrying out the development.]

**Annotations****Amendments:**

**F120** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 28, S.I. No. 405 of 2010.

**F121** [Power to extend appropriate period on application of NAMA.]

**42A.—****F122**[(1) On application to it in that behalf a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with:

(a) either—

(i) the authority is satisfied that—

- (I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,
- (II) substantial works were carried out pursuant to the permission during that period, and
- (III) the development will be completed within a reasonable time,

or

(ii) the authority is satisfied—

- (I) that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission,
- (II) that there have been no significant changes in the development objectives in the development plan or in regional development objectives in the regional planning guidelines for the area of the planning authority since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area,
- (III) that the development would not be inconsistent with the proper planning and sustainable development of the area having regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section, and
- (IV) where the development has not commenced, that an environmental impact assessment, or an appropriate assessment, or both of those assessments, if required, was or were carried out before the permission was granted,

(b) the application is in accordance with such regulations under this Act as apply to it,

(c) any requirements of, or made under those regulations are complied with as regards the application, and

(d) the application is duly made prior to the end of the appropriate period.]

**F122**[(2) In extending the appropriate period under subsection (1) a planning authority may attach conditions requiring the giving of adequate security for the



satisfactory completion of the proposed development, and/or may add to or vary any conditions to which the permission is already subject under section 34(4)(g).]

**F121**[(3) A decision to extend an appropriate period shall be made once and once only under this section and a planning authority shall not further extend the appropriate period.

(4) Particulars of any application made to a planning authority under this section and of the decision of the planning authority in respect of the application shall be recorded on the relevant entry in the register.

(5) Where a decision to extend is made under this section, section 40 shall, in relation to the permission to which the decision relates, be construed and have effect, subject to, and in accordance with, the terms of the decision.

(6) In satisfying itself under subsection (1)(a)(ii), a planning authority shall have regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section.

(7) In relation to a permission where the expiry of the appropriate period occurs during the period beginning on or after 1 January 2009 and ending on or before 31 December 2011, NAMA may make an application to extend the appropriate period—

(a) before the expiry of the appropriate period, or

(b) at any time during the period of 2 years beginning on the date of expiry of the appropriate period.]

**F123**[(8) Notwithstanding subsection (1) or (4), where a decision to extend an appropriate period has been made by a planning authority prior to the coming into operation of this section, the planning authority, where an application is made to it in that behalf prior to the expiration of the period by which the appropriate period was extended, may further extend the appropriate period provided that each of the following requirements is complied with—

(i) an application is made in that behalf in accordance with regulations under section 43,

(ii) any requirements of, or made under, the regulations are complied with as regards the application, and

(iii) the authority is satisfied that the relevant development has not been completed due to circumstances beyond the control of the person carrying out the development.]

#### Annotations

#### Amendments:

**F121** Inserted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 238 and sch. 3, part 8, item 2, S.I. No. 545 of 2009.

**F122** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 29(a) and (b), S.I. No. 405 of 2010.

**F123** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 29(c), S.I. No. 405 of 2010.

**Editorial Notes:**

- E76** Previous affecting provision: subss. (1) and (2) substituted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 238 and sch. 3, part 8, item 2, S.I. No. 545 of 2009; substituted as per F-note above.

Regulations regarding sections 40, 41 and 42.

**43.**—(1) The Minister may make regulations providing for any matter of procedure in relation to applications under *section 42* and making such incidental, consequential or supplementary provision as may appear to him or her to be necessary or proper to give full effect to any of the provisions of *section 40, 41 or 42*.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) specify the time at which applications under *section 42* may be made, the manner in which those applications shall be made and the particulars they shall contain,
- (b) require applicants to furnish to the planning authority any specified information with respect to their applications (including any information regarding any estate or interest in or right over land),
- (c) require applicants to submit to a planning authority any further information relevant to their applications (including any information as to any such estate, interest or right),
- (d) require the production of any evidence to verify any particulars or information given by any applicant, and
- (e) require the notification (in a prescribed manner) by planning authorities of decisions on applications.

**Annotations****Editorial Notes:**

- E77** Power pursuant to section exercised (19.08.2010) by *Planning and Development Regulations 2010* (S.I. No. 406 of 2010).
- E78** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Revocation or modification of permission.

**44.**—(1) If the planning authority considers that it is expedient that any permission to develop land granted under this Part should be revoked or modified, it may serve a notice in accordance with *subsection (3)* on the applicant and on any other person who, in its opinion, will be materially affected by the revocation or modification.

(2) A planning authority shall neither revoke nor modify a permission under this section unless the development to which the permission relates no longer conforms with the provisions of the development plan.

(3) The notice referred to in *subsection (1)* shall—

- (a) refer to the permission concerned,
- (b) specify the provisions of the development plan to which the permission no longer conforms, and
- (c) invite the person or persons served with the notice to make written submissions or observations to the planning authority within the period specified in the

notice (being not less than 4 weeks from the service of the notice) concerning the proposed revocation or modification.

(4) A planning authority may decide to revoke or modify a permission and, when making its decision, shall have regard to any submissions or observations made under *subsection (3) (c)*.

(5) Where a planning authority decides to revoke or modify a permission under *subsection (4)*, it shall specify in the decision the provisions of the development plan to which the permission no longer conforms, and the main reasons and considerations on which the decision is based.

(6) A person served with a notice under *subsection (1)* may, at any time within 4 weeks of the date of the decision, appeal to the Board against the decision.

(7) Where an appeal is brought under this section against a decision, the Board may confirm the decision with or without modifications, or annul the decision, and it shall specify the main reasons and considerations for its decision.

(8) The power conferred by this section to revoke or modify permission to develop land may be exercised—

(a) where the permission relates to the carrying out of works, at any time before those works have been commenced or, in the case of works which have been commenced and which, consequent on the making of a variation in the development plan, will contravene the plan, at any time before those works have been completed,

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place,

but the revocation or modification of permission for the carrying out of works shall not affect so much of the works as have been previously carried out.

(9) A planning authority may at any time, for stated reasons, by notice in writing withdraw a notice served under this section.

(10) Particulars of a decision made under this section shall be entered in the register.

(11) The revocation or modification under this section of a permission shall be a reserved function.

Acquisition of  
land for open  
spaces.

**45.—(1) Where—**

(a) development is being or has been carried out pursuant to a permission under *section 34*,

(b) (i) a condition requiring the provision or maintenance of land as open space, being open space to which this section applies, was attached to the permission, or

(ii) it was either explicit or implicit in the application for the permission that land would be provided or maintained as such open space,

(c) the planning authority has served on the owner of the land a written request that, within a period specified in the request (being a period of not less than 8 weeks commencing on the date of the request), he or she will provide, level, plant or otherwise adapt or maintain the land in a manner so specified, being a manner which in its opinion would make it suitable for the purpose for which the open space was to be provided, and

(d) the owner fails to comply or to secure compliance with the request within the period so specified,

the planning authority may, if it thinks fit, publish in a newspaper circulating in the district a notice (an "acquisition notice") of its intention to acquire the land by order under this section and the acquisition notice shall specify a period (being a period of not less than 4 weeks commencing on the date on which the notice is published) within which an appeal may be made under this section.

(2) Where a planning authority publishes an acquisition notice, it shall serve a copy of the notice on the owner of the land to which the notice relates not later than 10 days after the date of the publication.

(3) Any person having an interest in the land to which an acquisition notice relates may within the period specified in the notice appeal to the Board.

(4) Where an appeal is brought under this section the Board may—

(a) annul the acquisition notice to which the appeal relates, or

(b) confirm the acquisition notice, with or without modification, in respect of all or such part of the relevant land as the Board considers reasonable.

(5) If a planning authority publishes an acquisition notice and either—

(a) the period for appealing against the notice has expired and no appeal has been taken, or

(b) an appeal has been taken against the notice and the appeal has been withdrawn or the notice has been confirmed whether unconditionally or subject to modifications,

the planning authority may make an order in the prescribed form which order shall be expressed and shall operate to vest the land to which the acquisition notice, or, where appropriate, the acquisition notice as confirmed, relates in the planning authority on a specified date for all the estate, term or interest for which immediately before the date of the order the land was held by the owner together with all rights and liabilities which, immediately before that date, were enjoyed or incurred in connection therewith by the owner together with an obligation to comply with the request made under *subsection (1)(c)*.

(6) Where a planning authority has acquired by an order under this section land which is subject, either alone or in conjunction with other land, to a purchase annuity, payment in lieu of rent, or other annual sum (not being merely a rent under a contract of tenancy) payable to the Minister for Agriculture, Food and Rural Development or to the Commissioners, the authority shall become and be liable, as from the date on which the land is vested in them by the vesting order, for the payment to that Minister or to the Commissioners, as the case may be, of the annual sum or such portion thereof as shall be apportioned by that Minister or by the Commissioners, on the land as if the land had been transferred to the authority by the owner thereof on that date.

(7) When a planning authority makes an order under this section in relation to any land, it shall send the order to the registering authority under the Registration of Title Act, 1964, and thereupon the registering authority shall cause the planning authority to be registered as owner of the land in accordance with the order.

(8) Where a claim is made for compensation in respect of land to which an order under this section relates, the claim shall, in default of agreement, be determined by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919, in the like manner in all respects as if such claim arose in relation to the compulsory acquisition of land, but subject to the proviso that the arbitrator shall have jurisdiction to make a nil award and to the following provisions:

(a) the arbitrator shall make a nil award, unless it is shown by or on behalf of the owner that an amount equal to the value of the land to which the relevant permission under *section 34* relates, being that value at the time when the

application for the permission was made, as a result of the development has not been recovered and as a further such result will not in the future be recoverable by disposing of the land which is land to which the permission relates and which is not land to which the order relates, and

(b) in the assessment of the value of the land to which the order relates, no regard shall be had to its value for use other than as open space and a deduction shall be made in respect of the cost of carrying out such works as may be necessary to comply with the request made pursuant to *subsection (1)(c)*.

(9) A planning authority shall enter in the register—

(a) particulars of any acquisition notice published by it,

(b) the date and effect of any decision on appeal in relation to any such notice, and

(c) particulars of any order made under this section,

and every entry shall be made within the period of 7 days commencing on the day of publication, receipt of notification of the decision or the making of the order, as may be appropriate.

(10) This section applies to any form of open space (whether referred to as open space or by any other description in the relevant application for a permission or in a condition attached to the relevant permission), being land which is not described in the application or condition either as private open space or in terms indicating that it is not intended that members of the public are to have resort thereto without restriction.

#### Annotations

#### Editorial Notes:

**E79** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Requiring removal or alteration of structure or discontinuance of use.

**46.—**(1) If a planning authority decides that, in exceptional circumstances—

(a) any structure should be demolished, removed, altered or replaced,

(b) any use should be discontinued, or

(c) any conditions should be imposed on the continuance of a use,

the planning authority may serve a notice on the owner and on the occupier of the structure or land concerned and on any other person who, in its opinion, will be affected by the notice.

(2) *Subsection (1)* shall not apply to any unauthorised development unless the notice under this section is served after seven years from the commencement of the unauthorised development.

(3) A notice referred to in *subsection (1)* shall—

(a) specify the location of the structure or land concerned,

(b) specify the steps that will be required to be taken within a specified period, including, where appropriate—

(i) the demolition, removal, alteration or replacement of any structure, or

- (ii) the discontinuance of any use or the continuance of any use subject to conditions,
- and
- (c) invite any person served with the notice to make written submissions or observations to the planning authority in respect of the matters referred to in the notice within a specified period (being not less than 4 weeks from the date of service of the notice).
- (4) A planning authority may, having regard to any submissions or observations made in accordance with *subsection (3) (c)*, decide to confirm the notice, with or without modifications, or not to confirm the notice.
- (5) A planning authority, in deciding whether to confirm a notice pursuant to this section, shall consider—
- (a) the proper planning and sustainable development of the area,
- (b) the provisions of the development plan,
- (c) the provisions of any special amenity area order, any European site or other area designated for the purposes of *section 10(2) (c)* relating to the area, and
- (d) any other relevant provision of this Act and any regulations made thereunder.
- (6) Where a notice is confirmed by a planning authority under *subsection (4)*, any person served with the notice may, within 8 weeks of the date of service of the notice, appeal to the Board against the notice.
- (7) Where an appeal is brought under this section against a notice, the Board may confirm the notice with or without modifications or annul the notice, and the provisions of *subsection (5)* shall apply, subject to any necessary modifications, to the deciding of an appeal under this subsection by the Board, as they apply to the making of a decision by the planning authority.
- (8) A notice under this section (other than a notice which is annulled) shall take effect—
- (a) in case no appeal against it is taken, on the expiration of the period for taking an appeal, or
- (b) in case an appeal or appeals are taken against it and not withdrawn, when the appeal or appeals have been either withdrawn or decided.
- (9) If, within the period specified in a notice under this section, or within such extended period as the planning authority may allow, any demolition, removal, alteration or replacement required by the notice has not been effected, the planning authority may enter the structure and may effect such demolition, removal, alteration or replacement as is specified in the notice.
- (10) Where a notice under this section is complied with, the planning authority shall pay to the person complying with the notice the expenses reasonably incurred by the person in carrying out the demolition, removal, alteration or replacement specified in the notice, less the value of any salvageable materials.
- (11) Where any person served with a notice under this section fails to comply with the requirements of the notice, or causes or permits the failure to comply with the requirements, he or she shall be guilty of an offence.
- (12) Particulars of a notice served or confirmed under this section shall be entered in the register.

(13) (a) A planning authority may, for stated reasons, by notice in writing withdraw a notice served under this section.

(b) Where a notice is withdrawn pursuant to this subsection by a planning authority, the fact that the notice was withdrawn shall be recorded by the authority in the register.

Agreements regulating development or use of land.

**47.**—(1) A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.

(2) A planning authority in entering into an agreement under this section may join with any body which is a prescribed authority for the purposes of *section 11*.

(3) An agreement made under this section with any person interested in land may be enforced by the planning authority, or any body joined with it, against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.

(4) Nothing in this section, or in any agreement made thereunder, shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Minister, the Board or the planning authority under this Act, so long as those powers are not exercised so as to contravene materially the provisions of the development plan, or as requiring the exercise of any such powers so as to contravene materially those provisions.

(5) Particulars of an agreement made under this section shall be entered in the register.

Development contributions.

**48.**—(1) A planning authority may, when granting a permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to *paragraph (c)*, the basis for the determination of a contribution under *subsection (1)* shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with *paragraph (a)*, the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority

- shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.
- (c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.
- (4) Where a planning authority proposes to make a scheme under this section, it shall publish in one or more newspapers circulating in the area to which the scheme relates, a notice—
- (a) stating that a draft scheme has been prepared,
- (b) giving details of the proposed contributions under the draft scheme,
- (c) indicating the times at which, the period (which shall be not less than 6 weeks) during which, and the place where, a copy of the draft scheme may be inspected, and
- (d) stating that submissions or observations may be made in writing to the planning authority in relation to the draft scheme, before the end of the period for inspection.
- (5) (a) In addition to the requirements of *subsection (4)*, a planning authority shall send a copy of the draft scheme to the Minister.
- (b) The Minister may make recommendations to the planning authority regarding the terms of the draft scheme, within 6 weeks of being sent the scheme.
- (6) (a) Not later than 4 weeks after the expiration of the period for making submissions or observations under *subsection (4)*, the manager of a planning authority shall prepare a report on any submissions or observations received under that subsection, and submit the report to the members of the authority for their consideration.
- (b) A report under *paragraph (a)* shall—
- (i) list the persons or bodies who made submissions or observations under this section,
- (ii) summarise the issues raised by the persons or bodies in the submissions or observations, and
- (iii) give the response of the manager to the issues raised, taking account of the proper planning and sustainable development of the area.
- (7) The members of the planning authority shall consider the draft scheme and the report of the manager under *subsection (6)*, and shall have regard to any recommendations made by the Minister under *subsection (5)*.
- (8) (a) Following the consideration of the manager's report, and having had regard to any recommendations made by the Minister, the planning authority shall make the scheme, unless it decides, by resolution, to vary or modify the scheme, otherwise than as recommended in the manager's report, or otherwise decides not to make the scheme.
- (b) A resolution under *paragraph (a)* must be passed not later than 6 weeks after receipt of the manager's report.
- (9) (a) Where a planning authority makes a scheme in accordance with *subsection (8)*, the authority shall publish notice of the making, or approving, of the scheme, as the case may be, in at least one newspaper circulating in its area.
- (b) A notice under *paragraph (a)* shall—



- (i) give the date of the decision of the planning authority in respect of the draft scheme,
  - (ii) state the nature of the decision, and
  - (iii) contain such other information as may be prescribed.
- (10) (a) Subject to *paragraph (b)*, no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.
- (b) An appeal may be brought to the Board where an applicant for permission under *section 34* considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.
- (c) Notwithstanding *section 34(11)*, where an appeal is brought in accordance with *paragraph (b)*, and no other appeal of the decision of a planning authority is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with *paragraph (b)* furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.
- (11) Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.
- (12) Where payment of a special contribution is required in accordance with *subsection (2) (c)*, the following provisions shall apply—
- (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,
  - (b) where the works in question—
    - F124[(i) are not commenced within 5 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under *subsection (15)(a)*),
    - (ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under *subsection (15)(a)*), or]
    - (iii) where the local authority decides not to proceed with the proposed works or part thereof.

the contribution shall, subject to *paragraph (c)*, be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,
  - (c) where under *subparagraph (ii) or (iii) of paragraph (b)*, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.
- (13) (a) Notwithstanding *sections 37 and 139*, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under *section 37* of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had

been made to it in the first instance, but shall determine only the matters under appeal.

- (b) Notwithstanding *section 34(11)*, where an appeal referred to in *paragraph (a)* is received by the Board, and no appeal is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal furnishes to the planning authority, pending the decision of the Board, security for payment of the full amount of the special contribution as specified in the condition referred to in *paragraph (a)*.
- (14) (a) Money accruing to a local authority under this section shall be accounted for in a separate account, and shall only be applied as capital for public infrastructure and facilities.
- (b) A report of a local authority under section 50 of the Local Government Act, 1991, shall contain details of monies paid or owing to it under this section and shall indicate how such monies paid to it have been expended by any local authority.
- (15) (a) A planning authority may facilitate the phased payment of contributions under this section, and may require the giving of security to ensure payment of contributions.
- (b) Where a contribution is not paid in accordance with the terms of the condition laid down by the planning authority, any outstanding amounts due to the planning authority shall be paid together with interest that may have accrued over the period while withheld by the person required to pay the contribution.
- (c) A planning authority may recover, as a simple contract debt in a court of competent jurisdiction, any contribution or interest due to the planning authority under this section.
- (16) (a) A planning authority shall make a scheme or schemes under this section within 2 years of the commencement of this section.
- (b) Notwithstanding the repeal of any enactment by this Act, the provisions of section 26 of the Act of 1963, in relation to requiring contributions in respect of expenditure by local authorities on works which facilitate development, shall continue to apply pending the making of a scheme under this section, but shall not apply after two years from the commencement of this section.
- (17) In this section—
- “public infrastructure and facilities” means—
- (a) the acquisition of land,
- (b) the provision of open spaces, recreational and community facilities and amenities and landscaping works,
- (c) the provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, F124[service connections, watermains and flood relief work],
- (d) the provision of bus corridors and lanes, bus interchange facilities (including car parks for those facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,
- F124[(e) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, sewers, waste water and water treatment facilities, service connections or watermains,

(f) the provision of high-capacity telecommunications infrastructure, such as broadband,

(g) the provision of school sites, and

(h) any matters ancillary to paragraphs (a) to (g).]

“scheme” means a development contribution scheme made under this section;

“special contribution” means a special contribution referred to in *subsection (2)(c)*.

#### Annotations

#### Amendments:

**F124** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 30, S.I. No. 477 of 2010.

Supplementary  
development  
contribution  
schemes.

**49.—F125**[(1) A planning authority may, when granting a permission under section 34, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project—

(a) specified in a scheme made by the planning authority (in this section referred to as a ‘supplementary development contribution scheme’),

(b) provided or carried out or proposed to be provided or carried out—

(i) by a planning authority,

(ii) where the provision of the infrastructure concerned is an objective in the development plan of a planning authority, or of a planning scheme of the Dublin Docklands Development Authority under section 25 of the Dublin Docklands Development Act 1997, by a public authority, or, pursuant to an agreement entered into by a public authority with any other person, by that person, or

(iii) pursuant to an agreement entered into by a local authority with any other person, by that person,

and

(c) that will benefit the development to which the permission relates when carried out.

(1A) In this section, ‘public authority’ means any body established by or under statute which is for the time being declared, by regulations made by the Minister, to be a public authority for the purposes of this section.]

(2) (a) The amount, and manner of payment, of a contribution under *subsection (1)* shall be determined in accordance with a supplementary development contribution scheme.

(b) A supplementary development contribution scheme shall specify—

(i) the area or areas within the functional area of the planning authority, and

(ii) the public infrastructure project or service,

to which it relates, and more than one such scheme may be made in respect of a particular area.

(c) A supplementary development contribution scheme may make provision for the payment of different contributions in respect of different classes or descriptions of development.

(3) *Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11) and (15) of section 48* shall apply to a scheme subject to—

(a) the modification that references in those subsections to a scheme shall be construed as references to a supplementary development contribution scheme,

(b) any other necessary modifications, and

(c) the provisions of this section.

F126[(3A) Notwithstanding subsection (3) and section 48(10), the Board shall consider an appeal brought to it by an applicant for permission under section 34, in relation to a condition requiring the payment of a contribution in respect of a public infrastructure service or project specified in a supplementary development contribution scheme, where the applicant considers that the service or project will not benefit the development to which the permission relates and section 48(13) shall apply to such an appeal.]

(4) (a) A planning authority may enter into an agreement with any person in relation to the carrying out, or the provision, as may be appropriate, of a public infrastructure project or service.

(b) Without prejudice to the generality of *paragraph (a)*, an agreement may make provision for—

(i) the manner in which the service or project is to be provided or carried out, as the case may be, including provision relating to construction or maintenance of any infrastructure or operation of any service or facility,

(ii) arrangements regarding the financing of the project or service and the manner in which contributions paid or owed to a planning authority pursuant to a condition under *subsection (1)* may be applied in respect of that project or service,

(iii) the entry into such further agreements as may be necessary with any other person regarding the financing and provision of such service or carrying out of such project,

(iv) the entry into force, duration and monitoring of the agreement (including the resolution of disputes).

(5) A planning authority shall not, pursuant to a condition under *subsection (1)*, require the payment of a contribution in respect of a public infrastructure project or service where the person concerned has made a contribution under *section 48* in respect of public infrastructure and facilities of which the said public infrastructure project or service constituted a part.

(6) A planning authority may, at any time, by resolution, amend a supplementary development contribution scheme for the purpose of modifying the manner of determining a contribution pursuant to a condition under *subsection (1)* where the cost of carrying out or providing, as the case may be, the public infrastructure project or service is less than the cost that was estimated when the planning authority first determined the amount of the contribution.

(7) In this section, “public infrastructure project or service” means—

(a) the provision of particular rail, light rail or other public transport infrastructure, including car parks and other ancillary development,

(b) the provision of particular new roads,

F125[(c) the provision of particular new sewers, waste water and water treatment facilities, service connections or watermains and ancillary infrastructure,

(d) the provision of new schools and ancillary infrastructure.]

#### Annotations

#### Amendments:

**F125** Substituted and inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 31(a) and (c), S.I. No. 477 of 2010.

**F126** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 31(b), S.I. No. 477 of 2010.

#### Editorial Notes:

**E80** Previous affecting provision: amendment to subs. (7)(c) made (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 11, commenced on enactment; substituted as per F-note above.

**F127**[Judicial review of applications, appeals, referrals and other matters.

**50.—** (1) Where a question of law arises on any matter with which the Board is concerned, the Board may refer the question to the High Court for decision.

(2) A person shall not question the validity of any decision made or other act done by—

(a) a planning authority, a local authority or the Board in the performance or purported performance of a function under this Act,

(b) the Board in the performance or purported performance of a function transferred under Part XIV, or

(c) a local authority in the performance or purported performance of a function conferred by an enactment specified in section 214 relating to the compulsory acquisition of land,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the 'Order').

(3) Subsection (2)(a) does not apply to an approval or consent referred to in Chapter I or II of Part VI.

(4) A planning authority, a local authority or the Board may, at any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (2) applies and which relates to a matter for the time being before the authority or the Board, as the case may be, apply to the High Court to stay the proceedings pending the making of a decision by the authority or the Board in relation to the matter concerned.

(5) On the making of such an application, the High Court may, where it considers that the matter before the authority or the Board is within the jurisdiction of the authority or the Board, make an order staying the proceedings concerned on such terms as it thinks fit.

(6) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(a) applies shall be made within the period of 8 weeks beginning on the date of the decision or,

as the case may be, the date of the doing of the act by the planning authority, the local authority or the Board, as appropriate.

(7) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(b) or (c) applies shall be made within the period of 8 weeks beginning on the date on which notice of the decision or act was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred under Part XIV or which is specified in section 214, was first published).

(8) The High Court may extend the period provided for in subsection (6) or (7) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

(9) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court.]

#### Annotations

#### Amendments:

**F127** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 13, S.I. No. 525 of 2006.

#### Editorial Notes:

**E81** Previous affecting provision: section amended (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 12, commenced on enactment; substituted as per F-note above.

**F128**[Section 50:  
supplemental  
provisions.

**50A.—** (1) In this section—

‘Court’, where used without qualification, means the High Court (but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made);

‘Order’ shall be construed in accordance with section 50;

‘section 50 leave’ means leave to apply for judicial review under the Order in respect of a decision or other act to which section 50(2) applies.

**F129**[(2) (a) An application for section 50 leave shall be made by motion *ex parte* and shall be grounded in the manner specified in the Order in respect of an *ex parte* motion for leave.

(b) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the respondent or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.

(c) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave)—

(i) if the application relates to a decision made or other act done by a planning authority or local authority in the performance or purported performance of a function under this Act, to the authority concerned and, in the case of a decision made or other act done by a planning authority on an application for permission, to the applicant for the permission where he or she is not the applicant for leave,

(ii) if the application relates to a decision made or other act done by the Board on an appeal or referral, to the Board and each party or each other party, as the case may be, to the appeal or referral,

(iii) if the application relates to a decision made or other act done by the Board on an application for permission or approval, to the Board and to the applicant for the permission or approval where he or she is not the applicant for leave,

(iv) if the application relates to a decision made or other act done by the Board or a local authority in the performance or purported performance of a function referred to in section 50(2)(b) or (c), to the Board or the local authority concerned, and

(v) to any other person specified for that purpose by order of the High Court.

(d) The Court may—

(i) on the consent of all of the parties, or

(ii) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.]

(3) The Court shall not grant section 50 leave unless it is satisfied that—

(a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and

(b) (i) the applicant has a F130[sufficient interest] in the matter which is the subject of the application, or

(ii) where the decision or act concerned relates to a development identified in or under regulations made under section 176, for the time being in force, as being development which may have significant effects on the environment, the applicant—

(I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection,

(II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives, and

(III) satisfies such requirements (if any) as a body or organisation, if it were to make an appeal under section 37(4)(c), would have to satisfy by virtue of section 37(4)(d)(iii) (and, for this purpose, any requirement prescribed under section 37(4)(e)(iv) shall apply as if the reference in it to the class of matter into which the decision, the subject of the appeal, falls were a reference to the class of matter into which the

decision or act, the subject of the application for section 50 leave, falls).

(4) A **F130**[sufficient interest] for the purposes of subsection (3)(b)(i) is not limited to an interest in land or other financial interest.

(5) If the court grants section 50 leave, no grounds shall be relied upon in the application for judicial review under the Order other than those determined by the Court to be substantial under subsection (3)(a).

(6) The Court may, as a condition for granting section 50 leave, require the applicant for such leave to give an undertaking as to damages.

(7) The determination of the Court of an application for section 50 leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case save with leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(8) Subsection (7) shall not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(9) If an application is made for judicial review under the Order in respect of part only of a decision or other act to which section 50(2) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.

(10) The Court shall, in determining an application for section 50 leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice.

(11) On an appeal from a determination of the Court in respect of an application referred to in subsection (10), the Supreme Court shall—

(a) have jurisdiction to determine only the point of law certified by the Court under subsection (7) (and to make only such order in the proceedings as follows from such determination), and

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(12) Rules of court may make provision for the expeditious hearing of applications for section 50 leave and applications for judicial review on foot of such leave.]

#### Annotations

#### Amendments:

**F128** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 13, S.I. No. 525 of 2006.

**F129** Substituted (28.09.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 32, S.I. No. 451 of 2010.

**F130** Substituted (23.08.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 20, S.I. No. 433 of 2011.



**F131**[Costs in environmental matters.]

**50B.—** (1) This section applies to proceedings of the following kinds:

- (a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—
  - (i) any decision or purported decision made or purportedly made,
  - (ii) any action taken or purportedly taken, or
  - (iii) any failure to take any action,
 pursuant to a law of the State that gives effect to—
  - (I) a provision of Council Directive 85/337/EEC of 27 June 1985 to which Article 10a (inserted by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC and 96/61/EC) of that Council Directive applies,
  - (II) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, or
  - (III) a provision of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control to which Article 16 of that Directive applies; or
- (b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);
- (c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

**F132**[(2) Notwithstanding anything contained in Order 99 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and subject to subsections (2A), (3) and (4), in proceedings to which this section applies, each party to the proceedings (including any notice party) shall bear its own costs.]

**F133**[(2A) The costs of proceedings, or a portion of such costs, as are appropriate, may be awarded to the applicant to the extent that the applicant succeeds in obtaining relief and any of those costs shall be borne by the respondent or notice party, or both of them, to the extent that the actions or omissions of the respondent or notice party, or both of them, contributed to the applicant obtaining relief.]

(3) The Court may award costs against a party in proceedings to which this section applies if the Court considers it appropriate to do so—

- (a) because the Court considers that a claim or counterclaim by the party is frivolous or vexatious,
- (b) because of the manner in which the party has conducted the proceedings, or
- (c) where the party is in contempt of the Court.

(4) Subsection (2) does not affect the Court's entitlement to award costs in favour of a party in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.

(5) In this section a reference to 'the Court' shall be construed as, in relation to particular proceedings to which this section applies, a reference to the High Court or the Supreme Court, as may be appropriate.]

**Annotations****Amendments:**

**F131** Inserted (28.09.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 33, S.I. No. 451 of 2010.

**F132** Substituted (23.08.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 21(a), S.I. No. 433 of 2011.

**F133** Inserted (23.08.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 21(b), S.I. No. 433 of 2011.

**Editorial Notes:**

**E82** Previous affecting provision: subs. (2) substituted (28.09.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 33, S.I. No. 451 of 2010; substituted as per F-note above.

## PART IV

## ARCHITECTURAL HERITAGE

## CHAPTER I

*Protected Structures*

Record of protected structures.

**51.—(1)** For the purpose of protecting structures, or parts of structures, which form part of the architectural heritage and which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, every development plan shall include a record of protected structures, and shall include in that record every structure which is, in the opinion of the planning authority, of such interest within its functional area.

(2) After consulting with the Minister for Arts, Heritage, Gaeltacht and the Islands, the Minister shall prescribe the form of a record of protected structures.

(3) Subject to any additions or deletions made to the record, either under this Part or in the course of a review of the development plan under *Part II*, a record of protected structures shall continue to be part of that plan or any variation or replacement of the plan.

**Annotations****Modifications (not altering text):**

**C25** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business

transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

#### Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 );

...

#### Editorial Notes:

- E83** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E84** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994* (17/1994), ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002).
- E85** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002).

Guidelines by  
Minister for Arts,  
Heritage,  
Gaeltacht and the  
Islands.

**52.—(1)** The Minister for Arts, Heritage, Gaeltacht and the Islands shall, after consulting with the Minister, issue guidelines to planning authorities concerning development objectives—

(a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, and

(b) for preserving the character of architectural conservation areas,

and any such guidelines shall include the criteria to be applied when selecting proposed protected structures for inclusion in the record of protected structures.

(2) The Minister for Arts, Heritage, Gaeltacht and the Islands may, after consulting with the authorities of any religious denominations which he or she considers necessary, issue guidelines to planning authorities concerning—

(a) the issue of declarations under *section 57* in respect of protected structures which are regularly used as places of public worship, and

(b) the consideration by planning authorities of applications for development affecting the interior of such protected structures.

(3) In considering development objectives, a planning authority shall have regard to any guidelines issued under this section.

(4) In this section, “development objective” means an objective which, under *section 10*, a planning authority proposes to include in its development plan.

#### Annotations

#### Modifications (not altering text):

**C26** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 );

...

**Editorial Notes:**

- E86** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994 (17/1994)*, ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002 (S.I. No. 358 of 2002)*.
- E87** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 308 of 2002)*.

Recommendations to planning authorities concerning specific structures.

**53.—(1)** The Minister for Arts, Heritage, Gaeltacht and the Islands may, in writing, make recommendations to a planning authority concerning the inclusion in its record of protected structures of any or all of the following—

- (a) particular structures;
- (b) specific parts of particular structures;
- (c) specific features within the attendant grounds of particular structures.

(2) A planning authority shall have regard to any recommendations made to it under this section.

(3) A planning authority which, after considering a recommendation made to it under this section, decides not to comply with the recommendation, shall inform the Minister for Arts, Heritage, Gaeltacht and the Islands in writing of the reason for its decision.

**Annotations**

**Modifications (not altering text):**

- C27** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (S.I. No. 192 of 2011)*, arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 220 of 2011)*.

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business

transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

#### Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 );

...

#### Editorial Notes:

**E88** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994* (17/1994), ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002).

**E89** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002).

Additions to and deletions from record of protected structures.

**54.—**(1) A planning authority may add to or delete from its record of protected structures a structure, a specified part of a structure or a specified feature of the attendant grounds of a structure, where—

(a) the authority considers that—

(i) in the case of an addition, the addition is necessary or desirable in order to protect a structure, or part of a structure, of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical

interest, whether or not a recommendation has been made under *section 53*, or

(ii) in the case of a deletion, the protection of the structure or part is no longer warranted,

and

(b) the addition or deletion is made when making a development plan under *Part II* or in accordance with *section 55*.

(2) The making of an addition to, or a deletion from, a record of protected structures shall be a reserved function.

Procedure for making additions for deletions.

**55.**—(1) A planning authority which proposes, at any time other than in the course of making its development plan under *Part II*, to make an addition to or a deletion from its record of protected structures shall—

(a) serve on each person who is the owner or occupier of the proposed protected structure or the protected structure, as the case may be, a notice of the proposed addition or deletion, including the particulars,

(b) send particulars of the proposed addition or deletion to the Minister for Arts, Heritage, Gaeltacht and the Islands and to any other prescribed bodies, and

(c) cause notice of the proposed addition or deletion to be published in at least one newspaper circulating in its functional area.

(2) A notice under *paragraph (a)* or *(c)* of *subsection (1)* shall state the following—

(a) that particulars of the proposed addition or deletion may be inspected at a specified place, during a specified period of not less than 6 weeks;

(b) that, during such period, any person may make written submissions or observations, with respect to the proposed addition or deletion, to the planning authority, and that any such submissions or observations will be taken into consideration before the making of the addition or deletion concerned;

(c) whether or not the proposed addition or deletion was recommended by the Minister for Arts, Heritage, Gaeltacht and the Islands;

(d) that, if the proposed addition or deletion was recommended by the Minister for Arts, Heritage, Gaeltacht and the Islands, the planning authority shall forward to that Minister for his or her observations a copy of any submission or observation made under *paragraph (b)*.

(3) Before making the proposed addition or deletion, the planning authority shall—

(a) consider any written submissions or observations received under *subsection (2) (b)*, and

(b) have regard to any observations received from the Minister for Arts, Heritage, Gaeltacht and the Islands, concerning those submissions or observations, within 4 weeks after the receipt by that Minister of a copy of the submissions or observations.

(4) Within 12 weeks after the end of the period allowed under *subsection (2)(a)* for inspection, the planning authority shall decide whether or not the proposed addition or deletion should be made.

(5) Within 2 weeks after making an addition to or a deletion from the record of protected structures, a planning authority shall serve on the owner and on the occupier of the structure concerned a notice of the addition or deletion, including the particulars.

**Annotations****Modifications (not altering text):**

**C28** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

#### Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 ( S.I. No. 600 of 2001 );

...

**Editorial Notes:**

**E90** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).



- E91** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E92** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994* (17/1994), ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002).
- E93** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002).

Registration under Registration of Title Act, 1964.

**56.**—Where a structure, a specified part of a structure or a specified feature within the attendant grounds of a structure is included in the record of protected structures, its inclusion may be registered under the Registration of Title Act, 1964, in the appropriate register maintained under that Act, as a burden affecting registered land (within the meaning of that Act).

Works affecting character of protected structures or proposed protected structures.

**57.**—(1) F134[Notwithstanding section 4(1)(a), (h), (i), F135[(ia)] (j), (k), or (l) and any regulations made under section 4(2),] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in *subsection (1)(b)*, of that structure.

(3) Within 12 weeks after receiving a request under *subsection (2)*, or within such other period as may be prescribed, a planning authority shall issue a declaration under this section to the person who made the request.

(4) Before issuing a declaration under this section, a planning authority F136[or the Board] shall have regard to—

(a) any guidelines issued under *section 52*, and

(b) any recommendations made to the authority under *section 53*.

(5) If the declaration relates to a protected structure that is regularly used as a place of public worship, the planning authority F136[or the Board]

(a) in addition to having regard to the guidelines and recommendations referred to in *subsection (4)*, shall respect liturgical requirements, and

(b) for the purpose of ascertaining those requirements shall—

(i) comply with any guidelines concerning consultation which may be issued by the Minister for Arts, Heritage, Gaeltacht and the Islands, or

(ii) if no such guidelines are issued, consult with such person or body as the planning authority F136[or the Board] considers appropriate.

(6) When considering an application for permission for the development of land under *section 34* which—

(a) relates to the interior of a protected structure, and

(b) is regularly used as a place of public worship,

the planning authority, and the Board on appeal, shall, in addition to any other requirements of the Act, respect liturgical requirements.

(7) A planning authority may at any time review a declaration issued under this section but the review shall not affect any works carried out in reliance on the declaration prior to the review.

**F137**[(8) Any person to whom a declaration under subsection (3), or a declaration reviewed under subsection (7) has been issued, may, on payment to the Board of such fee as may be prescribed, refer the declaration for review by the Board within 4 weeks from the date of the issuing of the declaration, or the declaration as reviewed, as the case may be.

(9) A planning authority shall cause—

(a) the details of any declaration issued by that authority, or of a decision by the Board on a referral, to be entered on the register kept by the authority under *section 7*, and

(b) a copy of the declaration or decision, as appropriate, to be made available for inspection by members of the public, during office hours, at the office of the authority, following the issue of the declaration or decision.]

(10) (a) For the avoidance of doubt, it is hereby declared that a planning authority or the Board on appeal—

(i) in considering any application for permission in relation to a protected structure, shall have regard to the protected status of the structure, or

(ii) in considering any application for permission in relation to a proposed protected structure, shall have regard to the fact that it is proposed to add the structure to a record of protected structures.

(b) A planning authority, or the Board on appeal, shall not grant permission for the demolition of a protected structure or proposed protected structure, save in exceptional circumstances.

#### Annotations

#### Amendments:

**F134** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 34, S.I. No. 477 of 2010.

**F135** Inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 22(1), S.I. No. 474 of 2011, subject to transitional provision in subs. (2).

**F136** Inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s.13(a) and (b), commenced on enactment.

**F137** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s.13(c), commenced on enactment.

Duty of owners and occupiers to protect structures from endangerment.

**58.—**(1) Each owner and each occupier shall, to the extent consistent with the rights and obligations arising out of their respective interests in a protected structure or a proposed protected structure, ensure that the structure, or any element of it which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, is not endangered.

(2) The duty imposed by *subsection (1)* in relation to a proposed protected structure arises at the time the owner or occupier is notified, under *section 55* or under *Part II*, of the proposal to add the structure to the record of protected structures.

(3) Neither of the following shall be considered to be a breach of the duty imposed on each owner and each occupier under this section—

(a) development in respect of which permission under *section 34* has been granted;

(b) development consisting only of works of a type which, in a declaration issued under *section 57(3)* to that owner or occupier, a planning authority has declared would not materially affect the character of the protected structure or any element, referred to in *subsection (1)* of this section, of that structure.

(4) Any person who, without lawful authority, causes damage to a protected structure or a proposed protected structure shall be guilty of an offence.

(5) Without prejudice to any other defence that may be available, it shall be a good defence in any proceedings for an offence under *subsection (4)* to prove that the damage to the structure resulted from works which were—

(a) urgently required in order to secure the preservation of the structure or any part of it,

(b) undertaken in good faith solely for the purpose of temporarily safeguarding the structure, and

(c) unlikely to permanently alter the structure or any element of it referred to in *subsection (1)*.

Notice to require works to be carried out in relation to endangerment of protected structures.

**59.—**(1) Where, in the opinion of the planning authority, it is necessary to do so in order to prevent a protected structure situated within its functional area from becoming or continuing to be endangered, the authority shall serve on each person who is the owner or occupier of the protected structure a notice—

(a) specifying the works which the planning authority considers necessary in order to prevent the protected structure from becoming or continuing to be endangered, and

(b) requiring the person on whom the notice is being served to carry out those works within a specified period of not less than 8 weeks from the date the notice comes into effect under *section 62*.

(2) After serving notice under *subsection (1)* on a person, a planning authority may—

(a) at its discretion, assist the person in carrying out the works required under the notice, and

(b) provide such assistance in any form it considers appropriate, including advice, financial aid, materials, equipment and the services of the authority's staff.

(3) Any person on whom a notice under *subsection (1)* has been served may, within 4 weeks from the date of service of the notice, make written representations to the planning authority concerning—

(a) the terms of the notice,

(b) the provision of assistance under *subsection (2)*, and

(c) any other material considerations.

(4) After considering any representations made under *subsection (3)*, the planning authority may confirm, amend or revoke the notice, and shall notify the person who made the representations of its decision.

(5) Particulars of a notice served under this section shall be entered in the register.

Notice to require restoration of character of protected structures and other places.

**60.—**(1) In this section, “works”, in relation to a structure or any element of a structure, includes the removal, alteration or replacement of any specified part of the structure or element, and the removal or alteration of any advertisement structure.

(2) A planning authority may serve a notice that complies with *subsection (3)* on each person who is the owner or occupier of a structure situated within its functional area, if—

(a) the structure is a protected structure and, in the opinion of the planning authority, the character of the structure or of any of its elements ought to be restored, or

(b) the structure is in an architectural conservation area and, in the opinion of the planning authority, it is necessary, in order to preserve the character of the area, that the structure be restored.

(3) A notice under *subsection (2)* shall—

(a) specify the works required to be carried out for the purposes of restoring the structure or element referred to in the notice,

(b) state that the person on whom the notice is served may, within a specified period of not less than 8 weeks from the date of the service of the notice, make written representations to the planning authority concerning the notice,

(c) invite that person to enter into discussions with the planning authority, within a specified period of not less than 8 weeks from the date of the service of the notice, concerning the notice and in particular concerning—

(i) the provision by the planning authority of advice, materials, equipment, the services of the authority’s staff or other assistance in carrying out the works specified in the notice, and

(ii) the period within which the works are to be carried out,

(d) specify the period within which, unless otherwise agreed in the discussions under *paragraph (c)*, the works shall be carried out, being a period of not less than 8 weeks from the end of the period allowed for entering into discussions, and

(e) state that the planning authority shall pay any expenses that are reasonably incurred by that person in carrying out the works in accordance with the notice, other than works that relate to an unauthorised structure which has been constructed, erected or made 7 years or less prior to the service of the notice.

(4) In deciding whether to serve a notice under this section, a planning authority shall have regard to any guidelines issued under *section 52* and any recommendations made under *section 53*.

(5) If the invitation under *subsection (3)(c)* to enter into discussions is accepted, the planning authority shall facilitate the holding of those discussions.

(6) After considering any representations made under *subsection (3)(b)* and any discussions held under *subsection (5)*, the planning authority may confirm, amend or revoke the notice and shall notify the person who made the representations of its decision.

(7) Particulars of a notice served under this section shall be entered in the register.

Appeals against notices.

**61.**—(1) Within 2 weeks after being notified under *section 59(4)* or *60(6)* of the confirmation or amendment of a notice, any person who made representations in relation to the notice may appeal against the notice to the District Court, on any one or more of the following grounds:

- (a) that the person is not the owner or occupier of the structure in respect of which the notice has been served;
- (b) that, in the case of a notice under *section 59(1)*, compliance with the requirements of the notice would involve unreasonable expense, and that the person had stated in representations made to the planning authority under *section 59(3)* that he or she did not have the means to pay;
- (c) that the person has already taken all reasonable steps to—
  - (i) in the case of a notice under *section 59(1)*, prevent the structure from becoming, or continuing to be endangered,
  - (ii) in the case of a notice under *section 60(2)* in relation to a protected structure, restore the character of the structure or the element, or
  - (iii) in the case of a notice under *section 60(2)* in relation to a structure that forms part of a place, area, group of structures or townscape referred to in *paragraph (b)* of that subsection, assist in restoring the character of that place, area, group of structures or townscape, as the case may be;
- (d) that the time for complying with the notice is unreasonably short.

(2) Notice of an appeal under *subsection (1)* shall be given to the planning authority, and it shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(3) On the hearing of the appeal, the District Court may, as it thinks proper—

- (a) confirm the notice unconditionally,
- (b) confirm the notice subject to such modifications or additions as the Court thinks reasonable, or
- (c) annul the notice.

(4) Where the notice is confirmed under *subsection (3)(b)* subject to modifications or additions, the notice shall have effect subject to those modifications or additions.

Effective date of notices.

**62.**—A notice under *section 59(1)* or *60(2)* shall not have effect until the expiry of 4 weeks from the date of service of the notice, subject to the following exceptions—

- (a) if any representations have been made under *section 59* or *60* in relation to the notice, and no appeal is taken within the period allowed under *section 61(1)*, the notice has effect on the expiry of the appeal period;
- (b) if an appeal is taken under *section 61(1)* and the notice is confirmed, the notice has effect on the date on which the decision of the District Court is pronounced, or the date on which that order is expressed to take effect, whichever is later;

(c) if an application is made to the District Court under *section 65(1)* and an order is made under *section 65(2)(a)*, the notice has effect on the date on which the decision of the Court is pronounced, or the date on which that order is expressed to take effect, whichever is later.

Offence relating to endangerment of protected structures.

**63.**—A person who fails to comply with a notice served on him or her under *section 59(1)* shall be guilty of an offence.

Owners' powers in relation to notices concerning endangerment or restoration of structures.

**64.**—Any person who is the owner of the land or structure in respect of which a notice under *section 59(1)* or *60(2)* has been served, and his or her servants or agents, may enter that land or structure and carry out the works required under the notice.

Application to District Court for necessary consent.

**65.**—(1) A person served with a notice under *section 59(1)* or *60(2)* may apply to the District Court for an order under *subsection (2)* of this section if—

(a) that person is unable, without the consent of another person, to carry out the works required under the notice, and

(b) the other person withholds consent to the carrying out of those works.

(2) If, on hearing an application under *subsection (1)*, the District Court determines that the other person's consent has been unreasonably withheld—

(a) the Court may, at its discretion, deem that consent to have been given, and

(b) in that case, the person making the application shall be entitled to carry out the works required under the notice.

Jurisdiction of District Court.

**66.**—The jurisdiction conferred on the District Court—

(a) by *section 61* in relation to an appeal against a notice, or

(b) by *section 65* in relation to an application for an order deeming consent to have been given,

shall be exercised by a judge of that Court having jurisdiction in the district in which the structure that is the subject of the appeal or application is situated.

Application to court for contribution to cost of carrying out works on endangered structures.

**67.**—(1) A person who has been served with a notice under *section 59(1)*, and who has carried out the works required under the notice, may apply to a court of competent jurisdiction for an order directing that all, or such part as may be specified in the order, of the cost of those works be borne by some other person who has an interest in the structure concerned.

(2) On the hearing of an application under *subsection (1)*, the court shall make such order as it considers just, having regard to all the circumstances of the case.

Carrying out of certain works to be exempted development.

**68.**—The carrying out of any works specified in a notice under *section 59(1)* or *60(2)* shall be exempted development.

Planning authority's power to carry out works to protected structures and other places.

**69.**—Where a person on whom a planning authority has served a notice under *section 59(1)* or *60(2)* fails to comply with the notice, the planning authority may take such steps as it considers reasonable and necessary to give effect to the terms of the notice including—

- (a) entry on land by authorised persons in accordance with *section 252*, and
- (b) the carrying out, or arranging the carrying out, of the works specified in the notice.

Recovery by planning authority of expenses for carrying out works on endangered structures.

**70.**—A planning authority which serves a notice under *section 59(1)* in respect of a protected structure may—

- (a) recover (whether as a simple contract debt in a court of competent jurisdiction or otherwise), from the owner or occupier, any expenses reasonably incurred by the authority under *section 69*, including any assistance provided under *section 59(2)*, and
- (b) secure those expenses by—
  - (i) charging the protected structure under the Registration of Title Act, 1964, or
  - (ii) an instrument vesting any interest in the protected structure in the authority subject to a right of redemption by the owner or occupier.

Power to acquire protected structure.

**71.**—(1) A planning authority may acquire, by agreement or compulsorily, any protected structure situated within its functional area if—

- (a) it appears to the planning authority that it is necessary to do so for the protection of the structure, and
- (b) in the case of a compulsory acquisition, the structure is not lawfully occupied as a dwelling house by any person other than a person employed as a caretaker.

(2) In this section and *sections 72 to 77*, a reference to a protected structure shall be construed to include a reference to any land which—

- (a) forms part of the attendant ground of that structure, and
- (b) is, in the planning authority's opinion, necessary to secure the protection of that structure,

whether or not the land lies within the curtilage of the structure or is specified as a feature in the record of protected structures.

Notice of intention to acquire protected structure compulsorily.

**72.**—(1) A planning authority intending to acquire any protected structure compulsorily under this Part shall—

- (a) publish in one or more newspapers circulating in its functional area a notice—
  - (i) stating its intention to acquire the protected structure compulsorily under this Part,
  - (ii) describing the structure to which the notice relates,
  - (iii) naming the place where a map showing the location of the protected structure is deposited and the times during which it may be inspected, and

(iv) specifying the time within which (not being less than 4 weeks), and the manner in which, objections to the acquisition of the structure may be made to the planning authority,

and

(b) serve on every owner, lessee and occupier (except tenants for one month or a period less than one month) of the structure a notice which complies with *paragraph (a)*.

(2) In this section, “owner”, in relation to a protected structure, means—

(a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose (whether in possession or reversion) of the fee simple of the protected structure, and

(b) a person who, under a lease or agreement the unexpired term of which exceeds 5 years, holds or is entitled to the rents or profits of the protected structure.

Objection to compulsory acquisition of protected structure.

**73.**—(1) Any person, on whom a notice of the proposed compulsory acquisition of a protected structure has been served under *section 72(1)(b)*, may, within the time and in the manner specified in the notice, submit to the planning authority concerned an objection to the proposed compulsory acquisition referred to in the notice.

(2) A person who has submitted an objection under *subsection (1)* may withdraw the objection by notice in writing sent to the planning authority concerned.

(3) Where an objection submitted to a planning authority under *subsection (1)* is not withdrawn, the planning authority shall not acquire the protected structure compulsorily without the consent of the Board.

(4) An application for the Board’s consent to the compulsory acquisition of a protected structure shall be made within 4 weeks after the expiry of the time allowed, under *subsection (1)*, for submitting an objection to that acquisition, and shall be accompanied by the following—

(a) the relevant map,

(b) a copy of the objection made under *subsection (1)* to the planning authority,

(c) the planning authority’s comments (if any) on the objection, and

(d) such other documents and particulars as may be prescribed.

(5) On receipt of the planning authority’s comments (if any) on the objection, the Board shall, by notice served on the person who made the objection, send a copy of the comments to that person who may, within 3 weeks from the date of the service of the notice, make observations to the Board in relation to the comments.

(6) On application under *subsection (4)*, the Board may, as it thinks fit, grant or refuse to grant consent to the compulsory acquisition of all or part of a protected structure referred to in a notice published under *section 72*.

#### Annotations

#### Editorial Notes:

- E94** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).



Vesting order for protected structures.

**74.**—(1) After complying with *section 73*, a planning authority may, by vesting order, acquire a protected structure if—

- (a) no objection is submitted to the planning authority under *section 73*,
- (b) any objection submitted under *section 73*, is subsequently withdrawn, or
- (c) the Board consents to the compulsory acquisition of the structure by the planning authority.

(2) Where a planning authority becomes aware, before making a vesting order in respect of a protected structure, that the structure is subject (whether alone or in conjunction with other land) to—

- (a) any annuity or other payment to the Minister for Agriculture, Food and Rural Development or to the Commissioners, or

- (b) any charge payable to the Revenue Commissioners on the death of any person,

the planning authority shall forthwith inform the Minister for Agriculture, Food and Rural Development, the Commissioners or the Revenue Commissioners, as the case may be, of its intention to make the vesting order.

(3) Within 2 weeks after making a vesting order, a planning authority shall—

- (a) publish, in one or more newspapers circulating within its functional area, a notice—

- (i) stating that the order has been made,

- (ii) describing the protected structure to which it relates, and

- (iii) naming a place where a copy of the order and the attached map may be seen during office hours at the offices of the authority,

and

- (b) serve on every person appearing to the authority to have an interest in the protected structure to which the order relates, a notice stating that the order has been made and the effect of the order.

Form and effect of vesting order.

**75.**—(1) A vesting order by which a planning authority acquires a protected structure under this Part shall be in the prescribed form, and shall have attached to it a map showing the location of the protected structure.

(2) A vesting order shall be expressed and shall operate to vest the protected structure to which it relates in the planning authority in fee simple, free from encumbrances and all estates, rights, titles and interests of whatsoever kind on a specified date (in this section referred to as the vesting date) not earlier than 3 weeks after the making of the order.

(3) Notwithstanding *subsection (2)*, where a planning authority has acquired by a vesting order a protected structure which is subject, either alone or in conjunction with other land, to an annual sum payable to the Minister for Agriculture, Food and Rural Development or the Commissioners, the planning authority shall become and be liable, as from the vesting date, for the payment to that Minister or those Commissioners, as the case may be, of—

- (a) that annual sum, or

- (b) such portion of it as shall be apportioned by the Minister or the Commissioners, as the case may be,

as if the protected structure had been transferred to the authority by the owner on that date.

(4) For the purposes of *subsection (3)*, an “annual sum” means a purchase annuity, a payment in lieu of rent, or any other annual sum that is not merely a rent under a contract of tenancy.

#### Annotations

#### Editorial Notes:

**E95** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Registration of  
acquired title and  
amendment of  
vesting order.

**76.**—(1) On making a vesting order in relation to a protected structure, a planning authority shall send the order to the registering authority which, on receipt of the order, shall immediately cause the planning authority to be registered as owner of the land in accordance with the order.

(2) On the application of any person, a planning authority may amend a vesting order made by the authority if—

(a) the authority is satisfied that the vesting order contains an error, whether occasioned by it or otherwise, and

(b) the error may be rectified without injustice to any person.

(3) Where a copy of an order under *subsection (2)*, amending a vesting order, is lodged with the registering authority, that authority shall rectify its register in such manner as may be necessary to make the register conform with the amending order.

Compensation for  
interest in  
protected struc-  
ture.

**77.**—(1) Any person who, immediately before a vesting order is made, has any estate or interest in, or any right in respect of, the protected structure acquired by the order, may apply to the planning authority within one year (or such other period as the High Court, on application to it, may allow) after the making of the order for compensation in respect of the estate, interest or right.

(2) On application under *subsection (1)*, the planning authority shall, subject to *subsection (4)*, pay to the applicant by way of compensation an amount equal to the value (if any) of the estate, interest or right.

(3) The compensation to be paid by the planning authority under this section in relation to any estate, interest or right in respect of the protected structure shall, in default of agreement, be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

(4) Where, after a planning authority makes a vesting order in relation to a protected structure, any sum (including a sum for costs) remains due to the authority by any person under an order of a court for payment of an amount due (whether under this Act or any other Act, or whether remaining due after deducting expenses reasonably incurred by the authority under this Act in relation to the structure), the amount of any compensation payable to that person under this section shall be reduced by the amount of that sum.

(5) Section 69 to 79 of the Lands Clauses Consolidation Act, 1845, as amended or adapted by or under the Second Schedule to the Housing of the Working Classes Act, 1890, or any other Act, shall apply in relation to compensation to be paid by a planning authority under this section as if such compensation were a price or compensation under that Act as so amended.

(6) Where money is paid into court by the planning authority under section 69 of the Lands Clauses Consolidation Act, 1845, as applied by this section, no costs shall be payable by that authority to any person in respect of any proceedings for the investment, payment of income, or payment of capital of such money.

Use of protected structure acquired by planning authority.

**78.**—A planning authority may—

(a) use a protected structure acquired by it under this Act or any other enactment for any purpose connected with its functions, or

(b) sell, let, transfer or exchange all or any part of that protected structure,

and in so doing shall have regard to its protected status.

Obligations of sanitary authorities in respect of protected structures.

**79.**—(1) Before issuing a notice under section 3(1) of the Local Government (Sanitary Services) Act, 1964, in respect of a protected structure or a proposed protected structure, a sanitary authority shall consider—

(a) the protected status of the structure, and

(b) whether, instead of a notice under section 3(1) of that Act, a notice should be issued under *section 59(1)* or section 11 of the Derelict Sites Act, 1990.

(2) As soon as practicable after serving or proposing to serve a notice in accordance with section 3(1) of the Local Government (Sanitary Services) Act, 1964, in respect of a protected structure or a proposed protected structure, a sanitary authority shall inform the Minister for Arts, Heritage, Gaeltacht and the Islands of the particulars of the notice if he or she recommended that the structure be protected.

(3) A sanitary authority which carries out works on a protected structure, or a proposed protected structure, under section 3(2) of the Local Government (Sanitary Services) Act, 1964, shall as far as possible preserve that structure (or elements of that structure which may be of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest), in as much as the preservation of that structure is not likely to cause a danger to any person or property.

(4) When carrying out works in accordance with section 3(2) of the Local Government (Sanitary Services) Act, 1964, on a protected structure or a proposed protected structure, a sanitary authority shall, as soon as practicable, inform the Minister for Arts, Heritage, Gaeltacht and the Islands of the works if he or she recommended that the structure be protected.

Grants to planning authorities in respect of functions under this Part.

**80.**—With the consent of the Minister for Finance, the Minister may, out of moneys provided by the Oireachtas, make grants to planning authorities in respect of any or all of their functions under this Part, including grants for the purpose of defraying all or part of the expenditure incurred by them in—

(a) assisting persons on whom notice is served under *section 59(1)* or *60(2)* in carrying out works in accordance with the notice, and

(b) assisting any other person in carrying out works to protected structures in accordance with such conditions as may be specified by a planning authority for the receipt of such assistance.

#### Annotations

#### Modifications (not altering text):

- C29** Functions in relation to section transferred (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3 and sch. 1.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

#### Schedule 1 Enactments

...

No. 30 of 2000	Planning and Development Act 2000	Sections 80, 116, 117, 120(2) and 181
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...

**C30** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001);

...

CHAPTER II

*Architectural Conservation Areas and Areas of Special Planning Control*

Architectural  
conservation  
areas.

**81.—(1)** A development plan shall include an objective to preserve the character of a place, area, group of structures or townscape, taking account of building lines and heights, that—

(a) is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value, or

(b) contributes to the appreciation of protected structures,

if the planning authority is of the opinion that its inclusion is necessary for the preservation of the character of the place, area, group of structures or townscape concerned and any such place, area, group of structures or townscape shall be known as and is in this Act referred to as an “architectural conservation area”.

(2) Where a development plan includes an objective referred to in *subsection (1)*, any development plan that replaces the first-mentioned development plan shall, subject to any variation thereof under *section 13*, also include that objective.

Development in  
architectural  
conservation  
areas.

**82.—(1)** F138[Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

(2) In considering an application for permission for development in relation to land situated in an architectural conservation area, a planning authority, or the Board on appeal, shall take into account the material effect (if any) that the proposed development would be likely to have on the character of the architectural conservation area.

**Annotations**

**Amendments:**

**F138** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 23, S.I. No. 474 of 2011, subject to transitional provision in subs. (2).

**Editorial Notes:**

**E96** Previous affecting provision: subs. (1) amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 35, not commenced; subsequently repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Power to acquire structure or other land in architectural conservation area.

**83.**—(1) A planning authority may acquire, by agreement or compulsorily, any land situated within an architectural conservation area if the planning authority is of the opinion—

- (a) that it is necessary to so do in order to preserve the character of the architectural conservation area, and
- (b) (i) the condition of the land, or the use to which the land or any structure on the land is being put, detracts, or is likely to detract, to a material degree from the character or appearance of the architectural conservation area, or
- (ii) the acquisition of the land is necessary for the development or renewal of the architectural conservation area or for the provision of amenities in the area.

(2) A planning authority shall not compulsorily acquire any land under *subsection (1)* that is lawfully occupied as a dwelling house by any person other than a person employed therein as a caretaker.

(3) *Sections 71(2) to 78* of this Act shall, subject to any necessary modifications, apply to acquisitions under *subsection (1)* and references in those provisions to a protected structure shall, for the purposes of this section, be construed as references to a structure or other land situated within an architectural conservation area.

Area of special planning control.

**84.**—(1) A planning authority may, if it considers that all or part of an architectural conservation area is of special importance to, or as respects, the civic life or the architectural, historical, cultural or social character of a city or town in which it is situated, prepare a scheme setting out development objectives for the preservation and enhancement of that area, or part of that area, and providing for matters connected therewith.

(2) Without prejudice to the generality of *subsection (1)*, a scheme prepared under that subsection may include objectives (and provisions for the furtherance or attainment of those objectives) for—

- (a) the promotion of a high standard of civic amenity and civic design;
- (b) the preservation and protection of the environment, including the architectural, archaeological and natural heritage;
- (c) the renewal, preservation, conservation, restoration, development or redevelopment of the streetscape, layout and building pattern, including the co-ordination and upgrading of shop frontages;
- (d) the control of the layout of areas, density, building lines and height of structures and the treatment of spaces around and between structures;
- (e) the control of the design, colour and materials of structures, in particular the type or quality of building materials used in structures;
- (f) the promotion of the maintenance, repair or cleaning of structures;
- (g) the promotion of an appropriate mix of uses of structures or other land;
- (h) the control of any new or existing uses of structures or other land;

(i) the promotion of the development or redevelopment of derelict sites or vacant sites; or

(j) the regulation, restriction or control of the erection of advertisement structures and the exhibition of advertisements.

(3) A scheme prepared under *subsection (1)* shall be in writing and shall be consistent with the objectives of the relevant development plan and any local area plan or integrated area plan (within the meaning of the Urban Renewal Act, 1998) in force relating to the area to which the scheme relates.

(4) (a) A scheme prepared under *subsection (1)* shall indicate the period for which the scheme is to remain in force.

(b) A scheme may indicate the order in which it is proposed that the objectives of the scheme or provisions for their furtherance or attainment will be implemented.

(5) A scheme shall contain information, including information of such class or classes as may be prescribed by the Minister, on the likely significant effects on the environment of implementing the scheme.

(6) In this section, and *sections 85 and 86*—

“city” means a county borough;

“town” means a borough (other than a county borough), an urban district or a town having town commissioners that has a population in excess of 2,000.

Special planning  
control scheme.

**85.**—(1) *Subsection (2), (3), (4), (5) and (6)* shall, upon the passing of a resolution by the planning authority concerned, be complied with in relation to the scheme specified in the resolution.

(2) The planning authority shall, as soon as may be after the passing of a resolution under *subsection (1)*—

(a) notify in writing the Minister, the Board and such other persons as may be prescribed, of the preparation of the scheme,

(b) send copies of the scheme to each of the persons referred to in *paragraph (a)*, and

(c) publish a notice of the preparation of the scheme in one or more newspapers circulating in the city or town concerned.

(3) A notice under *subsection (2)* shall—

(a) indicate the place or places at which, and the period (being not less than 8 weeks) during and times at which, a copy of the scheme may be inspected (and a copy of the scheme shall be kept available for inspection accordingly), and

(b) invite submissions or observations in relation to the scheme within such period (being not less than 8 weeks) as is specified in the notice.

(4) (a) Where the scheme prepared under *subsection (1)* includes an objective or provision relating to—

(i) the co-ordination, upgrading or changing of specified shop frontages,

(ii) the control of the layout of specified areas, the density, building lines and height of specified structures and the treatment of spaces around and between specified structures,

- (iii) the control of the design, colour and materials of specified structures,
- (iv) the promotion of the maintenance, repair or cleaning of specified structures,
- (v) the control of the use or uses of any specified structure or other land in the area,
- (vi) the discontinuance of the existing use of any specified structure or other land,
- (vii) the development or redevelopment of specified derelict or vacant sites, or
- (viii) the control of specified advertisement structures or of the exhibition of specified advertisements,

the planning authority shall, as soon as may be after the making of a resolution under *subsection (1)*, notify in writing each person who is the owner or occupier of land thereby affected, of the objective or provision concerned.

(b) A notice under *paragraph (a)* shall refer to the land concerned and shall—

- (i) specify the measures that are required to be undertaken in respect of the structure or other land to ensure compliance with the proposed objective or objectives,
- (ii) indicate the place or places at which, and the period (being not less than 8 weeks) during and times at which, a copy of the scheme may be inspected (and the copy shall be kept available for inspection accordingly), and
- (iii) invite submissions or observations in relation to the proposed objective or provision within such period (being not less than 8 weeks) as is specified in the notice.

(5) (a) Not later than 12 weeks after giving notice under *subsection (2)* and, where appropriate, a notification under *subsection (4)*, whichever occurs later, the manager of a planning authority shall prepare a report on any submissions or observations received in relation to a scheme prepared under *subsection (1)* and shall submit the report to the members of the authority for their consideration.

(b) A report under *paragraph (a)* shall—

- (i) list the persons who made submissions or observations in relation to the scheme,
- (ii) give a summary of the matters raised in those submissions or observations, and
- (iii) include the response of the manager to the submissions or observations.

(6) In responding to submissions or observations made in relation to a scheme prepared under *subsection (1)*, the manager of a planning authority shall take account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives of the Government or of any Minister of the Government.

(7) A planning authority may, after considering a scheme prepared under *subsection (1)* and the report of the manager under *subsection (5)*, by resolution, approve the scheme with or without modifications, or refuse to so approve, and a scheme so approved shall be known as and is referred to in this Part as an “approved scheme”.



(8) An architectural conservation area, or that part of an architectural conservation area, to which a scheme approved by a planning authority under *subsection (7)* applies shall be known as and is referred to in this Act as an “area of special planning control”.

(9) (a) Where a planning authority approves a scheme under *subsection (7)*, it shall publish a notice thereof in one or more newspapers circulating in the city or town concerned.

(b) A notice under *paragraph (a)* shall indicate the place or places at which, and times during which, an approved scheme may be inspected (and a copy thereof shall be kept available for inspection accordingly).

(c) A planning authority shall send a copy of the scheme to the Minister, the Board and such other persons as may be prescribed.

#### Annotations

#### Editorial Notes:

**E97** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E98** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Variation and review of scheme.

**86.**—(1) A planning authority shall, from time to time as circumstances require and in any case not later than 6 years after—

(a) its approval under *section 85(7)*, or

(b) it has most recently been reviewed,

review an approved scheme and may by resolution, amend or revoke the scheme.

(2) Where a planning authority proposes to amend an approved scheme under this section, *section 85* shall, subject to any necessary modifications, apply as respects any such amendment.

(3) Notice of the revocation of an approved scheme under this section shall be given in one or more newspapers circulating in the city or town concerned.

(4) The amendment or revocation of an approved scheme shall be without prejudice to the validity of anything previously done thereunder.

Development in special planning control area.

**87.**—(1) F139[Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] any development within an area of special planning control shall not be exempted development where it contravenes an approved scheme applying to that area.

(2) When considering an application for permission in relation to land situated in an area of special planning control, a planning authority, or the Board on appeal, shall, in addition to the matters set out in *section 34*, have regard to the provisions of an approved scheme.

(3) An owner or occupier of land situated in an area of special planning control may make a written request to the planning authority, within whose functional area the area of special planning control is situated, for a declaration as to—

(a) those developments or classes of development that it considers would be contrary or would not be contrary, as the case may be, to the approved scheme concerned,

(b) the objectives or provisions of the approved scheme that apply to the land,  
or

(c) the measures that will be required to be undertaken in respect of the land to ensure compliance with such objectives or provisions.

(4) Within 12 weeks of receipt by a planning authority of a request under *subsection (3)*, or within such other period as may be prescribed by regulations of the Minister, a planning authority shall issue a declaration under this section to the person who made the request.

(5) A planning authority may at any time rescind or vary a declaration under this section.

(6) The rescission or variation of a declaration under *subsection (5)* shall not affect any development commenced prior thereto in reliance on the declaration concerned and that the planning authority has indicated, in accordance with *paragraph (a) of subsection (3)*, would not be contrary to an approved scheme.

(7) A declaration under this section is without prejudice to the application of *section 5*.

(8) A planning authority shall cause—

(a) the particulars of any declaration issued by that authority under this section to be entered on the register kept by the authority under *section 7*, and

(b) a copy of the declaration to be made available for inspection by members of the public during office hours, at the principal office of the authority, following the issue of the declaration.

#### Annotations

#### Amendments:

**F139** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 24, S.I. No. 474 of 2011, subject to transitional provision in subs. (2).

#### Editorial Notes:

**E99** Previous affecting provision: subs. (1) amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 36, not commenced; subsequently repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Service of notice relating to structures or other land in an area of special planning control.

**88.**—(1) A planning authority may serve a notice that complies with *subsection (2)* on each person who is the owner or occupier of land to which an objective or provision of an approved scheme applies.

(2) A notice under *subsection (1)* shall—

(a) refer to the structure or land concerned,

(b) specify the date on which the notice shall come into force,

(c) specify the measures required to be undertaken on the coming into force of the notice including, as appropriate, measures for—

(i) the restoration, demolition, removal, alteration, replacement, maintenance, repair or cleaning of any structure, or

(ii) the discontinuance of any use or the continuance of any use subject to conditions,

- (d) invite the person on whom the notice is served, within such period as is specified in the notice (being not less than 8 weeks from the date of service of the notice) to make written representations to the planning authority concerning the notice,
  - (e) invite the person to enter into discussions with the planning authority, within such period as is specified in the notice (being not less than 8 weeks from the date of service of the notice) concerning the matters to which the notice refers and in particular concerning—
    - (i) the period within which the measures specified in the notice are to be carried out, and
    - (ii) the provision by the planning authority of advice, materials, equipment, the services of the authority's staff or other assistance required to carry out the measures specified in the notice,
  - (f) specify the period within which, unless otherwise agreed in the discussions entered into pursuant to an invitation in the notice in accordance with *paragraph (e)*, the measures specified in the notice shall be carried out, being a period of not less than 8 weeks from the date of the coming into force of the notice,
  - (g) state that the planning authority shall pay any expenses that are reasonably incurred by that person in carrying out the steps specified in the notice, other than expenses that relate to unauthorised development carried out not more than 7 years prior to the service of the notice, and
  - (h) state that the planning authority shall, by way of compensation, pay, to any person who shows that as a result of complying with the notice—
    - (i) the value of an interest he or she has in the land or part thereof existing at the time of the notice has been reduced, or
    - (ii) he or she, having an interest in the land at that time, has suffered damage by being disturbed in his or her enjoyment of the structure or other land,a sum equal to the amount of such reduction in value or a sum in respect of the damage suffered.
- (3) If the invitation in a notice in accordance with *subsection (2)(d)* to enter into discussions is accepted, the planning authority shall take all such measures as may be necessary to enable the discussions concerned to take place.
- (4) After considering any representations made and any discussions held pursuant to invitations in a notice under *subsection (2)*, the planning authority may confirm, amend or revoke the notice and shall notify in writing the person to whom the notice is addressed.
- (5) Any person served with a notice under *subsection (1)* may, within 8 weeks from the date of notification of the confirmation or amendment of the notice under *subsection (4)*, appeal to the Board against the notice.
- (6) Where an appeal is brought under *subsection (5)* against a notice, the Board may, after taking into account—
- (a) the proper planning and sustainable development of the area,
  - (b) the provisions of the development plan for the area,
  - (c) any local area plan or integrated area plan (within the meaning of the Urban Renewal Act, 1998) in force relating to the area to which the scheme relates, and
  - (d) the provisions of the approved scheme concerned,

confirm with or without modification, or annul, the notice.

(7) A notice served by a planning authority under *subsection (1)* may, for stated reasons, by notice in writing, be withdrawn.

(8) A notice under this section (other than a notice that has been withdrawn) shall not come into force—

- (a) until the expiry of any period within which an appeal against the notice may be brought, or
- (b) where an appeal is taken against the notice, when the appeal has been withdrawn or decided,

as may be appropriate.

Implementation  
of the notice  
under *section 88*.

**89.**—If, within 8 weeks from the date of the coming into force of the notice or such longer period as may be agreed by the planning authority and the person to whom the notice is addressed, the restoration, demolition, removal, alteration, replacement, maintenance, repair or cleaning required by the notice has not been effected, the planning authority may, subject to *section 252*, enter the structure or land and may effect such restoration, demolition, removal, alteration, replacement, maintenance, repair or cleaning as is specified in the notice.

Court may  
compel compli-  
ance with notice  
under *section 88*.

**90.**—(1) Where a person served with a notice under *section 88* fails to comply with a requirement of the notice, or causes or permits a person to fail to comply with such a requirement, the High Court or the Circuit Court may, on the application of the planning authority, order any person to comply with the notice or to do, or refrain from doing or continuing to do, anything that the Court considers necessary or expedient to ensure compliance with the terms of the said notice.

(2) An order under *subsection (1)* may, without prejudice to that subsection, require such person as is specified in the order to carry out any works, including the restoration, demolition, removal, alteration, replacement, maintenance, repair or cleaning of any structure or other feature, or the discontinuance of any use, or continuance thereof subject to such conditions as are specified in the order.

(3) (a) An application to the High Court or the Circuit Court for an order under *subsection (1)* shall be by motion and the Court when considering the matter may make such interim or interlocutory order, if any, as it considers appropriate.

(b) The order by which an application under this section is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(4) Rules of Court made in respect of section 27 of the Act of 1976 (inserted by section 19 of the Act of 1992) shall apply with any necessary modifications to an application under this section.

(5) (a) An application under *subsection (1)* to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the land the subject of the application is situated.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the rateable valuation of the land the subject of the application does not exceed £200.

(c) Where the rateable valuation of any land the subject of the application under this section exceeds £200, the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done

in the course of such proceedings before the transfer shall be valid unless discharged or varied by order of the High Court.

#### Annotations

#### Amendments:

**F140** Substituted by *Civil Liability and Courts Act 2004* (31/2004), s. 53(1)(a), not commenced as of 27.12.2012.

**F141** Inserted by *Civil Liability and Courts Act 2004* (31/2004), s. 53(1)(b), not commenced as of 27.12.2012.

#### Modifications (not altering text):

**C31** Prospective amending provisions: subs. (5)(b) and (c) amended and subs. (5)(d) inserted by *Civil Liability and Courts Act 2004* (31/2004), s. 53(1), not commenced as of 27.12.2012.

#### Court may compel compliance with notice under section 88.

90.— ...

(5) (a) An application under *subsection (1)* to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the land the subject of the application is situated.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the F140[market value] of the land the subject of the application does not exceed F140[€3,000,000].

(c) Where the F140[market value] of any land the subject of the application under this section exceeds F140[€3,000,000], the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by order of the High Court.

F141[(d) In this subsection 'market value' means, in relation to land, the price that would have been obtained in respect of the unencumbered fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.]

Offence to fail to comply with notice under *section 88*.

**91.**—Where a person served with a notice under *section 88* fails to comply with a requirement of the notice, or causes or permits a person to fail to comply with such a requirement, he or she shall be guilty of an offence.

Permission not required for any development required under this Chapter.

**92.**—Notwithstanding *Part III*, permission shall not be required in respect of a development required by a notice under *section 88* or an order under *section 90*.

## PART V

### HOUSING SUPPLY

Interpretation.

**93.**—(1) In this Part—

“accommodation needs” means the size of the accommodation required by an eligible person determined in accordance with the regulations made by the Minister under *section 100(1)(a)*;

“affordable housing” means houses or land made available, in accordance with *section 96(9)* or *(10)*, for eligible persons;

“eligible person” means, subject to *subsection (3)* and to the regulations, if any, made by the Minister under *section 100(1)(b)*, a person who is in need of accommodation and whose income would not be adequate to meet the payments on a mortgage for the purchase of a house to meet his or her accommodation needs because the payments calculated over the course of a year would exceed 35 per cent of that person’s annual income net of income tax and pay related social insurance;

F142[...]

“market value”, in relation to a house, means the price which the unencumbered fee simple of the house would fetch if sold on the open market;

“mortgage” means a loan for the purchase of a house secured by mortgage in an amount not exceeding 90 per cent of the price of the house.

(2) For the purposes of this Part, the accommodation needs of an eligible person includes the accommodation needs of any other person who might reasonably be expected to reside with the eligible person.

(3) In determining the eligibility of a person for the purposes of this Part, the planning authority shall take into account—

- (a) half the annual income, net of income tax and pay related social insurance, of any other person who might reasonably be expected to reside with the eligible person and contribute to the mortgage payments, and
- (b) any other financial circumstances of the eligible person and any other person who might reasonably be expected to reside with the eligible person and contribute to the mortgage payments.

(4) For the avoidance of doubt, it is hereby declared that, in respect of any planning application or appeal, compliance with the housing strategy and any related objective in the development plan shall be a consideration material to the proper planning and sustainable development of the area.

#### Annotations

#### Amendments:

- F142** Deleted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 37, S.I. No. 405 of 2010.
- F143** Substituted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 1, not commenced as of 27.12.2012.
- F144** Deleted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 1, not commenced as of 27.12.2012.

#### Modifications (not altering text):

- C32** Prospective amending provisions: subs. (1) amended and subs. (2) and (3) deleted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 1, not commenced as of 27.12.2012.

#### Interpretation.

F143[93.—(1) In this Part—

‘housing strategy’ means a strategy included in a development plan in accordance with section 94(1);

‘market value’, in relation to a house, means the price which the unencumbered fee simple of the house would fetch if sold on the open market;

'mortgage' means a loan for the purchase of a house secured by mortgage in an amount not exceeding 90 per cent of the price of the house.]

(2)F144[...]

(3)F144[...]

(4) For the avoidance of doubt, it is hereby declared that, in respect of any planning application or appeal, compliance with the housing strategy and any related objective in the development plan shall be a consideration material to the proper planning and sustainable development of the area.

Housing strategies.

**94.—(1) (a)** Each planning authority shall include in any development plan it makes in accordance with *section 12* a strategy for the purpose of ensuring that the proper planning and sustainable development of the area of the development plan provides for the housing of the existing and future population of the area in the manner set out in the strategy.

(b) (i) Subject to *subparagraph (ii)*, any development plan made by a planning authority after the commencement of this section shall include a housing strategy in respect of the area of the development plan.

(ii) Where before the commencement of this section a planning authority has given notice under *section 21A(2)* (inserted by the Act of 1976) of the Act of 1963 of a proposed amendment of a draft development plan, it may proceed in accordance with *section 266* without complying with *subparagraph (i)*, but where a development plan is so made, the planning authority shall take such actions as are necessary to ensure that, as soon as possible and in any event within a period of 9 months from the commencement of this section, a housing strategy is prepared in respect of the area of the development plan and the procedures under *section 13* are commenced to vary the development plan in order to insert the strategy in the plan and to make such other changes as are necessary arising from the insertion of the strategy in the plan pursuant to this Part.

(c) A planning authority shall take such actions as are necessary to ensure that, as soon as possible and in any event within a period of 9 months from the commencement of this section, a housing strategy is prepared in respect of the area of the development plan and the procedures under *section 13* are commenced to vary the development plan in order to insert the strategy in the plan and to make such other changes as are necessary arising from the insertion of the strategy in the plan pursuant to this Part.

(d) A housing strategy shall relate to the period of the development plan or, in the case of a strategy prepared under *paragraph (b)(ii)* or *paragraph (c)*, to the remaining period of the existing development plan.

(e) A housing strategy under this section may, or pursuant to the direction of the Minister shall, be prepared jointly by 2 or more planning authorities in respect of the combined area of their development plans and such a joint strategy shall be included in any development plan that relates to the whole or any part of the area covered by the strategy and the provisions of this Part shall apply accordingly.

(2) In preparing a housing strategy, a planning authority shall have regard to the most recent F145[summary of social housing assessments prepared under *section 21(a)* of the *Housing (Miscellaneous Provisions) Act 2009*] that relate to the area of the development plan.

(3) A housing strategy shall take into account—

(a) the existing need and the likely future need for housing to which *subsection (4)(a)* applies,

- (b) the need to ensure that housing is available for persons who have different levels of income,
  - (c) the need to ensure that a mixture of house types and sizes is developed to reasonably match the requirements of the different categories of households, as may be determined by the planning authority, and including the special requirements of elderly persons and persons with disabilities, and
  - (d) the need to counteract undue segregation in housing between persons of different social backgrounds.
- (4) (a) A housing strategy shall include an estimate of the amount of—
- F145[(i) housing for the purposes of the provision of social housing support within the meaning of the Housing (Miscellaneous Provisions) Act 2009, and]
  - (ii) affordable housing,
- required in the area of the development plan during the period of the development plan and the estimate may state the different requirements for different areas within the area of the development plan.
- (b) For the purpose of making an estimate under paragraph (a)(ii), a planning authority may exclude eligible persons who own or have previously owned a house.
  - (c) Subject to *paragraph (d)*, a housing strategy shall provide that as a general policy a specified percentage, not being more than 20 per cent, of the land zoned for residential use, or for a mixture of residential and other uses, shall be reserved under this Part for the provision of housing for the purposes of either or both *subparagraphs (i) and (ii) of paragraph (a)*.
  - (d) *Paragraph (c)* shall not operate to prevent any person (including a local authority) from using more than 20 per cent. of land zoned for residential use, or for a mixture of residential and other uses, for the provision of housing to which *paragraph (a)* applies.
- (5) (a) When making an estimate under *subsection (4)(a)(ii)*, the planning authority shall have regard to the following:
- (i) the supply of and demand for houses generally, or houses of a particular class or classes, in the whole or part of the area of the development plan;
  - (ii) the price of houses generally, or houses of a particular class or classes, in the whole or part of the area of the development plan;
  - (iii) the income of persons generally or of a particular class or classes of person who require houses in the area of the development plan;
  - (iv) the rates of interest on mortgages for house purchase;
  - (v) the relationship between the price of housing under *subparagraph (ii)*, incomes under *subparagraph (iii)* and rates of interest under *subparagraph (iv)* for the purpose of establishing the affordability of houses in the area of the development plan;
  - (vi) such other matters as the planning authority considers appropriate or as may be prescribed for the purposes of this subsection.
- (b) Regulations made for the purposes of this subsection shall not affect any housing strategy or the objectives of any development plan made before those regulations come into operation.



**Annotations****Amendments:**

- F145** Substituted (1.04.2011) by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 2(a) and (b)(i), S.I. No. 83 of 2011.
- F146** Substituted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 7 item 2(b)(i), not commenced as of 27.12.2012.
- F147** Deleted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 7 item 2(b)(ii), not commenced as of 27.12.2012.
- F148** Inserted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 2(c), not commenced as of 27.12.2012.

**Modifications (not altering text):**

- C33** Subs. (4)(a)(ii) substituted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 7 item 2(b)(i), not commenced as of 27.12.2012.
- F146[(ii) housing for eligible households (within the meaning of section 78 of the *Housing (Miscellaneous Provisions) Act 2009*);]
- C34** Subs. (4)(b) deleted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 7 item 2(b)(ii), not commenced as of 26.07.2012.
- (b)F147[...]
- C35** Subs. (5)(va) inserted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 2(c), not commenced as of 27.12.2012.
- F148[(va) the number of households who have applied to purchase an affordable dwelling under an affordable dwelling purchase arrangement pursuant to *Part 5 of the Housing (Miscellaneous Provisions) Act 2009*;]

Housing strategies and development plans.

- 95.—(1) (a)** In conjunction with the inclusion of the housing strategy in its development plan, a planning authority shall ensure that sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses, to meet the requirements of the housing strategy and to ensure that a scarcity of such land does not occur at any time during the period of the development plan.
- (b) A planning authority shall include objectives in the development plan in order to secure the implementation of the housing strategy, in particular, any of the matters referred to in *section 94(3)*, including objectives requiring that a specified percentage of land zoned solely for residential use, or for a mixture of residential and other uses, be made available for the provision of housing referred to in *section 94(4)(a)*.
- (c) Specific objectives as referred to in *paragraph (b)* may be indicated in respect of each area zoned for residential use, or for a mixture of residential and other uses, and, where required by local circumstances relating to the amount of housing required as estimated in the housing strategy under *section 94(4)(a)*, different specific objectives may be indicated in respect of different areas, subject to the specified percentage referred to in *section 94(4)(c)* not being exceeded.
- (d) In order to counteract undue segregation in housing between persons of different social backgrounds, the planning authority may indicate in respect of any particular area referred to in *paragraph (c)* that there is no requirement for housing referred to in *section 94(4)(a)* in respect of that area, or that a

lower percentage than that specified in the housing strategy may instead be required.

(2) Nothing in *subsection (1)* shall prevent any land being developed exclusively for housing referred to in *section 94(4)(a)(i) or (ii)*.

(3) (a) The report of the manager under *section 15(2)* shall include a review of the progress achieved in implementing the housing strategy and, where the report indicates that new or revised housing needs have been identified, the manager may recommend that the housing strategy be adjusted and the development plan be varied accordingly.

(b) The manager of a planning authority shall, where he or she considers that there has been a change in the housing market, or in the regulations made by the Minister under *section 100*, that significantly affects the housing strategy, give a report on the matter to the members of the authority and, where he or she considers it necessary, the manager may recommend that the housing strategy be adjusted and the development plan be varied accordingly.

#### Annotations

#### Editorial Notes:

**E100** Variation of housing services plan in context of adjustment of a housing strategy pursuant to subs. (3) provided for by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 17(1), not commenced as of 27.12.2012.

F149 [Provision of social and affordable housing, etc.

**96.—**(1) Subject to subsection (13) and section 97, where a development plan objective requires that a specified percentage of any land zoned solely for residential use, or for a mixture of residential and other uses, be made available for housing referred to in section 94(4)(a), the provisions of this section shall apply to an application for permission for the development of houses on land to which such an objective applies, or where an application relates to a mixture of developments, to that part of the application which relates to the development of houses on such land, in addition to the provisions of section 34.

(2) A planning authority, or the Board on appeal, shall require as a condition of a grant of permission that the applicant, or any other person with an interest in the land to which the application relates, enter into an agreement under this section with the planning authority, providing, in accordance with this section, for the matters referred to in paragraph (a) or (b) of subsection (3).

(3) (a) Subject to paragraph (b), an agreement under this section shall provide for the transfer to the planning authority of the ownership of such part or parts of the land which is subject to the application for permission as is or are specified by the agreement as being part or parts required to be reserved for the provision of housing referred to in section 94(4)(a).

(b) Instead of the transfer of land referred to in paragraph (a) and subject to paragraph (c) and the other provisions of this section, an agreement under this section may provide for—

(i) the building and transfer, on completion, to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part, of houses on the land which is subject to the application for permission of such number and description as may be specified in the agreement,

(ii) the transfer of such number of fully or partially serviced sites on the land which is subject to the application for permission as the agreement may

specify to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part,

- (iii) the transfer to the planning authority of the ownership of any other land within the functional area of the planning authority,
  - (iv) the building and transfer, on completion, to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part, of houses on land to which subparagraph (iii) applies of such number and description as may be specified in the agreement,
  - (v) the transfer of such number of fully or partially serviced sites on land to which subparagraph (iii) applies as the agreement may specify to the ownership of the planning authority, or to the ownership of persons nominated by the authority in accordance with this Part,
  - (vi) a payment of such an amount as specified in the agreement to the planning authority,
  - (vii) a combination of a transfer of land referred to in paragraph (a) (but involving a lesser amount of such land than if the agreement solely provided for a transfer under that paragraph) and the doing of one or more of the things referred to in the preceding subparagraphs,
  - (viii) a combination of the doing of 2 or more of the things referred to in subparagraphs (i) to (vi),
- but, subject, in every case, to the provision that is made under this paragraph resulting in the aggregate monetary value of the property or amounts or both, as the case may be, transferred or paid by virtue of the agreement being equivalent to the monetary value of the land that the planning authority would receive if the agreement solely provided for a transfer of land under paragraph (a).
- (c) In considering whether to enter into an agreement under paragraph (b), the planning authority shall consider each of the following:
    - (i) whether such an agreement will contribute effectively and efficiently to the achievement of the objectives of the housing strategy;
    - (ii) whether such an agreement will constitute the best use of the resources available to it to ensure an adequate supply of housing and any financial implications of the agreement for its functions as a housing authority;
    - (iii) the need to counteract undue segregation in housing between persons of different social background in the area of the authority;
    - (iv) whether such an agreement is in accordance with the provisions of the development plan;
    - (v) the time within which housing referred to in section 94(4)(a) is likely to be provided as a consequence of the agreement.
  - (d) Where houses or sites are to be transferred to the planning authority in accordance with an agreement under paragraph (b), the price of such houses or sites shall be determined on the basis of—
    - (i) the site cost of the houses or the cost of the sites (calculated in accordance with subsection (6)), and
    - (ii) the building and attributable development costs as agreed between the authority and the developer, including profit on the costs.

- (e) Where an agreement under this section provides for the transfer of land, houses or sites, the houses or sites or the land, whether in one or more parts, shall be identified in the agreement.
- (f) In so far as it is known at the time of the agreement, the planning authority shall indicate to the applicant its intention in relation to the provision of housing, including a description of the proposed houses, on the land or sites to be transferred in accordance with paragraph (a) or (b).
- (g) Nothing in this subsection shall be construed as requiring the applicant or any other person (other than the planning authority) to enter into an agreement under paragraph (b) instead of an agreement under paragraph (a).
- (h) For the purposes of an agreement under this subsection, the planning authority shall consider—
  - (i) the proper planning and sustainable development of the area to which the application relates,
  - (ii) the housing strategy and the specific objectives of the development plan which relate to the implementation of the strategy,
  - (iii) the need to ensure the overall coherence of the development to which the application relates, where appropriate, and
  - (iv) the views of the applicant in relation to the impact of the agreement on the development.
- (i) Government guidelines on public procurement shall not apply to an agreement made under paragraph (a) or (b) except in the case of an agreement which is subject to the requirements of Council Directive No. 93/37/EEC<sup>1</sup> on the co-ordination of procedures relating to the award of Public Works Contracts and any directive amending or replacing that directive.

(4) An applicant for permission shall, when making an application to which this section applies, specify the manner in which he or she would propose to comply with a condition to which subsection (2) relates, were the planning authority to attach such a condition to any permission granted on foot of such application, and where the planning authority grants permission to the applicant subject to any such condition it shall have regard to any proposals so specified.

(5) In the case of a dispute in relation to any matter which may be the subject of an agreement under this section, other than a dispute relating to a matter that falls within subsection (7), the matter may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

(6) Where ownership of land is transferred to a planning authority pursuant to subsection (3), the planning authority shall, by way of compensation, pay to the owner of the land a sum equal to—

- (a) (i) in the case of—
    - (I) land purchased by the applicant before 25 August 1999, or
    - (II) land purchased by the applicant pursuant to a legally enforceable agreement entered into before that date or in exercise of an option in writing to purchase the land granted or acquired before that date,
- the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon (including, in circumstances where there is a mortgage on the land, interest paid in respect of the mortgage) as may be determined by the property arbitrator,

<sup>1</sup>O.J. No. L 199/54, 9.7.1993

(ii) in the case of land the ownership of which was acquired by the applicant by way of a gift or inheritance taken (within the meaning of the Capital Acquisitions Tax Act, 1976) before 25 August 1999, a sum equal to the market value of the land on the valuation date (within the meaning of that Act) estimated in accordance with section 15 of that Act,

(iii) in the case of—

(I) land purchased before 25 August 1999, or

(II) land purchased pursuant to a legally enforceable agreement to purchase the land entered into before that date, or in exercise of an option, in writing, to purchase the land granted or acquired before that date,

(where the applicant for permission is a mortgagee in possession of the land) the price paid for the land, or the price agreed to be paid for the land pursuant to the agreement or option, together with such sum in respect of interest thereon calculated from that date (including any interest accruing and not paid in respect of the mortgage) as may be determined by the property arbitrator,

or

(b) the value of the land calculated by reference to its existing use on the date of the transfer of ownership of the land to the planning authority concerned on the basis that on that date it would have been, and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development,

whichever is the greater.

(7) (a) Subject to paragraph (b), a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act, 1960, shall (in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919), in default of agreement, fix the following where appropriate:

(i) the number and price of houses to be transferred under subsection (3)(b)(i), (iv), (vii) or (viii);

(ii) the number and price of sites to be transferred under subsection (3)(b)(ii), (v), (vii) or (viii);

(iii) the compensation payable under subsection (6) by a planning authority to the owner of land;

(iv) the payment of an amount to the planning authority under subsection (3)(b)(vi), (vii) or (viii); and

(v) the allowance to be made under section 99(3)(d)(i).

(b) For the purposes of paragraph (a), section 2(2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall not apply and the value of the land shall be calculated on the assumption that it was at that time and would remain unlawful to carry out any development in relation to the land other than exempted development.

(c) Section 187 shall apply to compensation payable under subsection (6).

(8) Where it is a condition of the grant of permission that an agreement be entered into in accordance with subsection (2) and, because of a dispute in respect of any matter relating to the terms of such an agreement, the agreement is not entered into before the expiration of 8 weeks from the date of the grant of permission, the applicant or any other person with an interest in the land to which the application relates may—

(a) if the dispute relates to a matter falling within subsection (5), refer the dispute under that subsection to the Board, or

(b) if the dispute relates to a matter falling within subsection (7), refer the dispute under that subsection to the property arbitrator,

and the Board or the property arbitrator, as may be appropriate, shall determine the matter as soon as practicable.

(9) (a) Where ownership of land or sites is transferred to a planning authority in accordance with subsection (3), the authority may—

(i) provide, or arrange for the provision of, houses on the land or sites for persons referred to in section 94(4)(a),

(ii) make land or sites available to those persons for the development of houses by them for their own occupation, or

(iii) make land or sites available to a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992, for the provision of houses on the land for persons referred to in section 94(4)(a).

(b) Pending the provision of houses or sites in accordance with paragraph (a)(i), or the making available of land or sites in accordance with paragraph (a)(ii) or (iii), the planning authority shall maintain the land or sites in a manner which does not detract, and is not likely to detract, to a material degree from the amenity, character or appearance of land or houses in the neighbourhood of the land or sites.

(10) (a) Where a house is transferred to a planning authority or its nominees under subsection (3)(b), it shall be used for the housing of persons to whom section 94(4)(a) applies.

(b) A nominee of a planning authority may be a person referred to in section 94(4)(a) or a body approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992, for the provision of housing for persons referred to in section 94(4)(a).

(11) Notwithstanding any provision of this or any other enactment, if a planning authority becomes satisfied that land, a site or a house transferred to it under subsection (3) is no longer required for the purposes specified in subsection (9) or (10), it may use the land, site or house for another purpose connected with its functions or sell it for the best price reasonably obtainable and, in either case, it shall pay an amount equal to the market value of the land, site or house or the proceeds of the sale, as the case may be, into the separate account referred to in subsection (12).

(12) Any amount referred to in subsection (11) and any amount paid to a planning authority in accordance with subsection (3)(b)(vi), (vii) or (viii) shall be accounted for in a separate account and shall only be applied as capital for its functions under this Part or by a housing authority for its functions in relation to the provision of housing under the Housing Acts, 1966 to 2002.

(13) This section shall not apply to applications for permission for—

(a) development consisting of the provision of houses by a body standing approved for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992, for the provision of housing F150[required for households assessed under section 20 of the Housing (Miscellaneous Provisions) Act 2009 as being qualified for social housing support], where such houses are to be made available for letting or sale,

(b) the conversion of an existing building or the reconstruction of a building to create one or more dwellings, provided that 50 per cent or more of the existing external fabric of the building is retained,

(c) the carrying out of works to an existing house, or

(d) development of houses pursuant to an agreement under this section.

(14) A planning authority may, for the purposes of an agreement under this section, agree to sell, lease or exchange any land within its ownership to the applicant for permission, in accordance with section 211.

(15) In this section, 'owner' means—

(a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose (whether in possession or reversion) of the fee simple of the land, and

(b) a person who, under a lease or agreement the unexpired term of which exceeds 5 years, holds or is entitled to the rents or profits of the land.]

#### Annotations

#### Amendments:

**F149** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 3, commenced on enactment.

**F150** Substituted (1.04.2011) by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 3(b), S.I. No. 83 of 2011.

**F151** Inserted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 38(a)(i) and (iii), (b), not commenced as of 27.12.2012.

**F152** Substituted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 38(a)(ii) and (c), not commenced as of 27.12.2012.

**F153** Inserted (1.04.2011) by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 3(a), not commenced as of 27.12.2012.

#### Modifications (not altering text):

**C36** Prospective amending provisions: subs. (3)(b)(viii) and (8) amended and subs. (3)(b)(via), (3)(da) and (7)(a)(iia) inserted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 38, not commenced as of 27.12.2012.

#### Provision of social and affordable housing, etc.

F149[96.— ...

(3) ...

(b) Instead of the transfer of land referred to in paragraph (a) and subject to paragraph (c) and the other provisions of this section, an agreement under this section may provide for— ...

(vi) a payment of such an amount as specified in the agreement to the planning authority,

F151[(via) one of the following—

(I) the entry into a rental accommodation availability agreement (which term shall, in this section, have the meaning given to it by section 2 of the *Housing (Miscellaneous Provisions) Act 2009*) with the planning authority, under Part 2 of that Act, in respect of, or

(II) a grant of a lease to the planning authority of,

houses on the land which is subject to the application for permission, or any other land within the functional area of the planning authority of such number and description as may be specified in the agreement,]

(vii) a combination of a transfer of land referred to in paragraph (a) (but involving a lesser amount of such land than if the agreement solely provided for a transfer under that paragraph) and the doing of one or more of the things referred to in the preceding subparagraphs,

(viii) a combination of the doing of 2 or more of the things referred to in F152[in subparagraphs (i) to (via)],

but, subject, in every case, to the provision that is made under this paragraph resulting in the aggregate monetary value of the property or amounts or both, as the case may be, transferred or paid by virtue of the agreement being equivalent to the monetary value of the land that the planning authority would receive if the agreement solely provided for a transfer of land under paragraph (a).

...

**F151**[(da) Where a planning authority proposes to enter into a rental accommodation availability agreement or to take a lease in accordance with an agreement under paragraph (b), then, to the extent as may be appropriate the payment to be made, or the rent payable by the planning authority as the case may be shall be reduced (without prejudice to any other relevant discount or allowance) by such amount as may be agreed or in default of agreement as may be prescribed by the Minister as takes account of the obligations imposed by this section and in particular the attribution to the site cost of the houses of a value calculated in accordance with subsection (6).]

...

(7) (a) Subject to paragraph (b), a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act, 1960, shall (in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919), in default of agreement, fix the following where appropriate:

(i) the number and price of houses to be transferred under subsection (3)(b)(i), (iv), (vii) or (viii);

(ii) the number and price of sites to be transferred under subsection (3)(b)(ii), (v), (vii) or (viii);

**F151**[(iia) the number of houses, and the amount to be paid, or rent payable, therefor under a rental accommodation availability agreement or a lease under subsection (3)(b)(via)]

(iii) the compensation payable under subsection (6) by a planning authority to the owner of land;

(iv) the payment of an amount to the planning authority under subsection (3)(b)(vi), (vii) or (viii); and

(v) the allowance to be made under section 99(3)(d)(i).

(b) For the purposes of paragraph (a), section 2(2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall not apply and the value of the land shall be calculated on the assumption that it was at that time and would remain unlawful to carry out any development in relation to the land other than exempted development.

(c) Section 187 shall apply to compensation payable under subsection (6).

(8) Where it is a condition of the grant of permission that an agreement be entered into in accordance with subsection (2) and, because of a dispute in respect of any matter relating to the terms of such an agreement, the agreement is not entered into before the expiration of 8 weeks from the date of the grant of permission, F152[the planning authority, applicant or any other person] with an interest in the land to which the application relates may—

(a) if the dispute relates to a matter falling within subsection (5), refer the dispute under that subsection to the Board, or

(b) if the dispute relates to a matter falling within subsection (7), refer the dispute under that subsection to the property arbitrator,

and the Board or the property arbitrator, as may be appropriate, shall determine the matter as soon as practicable.



(9) ...]

**C37** Subs. (12) substituted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2, part 7, item no. 3(a), not commenced as of 27.12.2012.

**F153**[(12) Any amount referred to in subsection (11) and any amount paid to a planning authority in accordance with subsection (3)(b)(vi), (vii) or (viii) shall be accounted for in a separate account and shall only be applied as capital for its functions in relation to the provision of housing under the Housing Acts 1966 to 2009, including the making of payments under section 94 of the Housing (Miscellaneous Provisions) Act 2009 into the Affordable Dwellings Fund established under Part 5 of that Act.]

**F154**[Restoration of normal limit of duration for certain permissions.

**96A.**—Sections 40 to 42 shall apply to permissions granted under Part IV of the Act of 1963 or under Part III of this Act pursuant to an application made after 25 August 1999 and to which this Part would have applied if the application for permission had been made after the inclusion of a housing strategy in the development plan under section 94(1).]

#### Annotations

#### Amendments:

**F154** Inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 4, commenced on enactment.

**F155**[Levy to be paid in consideration of restoration effected by section 96A.

**96B.**—(1) In this section—

‘house’ means—

- (a) a building or part of a building which has been built for use as a dwelling, and
- (b) in the case of a block of apartments or other building or part of a building comprising 2 or more dwellings, each of those dwellings;

‘market value’, in relation to a house, means the price which the house might reasonably be expected to fetch on a sale in the open market;

‘relevant house’ means a house, permission for which would have ceased to have effect or expired but for section 4 of the Planning and Development (Amendment) Act, 2002.

(2) There shall be deemed to be attached to a permission referred to in section 96A a condition providing that there shall, in accordance with subsections (3) to (5), be paid to the planning authority an amount in respect of—

- (a) unless paragraph (b) applies as respects the particular house, the first disposal of each relevant house built on foot of that permission,
- (b) if, as respects a particular relevant house—
  - (i) it is built on foot of that permission by a person for his or her own occupation, or
  - (ii) it is built on foot of that permission for a person (‘the first-mentioned person’) by another for the first-mentioned person’s occupation and that other person is not the person from whom the first-mentioned person acquires his or her interest in the land on which the house is built,

the completion of the building of that relevant house on foot of that permission.

(3) In subsection (2) 'first disposal', in relation to a relevant house, means whichever of the following first occurs after the house is built—

- (a) the sale, at arm's length, of the house (whether the agreement for that sale is entered into before or after the building of the house is completed),
- (b) the granting of a tenancy or lease in respect of the house for the purpose of the grantee of the tenancy or lease occupying the house, or
- (c) the sale, otherwise than at arm's length, of the house (whether the agreement for that sale is entered into before or after the building of the house is completed) or the transfer of the beneficial interest in the house.

(4) The amount of the payment referred to in subsection (2) shall be—

(a) where the disposal of the house concerned falls within subsection (3)(a)—

- (i) if the consideration paid to the vendor by the purchaser equals or exceeds €270,000, an amount equal to 1 per cent of the consideration so paid,
- (ii) if the consideration paid to the vendor by the purchaser is less than €270,000, an amount equal to 0.5 per cent of the consideration so paid,

(b) where either—

(i) the disposal of the house concerned falls within subsection (3)(b) or (c),  
or

(ii) subsection (2)(b) applies as respects the house concerned,

an amount equal to—

- (I) if the market value of the house at the time of the disposal or upon the completion of its building, equals or exceeds €270,000, 1 per cent of the market value of the house at the time of that disposal or upon that completion,
- (II) if the market value of the house at the time of the disposal or upon such completion is less than €270,000, 0.5 per cent of the market value of the house at the time of that disposal or upon such completion.

(5) The payment referred to in subsection (2) shall be made at such time as the planning authority specifies (and the time that is so specified may be before the date on which the disposal concerned of the relevant house is effected).

(6) Any amount paid to a planning authority in accordance with this section shall be accounted for in a separate account and shall only be applied as capital for its functions under this Part or by a housing authority for its functions in relation to the provision of housing under the Housing Acts, 1966 to 2002.

(7) (a) The planning authority shall issue, in respect of the payment to it of an amount (being the amount required to be paid under this section in a particular case), a receipt, in the prescribed form, to the payer stating that the liability for payment of that amount in the case concerned has been discharged.

(b) A document purporting to be a receipt issued under this subsection by the planning authority shall be *prima facie* evidence that the liability for the payment of the amount to which it relates has been discharged.

(8) Any of the following—

(a) a provision of a contract of sale of a house,

(b) a provision of a contract for the building for a person of a house for his or her occupation,

(c) a covenant or other provision of a conveyance of an interest in a house,

(d) a covenant or other provision of a lease or tenancy agreement in respect of a house,

(e) a provision of any other agreement (whether oral or in writing),

which purports to require the purchaser, the person referred to in paragraph (b), the grantee of the interest or the grantee of the lease or tenancy, as the case may be, to pay the amount referred to in subsection (2) or to indemnify another in respect of that other's paying or liability to pay that amount shall be void.

(9) Any amount paid by the purchaser, person referred to in subsection (8)(b) or grantee of an interest or a lease or tenancy, pursuant to a provision or covenant referred to in subsection (8), may be recovered by him or her from the person to whom it is paid as a simple contract debt in any court of competent jurisdiction.

(10) This section shall not apply to permissions for development consisting of the provision of 4 or less houses, or for housing on land of 0.1 hectares or less.

(11) For the avoidance of doubt, in this section 'sale', in relation to a house, includes any transaction or series of transactions whereby the vesting by the builder in another person of the interest in the land on which the house is built by the builder is effected separately from the conclusion of the arrangements under which the house is built for that other person by the builder.]

#### Annotations

#### Amendments:

**F155** Inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 4, commenced on enactment.

#### Editorial Notes:

**E101** Power pursuant to section exercised (6.03.2003) by *Planning and Development Regulations 2003* (S.I. No. 90 of 2003).

Development to which *section 96* shall not apply.

**97.—(1)** In this section—

“applicant” includes a person on whose behalf a person applies for a certificate;

“the court” other than in *subsections (19) and (21)*, means the Circuit Court for the circuit in which all or part of the development, to which the application under *subsection (3)* relates, is situated.

(2) For the purposes of this section—

(a) 2 or more persons shall be deemed to be acting in concert if, pursuant to an agreement, arrangement or understanding, one of them makes an application under *subsection (3)* or causes such an application to be made, and

(b) land in the immediate vicinity of other land shall be deemed in any particular case not to include land that is more than 400 metres from the land second-mentioned in this subsection.

(3) A person may, before applying for permission in respect of a development—

(a) consisting of the provision of 4 or fewer houses, or

(b) for housing on land of F156[0.1 hectares] or less,

apply to the planning authority concerned for a certificate stating that *section 96* shall not apply to a grant of permission in respect of the development concerned (in this section referred to as a "certificate"), and accordingly, where the planning authority grants a certificate, *section 96* shall not apply to a grant of permission in respect of the development concerned.

(4) Subject to—

(a) *subsections (6) and (12)*, and

(b) compliance by the applicant for a certificate with *subsection (8)*,

a planning authority to which an application has been made under and in accordance with this section may grant a certificate to the applicant.

(5) An application for a certificate shall be accompanied by a statutory declaration made by the applicant—

(a) giving, in respect of the period of 5 years preceding the application, such particulars of the legal and beneficial ownership of the land, on which it is proposed to carry out the development to which the application relates, as are within the applicant's knowledge or procurement,

(b) identifying any persons with whom the applicant is acting in concert,

(c) giving particulars of—

(i) any interest that the applicant has, or had at any time during the said period, in any land in the immediate vicinity of the land on which it is proposed to carry out such development, and

(ii) any interest that any person with whom the applicant is acting in concert has, or had at any time during the said period, in any land in the said immediate vicinity, of which the applicant has knowledge,

(d) stating that the applicant is not aware of any facts or circumstances that would constitute grounds under *subsection (12)* for the refusal by the planning authority to grant a certificate,

(e) giving such other information as may be prescribed.

(6) (a) A planning authority may require an applicant for a certificate to provide it with such further information or documentation as is reasonably necessary to enable it to perform its functions under this section.

(b) Where an applicant refuses to comply with a requirement under *paragraph (a)*, or fails, within a period of 8 weeks from the date of the making of the requirement, to so comply, the planning authority concerned shall refuse to grant the applicant a certificate.

(7) A planning authority may, for the purpose of performing its functions under this section, make such further inquiries as it considers appropriate.

(8) It shall be the duty of the applicant for a certificate, at all times, to provide the planning authority concerned with such information as it may reasonably require to enable it to perform its functions under this section.

(9) The Minister may make regulations in relation to the making of an application under this section.

(10) Where a planning authority fails within the period of 4 weeks from—

(a) the making of an application to it under this section, or

(b) (in the case of a requirement under *subsection (6)*) the date of receipt by it of any information or documentation to which the requirement relates,

to grant, or refuse to grant a certificate, the planning authority shall on the expiry of that period be deemed to have granted a certificate to the applicant concerned.

(11) Particulars of a certificate granted under this section shall be entered on the register.

(12) A planning authority shall not grant a certificate in relation to a development if the applicant for such certificate, or any person with whom the applicant is acting in concert—

(a) has been granted, not earlier than 5 years before the date of the application, a certificate in respect of a development, and the certificate at the time of the application remains in force, or

(b) has carried out, or has been granted permission to carry out, a development referred to in *subsection (3)*, not earlier than—

(i) 5 years before the date of the application, and

(ii) one year after the coming into operation of this section,

in respect of the land on which it is proposed to carry out the first-mentioned development, or land in its immediate vicinity, unless—

(I) the aggregate of any development to which *paragraph (a)* or *(b)* relates and the first-mentioned development would not, if carried out, exceed 4 houses, or

(II) (in circumstances where the said aggregate would exceed 4 houses) the aggregate of the land on which any development to which *paragraph (a)* or *(b)* relates, and the land on which it is proposed to carry out the first-mentioned development, does not exceed F157[0.1 hectares].

(13) Where a planning authority refuses to grant a certificate, it shall by notice in writing inform the applicant of the reasons for its so refusing.

(14) (a) Where a planning authority to which an application has been made under *subsection (3)* refuses to grant a certificate to the applicant, he or she may, not later than 3 weeks from the date on which the applicant receives notification of the refusal by the planning authority to grant the certificate, or such later date as may be permitted by the court, appeal to the court for an order directing the planning authority to grant to the applicant a certificate in respect of the development.

(b) The court may at the hearing of an appeal under *paragraph (a)*—

(i) dismiss the appeal and affirm the refusal of the planning authority to grant the certificate, or

(ii) allow the appeal and direct the planning authority to grant the applicant a certificate in respect of the development concerned.

(15) A planning authority shall comply with a direction of the court under this section.

(16) (a) Subject to *paragraph (b)*, a planning authority shall revoke a certificate, upon application in that behalf being made to it by the owner of land to which the certificate related, or by any other person acting with the permission of such owner.

(b) A planning authority shall not revoke a certificate under this subsection where permission has been granted in respect of the development to which the certificate relates.

(17) A person who, knowingly or recklessly—

(a) makes a statutory declaration under *subsection (5)*, or

(b) in purported compliance with a requirement under *subsection (6)*, provides a planning authority with information or documentation,

that is false or misleading in a material respect, or who believes any such statutory declaration made, or information or documentation provided in purported compliance with such requirement, by him or her not to be true, shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment to a fine not exceeding £500,000 or to imprisonment for a term not exceeding 5 years, or to both.

(18) A person who—

(a) forges, or utters, knowing it to be forged, a certificate purporting to have been granted under this section (hereafter in this subsection referred to as a “forged certificate”),

(b) alters with intent to deceive or defraud, or utters, knowing it to be so altered, a certificate (hereafter in this subsection referred to as an “altered certificate”), or

(c) without lawful authority or other reasonable excuse, has in his or her possession a forged certificate or an altered certificate,

shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment to a fine not exceeding £500,000 or imprisonment for a term not exceeding 5 years, or to both.

(19) Where a person is convicted on indictment of an offence under *subsection (17)* or *(18)*, the court may in addition to any fine or term of imprisonment imposed by the court under that subsection order the payment into court by the person of an amount that in the opinion of the court is equal to the amount of any gain accruing to that person by reason of the grant of a certificate on foot of the statutory declaration, information or documentation, as the case may be, to which the offence relates, and such sum shall, when paid in accordance with such order, stand forfeited.

(20) All sums that stand forfeited under *subsection (19)* shall be paid to the planning authority that granted the certificate concerned and shall be accounted for in the account referred to in *section 96(13)* and be applied only for the purposes specified in that section.

(21) Where a person is convicted of an offence under *subsection (17)*, the court may revoke a certificate granted on foot of a statutory declaration, information or documentation to which the offence relates, upon application being made to it in that behalf by the planning authority that granted the certificate.

(22) A person shall not, solely by reason of having been granted a certificate, be entitled to a grant of permission in respect of the development to which the certificate relates.

**Annotations****Amendments:**

**F156** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 5, commenced on enactment.

**F157** Inserted (2.06.2003) by *Local Government (No. 2) Act 2003* (17/2003), s. 5, commenced on enactment.

**Editorial Notes:**

**E102** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E103** Power pursuant to section exercised (6.03.2003) by *Planning and Development Regulations 2003* (S.I. No. 90 of 2003).

**E104** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).

**E105** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Allocation of  
affordable housing.

**98.—**(1) Affordable housing may be sold or leased only to eligible persons who qualify in accordance with a scheme established by a planning authority under *subsection (2)*.

(2) For the purposes of *subsection (1)*, each planning authority shall establish a scheme which determines the order of priority to be accorded to eligible persons.

(3) Without prejudice to the generality of *subsection (2)*, when establishing a scheme referred to in that subsection, the planning authority shall have regard to the following:

- (a) the accommodation needs of eligible persons, in particular eligible persons who have not previously purchased or built a house for their occupation or for any other purpose;
- (b) the current housing circumstances of eligible persons;
- (c) the incomes or other financial circumstances of eligible persons (and priority may be accorded to eligible persons whose income level is lower than that of other eligible persons);
- (d) the period for which eligible persons have resided in the area of the development plan;
- (e) whether eligible persons own houses or lands in the area of the development plan or elsewhere;
- (f) distance of affordable housing from places of employment of eligible persons;
- (g) such other matters as the planning authority considers appropriate or as may be prescribed for the purposes of this section.

(4) A planning authority—

- (a) shall, when making or reviewing a development plan under *Part II*, and
- (b) may, at any other time,

review a scheme made under this section and, as it sees fit, make amendments to the scheme or make a new scheme.

(5) The making of a scheme under this section and the making of an amendment to any such scheme shall be reserved functions.

(6) For the purposes of allocation under this section, a planning authority may, from time to time, set aside such specified number or proportion of affordable houses, for such eligible persons or classes of eligible persons, as it considers appropriate.

(7) In this section and *section 99*, “lease” means a shared ownership lease within the meaning of section 2 of the Housing (Miscellaneous Provisions) Act, 1992.

#### Annotations

##### Amendments:

**F158** Repealed by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 7 and sch. 1, subject to transitional provisions in s. 96(6), not commenced as of 27.12.2012.

##### Modifications (not altering text):

**C38** Prospective affecting provision: scheme under section preserved for period by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 85(7), not commenced as of 27.12.2012.

##### Scheme of priority for affordable dwelling purchase arrangements.

**85.—** ...

(7) Notwithstanding the repeal by this Act of section 98 of the Planning and Development Act 2000 and section 8 of the Act of 2002, a scheme established under the said section 98 or the said section 8, as the case may be, and in force immediately before the coming into operation of this Part continues to have effect after such coming into operation and is deemed to have been made under this section until a scheme of priority made under this section comes into force.

...

**C39** Prospective amending provision: section repealed by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 7 and sch. 1, subject to transitional provisions in s. 96(6), not commenced as of 27.12.2012.

##### Allocation of affordable housing.

**98.—**F158[...]

Controls on resale of certain houses.

**99.—**(1) Where houses are provided or sites made available in accordance with *section 96(9) or (10)*, the sale or lease of those houses or sites shall be subject to such conditions (if any) as may be specified by the planning authority.

(2) Without prejudice to the generality of *subsection (1)*, terms and conditions under those subsections may provide for—

(a) the notification of the planning authority of the resale of any house or land, and

(b) the basis on which any house sold or leased under this Part may be occupied.

(3) (a) Terms and conditions under this section shall require, subject to *paragraphs (b) and (c)*, that where any house or land sold to any person in accordance with *subsection (1)* is first resold before the expiration of 20 years from the date of purchase, the person selling the house or land shall pay to the planning authority out of the proceeds of the sale an amount equal to a percentage of the proceeds, which percentage is calculated in accordance with the following formula—



$$\frac{Y \times 100}{Z}$$

where—

Y is the difference between the market value of the house or land at the time of sale to the person and the price actually paid, and

Z is the market value of the house at the time of sale to the person.

- (b) The amount payable under *paragraph (a)* shall be reduced by 10 per cent in respect of each complete year after the 10th year during which the person to whom the house or land was sold has been in occupation of the house or land as his or her normal place of residence.
- (c) Where the amount payable under *paragraph (a)* would reduce the proceeds of the sale (disregarding solicitor and estate agent's fees and costs) below the price actually paid, the amount payable shall be reduced to the extent necessary to avoid that result.
- (d) (i) In calculating the amount payable under *paragraph (a)*, due allowance shall be made for any material improvements made by the person to whom the house or land was sold.
- (ii) For the purpose of this paragraph, "material improvements" means improvements made to the house (whether for the purpose of extending, enlarging, repairing or converting the house), but does not include decoration, or any improvements carried out on the land including the construction of a house.

F159[(3A) (a) As soon as practicable after a house or land is sold in accordance with subsection (1), the planning authority shall make an order charging the house or land with an amount that shall be expressed in the order in the following terms.

- (b) Those terms are that the amount charged is an amount equal to the amount (if any) that may subsequently become payable under subsection (3)(a) in respect of the house or land.
- (c) An order under paragraph (a) shall be deemed to be a F160[legal mortgage under Part 10 of the Land and Conveyancing Law Reform Act 2009] and to have been executed, at the time of the sale of the house or land in accordance with subsection (1), in favour of the planning authority for a charge of the amount referred to in paragraph (b).
- (d) Accordingly, the planning authority shall, as on and from the making of such an order in respect of a house or land—
  - (i) be deemed to be a mortgagee of the house or land for the purposes of the Conveyancing Acts 1881 to 1911, and
  - (ii) have in relation to the charge referred to in paragraph (c) all the powers conferred by those Acts on mortgagees under mortgages made by deed.
- (e) Where a planning authority makes an order under paragraph (a) it shall, as soon as practicable thereafter, cause the order to be registered in the Registry of Deeds or the Land Registry, as appropriate, and it shall be a sufficient description of the amount in respect of which the charge to which the order relates is being registered to state that amount to be the amount referred to in section 99(3A)(b) of the Planning and Development Act 2000.
- (f) An order under paragraph (a) affecting a house or land which is registered land within the meaning of the Registration of Title Act 1964 shall be registrable as a burden affecting such land whether the person named in such order as

the owner of the land is or is not registered under the said Act as the owner of such land.

- (g) A charge created by virtue of an order under paragraph (a) shall not be regarded as a prior mortgage for the purposes of section 22(4) of the Building Societies Act 1989.
- (h) A planning authority may, subject to paragraph (i), enter into an agreement with a holder of a licence under the Central Bank Act 1971, a building society or other financial institution that a charge proposed to be created by it by an order under paragraph (a) shall have a priority, as against a mortgage or charge proposed to be created in favour of that holder, society or institution, that is different from the priority the charge would otherwise have if this paragraph had not been enacted.
- (i) A planning authority may only enter into such an agreement if it considers that the agreement will enable the person to whom the house or land concerned is proposed to be sold in accordance with subsection (1) to obtain an advance of moneys from the holder, society or institution referred to in paragraph (h) for the purposes of purchasing the house or land.
- (j) Any amount that becomes payable to a planning authority under subsection (3)(a) may, without prejudice to any other power in that behalf, be recovered by the authority from the person concerned as a simple contract debt in any court of competent jurisdiction.
- (k) For the avoidance of doubt, neither an order under paragraph (a) nor a charge that arises under it shall be regarded as a conveyance for the purposes of section 3 of the Family Home Protection Act 1976.]

(4) Any moneys accruing to a planning authority arising out of the resale of any house or land, subject to terms and conditions in accordance with *subsection (1)*, shall be paid into the separate account referred to in *section 96(13)* and shall be subject to the other requirements of that subsection.

#### Annotations

#### Amendments:

**F159** Inserted (21.12.2004) by *Housing (Miscellaneous Provisions) Act 2004* (43/2004), s. 2, commenced on enactment.

**F160** Substituted (1.12.2009) by *Land And Conveyancing Law Reform Act 2009* (27/2009), s. 8(1) and sch. 1, S.I. No. 356 of 2009.

**F161** Repealed by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 7 and sch. 1, not commenced as of 27.12.2012, subject to transitional provision in s. 96(6).

#### Modifications (not altering text):

**C40** Prospective amending provision: section repealed by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 7 and sch. 1, subject to transitional provision in s. 96(6), not commenced as of 27.12.2012.

#### Controls on resale of certain houses.

99.—F161[...]

Regulations under this Part.

**100.—(1)** The Minister may make regulations—

- (a) specifying the criteria for determining the size of the accommodation required by eligible persons, including minimum and maximum size requirements,

- having regard to any guidelines specified by the Minister in respect of the provision of housing under the Housing Acts, 1966 to 1998,
- (b) governing the determination of income for the purposes of *section 93*,
- (c) specifying matters for the purposes of *section 94(5)* or *98(3)*, and
- (d) setting out requirements related to terms and conditions referred to in *section 99(1)*.

(2) Regulations made under *subsection (1)* may apply either generally or by reference to a specified class or classes of eligible persons or to any other matter as may be considered by the Minister to be appropriate.

#### Annotations

#### Amendments:

**F162** Repealed by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 7 and sch. 1, not commenced as of 27.12.2012, subject to transitional provisions in s. 96(6).

#### Modifications (not altering text):

**C41** Prospective amending provisions: section repealed by *Housing (Miscellaneous Provisions) Act 2009 (22/2009)*, s. 7 and sch. 1, not commenced as of 27.12.2012, subject to transitional provisions in s. 96(6).

#### Regulations under this Part.

**100.**—F162[...]

#### Editorial Notes:

**E106** Power pursuant to section exercised (6.03.2003) by *Planning and Development Regulations 2003* (S.I. No. 90 of 2003).

**E107** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E108** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000); revoked by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Housing and  
planning authori-  
ty functions.

**101.**—(1) Where a planning authority performing any function under this Part is not the housing authority for the area of the function, the planning authority shall consult with the housing authority for the area with respect to the performance of that function.

(2) In this section, a reference to a “housing authority” means a housing authority as defined pursuant to section 23(2) of the *Housing (Miscellaneous Provisions) Act, 1992*.

## PART VI

### AN BORD PLEANÁLA

#### CHAPTER I

#### *Establishment and Constitution*

Continuation of Bord Pleanála. **102.**—(1) An Bord Pleanála shall continue in being notwithstanding the repeal of any enactment effected by this Act.

(2) The Board shall perform the functions assigned to it by this Act.

(3) The chairman, deputy chairman and any other member of the Board in office immediately prior to the coming into force of this section under an enactment repealed by this Act shall continue in office as chairperson, deputy chairperson and other member, respectively, for a term ending on the day on which his or her appointment would have expired under the repealed enactment.

Board to be body corporate, etc. **103.**—(1) The Board shall be a body corporate with perpetual succession and a seal and power to sue and be used in its corporate name and to acquire, hold and dispose of land.

(2) The seal of the Board shall be authenticated by the signature of the chairperson or of some other member, or of an employee of the Board or of a person whose services are availed of by the Board by virtue of *section 122*, who is authorised by the Board to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (2)*) of the Board shall be received in evidence and be deemed to be such an instrument without proof unless the contrary is shown.

Board to consist of chairperson and 7 other members. **104.**—(1) Subject to *subsection (2)* and *(3)* of this section, the Board shall consist of a chairperson and F163[9 ordinary members].

(2) The Minister may by order increase the number of ordinary members where he or she is of the opinion that the F164[number of applications, appeals], referrals or other matters with which the Board is concerned is at such a level so as to necessitate the appointment of one or more additional Board members to enable the Board fulfil its duty and objective F164[under section 37J, 126, 177C, 177E or 221, or section 47E of the Act of 2001].

F165[(2A) Subject to section 108(1), and notwithstanding section 106(5), the Minister shall not fill one or more than one vacancy that arises in relation to an ordinary member, for such period as he or she considers appropriate, where he or she is of the opinion that the number of applications, appeals, referrals or other functions conferred on the Board by or under this Act is at such a level so as to necessitate that the vacancy is not filled and that the Board shall, notwithstanding the reduction in the number of Board members be able to fulfil its duty and objective under section 37J, 126, 177C, 177E or 221, or section 47E of the Act of 2001 or otherwise satisfactorily perform the functions so conferred.]

(3) Where an order is proposed to be made under *subsection (2)*, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(4) (a) Notwithstanding *subsection (2)* of this section or *subsection (3)* of *section 106*, where the Minister is of the opinion that one or more than one additional ordinary member should be appointed as a matter of urgency due to the F164[number of applications, appeals], referrals or other matters with which the Board is concerned, F164[the Minister may, subject to paragraphs (b) and (c).], appoint one or more than one person from among the officers of the Minister who are established civil servants for the purposes of the F164[Civil Service Regulation Acts 1956 to 2005], or from among the employees of the Board, on a temporary basis.

(b) A person shall not be appointed to be an ordinary member under this subsection for a term in excess of F164[12 months].

F165[(c) The Minister shall appoint not more than 3 persons under this subsection at any one time, and the number of ordinary members appointed under this subsection shall not exceed one third of the total number of ordinary members at any one time.]

(5) An order made under *subsection (2)* shall have effect for such a period not exceeding 5 years as shall be specified therein.

#### Annotations

#### Amendments:

**F163** Substituted (5.11.2006) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 14, S.I. No. 553 of 2006.

**F164** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 39(a), (c)(i) and (ii), S.I. No. 477 of 2010.

**F165** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 39(b) and (c)(iii), S.I. No. 477 of 2010.

Appointment of  
chairperson.

**105.**—(1) The chairperson shall be appointed by the Government.

(2) There shall be a committee (“the committee”) consisting of—

- (a) the President of the High Court,
- (b) the Cathaoirleach of the General Council of County Councils,
- (c) the Secretary-General of the Department of the Environment and Local Government,
- (d) the Chairperson of the Council of An Taisce — the National Trust for Ireland,
- (e) the President of the Construction Industry Federation,
- (f) the President of the Executive Council of the Irish Congress of Trade Unions,  
and
- (g) the Chairperson of the National Women’s Council of Ireland.

(3) Where—

- (a) any of the persons referred to in *subsection (2)* signifies at any time his or her unwillingness or inability to act for any period as a member of the committee,  
or
- (b) any of the persons referred to in *subsection (2)* is through ill-health or otherwise unable so to act for any period,

the Minister may, when making a request under *subsection (7)*, appoint another person to be a member of the committee in his or her place and that person shall remain a member of the committee until such time as the selection by the committee pursuant to the request is made.

(4) Where the Minister makes a request under *subsection (7)* and at the time of making the request any of the offices referred to in *subsection (2)* is vacant, the Minister may appoint a person to be a member of the committee and that person shall remain a member of the committee until such time as the selection of the committee pursuant to the request is made.

(5) Where, pursuant to *subsection (3) or (4)*, the Minister appoints a person to be a member of the committee, he or she shall, as soon as may be, cause a notice of the appointment to be published in *Iris Oifigiúil*.

(6) (a) The Minister may by order amend *subsection (2)*.

(b) The Minister may by order amend or revoke an order under this subsection (including an order under this paragraph).

(c) Where an order under this subsection is proposed to be made, the Minister shall cause a draft thereof to be laid before both Houses of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(d) Where an order under this subsection is in force, *subsection (2)* shall be construed and have effect subject to the terms of the order.

(7) (a) The committee shall, whenever so requested by the Minister, select 3 candidates, or if in the opinion of the committee there is not a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment to be the chairperson and shall inform the Minister of the names of the candidates, or, as may be appropriate, the name of the candidate, selected and of the reasons why, in the opinion of the committee, they are or he or she is suitable for the appointment.

(b) In selecting candidates the committee shall have regard to the special knowledge and experience and other qualifications or personal qualities which the committee considers appropriate to enable a person effectively to perform the functions of the chairperson.

(8) Except in the case of a re-appointment under *subsection (12)*, the Government shall not appoint a person to be the chairperson unless the person was selected by the committee under *subsection (7)* in relation to that appointment but—

(a) if the committee is unable to select any suitable candidate pursuant to a particular request under *subsection (7)*, or

(b) if the Government decides not to appoint to be the chairperson any of the candidates selected by the committee pursuant to a particular request,

then either—

(i) the Government shall appoint a person to be the chairperson who was a candidate selected by the committee pursuant to a previous request (if any) in relation to that appointment, or

(ii) the Minister shall make a further request to the committee and the Government shall appoint to be the chairperson a person who is selected by the committee pursuant to the request or pursuant to a previous request.

(9) The Minister may make regulations as regards—

(a) the publication of the notice that a request has been received by the committee under *subsection (7)*,

(b) applications for selection by the committee, and

(c) any other matter which the Minister considers expedient for the purposes of this section.

(10) A person who is, for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(b) a member of the European Parliament, or

(c) a member of a local authority,

shall be disqualified from being appointed as the chairperson.

(11) The chairperson shall be appointed in a wholetime capacity and shall not at any time during his or her term of office hold any other office or employment in respect of which emoluments are payable.

(12) Subject to the other provisions of this section, the chairperson shall hold office for a term of 7 years and may be re-appointed by the Government for a second or subsequent term of office, provided that a person shall not be re-appointed under this subsection unless, at the time of his or her re-appointment, he or she is or was the outgoing chairperson.

(13) (a) The chairperson may resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect on and from the date of the receipt of the letter by the Minister.

F166[(b) The chairperson shall vacate the office of chairperson on attaining the age of 65 years but where the chairperson is either—

(i) a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) appointed on or after 1 April 2004, or

(ii) a Scheme member (within the meaning of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012,

then the requirement under this subsection to vacate office on grounds of age shall not apply.]

(c) A person shall cease to be the chairperson if he or she—

(i) is nominated either as a member of Seanad Éireann or for election to either House of the Oireachtas or to the European Parliament,

(ii) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament to fill a vacancy, or

(iii) becomes a member of a local authority.

(d) A person shall cease to be the chairperson if he or she—

(i) is adjudicated bankrupt,

(ii) makes a composition or arrangement with creditors,

(iii) is convicted of any indictable offence in relation to a company,

(iv) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(v) is sentenced by a court of competent jurisdiction to a term of imprisonment,

(vi) is the subject of an order under section 160 of the Companies Act, 1990, or

(vii) ceases to be resident in the State.

F167[(14) Subject to the provisions of this section, the chairperson shall hold office on such terms and conditions (including terms relating to allowances for expenses)

as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines. ]

(15) The chairperson may be removed from office by the Government if he or she has become incapable through ill-health of effectively performing his or her functions, or if he or she has committed stated misbehaviour, or if his or her removal appears to the Government to be necessary for the effective performance by the Board of its functions, and in case the chairperson is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.

#### Annotations

##### Amendments:

**F166** Substituted (28.07.2012) by *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* (37/2012), s. 58(a), commenced on enactment.

**F167** Substituted (1.01.2012) by *Financial Emergency Measures in the Public Interest (Amendment) Act 2011* (39/2011), s. 14, S.I. No. 683 of 2011.

##### Editorial Notes:

**E109** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E110** Previous affecting provision: subs. (13)(b) amended (25.03.2004) by *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004), s. 3 and sch. 2 part 2, commenced on enactment; substituted as per F-note above.

**E111** Previous affecting provision: power pursuant to section exercised (20.07.2001) by *Planning and Development (Appointment of Chairperson and Ordinary Members of an Board Pleanála) Regulations 2001* (S.I. No. 336 of 2000); revoked (21.02.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Appointment of  
ordinary  
members.

**106.—F168[(1)** The Minister shall appoint the 9 ordinary members of the Board as follows:

- (a) 2 members shall be appointed from amongst persons nominated for such appointment by such organisations that, in the Minister's opinion, are representative of persons whose professions or occupations relate to physical planning, engineering and architecture as may be prescribed;
- (b) 2 members shall be appointed from amongst persons nominated for such appointment by such organisations that, in the Minister's opinion, are concerned with economic development, the promotion of and carrying out of development, the provision of infrastructure or the development of land or otherwise connected with the construction industry as may be prescribed;
- (c) 2 members shall be appointed from among persons nominated for such appointment by such—
  - (i) organisations that, in the Minister's opinion, are representative of the interests of local government,
  - (ii) bodies representing farming, and
  - (iii) trade unions,
 as may be prescribed;



(d) 2 members shall be appointed from among persons nominated for such appointment by such—

(i) organisations that, in the Minister's opinion, are representative of persons concerned with the protection and preservation of the environment and of amenities,

(ii) voluntary bodies and bodies having charitable objects,

(iii) bodies that, in the Minister's opinion, have a special interest or expertise in matters relating to rural and local community development, the promotion of the Irish language or the promotion of heritage, the arts and culture,

(iv) bodies that are representative of people with disabilities, and

(v) bodies that are representative of young people,

as may be prescribed;

F169[(e) one member who, in the Minister's opinion, has satisfactory experience, competence or qualifications as respects issues relating to the environment and sustainability.]

(2) The Minister shall prescribe at least 2 organisations for the purposes of each of paragraphs (a) to (d) of subsection (1).]

(3) Where the Minister decides to appoint one or more members to the Board pursuant to an order under *section 104(2)*—

(a) where not more than F170[6 additional members] are appointed, not more than one shall be appointed from among persons selected by organisations which are prescribed for the purposes of a particular paragraph of *subsection (1)*;

(b) where F170[more than 6 but not more than 12 additional members] are appointed, not more than 2 shall be appointed from among persons selected by organisations which are prescribed for the purposes of a particular paragraph of *subsection (1)*.

(4) An organisation prescribed for the purposes of F168[paragraph (a), (b), (c) or (d)] of *subsection (1)*, shall, whenever so requested by the Minister, nominate such number of candidates (not being less than two) as the Minister may specify for appointment as an ordinary member and shall inform the Minister of the names of the candidates nominated and of the reasons why, in the opinion of the organisation, they are suitable for appointment.

(5) Except in the case of an appointment pursuant to F168[*subsection (1)(e)*] or a re-appointment under *subsection (12)* and subject to *subsection (6)* and *section 108(4)*, the Minister shall not appoint a person to be an ordinary member unless the person was nominated pursuant to a request under *subsection (4)* in relation to that appointment.

(6) Where—

(a) pursuant to a particular request under *subsection (4)*, an organisation refuses or fails to nominate any candidate, or

(b) the Minister decides not to appoint as an ordinary member any candidate nominated by the organisations pursuant to a particular request under that subsection,

then—

- (i) the Minister shall appoint as an ordinary member a person who was among those nominated by such an organisation pursuant to a previous request (if any) under that subsection in relation to that appointment,
  - (ii) the Minister shall make a further request and shall appoint as an ordinary member a person who was among those nominated pursuant to that request or pursuant to another request made in relation to that appointment, or
  - (iii) the Minister shall appoint as an ordinary member a person selected by a committee established under *subsection (7)*.
- (7) (a) There shall be a committee (“the committee”) consisting of—
- (i) the chairperson,
  - (ii) the Assistant-Secretary of the Department of the Environment and Local Government with responsibility for planning and sustainable development, and
  - (iii) the Chairperson of the Heritage Council.
- (b) The committee shall, whenever so requested by the Minister—
- (i) by notice in one or more national newspapers, invite applications for appointment as an ordinary member by suitably qualified persons,
  - (ii) select 3 candidates, or if in the opinion of the committee there is not such a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment as an ordinary member, having regard to the knowledge and experience and other qualifications or personal qualities which the committee considers appropriate to enable a person effectively to perform the functions of an ordinary member, and
  - (iii) inform the Minister of the names of the candidates or, as may be appropriate, the name of the candidate, selected and of the reasons why, in the opinion of the committee, they are or he or she is suitable for the appointment.
- (8) Where a request is made under *subsection (4)*, failure or refusal by the organisation of whom the request is made to nominate the number of candidates specified in the request shall not preclude the appointment as an ordinary member of a person who was nominated in relation to that appointment either by the organisation or by any other organisation.
- (9) The Minister may make regulations as regards—
- (a) the period within which the Minister is to be informed in accordance with *subsection (4)*, and
  - (b) any other matter which the Minister considers expedient for the purposes of this section.
- (10) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
  - (b) a member of the European Parliament, or
  - (c) a member of a local authority,
- shall be disqualified from being appointed as an ordinary member.

(11) Each of the ordinary members shall be appointed in a whole-time capacity and shall not at any time during his or her term of office hold any other office or employment in respect of which emoluments are payable.

(12) Subject to *section 108(4)(b)*, an ordinary member shall hold office for such term (not exceeding 5 years) as shall be specified by the Minister when appointing him or her to office and may be re-appointed by the Minister for a second or subsequent term of office provided that a person shall not be re-appointed under this subsection unless, at the time of his or her re-appointment, he or she is or was an outgoing member of the Board.

(13) (a) An ordinary member may resign his or her membership by letter addressed to the Minister and the resignation shall take effect on and from the date of the receipt of the letter by the Minister.

F171[(b) A person shall vacate the office of ordinary member on attaining the age of 65 years but where the ordinary member is either—

(i) a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) appointed on or after 1 April 2004, or

(ii) a Scheme member (within the meaning of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012),

then the requirement under this subsection to vacate office on grounds of age shall not apply.]

(c) A person shall cease to be an ordinary member if he or she—

(i) is nominated either as a member of Seanad Éireann or for election to either House of the Oireachtas or to the European Parliament,

(ii) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament to fill a vacancy, or

(iii) becomes a member of a local authority.

(d) A person shall cease to be an ordinary member of the Board if he or she—

(i) is adjudicated bankrupt,

(ii) makes a composition or arrangement with creditors,

(iii) is convicted of any indictable offence in relation to a company,

(iv) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(v) is sentenced by a court of competent jurisdiction to a term of imprisonment,

(vi) is the subject of an order under section 160 of the Companies Act, 1990, or

(vii) ceases to be resident in the State.

(14) (a) There shall be paid by the Board to each ordinary member such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

(b) Subject to the other provisions of this section, an ordinary member shall hold office on such terms and conditions as the Minister, with the consent of the Minister for Finance, determines.

(15) An ordinary member may be removed from office by the Minister if he or she has become incapable through ill-health of effectively performing his or her functions, or if he or she has committed stated misbehaviour, or if his or her removal appears to the Minister to be necessary for the effective performance by the Board of its functions, and in case an ordinary member is removed from office under this subsection, the Minister shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

#### Annotations

##### Amendments:

- F168** Substituted (5.11.2006) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 15(a), (b) and (c), S.I. No. 553 of 2006.
- F169** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 40, S.I. No. 477 of 2010.
- F170** Substituted (9.10.2001) by *Local Government Act 2001 (37/2001)*, s. 247(b), S.I. No. 458 of 2001.
- F171** Substituted (28.07.2012) by *Public Service Pensions (Single Scheme and Other Provisions) Act 2012 (37/2012)*, s. 58(b), commenced on enactment.

##### Editorial Notes:

- E112** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E113** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E114** Previous affecting provision: subs. (1)(e) substituted (5.11.2006) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 15, S.I. No. 553 of 2006; substituted as per F-note above.
- E115** Previous affecting provision: subs. (13)(b) amended (25.03.2004) by *Public Service Superannuation (Miscellaneous Provisions) Act 2004 (7/2004)*, s. 3 and sch. 2 part 2, commenced on enactment; substituted as per F-note above.
- E116** Previous affecting provision: power pursuant to section exercised (20.07.2001) by *Planning and Development (Appointment of Chairperson and Ordinary Members of an Board Pleanála) Regulations 2001* (S.I. No. 336 of 2000); revoked (21.02.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Appointment of  
deputy chairper-  
son.

**107.—(1)** The Minister shall appoint from among the ordinary members a person to be the deputy chairperson and the appointment shall be for such period as shall be specified in the appointment.

(2) If at any time the deputy chairperson ceases to be an ordinary member of the Board, he or she shall thereupon cease to be the deputy chairperson.

(3) The deputy chairperson shall, in addition to his or her remuneration as an ordinary member, be paid by the Board such additional remuneration (if any) as the Minister, with the consent of the Minister for Finance, determines.

(4) The deputy chairperson may resign his or her office as deputy chairperson by letter addressed to the Minister and the resignation shall take effect on and from the date of the receipt of the letter by the Minister.

Board's quorum,  
vacancies, etc.

**108.—F172[(1) Subject to subsection (1A) (inserted by section 41) a quorum for a meeting of the Board shall be 3.]**

F173[(1A) The Board may determine by resolution, if so requested by the chairperson (or the deputy chairperson if the chairperson is not available or where the office of chairperson is vacant) where he or she is of the opinion that it is necessary to ensure the efficient discharge of the business of the Board, that the quorum for a meeting of the Board, or, notwithstanding section 112(2), a division of the Board referred to in section 112, should be 2.

(1B) The resolution referred to in subsection (1A) shall specify the functions of the Board or division of the Board which may be performed in a meeting with a quorum of 2 and the period of time during which the specified functions may be performed.

(1C) The chairperson or deputy chairperson shall not request a resolution of the Board referred to in subsection (1A) for the purposes of any matter falling to be determined by the Board or division of the Board under this Act in relation to—

- (a) development that would materially contravene the relevant development plan,
- (b) strategic infrastructure development, or
- (c) a development or class of development referred to in regulations made under section 176.

(1D) If, in determining by vote a question at a meeting of the Board or a division of the Board with a quorum of 2, the voting is equally divided, the matter that is the subject of the vote shall be referred to a meeting of the Board with a quorum of 3 and section 111(4) shall apply in relation to the determination of the question.]

(2) Subject to *subsection (1)*, the Board may act notwithstanding a vacancy in the office of chairperson or deputy chairperson or among the ordinary members.

(3) Where a vacancy occurs or is due to occur in the office of chairperson or deputy chairperson or among the ordinary members, the Minister shall, as soon as may be, take steps to fill the vacancy.

(4) (a) Where, owing to the illness of the chairperson or of an ordinary member, or for any other reason, a sufficient number of members of the Board is not available to enable the Board effectively to perform its functions, the Minister may, as an interim measure, appoint from among the F174[*officers of the Minister who are established civil servants for the purposes of the Civil Service Regulation Acts 1956 to 2005*] or the employees of the Board, one or more persons to be an ordinary member.

(b) A person shall not be appointed to be an ordinary member under this subsection for a term in excess of one year.

#### Annotations

#### Amendments:

**F172** Substituted (23.03.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 41(a), S.I. No. 132 of 2011.

**F173** Inserted (23.03.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 41(b), S.I. No. 132 of 2011.

**F174** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 41(c), S.I. No. 477 of 2010.

**Editorial Notes:**

**E117** Previous affecting provision: subs. (4)(a) amended (5.11.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 16, S.I. No. 553 of 2006; substituted as per F-note above.

## CHAPTER II

*Organisation, Staffing, etc.*

Performance of Board.

**109.—**(1) The Board shall supply the Minister with such information relating to the performance of its functions as he or she may from time to time request.

(2) (a) The Board shall conduct, at such intervals as it thinks fit or the Minister directs, reviews of its organisation and of the systems and procedures used by it in relation to appeals and referrals.

(b) Where the Minister gives a direction under this section, the Board shall report to the Minister the results of the review conducted pursuant to the direction and shall comply with any directive which the Minister may, after consultation with the Board as regards those results, give in relation to all or any of the matters which were the subject of the review.

(3) The Board may make submissions to the Minister as regards any matter pertaining to its functions.

(4) The Minister may consult with the Board as regards any matter pertaining to the performance of—

(a) the functions of the Board, or

(b) the functions assigned to the Minister by or under this Act or by any other enactment or by any order, regulation or other instrument thereunder.

Chairperson to ensure efficient discharge of business of Board, etc.

**110.—F175**[(1) The chairperson and, subject to the overall direction of the chairperson or where subsection (1A) applies, the deputy chairperson shall each have the function of—

(a) ensuring the efficient discharge of the business of the Board, and

(b) arranging the distribution of the business of the Board among its members.

(1A) The functions referred to in subsection (1) shall also fall to be performed by the deputy chairperson where the chairperson is not available or where the office of chairperson is vacant.

(1B) The chairperson may assign to any ordinary member any function necessary to ensure the best or most efficient discharge of the business of the Board.

(1C) The chairperson, or the deputy chairperson where the chairperson is not available or where the office of chairperson is vacant, shall take all practical steps to ensure that the organisation and disposition of the staff and resources of the Board are such as to enable the Strategic Infrastructure Division to discharge its business expeditiously.]

(2) Where the chairperson is of the opinion that the conduct of an ordinary member has been such as to bring the Board into disrepute or has been prejudicial to the effective performance by the Board of all or any one or more of its functions, he or she may in his or her absolute discretion—

(a) require the member of the Board to attend for interview and there interview the member privately and inform him or her of such opinion, or

(b) where he or she considers it appropriate to do so, otherwise investigate the matter,

and, if he or she considers it appropriate to do so, report to the Minister the result of the interview or investigation.

**Annotations**

**Amendments:**

**F175** Substituted and inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 17, S.I. No. 684 of 2006.

Meetings and  
procedure of  
Board.

**111.—**(1) The Board shall hold such and so many meetings as may be necessary for the performance of its functions.

(2) The chairperson and each ordinary member at a meeting of the Board shall have a vote.

(3) At a meeting of the Board—

(a) the chairperson shall, if present, be chairperson of the meeting,

(b) if the chairperson is not present the deputy chairperson shall, if present, be chairperson of the meeting, and

(c) if neither the chairperson nor the deputy chairperson is present, the ordinary members who are present shall choose one of their number to be chairperson of the meeting.

(4) Every question at a meeting of the Board relating to the performance of its functions shall be determined by a majority of votes of the members present and, in the event that voting is equally divided, the person who is chairperson of the meeting shall have a casting vote.

(5) (a) Subject to this Act, and to any regulations made thereunder, and subject also to any other enactment or order, regulation or other instrument thereunder, which regulates or otherwise affects the procedure of the Board, the Board shall regulate its own procedure and business.

(b) The Minister may require the Board to keep him or her informed of the arrangements made under this subsection for the regulation of its procedure and business.

(6) (a) Subject to *paragraph (b) and (c)*, the Board may perform any of its functions through or by any member of the Board or other person who has been duly authorised by the Board in that behalf.

(b) *Paragraph (a)* shall be construed as enabling a member of the Board finally to determine points of detail relating to a decision on a particular case if the case to which an authorisation under that paragraph relates has been considered at a meeting of the Board prior to the giving of the authorisation and that determination shall conform to the terms of that authorisation.

(c) *Paragraph (a)* shall not be construed as enabling the Board to authorise a person who is not a member of the Board finally to determine any particular case with which the Board is concerned.

(7) The Board shall arrange to keep a written record of all its decisions including the names of those present at a meeting of the Board and the number of those persons who vote for or against those decisions.

Divisions of  
Board.

**112.**—(1) Whenever the Minister or the chairperson considers that, for the speedy dispatch of the business of the Board, it is expedient that the Board should act by divisions, he or she may direct accordingly, and until that direction is revoked—

(a) the chairperson shall assign to each division the business to be transacted by it, and

(b) for the purpose of the business so assigned to it, each division shall have all the function of the Board.

(2) A division of the Board shall consist of not less than 3 members of the Board.

(3) The chairperson, or in his or her absence, a person acting as chairperson of a meeting of a division of the Board, may at any stage before a decision is made, transfer the consideration of any appeal or referral from the division to a meeting of all available members of the Board, where the chairperson considers the appeal or referral to be of particular complexity or significance.

F176[(4) This section is without prejudice to section 112A.]

#### Annotations

#### Amendments:

**F176** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 18, S.I. No. 684 of 2006.

F177[Strategic Infrastructure Division.

**112A.**— (1) A division of the Board which shall be known as the Strategic Infrastructure Division is established on the commencement of *section 19* of the *Planning and Development (Strategic Infrastructure) Act 2006*.

(2) That division is in addition to any division for the time being constituted under section 112.

(3) The Strategic Infrastructure Division—

(a) shall, subject to subsections (8) and (9), determine any matter falling to be determined by the Board under this Act in relation to strategic infrastructure development, and

(b) shall determine any other matter falling to be determined by the Board under this or any other enactment, including any class of appeals or referrals, that the chairperson or the deputy chairperson may from time to time assign to it.

(4) For the purpose of business of either of the foregoing kinds, the Strategic Infrastructure Division shall have all the functions of the Board.

(5) The Strategic Infrastructure Division shall consist of the chairperson and the deputy chairperson and 3 other ordinary members nominated by the chairperson to be, for the time being, members of the Division.

(6) The chairperson may authorise any other ordinary member to act in place of any member of the Strategic Infrastructure Division referred to in subsection (5) where the latter member is absent.

(7) The quorum for a meeting of the Strategic Infrastructure Division shall be 3.



(8) Either—

- (a) the chairperson or, in his or her absence, the deputy chairperson, or
- (b) a person acting as chairperson of a meeting of the Division,

may, at any stage before a decision is made by the Division, transfer the consideration of any matter from the Strategic Infrastructure Division to a meeting of all available members of the Board where he or she considers the matter to be of particular complexity or significance.

(9) The chairperson may, if he or she considers that the issues arising in respect of any particular case of strategic infrastructure development, or any particular class or classes of such case, are not of sufficient complexity or significance as to warrant that case, or that class or those classes of case, being dealt with by the Strategic Infrastructure Division, transfer the consideration of that case, or that class or those classes of case, to another division or part of the Board.]

#### Annotations

#### Amendments:

**F177** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 19, S.I. No. 684 of 2006.

Prohibition on disclosure of information relating to functions of Board.

**113.—**(1) No person shall, without the consent of the Board (which may be given to the person, subject to or without conditions, as regards any information, as regards particular information or as regards information of a particular class or description), disclose—

- (a) any information obtained by him or her while serving as a member or employee of, or consultant or adviser to, the Board or as a person whose services are availed of by the Board by virtue of *section 120(2)* or *122*, or
- (b) any information so obtained relative to the business of the Board or to the performance of its functions.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) Nothing in *subsection (1)* shall prevent—

- (a) disclosure of information in a report made to the Board or in a report made by or on behalf of the Board to the Minister,
- (b) disclosure of information by any person in the course of and in accordance with the functions of his or her office,
- (c) disclosure of information in accordance with the Freedom of Information Act, 1997, or
- (d) disclosure of information in accordance with the European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998, and any regulations amending or replacing those regulations.

Prohibition of certain communications in relation to appeals, etc.

**114.—**(1) Any person who communicates with the chairperson, an ordinary member, an employee of, or consultant or adviser to, the Board or a person whose services are availed of by the Board by virtue of *section 120(2)* or *122* for the purpose of influencing improperly the consideration of an appeal or referral or a decision of the Board as regards any matter shall be guilty of an offence.

(2) If the chairperson or an ordinary member or an employee of, or consultant or adviser to, the Board or a person whose services are availed of by the Board by virtue of *section 120(2) or 122*, becomes of the opinion that a communication is in contravention of *subsection (1)*, it shall be his or her duty not to entertain the communication further and shall disclose the communication to the Board.

Indemnification of members and employees of Board and other persons.

**115.**—Where the Board is satisfied that a member of the Board, an employee of the Board or a person whose services are provided to the Board under *section 120(2), 122 or 124(1)* has discharged his or her duties in relation to the functions of the Board in a bona fide manner, it shall indemnify the member, employee or person against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

Grants to Board.

**116.**—There may, subject to such conditions, if any, as the Minister thinks proper, be paid to the Board in each financial year out of moneys provided by the Oireachtas a grant or grants of such amount or amounts as the Minister, with the consent of the Minister for Finance and after consultation with the Board in relation to its programme of expenditure for that year, may fix.

#### Annotations

#### Modifications (not altering text):

**C42** Functions in relation to section transferred (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3 and sch. 1.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

#### Schedule 1 Enactments

...

No. 30 of 2000	Planning and Development Act 2000	Sections 80, 116, 117, 120(2) and 181
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...

Accounts and audits of Board.

**117.**—(1) The Board shall keep in such form as may be approved by the Minister, after consultation with the Minister for Finance, all proper and usual accounts of all moneys received or expended by it.

(2) Accounts kept under this section shall be submitted by the Board to the Comptroller and Auditor General for audit at such times as the Minister shall direct and, when audited shall, together with the report of the Comptroller and Auditor General, be presented to the Minister who shall cause copies to be laid before each House of the Oireachtas.

**Annotations****Modifications (not altering text):**

**C43** Functions in relation to section transferred (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3 and sch. 1.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

Schedule 1 Enactments

...

No. 30 of 2000	Planning and Development Act 2000	Sections 80, 116, 117, 120(2) and 181
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...

Annual report and information to Minister.

**118.**—The Board shall, not later than the 30th day of June in each year, make a report to the Minister of its proceedings during the preceding year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

Superannuation of members of Board.

**119.**—(1) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of pensions, gratuities or other allowances to or in respect of the chairperson and ordinary members ceasing to hold office.

(2) A scheme under this section may provide that the termination of the appointment of the chairperson or of an ordinary member during that person's term of office shall not preclude the award to him or her under the scheme of a pension, gratuity or other allowance.

(3) The Minister may, with the consent of the Minister for Finance, amend a scheme made by him or her under this section.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity, or allowance payable in pursuance of a scheme under this section, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(5) A scheme under this section shall be carried out by the Board in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the Board to or in respect of any person referred to in *subsection (1)* ceasing to hold office otherwise than in accordance with a scheme under this section.

(7) Every scheme made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House, within the next 21 days on which that House has sat after the scheme is laid before it, passes a

resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Employees of Board.

**120.—**(1) The Board shall appoint such and so many persons to be employees of the Board as the Board, subject to the approval of the Minister, given with the consent of the Minister for Finance, as to the number and kind of those employees, from time to time considers appropriate, having regard to the need to ensure that an adequate number of staff are competent in the Irish language so as to be able to provide service through Irish as well as English.

(2) The Board may employ a person in a part-time capacity to be remunerated by the payment of fees in such amounts as the Board may, with the approval of the Minister, given with the consent of the Minister for Finance, from time to time determine.

(3) An employee of the Board shall hold his or her employment on such terms and conditions as the Board, subject to the approval of the Minister, from time to time determines.

(4) There shall be paid by the Board to its employees out of moneys at its disposal such remuneration and allowances as the Board, subject to the approval of the Minister, with the consent of the Minister for Finance, from time to time determines.

**Annotations**

**Modifications (not altering text):**

**C44** Functions in relation to section transferred (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3 and sch. 1.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

Schedule 1 Enactments

...

No. 30 of 2000	Planning and Development Act 2000	Sections 80, 116, 117, 120(2) and 181
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...

Superannuation of employees of Board.

**121.—**(1) The Board shall prepare and submit to the Minister for his or her approval, a scheme or schemes for the granting of pensions, gratuities and other allowances on retirement or death to or in respect of such whole-time employees of the Board as it considers appropriate.

(2) The Board may, at any time, prepare and submit to the Minister a scheme amending a scheme under this section.

(3) Where a scheme is submitted to the Minister pursuant to this section, the Minister may, with the consent of the Minister for Finance, approve the scheme without modification or with such modification (whether by way of addition, omission or variation) as the Minister shall, with such consent, think proper.

(4) A scheme submitted to the Minister under this section shall, if approved of by the Minister, with the consent of the Minister for Finance, be carried out by the Board in accordance with its terms.

(5) A scheme approved of under this section shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or other allowances are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(6) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme under this section, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(7) Every scheme approved of under this section shall be laid before each House of the Oireachtas as soon as may be after it is approved of and if either House within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Provision of services by Minister to Board.

**122.—**(1) For the purposes of enabling the Board to perform its functions, the Minister may provide services (including services of staff) to the Board on such terms and conditions (including payment for such services) as may be agreed and the Board may avail of such services.

(2) The Board may provide services (including services of staff) to the Minister on such terms and conditions (including payment for such services) as may be agreed and the Minister may avail of such services.

Membership of either House of the Oireachtas, etc.

**123.—**(1) Where a person who is an employee of the Board is nominated as a member of Seanad Éireann or for election to either House of the Oireachtas or the European Parliament, or is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament to fill a vacancy, or becomes a member of a local authority, he or she shall stand seconded from employment by the Board and shall not be paid by, or be entitled to receive from, the Board any remuneration or allowances—

(a) in case he or she is nominated as a member of Seanad Éireann in respect of the period commencing on his or her acceptance of the nomination and ending when he or she ceases to be a member of that House,

(b) in case he or she is nominated for election to either such House or to the European Parliament, in respect of the period commencing on his or her nomination or appointment and ending when he or she ceases to be a member of that House or Parliament or fails to be elected or withdraws his or her candidature, as may be appropriate, or

(c) in case he or she becomes a member of a local authority, in respect of the period commencing on his or her becoming a member of the local authority and ending when he or she ceases to be a member of that authority.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming an employee of the Board.

(3) A person who is for the time being a member of a local authority shall, while holding office as such member, be disqualified from becoming an employee of the Board.

Consultants and advisers to Board.

**124.—**(1) The Board may from time to time engage such consultants or advisers as it considers necessary for the performance of its functions and any fees due to a consultant or adviser engaged pursuant to this section shall be paid by the Board out of moneys at its disposal.

(2) The Board shall include in each report made under *section 118* a statement of the names of the persons (if any) engaged pursuant to this section during the year to which the report relates.

### CHAPTER III

#### *Appeal Procedures, etc.*

F178 [Appeals, referrals and applications with which the Board is concerned.]

**125.—** This Chapter shall apply—

(a) to appeals and referrals to the Board, and

(b) to the extent provided, to applications made to the Board under *section 37E* and any other matter with which the Board may be concerned,

but shall not apply to appeals under *section 182(4)(b)*.]

#### Annotations

#### Amendments:

**F178** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 20, S.I. No. 684 of 2006.

Duty and objective of Board in relation to appeals and referrals.

**126.—**(1) It shall be the duty of the Board to ensure that appeals and referrals are disposed of as expeditiously as may be and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of appeals and referrals.

(2) Without prejudice to the generality of *subsection (1)* and subject to *subsections (3), (4) and (5)*, it shall be the objective of the Board to ensure that every appeal or referral is determined within—

(a) a period of 18 weeks beginning on the date of receipt by the Board of the appeal or referral, or

(b) such other period as the Minister may prescribe in accordance with *subsection (4)*, either generally or in respect of a particular class or classes of appeals or referrals.

(3) (a) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of an appeal or referral or because of the number of appeals and referrals which have been submitted to the Board, to determine the appeal or referral within the period referred to in *paragraph (a) or (b) of subsection (2)*, as the case may be, the Board shall, by notice in writing served on the parties to the appeal or referral before the expiration of that period, inform those parties of the reasons why it would not be possible or appropriate to determine the appeal or referral within that period and shall specify the date before which the Board intends

that the appeal or referral shall be determined, and shall also serve such notice on each person who has made submissions or observations to the Board in relation to the appeal or referral.

(b) Where a notice has been served under *paragraph (a)*, the Board shall take all such steps as are open to it to ensure that the appeal or referral is determined before the date specified in the notice.

(4) The Minister may by regulations vary the period referred to in *subsection (2)(a)* either generally or in respect of a particular class or classes of appeals or referrals where it appears to him or her to be necessary, by virtue of exceptional circumstances, to do so and for so long as such regulations are in force this section shall be construed and have effect in accordance therewith.

(5) Where the Minister considers it to be necessary or expedient that—

(a) appeals from decisions (of a specified class or classes) of planning authorities under *section 34*, or

(b) referrals of a specified class or classes,

relating to development of a class or classes of special strategic, economic or social importance to the State, be determined as expeditiously as is consistent with proper planning and sustainable development, the Minister may give a direction to the Board to give priority to the class or classes of appeals or referrals concerned, and the Board shall comply with such direction.

(6) The Board shall include in each report made under *section 118* a statement of the number of appeals and referrals that it has determined within a period referred to in *paragraph (a)* or *(b)* of *subsection (2)* and such other information as to the time taken to determine appeals and referrals as the Minister may direct.

Provisions as to making of appeals and referrals.

**127.—**(1) An appeal or referral shall—

(a) be made in writing,

(b) state the name and address of the appellant or person making the referral and of the person, if any, acting on his or her behalf,

(c) state the subject matter of the appeal or referral,

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

(e) in the case of an appeal under *section 37* by a person who made submissions or observations in accordance with the permission regulations, be accompanied by the acknowledgement by the planning authority of receipt of the submissions or observations,

(f) be accompanied by such fee (if any) as may be payable in respect of such appeal or referral in accordance with *section 144*, and

(g) be made within the period specified for making the appeal or referral.

(2) (a) An appeal or referral which does not comply with the requirements of *subsection (1)* shall be invalid.

(b) The requirement of *subsection (1)(d)* shall apply whether or not the appellant or person making the referral requests, or proposes to request, in accordance with *section 134*, an oral hearing of the appeal or referral.

(3) Without prejudice to *section 131* or *134*, an appellant or person making the referral shall not be entitled to elaborate in writing upon, or make further submissions in writing in relation to, the grounds of appeal or referral stated in the appeal or

referral or to submit further grounds of appeal or referral and any such elaboration, submissions or further grounds of appeal or referral that is or are received by the Board shall not be considered by it.

- (4) (a) An appeal or referral shall be accompanied by such documents, particulars or other information relating to the appeal or referral as the appellant or person making the referral considers necessary or appropriate.
- (b) Without prejudice to *section 132*, the Board shall not consider any documents, particulars or other information submitted by an appellant or person making the referral other than the documents, particulars or other information which accompanied the appeal or referral.
- (5) An appeal or referral shall be made—
- (a) by sending the appeal or referral by prepaid post to the Board,
- (b) by leaving the appeal or referral with an employee of the Board at the offices of the Board during office hours (as determined by the Board), or
- (c) by such other means as may be prescribed.

F179 [Submission of documents, etc. to Board by planning authorities.

**128.—** (1) Where an appeal or referral is made to the Board the planning authority concerned shall, within a period of 2 weeks beginning on the day on which a copy of the appeal or referral is sent to it by the Board, submit to the Board—

- (a) in the case of an appeal under section 37—
- (i) a copy of the planning application concerned and of any drawings, maps, particulars, evidence, environmental impact statement, other written study or further information received or obtained by it from the applicant in accordance with regulations under this Act,
- (ii) a copy of any submission or observation made in accordance with regulations under this Act in respect of the planning application,
- (iii) a copy of any report prepared by or for the planning authority in relation to the planning application, and
- (iv) a copy of the decision of the planning authority in respect of the planning application and a copy of the notification of the decision given to the applicant,
- (b) in the case of any other appeal or referral, any information or documents in its possession which is or are relevant to that matter.

(2) The Board, in determining an appeal or referral, may take into account any fact, submission or observation mentioned, made or comprised in any document or other information submitted under subsection (1).]

#### Annotations

#### Amendments:

**F179** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 21, S.I. No. 525 of 2006.

Submissions or observations by other parties.

**129.—**(1) The Board shall, as soon as may be after receipt of an appeal or referral, give a copy thereof to each other party.



(2) (a) Each other party may make submissions or observations in writing to the Board in relation to the appeal or referral within a period of 4 weeks beginning on the day on which a copy of the appeal or referral is sent to that party by the Board.

(b) Any submissions or observations received by the Board after the expiration of the period referred to in *paragraph (a)* shall not be considered by the Board.

(3) Where no submissions or observations have been received from a party within the period referred to in *subsection (2)*, the Board may without further notice to that party determine the appeal or referral.

(4) Without prejudice to *section 131* or *134*, a party shall not be entitled to elaborate in writing upon any submissions or observations made in accordance with *subsection (2)* or make any further submissions or observations in writing in relation to the appeal or referral and any such elaboration, submissions or observations that is or are received by the Board shall not be considered by it.

Submissions or observations by persons other than parties.

**130.—**(1) (a) Any person other than a party may make submissions or observations in writing to the Board in relation to an appeal or referral, other than a referral under *section 96(5)*.

(b) Without prejudice to *subsection (4)*, submissions or observations may be made within the period specified in *subsection (3)* and any submissions or observations received by the Board after the expiration of that period shall not be considered by the Board.

(c) A submission or observation shall—

(i) be made in writing,

(ii) state the name and address of the person making the submission or observation and the name and address of any person acting on his or her behalf,

(iii) state the subject matter of the submission or observation,

(iv) state in full the reasons, considerations and arguments on which the submission or observation is based, and

(v) be accompanied by such fee (if any) as may be payable in accordance with *section 144*.

(2) Submissions or observations which do not comply with *subsection (1)* shall be invalid.

(3) The period referred to in *subsection (1)(b)* is—

(a) where notice of receipt of an environmental impact statement is published in accordance with regulations under *section 172(5)*, the period of 4 weeks beginning on the day of publication of any notice required under those regulations,

(b) where notice is required by the Board to be given under *section 142(4)*, the period of 4 weeks beginning on the day of publication of the required notice,

(c) in any other appeal under this Act, the period of 4 weeks beginning on the day of receipt of the appeal by the Board or, where there is more than one appeal against the decision of the planning authority, on the day on which the Board last receives an appeal, or

(d) in the case of a referral, the period of 4 weeks beginning on the day of receipt by the Board of the referral.

(4) Without prejudice to *section 131* or *134*, a person who makes submissions or observations to the Board in accordance with this section shall not be entitled to elaborate in writing upon the submissions or observations or make further submissions or observations in writing in relation to the appeal or other matter and any such elaboration, submissions or observations that is or are received by the Board shall not be considered by it.

F180[(5) Subsections (1)(b) and (4) shall not apply to submissions or observations made by a Member State or another state which is a party to the Transboundary Convention, arising from consultation in accordance with the Environmental Impact Assessment Directive or the Transboundary Convention, as the case may be, in relation to the effects on the environment of the development to which the appeal under section 37 relates.]

#### Annotations

#### Amendments:

**F180** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 25, S.I. No. 474 of 2011.

#### Editorial Notes:

**E118** Previous affecting provision: subs. (5) amended (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 42, S.I. No. 405 of 2010; substituted as per F-note above.

Power of Board to request submissions or observations.

**131.**—Where the Board is of opinion that, in the particular circumstances of an appeal or referral, it is appropriate in the interests of justice to request—

- (a) any party to the appeal or referral,
- (b) any person who has made submissions or observations to the Board in relation to the appeal or referral, or
- (c) any other person or body,

to make submissions or observations in relation to any matter which has arisen in relation to the appeal or referral, the Board may, in its discretion, notwithstanding *section 127(3)*, *129(4)*, *130(4)* or *137(4)(b)*, serve on any such person a notice under this section—

- (i) requesting that person, within a period specified in the notice (not being less than 2 weeks or more than 4 weeks beginning on the date of service of the notice) to submit to the Board submissions or observations in relation to the matter in question, and
- (ii) stating that, if submissions or observations are not received before the expiration of the period specified in the notice, the Board will, after the expiration of that period and without further notice to the person, pursuant to *section 133*, determine the appeal or referral.

Power of Board to require submission of documents, etc.

**132.**—(1) Where the Board is of opinion that any document, particulars or other information may be necessary for the purpose of enabling it to determine an appeal or referral, the Board may, in its absolute discretion, serve on any party, or on any person who has made submissions or observations to the Board in relation to the appeal or referral, as appropriate, a notice under this section—

- (a) requiring that person, within a period specified in the notice (being a period of not less than 2 weeks beginning on the date of service of the notice) to

submit to the Board such document, particulars or other information as is specified in the notice, and

- (b) stating that, in default of compliance with the requirements of the notice, the Board will, after the expiration of the period so specified and without further notice to the person, pursuant to *section 133*, dismiss or otherwise determine the appeal or referral.

(2) Nothing in this section shall be construed as affecting any other power conferred on the Board under this Act to require the submission of further or additional information or documents.

Powers of Board where notice served under *section 131* or *132*.

**133.**—Where a notice has been served under *section 131* or *132*, the Board, at any time after the expiration of the period specified in the notice, may, having considered any submissions or observations or document, particulars or other information submitted by the person on whom the notice has been served, without further notice to that person determine or, in the case of a notice served under *section 132*, dismiss the appeal or referral.

F181 [Oral hearings of appeals, referrals and applications.

**134.**— (1) The Board may in its absolute discretion, hold an oral hearing of an appeal, a referral under *section 5* or an application under *section 37E*.

(2) (a) A party to an appeal or a referral under *section 5* or an applicant under *section 37E* or any person who makes a submission or observation under *section 37E* may request an oral hearing of the appeal, referral or application, as appropriate.

- (b) (i) A request for an oral hearing of an appeal, referral or application shall be made in writing to the Board and shall be accompanied by such fee (if any) as may be payable in respect of the request in accordance with *section 144*.

(ii) A request for an oral hearing of an appeal, referral or application which is not accompanied by such fee (if any) as may be payable in respect of the request shall not be considered by the Board.

- (c) (i) A request by an appellant for an oral hearing of an appeal under *section 37* shall be made within the appropriate period referred to in that section and any request received by the Board after the expiration of that period shall not be considered by the Board.

(ii) Where a provision of this Act, other than *sections 37* and *254(6)*, authorising an appeal to the Board enables the appeal only to be made within, or before the expiration of, a specified period or before a specified day, a request by an appellant for an oral hearing of an appeal may only be made within, or before the expiration of, the specified period or before the specified day and any request for an oral hearing not so received by the Board shall not be considered by the Board.

(iii) A request by a person making a referral, by an applicant under *section 37E* or by an appellant under *section 254(6)* for an oral hearing of the referral, application or appeal, as the case may be, shall accompany the referral, application or appeal, and any request for an oral hearing received by the Board, other than a request which accompanies the referral, application or appeal, shall not be considered by the Board.

- (d) A request by a party to an appeal or referral other than the appellant, or by a person who makes a submission or observation in relation to an application under *section 37E*, for an oral hearing shall be made—

(i) in respect of an appeal or referral, within the period referred to in *section 129(2)(a)* within which the party may make submissions or observations to the Board in relation to the appeal or referral,

- (ii) in respect of an application under section 37E, within the period specified in a notice under that section within which the person may make submissions or observations to the Board in relation to the application,
- and any such request received by the Board after the expiration of that period shall not be considered by the Board.
- (3) Where the Board is requested to hold an oral hearing of an appeal, referral or application and decides to determine the appeal, referral or application without an oral hearing, the Board shall serve notice of its decision on—
- (a) the person who requested the hearing and on each other party to the appeal or referral or, as appropriate, (unless he or she was the requester) the applicant under section 37E, and
- (b) each person who has made submissions or observations to the Board in relation to the appeal, referral or application (not being the person who was the requester).
- (4) (a) A request for an oral hearing may be withdrawn at any time.
- (b) Where, following a withdrawal of a request for an oral hearing under paragraph (a), the appeal, referral or application falls to be determined without an oral hearing, the Board shall give notice that it falls to be so determined—
- (i) to each other party to the appeal or referral or, as appropriate, (unless he or she was the person who withdrew the request) the applicant under section 37E, and
- (ii) to each person who has made submissions or observations to the Board in relation to the appeal, referral or application (not being the person who withdrew the request).]

**Annotations****Amendments:**

**F181** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 22, S.I. No. 684 of 2006.

**Editorial Notes:**

**E119** Previous affecting provision: subsection inserted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(c), S.I. No. 458 of 2001; substituted as per F-note above.

**F182**[Further power to hold oral hearings.

**134A.**— (1) Where the Board considers it necessary or expedient for the purposes of making a determination in respect of any of its functions under this Act or any other enactment, it may, in its absolute discretion, hold an oral hearing and shall, in addition to any other requirements under this Act or other enactment, as appropriate, consider the report and any recommendations of the person holding the oral hearing before making such determination.

(2) Section 135 shall apply to any oral hearing held in accordance with subsection (1) and that section shall be construed accordingly.

(3) This section is in addition to section 134.]

**Annotations**

**Amendments:**

**F182** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 22, S.I. No. 684 of 2006.

Supplemental provisions relating to oral hearings.

**135.—F183**[(1) The Board or an employee of the Board duly authorised by the Board may assign a person to conduct an oral hearing of an appeal, referral or application on behalf of the Board.

(2) The person conducting an oral hearing of an appeal, referral or application shall have discretion as to the conduct of the hearing and shall conduct the hearing expeditiously and without undue formality (but subject to any direction F184[given by the Board under subsection (2A) or (2AB)]).

(2A) The Board may give a direction to the person conducting an oral hearing that he or she shall require persons intending to appear at the hearing to submit to him or her, in writing and in advance of the hearing, the points or a summary of the arguments they propose to make at the hearing; where such a direction is given that person shall comply with it (and, accordingly, is enabled to make such a requirement).

F185[(2AB) The Board may in its absolute discretion, following a recommendation in relation to the matter from a person assigned to make a written report under section 146, give a direction to a person assigned to conduct an oral hearing that he or she shall allow points or arguments in relation to specified matters only during the oral hearing.

(2AC) Where a direction is given by the Board under subsection (2AB) the person to whom it is given shall comply with the direction unless that person forms the opinion that it is necessary, in the interests of observing fair procedures, to allow a point or an argument to be made during the oral hearing in relation to matters not specified in the direction.

(2AD) The Board shall give a notice of its direction under subsection (2AB) to—

(a) each party, in the case of an appeal or referral,

(b) the applicant and planning authority in the case of an application—

(i) under this Act,

(ii) for a railway order under the Act of 2001, or

(iii) for approval under section 51 of the Roads Act 1993, and

(c) each person who has made objections, submissions or observations to the Board in the case of an appeal, referral or application.

(2AE) The points or summary of the arguments that a person intending to appear at the oral hearing shall submit to the person conducting the hearing, where a direction has been given under subsection (2A) or (2AB), shall be limited to points or arguments in relation to matters specified in the direction under subsection (2AB).]

(2B) Subject to the foregoing provisions, the person conducting the oral hearing—

(a) shall decide the order of appearance of persons at the hearing,

(b) shall permit any person to appear in person or to be represented by another person,

(c) may limit the time within which each person may make points or arguments (including arguments in refutation of arguments made by others at the hearing), or question the evidence of others, at the hearing,

(d) may refuse to allow the making of a point or an argument if—

(i) the point or a summary of the argument has not been submitted in advance to the person in accordance with a requirement made pursuant to a direction given under subsection (2A),

(ii) the point or argument is not relevant to the subject matter of the hearing, or

(iii) it is considered necessary so as to avoid undue repetition of the same point or argument,

F185[(dd) may refuse to allow the making of a point or an argument in relation to any matter where—

(i) a direction has been given under subsection (2AB) and the matter is not specified in the direction, and

(ii) he or she has not formed the opinion referred to in subsection (2AC).]

(e) may hear a person other than a person who has made submissions or observations to the Board in relation to the subject matter of the hearing if it is considered appropriate in the interests of justice to allow the person to be heard.

(3) A person conducting an oral hearing of any appeal, application or referral may require any officer of a planning authority or a local authority to give to him or her any information in relation to the appeal, application or referral which he or she reasonably requires for the purposes of the appeal, application or referral, and it shall be the duty of the officer to comply with the requirement.]

(4) A person conducting an oral hearing of any F183[appeal, referral or application] may take evidence on oath or affirmation and for that purpose may administer oaths or affirmations, and a person giving evidence at any such hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(5) (a) Subject to *paragraph (b)*, the Board in relation to an oral hearing of any F183[appeal, referral or application] may, by giving notice in that behalf in writing to any person, require that person to do either or both of the following:

(i) to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing;

(ii) to produce any books, deeds, contracts, accounts, vouchers, maps, plans, documents or other information in his or her possession, custody or control which relate to any such matter.

(b) Where a person is given a notice under *paragraph (a)*:

(i) the Board shall pay or tender to any person whose attendance is required such reasonable subsistence and travelling expenses to be determined by the Board in accordance with the rates for the time being applicable to senior planning authority officials;

(ii) any person who in compliance with a notice has attended at any place shall, save in so far as the reasonable and necessary expenses of the attendance have already been paid to him or her, be paid those expenses by the Board, and those expenses shall, in default of being so paid, be

recoverable as a simple contract debt in any court of competent jurisdiction.

(6) Every person to whom a notice under *subsection (5)* has been given who refuses or wilfully neglects to attend in accordance with the notice or who wilfully alters, suppresses, conceals or destroys any document or other information to which the notice relates or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document or other information to which the notice relates shall be guilty of an offence.

(7) Where any person—

- (a) wilfully gives evidence which is material to the oral hearing and which he or she knows to be false or does not believe to be true,
- (b) by act or omission, obstructs or hinders the person conducting the oral hearing in the performance of his or her functions,
- (c) refuses to take an oath or to make an affirmation when legally required to do so by a person holding the oral hearing.
- (d) refuses to answer any question to which the person conducting an oral hearing may legally require an answer, or
- (e) does or omits to do any other thing which, if the inquiry had been by the High Court, would have been contempt of that court,

the person shall be guilty of an offence.

- (8) (a) An oral hearing may be conducted through the medium of the Irish or the English language.
- (b) Where an oral hearing relates to development within the Gaeltacht, the hearing shall be conducted through the medium of the Irish language, unless the parties to the F183[*appeal, referral or application*] to which the hearing relates agree that the hearing should be conducted in English.
- (c) Where an oral hearing relates to development outside the Gaeltacht, the hearing shall be conducted through the medium of the English language, unless the parties to the F183[*appeal, referral or application*] to which the hearing relates agree that the hearing should be conducted in the Irish language.

#### Annotations

#### Amendments:

**F183** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 23, S.I. No. 684 of 2006.

**F184** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 26(a), S.I. No. 474 of 2011.

**F185** Inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 26(b) and (c), S.I. No. 474 of 2011.

#### Editorial Notes:

**E120** Previous affecting provision: section amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 43, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

**E121** Previous affecting provision: original version of subs. (2) substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 23, S.I. No. 684 of 2006; substituted as per F-note above.

Convening of meetings on referrals.

**136.**—(1) Where it appears to the Board to be expedient or convenient for the purposes of determining a referral under *section 34(5), 96(5) or 193(2)*, the Board may, in its absolute discretion, convene a meeting of the parties.

(2) The Board shall keep a record in writing of a meeting convened in accordance with this section and a copy of the record shall be placed and kept with the documents to which the referral concerned relates and, where the referral is connected with an appeal, with the documents to which the appeal concerned relates.

Matters other than those raised by parties.

**137.**—(1) The Board in determining an appeal or referral may take into account matters other than those raised by the parties or by any person who has made submissions or observations to the Board in relation to the appeal or referral if the matters are matters to which, by virtue of this Act, the Board may have regard.

(2) The Board shall give notice in writing to each of the parties and to each of the persons who have made submissions or observations in relation to the appeal or referral of the matters that it proposes to take into account under *subsection (1)* and shall indicate in that notice—

(a) in a case where the Board proposes to hold an oral hearing of the appeal or referral, or where an oral hearing of the appeal or referral has been concluded and the Board considers it expedient to re-open the hearing, that submissions in relation to the matters may be made to the person conducting the hearing, or

(b) in a case where the Board does not propose to hold an oral hearing of the appeal or referral, or where an oral hearing of the appeal or referral has been concluded and the Board does not consider it expedient to re-open the hearing, that submissions or observations in relation to the matters may be made to the Board in writing within a period specified in the notice (being a period of not less than 2 weeks or more than 4 weeks beginning on the date of service of the notice).

(3) Where the Board has given notice, in accordance with *subsection (2)(a)*, the parties and any other person who is given notice shall be permitted, if present at the oral hearing, to make submissions to the Board in relation to the matters which were the subject of the notice or which, in the opinion of the person conducting the hearing, are of relevance to the appeal or referral.

(4) (a) Submissions or observations that are received by the Board after the expiration of the period referred to in *subsection (2)(b)* shall not be considered by the Board.

(b) Subject to *section 131*, where a party or a person referred to in *subsection (1)* makes submissions or observations to the Board in accordance with *subsection (2)(b)*, that party or person shall not be entitled to elaborate in writing upon those submissions or observations or make further submissions or observations in writing in relation to the matters referred to in *subsection (1)* and any such elaboration, submissions or observations that is or are received by the Board shall not be considered by it.

Board may dismiss appeals or referrals if vexatious, etc.

**138.**—(1) The Board shall have an absolute discretion to dismiss an appeal or referral—



F186[(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,]

or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based.

(3) The Board may, in its absolute discretion, hold an oral hearing under *section 134* to determine whether an appeal or referral is made with an intention referred to in *subsection (1)(a)(ii)*.

#### Annotations

#### Amendments:

**F186** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 24, S.I. No. 525 of 2006.

Appeals against conditions.

**139.—(1) Where—**

(a) an appeal is brought against a decision of a planning authority to grant a permission,

(b) the appeal relates only to a condition or conditions that the decision provides that the permission shall be subject to, and

(c) the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted,

then, subject to compliance by the Board with *subsection (2)*, the Board may, in its absolute discretion, give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions.

(2) In exercising the power conferred on it by *subsection (1)*, apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering—

(a) the matters set out in *section 34(2)(a)*, and

(b) the terms of any previous permission considered by the Board to be relevant.

Withdrawal of  
appeals, applica-  
tions and refer-  
rals.

**140.—F187[(1) (a) A person who has made—**

- (i) an appeal,
- (ii) a planning application to which an appeal relates,
- (iii) a referral,
- (iv) an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development,

may withdraw, in writing, the appeal, application or referral at any time before that appeal, application, or referral is determined by the Board.

(b) As soon as maybe after receipt of a withdrawal, the Board shall notify each other party or person who has made submissions or observations on the appeal, application or referral of the withdrawal.]

(2) (a) Without prejudice to *subsection (1)*, where the Board is of the opinion that an appeal or a planning application to which an appeal relates, F188[an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development,] or a referral has been abandoned, the Board may serve on the person who made the appeal, application or referral, as appropriate, a notice stating that opinion and requiring that person, within a period specified in the notice (being a period of not less than two weeks or more than four weeks beginning on the date of service of the notice) to make to the Board a submission in writing as to why the appeal, application or referral should not be regarded as having been withdrawn.

(b) Where a notice has been served under *paragraph (a)*, the Board may, at any time after the expiration of the period specified in the notice, and after considering the submission (if any) made to the Board pursuant to the notice, declare that the appeal, application or referral, as appropriate, shall be regarded as having been withdrawn.

(3) Where, pursuant to this section, a person withdraws a planning application to which an appeal relates, or the Board declares that an application is to be regarded as having been withdrawn, the following provisions shall apply as regards the application:

- (a) any appeal in relation to the application shall be regarded as having been withdrawn and accordingly shall not be determined by the Board, and
- (b) notwithstanding any previous decision under *section 34* by a planning authority as regards the application, no permission shall be granted under that section by the authority on foot of the application.

#### Annotations

#### Amendments:

**F187** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 25(a), S.I. No. 684 of 2006.

**F188** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 25(b), S.I. No. 684 of 2006.

Time for deci-  
sions and  
appeals, etc.

**141.—(1)** Where a requirement of or under this Act requires a planning authority or the Board to give a decision within a specified period and the last day of that period is a public holiday (within the meaning of the F189[*Organisation of Working*

*Time Act, 1997*) or any other day on which the offices of the planning authority or the Board are closed, the decision shall be valid if given on the next following day on which the offices of the planning authority or Board, as the case may be, are open.

(2) Where the last day of the period specified for making an appeal or referral is a Saturday, a Sunday, a public holiday (within the meaning of the F189[*Organisation of Working Time Act, 1997*]) or any other day on which the offices of the Board are closed, an appeal or referral shall (notwithstanding any other provision of this Act) be valid as having been made in time if received by the Board on the next following day on which the offices of the Board are open.

(3) Where a requirement of or under this Act requires submissions, observations or a request to be made, or documents, particulars or other information to be submitted, to the Board within a specified period and the last day of that period is a public holiday (within the meaning of the F189[*Organisation of Working Time Act, 1997*]) or any other day on which the offices of the Board are closed, the submissions, observations or request of documents, particulars or other information (as the case may be) shall be regarded as having been received before the expiration of that period if received by the Board on the next following day on which the offices of the Board are open.

**Annotations**

**Amendments:**

**F189** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(d), S.I. No. 458 of 2001.

Regulations regarding appeals and referrals.

**142.—**(1) The Minister may by regulations—

- (a) provide for such additional, incidental, consequential or supplemental matters as regards procedure in respect of appeals as appear to the Minister to be necessary or expedient, and
- (b) make such provision as regards procedure in respect of referrals as appear to the Minister to be necessary or expedient.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may enable the Board where it is determining an appeal under *section 37* to invite an applicant and enable an applicant so invited to submit to the Board revised plans or other drawings modifying, or other particulars providing for the modification of, the development to which the appeal relates.

(3) Where plans, drawings or particulars referred to in *subsection (2)* are submitted to the Board in accordance with regulations under this section, the Board may, in determining the appeal, grant a permission for the relevant development as modified by all or any of the plans, drawings or particulars.

(4) Without prejudice to the generality of *subsection (1)*, the Board may require any party to an appeal or referral to give such public notice in relation thereto as the Board may specify and, in particular, may require notice to be given at the site or by publication in a newspaper circulating in the district in which the land or structure to which the appeal or referral relates is situate.

**Annotations**

**Editorial Notes:**

**E122** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E123** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**F190**[Board to have regard to certain policies and objectives.

**143.—** (1) The Board shall, in performing its functions, have regard to—

- (a) the policies and objectives for the time being of the Government, a State authority, the Minister, planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns or other areas, whether urban or rural,
- (b) the national interest and any effect the performance of the Board's functions may have on issues of strategic economic or social importance to the State, and
- (c) the National Spatial Strategy and any regional planning guidelines for the time being in force.

(2) In this section 'public authority' means any body established by or under statute which is for the time being declared, by regulations made by the Minister, to be a public authority for the purposes of this section.]

#### Annotations

#### Amendments:

**F190** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 26, S.I. No. 525 of 2006.

Fees payable to Board.

**144.—** F191[(1) The Board may determine fees that may be charged, subject to the approval of the Minister, in relation to any matter referred to in subsection (1A) and a fee as so determined shall be payable to the Board by any person concerned as appropriate.

(1A) The matters in relation to which the Board may determine fees under subsection (1) are:

- (a) an appeal or referral;
- (b) an application to the Board for any strategic infrastructure development or an application for leave to appeal under section 37(6)(a);
- (c) an application for a consultation under section 37B, 181C, or 182E or under section 47B of the Act of 2001;
- (d) a request under section 146B;
- (e) a request for a written opinion on the information to be contained in an environmental impact assessment under section 173(3), under section 39 of the Act of 2001 or under section 50 of the Roads Act 1993;
- (f) an application for leave to apply for substitute consent or an application for substitute consent under Part XA;
- (g) submission of an environmental impact statement in accordance with a request by the Board to furnish same;
- (h) submission of a Natura impact statement in accordance with a request by the Board to furnish same;

(i) request for an oral hearing under section 134 or 177Q; and

(j) making a submission or observation under section 37E, 37F, 130, 135(2B)(e), 146B, 146C, 146D, 175, 181A, 182A, 182C, 217B, or 226, section 51 of the Roads Act 1993, section 40 (other than by persons required to be served with a notice under section 40(1)(d)), section 41, or section 47D of the Act of 2001 or making an objection under section 48 of the Roads Act 1993 (other than by persons on whom notice is served under section 48(b)).

(1B) The Board may, subject to the approval of the Minister, provide for the payment of different fees in relation to different classes or descriptions of matters referred to in subsection (1A)(a) to (j), for exemption from the payment of fees in specified circumstances and for the waiver, remission or refund in whole or in part of fees in specified circumstances.]

(2) The Board shall review the fees determined under *subsection (1)* from time to time, but at least every three years, having regard to any change in the consumer price index since the determination of the fees for the time being in force, and may amend the fees to reflect the results of that review, without the necessity of the Minister's approval under *subsection (1)*.

(3) For the purposes of this section, "change in the consumer price index" means the difference between the All Items Consumer Price Index Number last published by the Central Statistics Office before the date of the determination under this section and the said number last published before the date of the review under *subsection (2)*, expressed as a percentage of the last-mentioned number.

(4) Where the Board determines or amends fees in accordance with this section, it shall give notice of the fees in at least one newspaper circulating in the State, not less than 8 weeks before the fees come into effect.

(5) Fees determined in accordance with regulations under section 10(1)(b) of the Act of 1982 shall continue to be payable to the Board in accordance with those regulations until such time as the Board determines fees in accordance with this section.

(6) The Board shall specify fees for the making of copies under *section 5(6)(a)*, not exceeding the cost of making the copies.

#### Annotations

#### Amendments:

**F191** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 44, S.I. No. 477 of 2010.

#### Editorial Notes:

**E124** Previous affecting provision: subs. (1) amended (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 27, S.I. No. 684 of 2006; substituted as per F-note above.

Expenses of  
appeal or refer-  
ral.

**145.—**(1) Where an appeal or referral is made to the Board—

(a) the Board, if it so thinks proper and irrespective of the result of the appeal or referral, may direct the planning authority to pay—

(i) to the appellant or person making the referral, such sum as the Board, in its absolute discretion, specifies as compensation for the expense occasioned to him or her in relation to the appeal or referral, and

(ii) to the Board, such sum as the Board, in its absolute discretion, specifies as compensation to the Board towards the expense incurred by the Board in relation to the appeal or referral,

and

F192[(b) in case—

(i) the decision of the planning authority in relation to an appeal or referral is confirmed or varied and the Board, in determining the appeal or referral, does not accede in substance to the grounds of appeal or referral, or

(ii) the appeal or referral is decided, dismissed under section 138 or withdrawn under section 140 and the Board, in any of those cases, considers that the appeal or referral was made with the intention of delaying the development or securing a monetary gain by a party to the appeal or referral or any other person,

the Board may, if it so thinks proper, direct the appellant or person making the referral to pay—

(I) to the planning authority, such sum as the Board, in its absolute discretion, specifies as compensation to the planning authority for the expense occasioned to it in relation to the appeal or referral,

(II) to any of the other parties to the appeal or referral, such sum as the Board, in its absolute discretion, specifies as compensation to the party for the expense occasioned to him or her in relation to the appeal or referral, and

(III) to the Board, such sum as the Board, in its absolute discretion, specifies as compensation to the Board towards the expense incurred by the Board in relation to the appeal or referral.]

(2) Any sum directed under this section to be paid shall, in default of being paid, be recoverable as a simple contract debt in any court of competent jurisdiction.

#### Annotations

#### Amendments:

**F192** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 28, S.I. No. 525 of 2006.

Reports and documents of the Board.

**146.**—(1) The Board or an employee of the Board duly authorised by the Board may in connection with the performance of any of the Board's functions under this Act, assign a person to report on any matter on behalf of the Board.

(2) A person assigned in accordance with *subsection (1)* shall make a written report on the matter to the Board, which shall include a recommendation, and the Board shall consider the report and recommendation before determining the matter.

F193[(3) Where, during the consideration by it of any matter falling to be decided by it in performance of a function under or transferred by this Act or any other enactment, the Board either—

(a) is required by or under this Act or that other enactment to supply to any person documents, maps, particulars or other information in relation to the matter, or

(b) considers it appropriate, in the exercise of its discretion, to supply to any person such documents, maps, particulars or information ('relevant material or information'),

subsection (4) applies as regards compliance with that requirement or such supply in the exercise of that discretion.

(4) It shall be sufficient compliance with the requirement referred to in subsection (3) for the Board to do both of the following (or, as appropriate, the Board, in the exercise of the discretion referred to in that subsection, may do both of the following), namely:

(a) make the relevant material or information available for inspection—

(i) at the offices of the Board or any other place, or

(ii) by electronic means;

and

(b) notify the person concerned that the relevant material or information is so available for inspection.

(5) Within 3 days following the making of a decision on any matter falling to be decided by it in performance of a function under or transferred by this Act or under any other enactment, the documents relating to the matter—

(a) shall be made available by the Board for inspection at the offices of the Board by members of the public, and

(b) may be made available by the Board for such inspection—

(i) at any other place, or

(ii) by electronic means,

as the Board considers appropriate.

(6) Copies of the documents referred to in subsection (5) and of extracts from such documents shall be made available for purchase at the offices of the Board, or such other places as the Board may determine, for a fee not exceeding the reasonable cost of making the copy.

(7) The documents referred to in subsection (5) shall be made available by the means referred to in paragraph (a) of that subsection for a period of at least 5 years beginning on the third day following the making by the Board of the decision on the matter concerned.]

#### Annotations

#### Amendments:

**F193** Substituted and inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 29, S.I. No. 684 of 2006.

#### F194[CHAPTER IV

*Additional powers of Board in relation to permissions, decisions, approvals, etc.*

Amendments of permissions, etc. of clerical or technical nature.

**146A.—** (1) Subject to subsection (2)—

(a) a planning authority or the Board, as may be appropriate, may amend a planning permission granted by it, or

(b) the Board may amend any decision made by it in performance of a function under or transferred by this Act or under any other enactment,

for the purposes of—

(i) correcting any clerical error therein,

(ii) facilitating the doing of any thing pursuant to the permission or decision where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission or decision or the terms of the permission or decision taken as a whole but which was not expressly provided for in the permission or decision, or

(iii) otherwise facilitating the operation of the permission or decision.

(2) A planning authority or the Board shall not exercise the powers under subsection (1) if to do so would, in its opinion, result in a material alteration of the terms of the development, the subject of the permission or decision concerned.

(3) A planning authority or the Board, before it decides whether to exercise the powers under subsection (1) in a particular case, may invite submissions in relation to the matter to be made to it by any person who made submissions or observations to the planning authority or the Board in relation to the permission or other matter concerned, and shall have regard to any submissions made to it on foot of that invitation.

(4) In this section ‘term’ includes a condition.]

#### Annotations

#### Amendments:

**F194** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 30, S.I. No. 684 of 2006.

**F195**[Alteration by Board of strategic infrastructure development on request made of it.

**146B.—** (1) Subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act.

(2) (a) As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.

(b) Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.

(3) If the Board decides that the making of the alteration—

(a) would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under



- this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration,
- (b) would constitute the making of such a material alteration, it shall determine whether to—
- (i) make the alteration,
- (ii) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or
- (iii) refuse to make the alteration.
- (4) Before making a determination under subsection (3)(b), the Board shall determine whether the extent and character of—
- (a) the alteration requested under subsection (1), and
- (b) any alternative alteration it is considering under subsection (3)(b)(ii),
- are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).
- (5) If the Board determines that the making of either kind of alteration referred to in subsection (3)(b)—
- (a) is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b), or
- (b) is likely to have such effects, the provisions of section 146C shall apply.
- (6) If, in a case to which subsection (5)(a) applies, the Board makes a determination to make an alteration of either kind referred to in subsection (3)(b), it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.
- (7) In making a determination under subsection (4), the Board shall have regard to the criteria for the purposes of determining which classes of development are likely to have significant effects on the environment set out in any regulations made under section 176.
- (8) (a) Before making a determination under subsection (3)(b) or (4), the Board shall—
- (i) make, or require the person who made the request concerned under subsection (1) to make, such information relating to that request available for inspection for such period,
- (ii) notify, or require that person to notify, such person, such class of person or the public (as the Board considers appropriate) that the information is so available, and
- (iii) invite, or require that person to invite, submissions or observations (from any foregoing person or, as appropriate, members of the public) to be made to it in relation to that request within such period,
- as the Board determines and, in the case of a requirement under any of the preceding subparagraphs, specifies in the requirement; such a requirement may specify the means by which the thing to which it relates is to be done.

(b) The Board shall have regard to any submissions or observations made to it in accordance with an invitation referred to in paragraph (a).

(c) The Board shall notify any person who made a submission or observation to it in accordance with that invitation of its determination under subsection (3)(b) or (4).

(9) In this section 'term' has the same meaning as it has in section 146A.]

**Annotations**

**Amendments:**

**F195** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 30, S.I. No. 684 of 2006.

**F196**[Preparation of environmental impact statement for purposes of section 146B.

**146C.—** (1) This section applies to a case where the determination of the Board under section 146B(4) is that the making of either kind of alteration referred to in section 146B(3)(b) is likely to have significant effects on the environment.

(2) In a case to which this section applies, the Board shall require the person who made the request under section 146B ('the requester') to prepare an environmental impact statement in relation to the proposed alteration of the terms of the development concerned and, in this subsection and the following subsections of this section, 'proposed alteration of the terms of the development concerned' means—

(a) the alteration referred to in subsection (3)(b)(i), and

(b) any alternative alteration under subsection (3)(b)(ii) the making of which the Board is considering (and particulars of any such alternative alteration the making of which is being so considered shall be furnished, for the purposes of this subsection, by the Board to the requester).

(3) An environmental impact statement under this section shall contain—

(a) any information that any regulations made under section 177 require to be contained in environmental impact statements generally under this Act, and

(b) any other information prescribed in any regulations made under section 177 to the extent that—

(i) such information is relevant to—

(I) the given stage of the consent procedure and to the specific characteristics of the development or type of development concerned, and

(II) the environmental features likely to be affected,

and

(ii) the person or persons preparing the statement may reasonably be required to compile it having regard to current knowledge and methods of assessment,

and

(c) a summary, in non-technical language, of the information referred to in paragraphs (a) and (b).

(4) When an environmental impact statement under this section is prepared, the requester shall as soon as may be—

- (a) submit a copy of the statement to the Board, together with either—
- (i) a copy of the published notice referred to in paragraph (c), or
  - (ii) a copy of the notice proposed to be published in accordance with paragraph (c) together with details of its proposed publication and date,
- (b) publish a notice, in the prescribed form, in one or more newspapers circulating in the area in which the development concerned is proposed to be, or is being, carried out—
- (i) stating that an environmental impact statement has been submitted to the Board in relation to the proposed alteration of the terms of the development concerned,
  - (ii) indicating the times at which, the period (which shall not be less than 4 weeks) during which and the place or places where a copy of the environmental impact statement may be inspected,
  - (iii) stating that a copy of the environmental impact statement may be purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy), and
  - (iv) stating that submissions or observations may be made in writing to the Board before a specified date (which date shall not be less than 4 weeks after the notice was first published) in relation to the likely effects on the environment of the proposed alteration of the foregoing terms,
- (c) send a copy of the environmental impact statement together with a notice in the prescribed form to the local authority or each local authority in whose functional area the proposed development would be situate and to any prescribed body or person stating that—
- (i) the statement has been submitted to the Board in relation to the proposed alteration of the terms of the development concerned,
  - (ii) before a specified date (which date shall be the same as provided or proposed to be provided for by the notice under paragraph (b)) submissions or observations may be made in writing to the Board in relation to the likely effects on the environment of the proposed alteration of the foregoing terms,
- (d) send a copy of the environmental impact statement, together with a notice in the prescribed form, to a Member State of the European Communities or a state which is a party to the Transboundary Convention where, in the Board's opinion, the proposed alteration of the terms of the development concerned is likely to have significant effects on the environment in that state, together with a notice (in the prescribed form, if any) stating that—
- (i) the statement has been submitted to the Board in relation to the likely effects on the environment of the proposed alteration of the foregoing terms,
  - (ii) before a specified date (which date shall be the same as provided or proposed to be provided for by the notice under paragraph (b)) submissions or observations may be made in writing to the Board in relation to the likely effects on the environment in that state of the proposed alteration of those terms,

and the Board may, at its discretion and from time to time, extend any time limits provided for by this subsection.

(5) On the preceding subsections having been complied with, the Board shall, subject to subsections (6) and (7), proceed to make a determination under section 146B(3)(b) in relation to the matter.

(6) In making that determination, the Board shall, to the extent that they appear to the Board to be relevant, have regard to the following:

- (a) the environmental impact statement submitted pursuant to subsection (4)(a), any submissions or observations made in response to the invitation referred to in subsection (4)(b) or (c) before the date specified in the notice concerned for that purpose and any other relevant information before it relating to the likely effects on the environment of the proposed alteration of the terms of the development concerned;
- (b) where such alteration is likely to have significant effects on the environment in another Member State of the European Communities, or a state which is a party to the Transboundary Convention, the views of such Member State or party;
- (c) the development plan or plans for the area in which the development concerned is proposed to be, or is being, carried out (referred to subsequently in this subsection as 'the area');
- (d) the provisions of any special amenity area order relating to the area;
- (e) if the area or part of the area is a European site or an area prescribed for the purposes of section 1(2)(c), that fact;
- (f) if the development concerned (were it to be carried out in the terms as they are proposed to be altered) would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact;
- (g) the matters referred to in section 143;
- (h) any social or economic benefit that would accrue to the State, a region of the State or the area were the development concerned to be carried out in the terms as they are proposed to be altered;
- (i) commitments entered into and the stage at which the development concerned has progressed under the permission, approval or other consent in the terms as originally granted; and
- (j) any relevant provisions of this Act and of any regulations made under this Act.

(7) The Board shall not make a determination under section 146B(3)(b) in a case to which this section applies at any time prior to the date specified, pursuant to subparagraph (iv) of subsection (4)(b), in the notice under subsection (4)(b).

(8) Where the Board makes a determination under section 146B(3)(b) in a case to which this section applies—

- (a) it shall give public notice of the determination (including notice in the area in which the development concerned is proposed to be, or is being, carried out) and inform any state to which an environmental impact statement has been sent under subsection (4)(d) of the determination, including, if the determination is of the kind referred to in paragraph (b), particulars of the determination, and
- (b) if the determination is a determination to make an alteration of either kind referred to in section 146B(3)(b), it shall alter the planning permission, approval or other consent accordingly and notify the requester of the alteration.

(9) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

**Annotations**

**Amendments:**

**F196** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 30, S.I. No. 684 of 2006.

**F197** [Application of sections 146A to 146C to railway orders.

**146D.**— Sections 146A to 146C shall apply to a railway order under the Transport (Railway Infrastructure) Act 2001 (whether made before or after the amendment of that Act by the *Planning and Development (Strategic Infrastructure) Act 2006*) as they apply to a permission, decision or approval referred to in them with the following modifications:

- (a) a reference in those sections to the terms of the development shall be construed as a reference to the terms of the railway works, the subject of the railway order;
- (b) a reference in those sections to altering the terms of the development shall be construed as a reference to amending, by order, the railway order with respect to the terms of the railway works, the subject of the railway order; and
- (c) a reference in section 146A to submissions or observations made to the Board in relation to the permission or other matter concerned shall be construed as a reference to submissions made to the Minister for Transport or the Board, as the case may be, under the Transport (Railway Infrastructure) Act 2001 in relation to the railway order.]

**Annotations**

**Amendments:**

**F197** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 30, S.I. No. 684 of 2006.

## PART VII

### DISCLOSURE OF INTERESTS, ETC.

**Annotations**

**Modifications (not altering text):**

**C45** Application of Part VII restricted (1.01.2003) by *Local Government Act 2001* (37/2001), s. 167(5)(a), S.I. No. 218 of 2002, subject to transitional provision in subs. (5)(b).

**Application (Part 15).**

**167.**— ...

(5) (a) Part VII of the Act of 2000 shall cease to apply to—

- (i) a member of a planning authority,
- (ii) a member of a committee of a planning authority, and
- (iii) an officer of a planning authority.

...

Declaration by  
members, etc. of  
certain interests.

**147.—(1)** It shall be the duty of a person to whom this section applies to give to the relevant body a declaration in the prescribed form, signed by him or her and containing particulars of every interest of his or hers which is an interest to which this section applies and for so long as he or she continues to be a person to whom this section applies it shall be his or her duty where there is a change regarding an interest particulars of which are contained in the declaration or where he or she acquires any other interest to which this section applies, to give to the relevant body a fresh declaration.

(2) A declaration under this section shall be given at least once a year.

(3) (a) This section applies to the following persons:

- (i) a member of the Board;
- (ii) a member of a planning authority;
- (iii) an employee of the Board or any other person—
  - (I) whose services are availed of by the Board, and
  - (II) who is of a class, description or grade prescribed for the purposes of this section;
- (iv) an officer of a planning authority who is the holder of an office which is of a class, description or grade so prescribed.

(b) This section applies to the following interests:

- (i) any estate or interest which a person to whom this section applies has in any land, but excluding any interest in land consisting of any private home within the meaning of paragraph 1(4) of the Second Schedule to the Ethics in Public Office Act, 1995;
- (ii) any business of dealing in or developing land in which such a person is engaged or employed and any such business carried on by a company or other body of which he or she, or any nominee of his or hers, is a member;
- (iii) any profession, business or occupation in which such a person is engaged, whether on his or her own behalf or otherwise, and which relates to dealing in or developing land.

(4) A person to whom this section applies and who has an interest to which this section applies shall be regarded as complying with the requirements of *subsection (1)* if he or she gives to the relevant body a declaration referred to in that subsection:

- (a) within the period of twenty-eight days beginning on the day on which he or she becomes such a person,
- (b) in case there is a change regarding an interest particulars of which are contained in a declaration already given by the person or where the person acquires any other interest to which this section applies, on the day on which the change occurs or the other such interest is acquired.

(5) For the purposes of this section, a person to whom this section applies shall be regarded as having an estate or interest in land if he or she, or any nominee of his or hers, is a member of a company or other body which has an estate or interest in the land.

(6) For the purposes of this section, a person shall not be regarded as having an interest to which this section applies, if the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to any matter arising or coming before the Board or authority, as may be appropriate, or in performing any function in relation to any such matter.

(7) Where a person to whom this section applies has an interest to which this section applies by reason only of the beneficial ownership of shares in a company or other body by him or her or by his or her nominee and the total value of those shares does not exceed the lesser of—

(a) F198[€13,000], or

(b) one-hundredth part of the total nominal value of either the issued share capital of the company or body or, where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which he or she has an interest,

*subsection (1)* shall not have effect in relation to that interest.

(8) The Board and each planning authority shall for the purposes of this section keep a register (“the register of interests”) and shall enter therein the particulars contained in declarations given to the Board or the authority, as the case may be, pursuant to this section.

(9) The register of interests shall be kept at the offices of the Board or the planning authority, as the case may be, and shall be available for public inspection during office hours.

(10) Where a person ceases to be a person to whom this section applies, any particulars entered in the register of interests as a result of a declaration being given by the person to the relevant body pursuant to this section shall be removed, as soon as may be after the expiration of the period of five years beginning on the day on which the person ceases to be such a person, from the register of interests by that body.

(11) Subject to *subsection (12)*, a person who fails to comply with *subsections (1)* and *(2)* or who, when purporting to comply with the requirements of *subsection (1)*, gives particulars which are false or which to his or her knowledge are misleading in a material respect, shall be guilty of an offence.

(12) In any proceedings for an offence under this section it shall be a defence for the defendant to prove that at the relevant time he or she believed, in good faith and upon reasonable grounds, that—

(a) the relevant particulars were true,

(b) there was no matter as regards which he or she was then required to make a declaration under *subsection (1)*, or

(c) that the matter in relation to which the offence is alleged was not one as regards which he or she was so required to make such a declaration.

(13) (a) For the purposes of this section and *sections 148* and *149*—

(i) a manager shall be deemed to be an officer of every planning authority for which he or she is manager,

(ii) an assistant county manager for a county shall be deemed to be an officer of every planning authority in the county, and

(iii) an officer of a planning authority who, by virtue of an arrangement or agreement entered into under any enactment, is performing functions

under another planning authority, shall be deemed to be also an officer of the other authority.

(b) In this section “relevant body” means—

- (i) in case a person to whom this section applies is either a member or employee of the Board, or other person whose services are availed of by the Board, the Board, and
- (ii) in case such a person is either a member or officer of a planning authority, the authority.

#### Annotations

#### Amendments:

**F198** Substituted (25.06.2001) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and (4) and schs. 3 ref. no. 6 and 4 item 10, commenced on enactment.

#### Modifications (not altering text):

**E125** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Requirements affecting members, etc. who have certain beneficial interests.

**148.—(1)** Where a member of the Board has a pecuniary or other beneficial interest in, or which is material to, any appeal, contribution, question, determination or dispute which falls to be decided or determined by the Board under any enactment, he or she shall comply with the following requirements:

- (a) he or she shall disclose to the Board the nature of his or her interest;
- (b) he or she shall take no part in the discussion or consideration of the matter;
- (c) he or she shall not vote or otherwise act as a member of the Board in relation to the matter;
- (d) he or she shall neither influence nor seek to influence a decision of the Board as regards the matter.

(2) Where, at a meeting of a planning authority or of any committee of a planning authority, a resolution, motion, question or other matter is proposed or otherwise arises either pursuant to, or as regards the performance by the authority of a function under this Act or in relation to the acquisition or disposal by the authority of land under or for the purposes of this Act or any other enactment, a member of the authority or committee present at the meeting shall, if he or she has a pecuniary or other beneficial interest in, or which is material to, the matter—

- (a) at the meeting, and before discussion or consideration of the matter commences, disclose the nature of his or her interest, and
- (b) withdraw from the meeting for so long as the matter is being discussed or considered,

and accordingly, he or she shall take no part in the discussion or consideration of the matter and shall refrain from voting in relation to it.

(3) A member of a planning authority or of any committee of a planning authority who has a pecuniary or other beneficial interest in, or which is material to, a matter arising either pursuant to, or as regards the performance by the authority of a function under this Act, or in relation to the acquisition or disposal by the authority of land



under or for the purposes of this Act or any other enactment, shall neither influence nor seek to influence a decision of the authority as regards the matter.

(4) Where the manager of a planning authority has a pecuniary or other beneficial interest in, or which is material to, any matter which arises or comes before the authority either pursuant to, or as regards the performance by the authority of a function under this Act, or in relation to the acquisition or disposal by the authority of land under or for the purposes of this Act or any other enactment, he or she shall, as soon as may be, disclose to the members of the planning authority the nature of his or her interest.

(5) (a) Where an employee of the Board, a consultant or adviser engaged by the Board, or any other person whose services are availed of by the Board has a pecuniary or other beneficial interest in, or which is material to, any appeal, contribution, question or dispute which falls to be decided or determined by the Board, he or she shall comply with the following requirements:

(i) he or she shall neither influence nor seek to influence a decision of the Board as regards the matter;

(ii) in case, as such employee, consultant, adviser or other person, he or she is concerned with the matter, he or she shall disclose to the Board the nature of his or her interest and comply with any directions the Board may give him or her in relation to the matter.

(b) Where an officer of a planning authority, not being the manager, has a pecuniary or other beneficial interest in, or which is material to, any matter which arises or comes before the authority, either pursuant to, or as regards the performance by the authority of a function under this Act, or in relation to the acquisition or disposal of land by the authority under or for the purposes of this Act or any other enactment, he or she shall comply with the following requirements:

(i) he or she shall neither influence nor seek to influence a decision of the authority as regards the matter; and

(ii) in case, as such officer, he or she is concerned with the matter, he or she shall disclose to the manager of the authority the nature of his or her interest and comply with any directions the manager may give him or her in relation to the matter.

(6) For the purposes of this section but without prejudice to the generality of *subsections (1) to (5)*, a person shall be regarded as having a beneficial interest if—

(a) he or she or his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*], or any nominee of his or her or of his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*], is a member of a company or any other body which has a beneficial interest in, or which is material to, a resolution, motion, question or other matter referred to in *subsections (1) to (5)*,

(b) he or she or his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*] is in partnership with or is in the employment of a person who has a beneficial interest in, or which is material to, such a resolution, motion, question or other matter,

(c) he or she or his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*] is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a resolution, motion, question or other matter relates, or

(d) his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*] has a beneficial interest in, or which is material to, such a resolution, motion, question or other matter.

(7) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or which is material to, any resolution, motion, question or other matter by reason only of an interest of his or her or of any company or of any other body or person referred to in *subsection (6)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(8) Where a person has a beneficial interest referred to in *subsection (1), (2), (3), (4) or (5)* by reason only of the beneficial ownership of shares in a company or other body by him or her or by his or her spouse F199[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*] and the total value of those shares does not exceed the lesser of—

(a) F200[€13,000], or

(b) one-hundredth part of the total nominal value of either the issued share capital of the company or body or, where that capital is issued in shares of more than one class, the issued share capital of the class of shares in which he or she has an interest,

none of those subsections shall have effect in relation to that beneficial interest.

(9) Where at a meeting referred to in *subsection (2)* a disclosure is made under that subsection, particulars of the disclosure and of any subsequent withdrawal from the meeting pursuant to that subsection shall be recorded in the minutes of the meeting.

(10) Subject to *subsection (11)*, a person who contravenes or fails to comply with a requirement of this section shall be guilty of an offence.

(11) In any proceedings for an offence under this section it shall be a defence for the defendant to prove that at the time of the alleged offence he or she did not know and had no reason to believe that a matter in which, or in relation to which, he or she had a beneficial interest had arisen or had come before, or was being considered by, the Board or the relevant planning authority or committee, as may be appropriate, or that the beneficial interest to which the alleged offence relates was one in relation to which a requirement of this section applied.

#### Annotations

#### Amendments:

**F199** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 97 and sch. part 1, item 26, S.I. No. 648 of 2010.

**F200** Substituted (25.06.2001) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and (4) and schs. 3 ref. no. 6 and 4 item 10, commenced on enactment.

Supplemental provisions relating to *sections 147 and 148*.

**149.**—(1) Proceedings for an offence under *section 147 or 148* shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(2) Where a person is convicted of an offence under *section 147 or 148*—

(a) the person shall be disqualified from being a member of the Board,

- (b) in case the person is a member of the Board, he or she shall on conviction accordingly cease to be a member of the Board,
- (c) in case the person is a member of a planning authority or a member of any committee of a planning authority, he or she shall on conviction cease to be a member of the authority or the committee, as may be appropriate,
- (d) in case the person is a member of both a planning authority and any one or more such committees, he or she shall on conviction cease to be a member of both the authority and every such committee, and
- (e) in case the person by virtue of this subsection ceases to be a member of a planning authority or any such committee, he or she shall be disqualified for being a member of the authority or committee during the period which, but for the cessation of his or her membership of the authority or committee under this section, would be the remainder of his or her term.

(3) A disqualification under this section shall take effect on the expiry of the ordinary time for appeal from the conviction concerned or if an appeal is brought within that time, upon the final disposal of that appeal.

(4) In case a person contravenes or fails to comply with a requirement of *section 147, 148 or 150*, or acts as a member of the Board, a planning authority or committee of a planning authority while disqualified for membership by virtue of this section, the fact of the contravention or failure or of his or her so acting, as the case may be, shall not invalidate any act or proceeding of the Board, authority or committee.

(5) Where any body which is a company within the meaning of section 155 of the Companies Act, 1963, is deemed under that section to be a subsidiary of another or to be another such company's holding company, a person who is a member of the first-mentioned such company shall, for the purposes of *sections 147 and 148* be deemed also to be a member of the other company.

Codes of conduct. **150.**—(1) (a) Every planning authority, by resolution, and the Board shall adopt a code of conduct for dealing with conflicts of interest and promoting public confidence in the integrity of the conduct of its business which must be followed by those persons referred to in *subsection (3)*.

(b) A code of conduct under this section shall be adopted within one year of the commencement of this section.

(2) A code of conduct shall consist of a written statement setting out the planning authority's or the Board's policy on at least the following matters:

- (a) disclosure of interests and relationships where the interests and relationships are of relevance to the work of the authority or the Board, as appropriate;
- (b) membership of other organisations, associations and bodies, professional or otherwise;
- (c) membership of, or other financial interests in, companies, partnerships or other bodies;
- (d) undertaking work, not being work on behalf of the authority or the Board, as the case may be, both during and after any period of employment with the authority or the Board, whether as a consultant, adviser or otherwise;
- (e) acceptance of gifts, sponsorship, considerations or favours;
- (f) disclosure of information concerning matters pertaining to the work of the authority or the Board, as appropriate;
- (g) following of proper procedure in relation to the functions of the authority and the Board including the procedures for—

- (i) (I) the review, making and variation of development plans,
    - (II) the review, making and amendment of local area plans,
    - (III) the processing of planning applications and appeals, and
    - (IV) the granting of permission which would materially contravene the development plan, including the use of resolutions referred to in *section 34(6)(c)*,
  - and
  - (ii) the disclosure by members and employees of the authority or of the Board of any representations made to such members or employees whether in writing or otherwise in relation to those matters.
- (3) This section shall apply to—
- (a) a member of the Board,
  - (b) a member of a planning authority,
  - (c) an employee of the Board or any other person—
    - (i) whose services are availed of by the Board, and
    - (ii) who is of a class, description or grade prescribed for the purposes of this section,
  - and
  - (d) an officer of a planning authority who is the holder of an office which is of a class, description or grade so prescribed.
- (4) (a) It shall be a condition of appointment of persons listed at *subsection (3)(a)* that they shall comply with the code of conduct.
- (b) It shall be a condition of taking up and holding office by persons listed at *subsection (3)(b)* that they shall comply with the code of conduct.
- (c) It shall be a condition of employment of persons listed at *subsection (3)(c)* and (d) that they shall comply with the code of conduct.
- (5) A planning authority or the Board may at any time review a code of conduct adopted under this section and may—
- (a) amend the code of conduct, or
  - (b) adopt a new code of conduct.

**Annotations**

**Editorial Notes:**

**E126** Provision for continuance of code made under section by *Local Government Act 2001 (37/2001)*, s. 169(6), not commenced as of 27.12.2012.

**E127** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001 (S.I. No. 600 of 2001)*.

ENFORCEMENT

Offence. **151.**—Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence.

Warning letter. **152.**—(1) Where—

(a) a representation in writing is made to a planning authority by any person that unauthorised development may have been, is being or may be carried out, and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation, or

(b) it otherwise appears to the authority that unauthorised development may have been, is being or may be carried out,

the authority shall issue a warning letter to the owner, the occupier or any other person carrying out the development and may give a copy, at that time or thereafter, to any other person who in its opinion may be concerned with the matters to which the letter relates.

(2) Notwithstanding *subsection (1)*, where the development in question is of a trivial or minor nature the planning authority may decide not to issue a warning letter.

(3) A planning authority shall issue the warning letter under *subsection (1)* as soon as may be but not later than 6 weeks after receipt of the representation under *subsection (1)*.

(4) A warning letter shall refer to the land concerned and shall—

(a) state that it has come to the attention of the authority that unauthorised development may have been, is being or may be carried out,

(b) state that any person served with the letter may make submissions or observations in writing to the planning authority regarding the purported offence not later than four weeks from the date of the service of the warning letter,

(c) state that when a planning authority considers that unauthorised development has been, is being or may be carried out, an enforcement notice may be issued,

(d) state that officials of the planning authority may at all reasonable times enter on the land for the purposes of inspection,

(e) explain the possible penalties involved where there is an offence, and

(f) explain that any costs reasonably incurred by the planning authority in relation to enforcement proceedings may be recovered from a person on whom an enforcement notice is served or where court action is taken.

Decision on enforcement. **153.**—(1) As soon as may be after the issue of a warning letter under *section 152*, the planning authority shall make such investigation as it considers necessary to enable it to make a decision on whether to issue an enforcement notice F201[or make an application under *section 160*].

(2) (a) It shall be the duty of the planning authority to ensure that decisions on whether to issue an enforcement notice are taken as expeditiously as possible.

(b) Without prejudice to the generality of *paragraph (a)*, it shall be the objective of the planning authority to ensure that the decision on whether to issue an enforcement notice shall be taken within 12 weeks of the issue of a warning letter.

(3) A planning authority, in deciding whether to issue an enforcement notice shall consider any representations made to it under *section 152(1)(a)* or submissions or observations made under *section 152(4)(b)* and any other material considerations.

(4) The decision made by the planning authority under *subsection (1)* including the reasons for it shall be entered by the authority in the register.

(5) Failure to issue a warning letter under *section 152* shall not prejudice the issue of an enforcement notice or any other proceedings that may be initiated by the planning authority.

F201[(6) F202[...]

F203[(7) Where a planning authority establishes, following an investigation under this section that unauthorised development (other than development that is of a trivial or minor nature) has been or is being carried out and the person who has carried out or is carrying out the development has not proceeded to remedy the position, then the authority shall issue an enforcement notice under *section 154* or make an application pursuant to *section 160*, or shall both issue such a notice and make such an application, unless there are compelling reasons for not doing so.

(8) Nothing in this section shall operate to prevent or shall be construed as preventing a planning authority, in relation to an unauthorised development which has been or is being carried out, from both issuing an enforcement notice under *section 154* and making an application pursuant to *section 160*.]]

#### Annotations

#### Amendments:

**F201** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 45(a) and (b), S.I. No. 477 of 2010.

**F202** Repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 27(a), S.I. No. 474 of 2011.

**F203** Substituted and inserted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 27(b), S.I. No. 474 of 2011.

#### Editorial Notes:

**E128** Previous affecting provision: subss. (6) and (7) inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 45(b), S.I. No. 477 of 2010; deleted and substituted as per F-note above.

Enforcement  
notice.

**154.—(1) (a)** Where a decision to enforce is made under *section 153* or where urgent action is required under *section 155*, the planning authority shall, as soon as may be, serve an enforcement notice under this section.

(b) Where an enforcement notice is served under this section, the planning authority shall notify any person who made representations under *section 152(1)(a)* and any other person, who in the opinion of the planning authority may be concerned with the matter to which the notice concerned relates, not being a person on whom the enforcement notice was served, of the service of the enforcement notice.

(2) Where the planning authority decides not to issue an enforcement notice, it shall notify any person to whom the warning letter was copied under *section 152* and any other person who made a representation under that section of the decision in writing within 2 weeks of the making of that decision.

- (3) (a) An enforcement notice under *subsection (1)* shall be served on the person carrying out the development and, where the planning authority considers it necessary, the owner or the occupier of the land or any other person who, in the opinion of the planning authority, may be concerned with the matters to which the notice relates.
- (b) If, subsequent to the service of the enforcement notice, the planning authority becomes aware that any other person may be carrying out development or is an owner or occupier of the land or may be affected by the notice, the notice may be served on that person and the period specified for compliance with the notice shall be extended as necessary to a maximum of 6 months, and the other person or persons on whom the notice had previously been served under *paragraph (a)* shall be informed in writing.
- (4) An enforcement notice shall take effect on the date of the service thereof.
- (5) An enforcement notice shall refer to the land concerned and shall—
- (a) (i) in respect of a development where no permission has been granted, require that development to cease or not to commence, as appropriate, or
- (ii) in respect of a development for which permission has been granted under *Part III*, require that the development will proceed in conformity with the permission, or with any condition to which the permission is subject,
- (b) require such steps as may be specified in the notice to be taken within a specified period, including, where appropriate, the removal, demolition or alteration of any structure and the discontinuance of any use and, in so far as is practicable, the restoration of the land to its condition prior to the commencement of the development,
- (c) warn the person or persons served with the enforcement notice that, if within the period specified under *paragraph (b)* or within such extended period (not being more than 6 months) as the planning authority may allow, the steps specified in the notice to be taken are not taken, the planning authority may enter on the land and take such steps, including the removal, demolition or alteration of any structure, and may recover any expenses reasonably incurred by them in that behalf,
- (d) require the person or persons served with the notice to refund to the planning authority the costs and expenses reasonably incurred by the authority in relation to the investigation, detection and issue of the enforcement notice concerned and any warning letter under *section 152*, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, and the planning authority may recover these costs and expenses incurred by it in that behalf, and
- (e) warn the person or persons served with the enforcement notice that if within the period specified by the notice or such extended period, not being more than 6 months, as the planning authority may allow, the steps specified in the notice to be taken are not taken, the person or persons may be guilty of an offence.
- (6) If, within the period specified under *subsection (5)(b)* or within such extended period, not being more than 6 months, as the planning authority may allow, the steps specified in the notice to be taken are not taken, the planning authority may enter on the land and take such steps, including the demolition of any structure and the restoration of land, and may recover any expenses reasonably incurred by it in that behalf.
- (7) Any expenses reasonably incurred by a planning authority under *paragraphs (c) and (d) of subsection (5) and subsection (6)* may be recovered—

(a) as a simple contract debt in any court of competent jurisdiction from the person or persons on whom the notice was served, or

(b) secured by—

(i) charging the land under the Registration of Title Act, 1964, or

(ii) where the person on whom the enforcement notice was served is the owner of the land, an instrument vesting the ownership of the land in the authority subject to a right of redemption by the owner within five years.

(8) Any person on whom an enforcement notice is served under *subsection (1)* who fails to comply with the requirements of the notice (other than a notice which has been withdrawn under *subsection (11)(a)* or which has ceased to have effect) within the specified period or within such extended period as the planning authority may allow, not exceeding 6 months, shall be guilty of an offence.

(9) Any person who knowingly assists or permits the failure by another to comply with an enforcement notice shall be guilty of an offence.

(10) Particulars of an enforcement notice shall be entered in the register.

(11) (a) A planning authority may for stated reasons by notice in writing to any person served with the notice, and, where appropriate, any person who made a representation under *section 152(1)(a)*, withdraw an enforcement notice served under this section.

(b) Where an enforcement notice is withdrawn pursuant to this subsection by a planning authority or where a planning authority finds that an enforcement notice has been complied with, the fact that the enforcement notice was withdrawn and the reason for the withdrawal or that it was complied with, as appropriate, shall be recorded by the authority in the register.

(12) An enforcement notice shall cease to have effect 10 years from the date of service of the notice under *subsection (1)* or, if a notice is served under *subsection (3)(b)*, 10 years from the date of service of the notice under that subsection.

(13) A person shall not question the validity of an enforcement notice by reason only that the person or any other person, not being the person on whom the enforcement notice was served, was not notified of the service of the enforcement notice.

(14) A report of a local authority under section 50 of the Local Government Act, 1991, shall contain details of the number of enforcement notices issued under this section, warning notices issued under *section 153*, prosecutions brought under *section 157* and injunctions sought under *section 160* by that authority.

Issue of enforcement notice in cases of urgency.

**155.—**(1) Where, in the opinion of the planning authority, due to the nature of an unauthorised development and to any other material considerations, it is necessary to take urgent action with regard to the unauthorised development, notwithstanding *sections 152* and *153*, it may serve an enforcement notice under *section 154*.

(2) Where an enforcement notice is issued in accordance with *subsection (1)*, any person who made a representation under *section 152(1)(a)* shall be notified in writing within two weeks of the service of the notice.

Penalties for offences.

**156.—**(1) A person who is guilty of an offence under *F204[section] 58(4)*, *63*, *F205[135(7),] 151, 154, 205, 230(3)*, *F204[239 or 247]* shall be liable—

(a) on conviction on indictment, to a fine not exceeding £10,000,000, or to imprisonment for a term not exceeding 2 years, or to both, or



(b) on summary conviction, to a fine not exceeding F206[€5,000], or to imprisonment for a term not exceeding 6 months, or to both.

(2) Where a person is convicted of an offence referred to in *subsection (1)* and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

(a) on conviction on indictment, to a fine not exceeding £10,000 for each day on which the offence is so continued, or to imprisonment for a term not exceeding 2 years, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 2 years, or

(b) on summary conviction, to a fine not exceeding F206[€1,500] for each day on which the offence is so continued or to imprisonment for a term not exceeding 6 months, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 6 months.

(3) Where a person is convicted of an offence referred to in *subsection (1)* involving the construction of an unauthorised structure, the minimum fine shall be—

(a) on conviction on indictment, the estimated cost of the construction of the structure or £10,000, whichever is less, or

(b) on summary conviction, the estimated cost of the construction of the structure or F206[€2,500], whichever is less,

except where the person convicted can show to the court's satisfaction that he or she does not have the necessary financial means to pay the minimum fine.

(4) Any person who is guilty of an offence under this Act other than an offence referred to in *subsection (1)* (or a further offence under *subsection (2)*) shall be liable, on summary conviction, to a fine not exceeding F206[€5,000] or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both.

(5) If the contravention in respect of which a person is convicted under *section 46(11)*, *208(2)(b)* or *252(9)* is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention continues and for each such offence he or she shall be liable on summary conviction to a fine not exceeding F207[€1,500].

(6) In a prosecution for an offence under *sections 151* and *154* it shall not be necessary for the prosecution to show, and it shall be assumed until the contrary is shown by the defendant, that the subject matter of the prosecution was development and was not exempted development.

(7) Where an enforcement notice has been served under *section 154*, it shall be a defence to a prosecution under *section 151* or *154* if the defendant proves that he or she took all reasonable steps to secure compliance with the enforcement notice.

F207[(8) Where a person is convicted of an offence under *section 154*, the Court in addition to imposing a penalty referred to in *subsection (1)* or *(2)* as the case may be, may order the person so convicted to take all or any steps specified in the relevant enforcement notice within such period as the Court considers appropriate.]

F205[(9) Where a person is convicted, on indictment, of an offence under *section 135(7)*, the court may, where it finds that the act or omission constituting the offence delayed the conduct of the oral hearing concerned referred to in *section 135(7)*, order—

(a) the person convicted, or

(b) any body with whose consent, connivance or approval the court is satisfied the offence was committed,

to pay to the Board or to any party or person who appeared at the oral hearing such an amount as is equal to the amount of any additional costs that it is shown to the court to have been incurred by the Board, party or person in appearing or being represented at the oral hearing by reason of the commission of the offence.]

#### Annotations

#### Amendments:

- F204** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(e), S.I. No. 458 of 2001.
- F205** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 31, S.I. No. 525 of 2006.
- F206** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 46(a)-(d), S.I. No. 405 of 2010.
- F207** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 46(e)-(f), S.I. No. 405 of 2010.

Prosecution of offences.

**157.—(1)** Subject to *section 149*, summary proceedings for an offence under this Act may be brought and prosecuted by a planning authority whether or not the offence is committed in the authority's functional area.

(2) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, and subject to *subsection (3)* of this section, summary proceedings may be commenced—

(a) at any time within 6 months from the date on which the offence was committed, or

(b) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify proceedings comes to that person's knowledge,

whichever is the later.

(3) For the purposes of this section, a certificate signed by or on behalf of the person initiating the proceedings as to the date or dates on which evidence described in *subsection (2)(b)* came to his or her knowledge shall be evidence of the date or dates and in any legal proceedings a document purporting to be a certificate under this section and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(4) (a) No warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence—

(i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development;

(ii) in respect of a development for which permission has been granted under *Part III*, after seven years beginning on the expiration, as respects the permission authorising the development, of the appropriate period within the meaning of *section 40* or, as the case may be, of the period as extended under *section 42*.

**F208**[(aa) Notwithstanding paragraph (a) a warning letter or enforcement notice may issue at any time or proceedings for an offence under this Part may

commence at any time in respect of unauthorised quarry development or unauthorised peat extraction development in the following circumstances:

(i) where no permission for the development has been granted under Part III and the development commenced not more than 7 years prior to the date on which this paragraph comes into operation;

(ii) where permission for the development has been granted under Part III and, as respects the permission—

(I) the appropriate period (within the meaning of section 40), or

(II) the appropriate period as extended under section 42 or 42A,

expired not more than 7 years prior to the date on which this paragraph comes into operation.

(ab) Notwithstanding paragraph (a) or (aa) a warning letter or enforcement notice may issue at any time to require any unauthorised quarry development or unauthorised peat extraction development to cease and proceedings for an offence under section 154 may issue at any time in relation to an enforcement notice so issued.]

(b) Notwithstanding paragraph (a), proceedings may be commenced at any time in respect of any condition concerning the use of land to which the permission is subject.

(c) It shall be presumed until the contrary is proved that proceedings were commenced within the appropriate period.

(5) Proceedings for other offences under this Act shall not be initiated later than 7 years from the date on which the offence concerned was alleged to have been committed.

#### Annotations

#### Amendments:

**F208** Substituted (15.11.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 28, S.I. No. 583 of 2011.

#### Editorial Notes:

**E129** Previous affecting provision: section amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 47, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Offences by bodies corporate. **158.**—(1) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of a person being a director, manager, secretary or other officer of the body or a person who was purporting to act in any such capacity, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

Payment of fines to planning authorities. **159.**—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under this Act, it shall provide by order for the payment of the amount of the fine to the planning authority and the payment may be enforced by the authority as if it were due to it on foot of a decree or order made by the court in civil proceedings.

Injunctions in relation to unauthorised development. **160.**—(1) Where an unauthorised development has been, is being or is likely to be carried out or continued, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure, as appropriate, the following:

- (a) that the unauthorised development is not carried out or continued;
- (b) in so far as is practicable, that any land is restored to its condition prior to the commencement of any unauthorised development;
- (c) that any development is carried out in conformity with the permission pertaining to that development or any condition to which the permission is subject.

(2) In making an order under *subsection (1)*, where appropriate, the Court may order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature.

(3) (a) An application to the High Court or the Circuit Court for an order under this section shall be by motion and the Court when considering the matter may make such interim or interlocutory order (if any) as it considers appropriate.

(b) Subject to *section 161*, the order by which an application under this section is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(4) (a) Rules of court may provide for an order under this section to be made against a person whose identity is unknown.

(b) Any relevant rules of Court made in respect of section 27 (inserted by section 19 of the Act of 1992) of the Act of 1976 shall apply to this section and shall be construed to that effect.

(5) (a) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the land which is the subject of the application is situated.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the rateable valuation of the land which is the subject of the application does not exceed £200.

(c) The Circuit Court may, for the purposes of *paragraph (b)*, in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, £200.

(d) Where the rateable valuation of any land which is the subject of an application under this section exceeds £200, the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(6) (a) An application to the High Court or Circuit Court for an order under this section shall not be made—

(i) in respect of a development where no permission has been granted, after the expiration of a period of 7 years from the date of the commencement of the development, or

(ii) in respect of a development for which permission has been granted under *Part III*, after the expiration of a period of 7 years beginning on the expiration, as respects the permission authorising the development, of the appropriate period (within the meaning of *section 40*) or, as the case may be, of the appropriate period as extended under *section 42*.

F209[(aa) Notwithstanding paragraph (a) an application to the High Court or Circuit Court for an order under this section may be made at any time in respect of unauthorised quarry development or unauthorised peat extraction development in the following circumstances:

(i) where no permission for the development has been granted under *Part III* and the development commenced not more than 7 years prior to the date on which this paragraph comes into operation;

(ii) where permission for the development has been granted under *Part III* and, as respects the permission—

(I) the appropriate period (within the meaning of *section 40*), or

(II) the appropriate period as extended under *section 42* or *42A*,

expired not more than 7 years prior to the date on which this paragraph comes into operation.

(ab) Notwithstanding paragraph (a) or (aa), an application to the High Court or Circuit Court may be made at any time for an order under this section to cease unauthorised quarry development or unauthorised peat extraction development.]

(b) Notwithstanding *paragraph (a)*, an application for an order under this section may be made at any time in respect of any condition to which the development is subject concerning the ongoing use of the land.

(7) Where an order has been sought under this section, any other enforcement action under this Part may be commenced or continued.

#### Annotations

#### Amendments:

**F209** Inserted (15.11.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 29, S.I. No. 583 of 2011.

**F210** Substituted by *Civil Liability and Courts Act 2004* (31/2004), s. 53(2)(a), not commenced as of 27.12.2012.

**F211** Inserted by *Civil Liability and Courts Act 2004* (31/2004), s. 53(2)(b), not commenced as of 27.12.2012.

#### Modifications (not altering text):

**C46** Prospective amending provision: subs. (5) amended by *Civil Liability and Courts Act 2004* (31/2004), s. 53(2), not commenced as of 27.12.2012.

#### Injunctions in relation to unauthorised development.

160.— ...

(5) (a) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the land which is the subject of the application is situated.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the F210[market value] of the land which is the subject of the application does not exceed F210[€3,000,000].

(c) The Circuit Court may, for the purposes of *paragraph (b)*, in relation to land that has not been given a F210[market value] or is the subject with other land of a F210[market value], determine that its F210[market value] would exceed, or would not exceed, F210[€3,000,000].

(d) Where the F210[market value] of any land which is the subject of an application under this section exceeds F210[€3,000,000], the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

F211[(e) In this subsection 'market value' means, in relation to land, the price that would have been obtained in respect of the unencumbered fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.]

...

**Editorial Notes:**

**E130** Previous affecting provision: subs. (6) amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 48, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Costs of prosecutions and applications for injunctions.

**161.—**(1) The court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay—

(a) where a person is convicted of an offence under this Part, to the planning authority, or

(b) where the person is the subject of an order under *section 160*, to the planning authority or to any other person as appropriate,

the costs and expenses of the action, measured by the court.

(2) Where costs or expenses are to be paid to the authority, they shall include any such costs or expenses reasonably incurred by the authority in relation to the investigation, detection and prosecution of the offence or order, as appropriate, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers.

Evidence of permission.

**162.—**(1) In any proceedings for an offence under this Act, the onus of proving the existence of any permission granted under *Part III* shall be on the defendant.

(2) Notwithstanding *subsection (1)* of this section, it shall not be a defence to a prosecution under this Part if the defendant proves that he or she has applied for or has been granted permission under *section 34(12)*—

(a) since the initiation of proceedings under this Part,

(b) since the date of the sending of a warning letter under *section 152*, or

(c) since the date of service of an enforcement notice in a case of urgency in accordance with *section 155*.

(3) No enforcement action under this Part (including an application under *section 160*) shall be stayed or withdrawn by reason of an F212[application for permission for retention of unauthorised development] under F213[*section 34(12C)*] or the grant of that permission.

**Annotations**

**Amendments:**

**F212** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(f), S.I. No. 458 of 2001.

**F213** Substituted (23.03.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 49, S.I. No. 132 of 2011.

Permission not required for any works required under this Part.

**163.**—Notwithstanding *Part III*, permission shall not be required in respect of development required by a notice under *section 154* or an order under *section 160* (disregarding development for which there is in fact permission under *Part III*).

Transitional arrangements for offences.

**164.**—Notwithstanding any repeal of any enactment (“repealed enactment”) by this Act, where proceedings have been initiated in respect of any offence under the repealed enactment, or an enforcement notice or a warning notice (within the meaning of the relevant provisions) has issued under any provision of the repealed enactment, or an application to a Court has been made under section 27 of the Act of 1976, the relevant provision which applied before the repeal shall continue to so apply until the proceedings have been finalised, the notices complied with or withdrawn or the application determined, as the case may be.

## PART IX

### STRATEGIC DEVELOPMENT ZONES

Interpretation.

**165.**—In this Part—

“development agency” means the Industrial Development Agency (Ireland), Enterprise Ireland, the Shannon Free Airport Development Company Limited, údarás na Gaeltachta, the National Building Agency Limited, F214[the Grangegorman Development Agency, a local authority or such other person as may be prescribed by the Minister for the purposes of this Part;]

“strategic development zone” means a site or sites to which a planning scheme made under *section 169* applies.

**Annotations**

**Amendments:**

**F214** Substituted (11.07.2005) by *Grangegorman Development Agency Act 2005* (21/2005), s. 42, commenced on enactment.

Designation of sites for strategic development zones.

**166.**—(1) Where, in the opinion of the Government, specified development is of economic or social importance to the State, the Government may be order, when so proposed by the Minister, designate one or more sites for the establishment, in accordance with the provisions of this Part, of a strategic development zone to facilitate such development.

(2) The Minister shall, before proposing the designation of a site or sites to the Government under *subsection (1)*, consult with any relevant development agency or planning authority on the proposed designation.

(3) An order under *subsection (1)* shall—

(a) specify the development agency or development agencies for the purposes of *section 168*,

(b) specify the type or types of development that may be established in the strategic development zone, and

(c) state the reasons for specifying the development and for designating the site or sites.

(4) The Minister shall send a copy of any order made under this section to any relevant development agency, planning authority and regional authority and to the Board.

(5) Development that is specified in an order under *subsection (3)* shall be deemed to include development that is ancillary to, or required for, the purposes of development so specified, and may include any necessary infrastructural and community facilities and services.

(6) The Government may revoke or amend an order made under this section.

#### Annotations

##### Editorial Notes:

**E131** Power pursuant to section exercised (18.12.2012) by *Planning and Development Act 2000 (Designation of Strategic Development Zone: North Lotts and Grand Canal Dock) Order 2012* (S.I. No. 530 of 2012).

**E132** Power pursuant to subs. (6) exercised (24.05.2011) by *Planning and Development Act 2000 (Strategic Development Zone) (Amendment) Order 2011* (S.I. No. 243 of 2011).

**E133** Power pursuant to section exercised (22.12.2010) by *Planning and Development Act 2000 (Strategic Development Zone) Order 2010* (S.I. No. 678 of 2010).

**E134** Power pursuant to subs. (1) exercised (25.05.2010) by *Planning and Development Act 2000 (Strategic Development Zone) (No. 2) Order 2010* (S.I. No. 540 of 2010).

**E135** Power pursuant to subs. (1) exercised (25.05.2010) by *Planning and Development Act 2000 (Strategic Development Zone: Cherrywood, Dún Laoghaire-Rathdown County) Order 2010* (S.I. No. 535 of 2010).

**E136** Power pursuant to subs. (1) exercised (31.07.2006) by *Planning and Development Act 2000 (Designation of Strategic Development Zone: Balgaddy-Clonburris, South Dublin County) Order 2006* (S.I. No. 442 of 2006).

**E136** Power pursuant to subs. (1) exercised (1.07.2001) by *Planning and Development Act, 2000 (Designation of Strategic Development Zone - Clonmagadden Valley, Navan) Order 2001* (S.I. No. 274 of 2001).



**E138** Power pursuant to subs. (1) exercised (1.07.2001) by *Planning and Development Act, 2000 (Designation of Strategic Development Zone - Hansfield, Blanchardstown) Order 2001* (S.I. No. 273 of 2001).

**E139** Power pursuant to subs. (1) exercised (1.07.2001) by *Planning and Development Act, 2000 (Designation of Strategic Development Zone - Adamstown, Lucan) Order 2001* (S.I. No. 272 of 2001).

Acquisition of site for strategic development zone.

**167.**—(1) A planning authority may use any powers to acquire land that are available to it under any enactment, including any powers in relation to the compulsory acquisition of land, for the purposes of providing, securing or facilitating the provision of, a site referred to in *section 166(1)*.

(2) Where a person, other than the relevant development agency, has an interest in land, or any part of land, on which a site or sites referred to in an order under *section 166(1)* is or are situated, the relevant development agency may enter into an agreement with that person for the purpose of facilitating the development of the land.

(3) An agreement made under *subsection (2)* with any person having an interest in land may be enforced by the relevant development agency against persons deriving title under that person in respect of that land.

Planning scheme for strategic development zones.

**168.**—F215[(1) Subject to subsection (1A), as soon as may be after the making of an order designating a site under section 166—

(a) the relevant development agency (other than a local authority) or, where an agreement referred to in section 167 has been made, the relevant development agency (other than a local authority) and any person who is a party to the agreement shall prepare a draft planning scheme in respect of all or any part of the site and submit it to the relevant planning authority,

(b) the local authority, where it is the development agency, or where an agreement referred to in section 167 has been made, the local authority and any person who is a party to the agreement shall prepare a draft planning scheme in respect of all or any part of the site.

(1A) The first draft planning scheme under subsection (1) in respect of all or any part of a site designated under section 166, shall be prepared not later than 2 years after the making of the order so designating the site.]

(2) F215[A draft planning scheme under this section shall consist of a written statement and a plan indicating the manner in which it is intended that the site or part of the site designated under section 166 to which the scheme relates is to be developed and in particular—]

(a) the type or types of development which may be permitted to establish on the site (subject to the order of the Government under *section 166*),

(b) the extent of any such proposed development,

(c) proposals in relation to the overall design of the proposed development, including the maximum heights, the external finishes of structures and the general appearance and design,

(d) proposals relating to transportation, including public transportation, the roads layout, the provision of parking spaces and traffic management,

(e) proposals relating to the provision of services on the site, including the provision of waste and sewerage facilities and water, electricity and telecommunications services, oil and gas pipelines, including storage facilities for oil or gas,

(f) proposals relating to minimising any adverse effects on the environment, including the natural and built environment, and on the amenities of the area, and

(g) where the scheme provides for residential development, proposals relating to the provision of amenities, facilities and services for the community, including schools, crèches and other education and childcare services.

**F216**[(3) The Minister may, for the purposes of giving effect to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (No. 2001/42/EC, O.J. No. L 197, 21 July 2001 P. 0030 - 0037), by regulations make provision in relation to consideration of the likely significant effects on the environment of implementing a planning scheme.]

**F217**[(3A) An appropriate assessment of a draft planning scheme shall be carried out in accordance with Part XAB.]

(4) (a) A draft planning scheme for residential development shall be consistent with the housing strategy prepared by the planning authority in accordance with Part V.

(b) Where land in a strategic development zone is to be used for residential development, an objective to secure the implementation of the housing strategy shall be included in the draft planning scheme as if it were a specific objective under *section 95(1)(b)*.

(5) Where an area designated under *section 166* is situated within the functional area of two or more planning authorities the functions conferred on a planning authority under this Part shall be exercised—

(a) jointly by the planning authorities concerned, or

(b) by one of the authorities, provided that the consent of the other authority or authorities, as appropriate, is obtained prior to the making of the scheme under *section 169*,

and the words “planning authority” shall be construed accordingly.

#### Annotations

#### Amendments:

**F215** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 50(a) and (b), S.I. No. 477 of 2010.

**F216** Substituted (14.07.2004) by *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No. 435 of 2004), reg. 8.

**F217** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 50(c), S.I. No. 475 of 2011.

#### Editorial Notes:

**E140** Power pursuant to subs. (3) exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011).

**E141** Power pursuant to subs. (3) exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).

Making of planning scheme.

**169.**—(1) Where a draft planning scheme has been prepared and submitted to the planning authority in accordance with *section 168*, the planning authority shall, as soon as may be—

- (a) send notice and copies of the draft scheme to the Minister, the Board and the prescribed authorities,
- (b) publish notice of the preparation of the draft scheme in one or more newspapers circulating in its area.

(2) A notice under *subsection (1)* shall state—

- (a) that a copy of the draft may be inspected at a stated place or places and at stated times during a stated period of not less than 6 weeks (and the copy shall be kept available for inspection accordingly), and
- (b) that written submissions or observations with respect to the draft scheme made to the planning authority within the stated period will be taken into consideration in deciding upon the scheme.

(3) (a) Not longer than 12 weeks after giving notice under *subsection (2)* the manager of a planning authority shall prepare a report on any submissions or observations received under that subsection and submit the report to the members of the authority for their consideration.

(b) A report under *paragraph (a)* shall—

- (i) list the persons or bodies who made submissions or observations under this section,
- (ii) summarise the issues raised by the persons or bodies in the submissions or observations,
- (iii) give the response of the manager to the issues raised, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.

(4) (a) The members of a planning authority shall consider the draft planning scheme and the report of the manager prepared and submitted in accordance with *subsection (3)*.

F218(b) The draft planning scheme shall be deemed to be made 6 weeks after the submission of that draft planning scheme and report to the members of the planning authority in accordance with *subsection (3)* unless the planning authority decides, by resolution, to—

- (i) make, subject to variations and modifications, the draft planning scheme (and the passing of such a resolution shall be subject to paragraphs (ba) and (be)), or
- (ii) not to make the draft planning scheme.

(ba) The planning authority shall determine if a strategic environmental assessment or an appropriate assessment or both such assessments, as the case may be, is or are to be carried out as respects one or more than one proposed variation or modification that would, if made, be a material alteration of the draft planning scheme.

(bb) The manager shall, not later than 2 weeks after a determination under *paragraph (ba)* specify such period as he or she considers necessary following the determination as being required to facilitate an assessment referred to in *paragraph (ba)*.

(bc) The planning authority shall publish notice of the proposed material alteration, and where appropriate in the circumstances, the making of a determination that an assessment referred to in paragraph (ba) is required, in at least one newspaper circulating in its area.

(bd) The notice referred to in paragraph (bc) shall state—

(i) that a copy of the proposed material alteration and of any determination by the authority that an assessment referred to in paragraph (ba) is required may be inspected at a stated place or places and at stated times, and on the authority's website, during a stated period of not less than 4 weeks (and that copies will be kept for inspection accordingly), and

(ii) that written submissions or observations with respect to the proposed material alteration or an assessment referred to in paragraph (ba) and made to the planning authority within a stated period shall be taken into account by the authority before the draft planning scheme is made.

(be) The planning authority shall carry out an assessment referred to in paragraph (ba) of the proposed material alteration of the draft planning scheme within the period specified by the manager.]

(c) Where a draft planning scheme is—

(i) deemed, in accordance with paragraph (b), to have been made, or

(ii) made in accordance with paragraph (b)(i),

it shall have effect 4 weeks from the date of such making unless an appeal is brought to the Board under subsection (6).

(5) (a) Following the decision of the planning authority under subsection (4) the authority shall, as soon as may be, and in any case not later than 6 working days following the making of the decision—

(i) give notice of the decision of the planning authority to the Minister, the Board, the prescribed authorities and any person who made written submissions or observations on the draft scheme, and

(ii) publish notice of the decision in one or more newspapers circulating in its area.

(b) A notice under paragraph (a) shall—

(i) give the date of the decision of the planning authority in respect of the draft planning scheme,

(ii) state the nature of the decision,

(iii) state that a copy of the planning scheme is available for inspection at a stated place or places (and the copy shall be kept available for inspection accordingly),

(iv) state that any person who made submissions or observation regarding the draft scheme may appeal the decision of the planning authority to the Board within 4 weeks of the date of the planning authority's decision, and

(v) contain such other information as may be prescribed.

(6) The development agency or any person who made submissions or observations in respect of the draft planning scheme may, for stated reasons, within 4 weeks of the date of the decision of the planning authority appeal the decision of the planning authority to the Board.

F218[(7)(a) The Board may, following the consideration of an appeal made under this section, approve the making of the planning scheme, with or without any modifications (and paragraph (aa) shall apply in relation to any modifications) or it may refuse to approve it.

(aa) A modification made by the Board on appeal may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site.]

(b) Where the Board approves the making of a planning scheme in accordance with paragraph (a), the planning authority shall, as soon as practicable, publish notice of the approval of the scheme in at least one newspaper circulating in its area, and shall state that a copy of the planning scheme is available for inspection at a stated place or places (and a copy shall be kept available for inspection accordingly).

(8) In considering a draft planning scheme under this section a planning authority or the Board, as the case may be, shall consider the proper planning and sustainable development of the area and consider the provisions of the development plan, the provisions of the housing strategy, the provisions of any special amenity area order or the conservation and preservation of any European Site and, where appropriate—

(a) the effect the scheme would have on any neighbouring land to the land concerned,

(b) the effect the scheme would have on any place which is outside the area of the planning authority, and

(c) any other consideration relating to development outside the area of the planning authority, including any area outside the State.

(9) A planning scheme made under this section shall be deemed to form part of any development plan in force in the area of the scheme until the scheme is revoked, and any contrary provisions of the development plan shall be superseded.

#### Annotations

##### Amendments:

**F218** Substituted and inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 51, S.I. No. 477 of 2010.

##### Editorial Notes:

**E142** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E143** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E144** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Application for development in strategic development zone.

**170.—(1)** Where an application is made to a planning authority under *section 34* for a development in a strategic development zone, that section and any permission regulations shall apply, subject to the other provisions of this section.

(2) F219[Subject to the provisions of Part X or Part XAB, or both of those Parts as appropriate, a planning authority shall] grant permission in respect of an application for a development in a strategic development zone where it is satisfied that the

development, where carried out in accordance with the application or subject to any conditions which the planning authority may attach to a permission, would be consistent with any planning scheme in force for the land in question, and no permission shall be granted for any development which would not be consistent with such a planning scheme.

(3) Notwithstanding *section 37*, no appeal shall lie to the Board against a decision of a planning authority on an application for permission in respect of a development in a strategic development zone.

(4) Where the planning authority decides to grant permission for a development in a strategic development zone, the grant shall be deemed to be given on the date of the decision.

#### Annotations

#### Amendments:

**F219** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 30, S.I. No. 474 of 2011.

#### Editorial Notes:

**E145** Previous affecting provision: subs. (2) amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 52, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

Revocation of planning scheme. **171.—(1)** A planning authority may by resolution, with the consent of the relevant development agency, amend or revoke a planning scheme made under this Part.

(2) Where a planning authority proposes to amend a planning scheme under this section it shall comply with the procedure laid down in *section 169* and that section shall be construed accordingly.

(3) Notice of the revocation of a planning scheme under this section shall be given in at least one newspaper circulating in the area of the planning authority.

(4) The amendment or revocation of a planning scheme shall not prejudice the validity of any planning permission granted or anything done in accordance with the terms of the scheme before it was amended or revoked except in accordance with the terms of this Act.

(5) Without prejudice to the generality of *subsection (4)*, *sections 40* and *42* shall apply to any permission granted under this Part.

## PART X

### ENVIRONMENTAL IMPACT ASSESSMENT

Interpretation. **F220[171A.— (1) In this Part—**

‘environmental impact assessment’ means an assessment<sup>F221</sup>[, which includes an examination, analysis and evaluation,] carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following:

- (a) human beings, flora and fauna,
- (b) soil, water, air, climate and the landscape,
- (c) material assets and the cultural heritage, and
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

(2) Subject to this Part, a word or expression that is used in the Part and that is also used in the Environmental Impact Assessment Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Environmental Impact Assessment Directive.]

**Annotations**

**Amendments:**

**F220** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 53, S.I. No. 405 of 2010.

**F221** Inserted (31.10.2012) by *European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012* (S.I. No. 419 of 2012), reg. 2(b).

Requirement for environmental impact statement.

F222[**172.**—(1) An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for

F223[consent for—

- (a) F224[proposed development] of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limit specified in that Schedule, and
- (b) F224[proposed development] of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment.]

(1A) In subsection (1)—

(a) ‘proposed development’ means—

(i) a proposal to carry out one of the following:

(I) development to which Part III applies;

(II) development that may be carried out under Part IX;

F223[(III) development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;]

(IV) development on the foreshore under Part XV;

(V) development under section 43 of the Act of 2001;

(VI) development under section 51 of the Roads Act 1993; and

(ii) notwithstanding that development has been carried out, development in relation to which an application for substitute consent is required under Part XA;

(b) ‘consent for proposed development’ means, as appropriate—

- (i) grant of permission;
- (ii) a decision of the Board to grant permission on application or on appeal;
- (iii) consent to development under Part IX;
- F223[(iv) consent to development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;]
- (v) consent to development on the foreshore under Part XV;
- (vi) consent to development under section 43 of the Act of 2001;
- (vii) consent to development under section 51 of the Roads Act 1993; or
- (viii) substitute consent under Part XA.

(1B) An applicant for consent to carry out a proposed development referred to in F223[subsection (1)(a)] shall furnish an environmental impact statement to the planning authority or the Board, as the case may be, in accordance with the permission regulations.

F223[(1C) Where the planning authority or the Board receives an application for consent for proposed development referred to in paragraph (b) of subsection (1) in relation to which the authority or the Board has made a determination referred to in that paragraph, and the application is not accompanied by an environmental impact statement, the planning authority or Board, as the case may be, shall require the applicant to submit an environmental impact statement and where the environmental impact statement is not submitted within the period specified, or any further period as may be specified by the planning authority or the Board, the application for consent for the proposed development shall be deemed to be withdrawn.]]

F225[(1D) The planning authority or the Board, as the case may be, shall consider whether an environmental impact statement submitted under this section identifies and describes adequately the direct and indirect effects on the environment of the proposed development and, where it considers that the environmental impact statement does not identify or adequately describe such effects, the planning authority or the Board shall require the applicant for consent to furnish, within a specified period, such further information as the planning authority or the Board considers necessary to remedy such defect.

(1E) In addition to any requirement arising under subsection (1D), the planning authority or the Board, as the case may be, shall require an applicant for consent to furnish, within a specified period, any further information that the planning authority or the Board considers necessary to enable it to carry out an environmental impact assessment under this section.

(1F) Where information required by the planning authority or the Board under subsection (1D) or subsection (1E) is not furnished by the applicant for consent within the period specified, or any further period as may be specified by the planning authority or the Board, the application for consent for the proposed development shall be deemed to be withdrawn.

(1G) In carrying out an environmental impact assessment under this section the planning authority or the Board, as the case may be, shall consider—

- (a) the environmental impact statement;
- (b) any further information furnished to the planning authority or the Board pursuant to subsections (1D) or (1E);
- (c) any submissions or observations validly made in relation to the environmental effects of the proposed development;



(d) the views, if any, provided by any other Member State under section 174 or Regulations made under that section.

(1H) In carrying out an environmental impact assessment under this section the planning authority or the Board, as the case may be, may have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisers.

(1I) Where the planning authority or the Board, as the case may be, decides to grant consent for the proposed development, it may attach such conditions to the grant as it considers necessary, to avoid, reduce and, if possible, offset the major adverse effects on the environment (if any) of the proposed development.

(1J) When the planning authority or the Board, as the case may be, has decided whether to grant or to refuse consent for the proposed development, it shall inform the applicant for consent and the public of the decision and shall make the following information available to the applicant for consent and the public:

- (a) the content of the decision and any conditions attached thereto;
- (b) an evaluation of the direct and indirect effects of the proposed development on the matters set out in section 171A;
- (c) having examined any submission or observation validly made,
  - (i) the main reasons and considerations on which the decision is based, and
  - (ii) the main reasons and considerations for the attachment of any conditions, including reasons and considerations arising from or related to submissions or observations made by a member of the public;
- (d) where relevant, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects;
- (e) any report referred to in subsection (1H);
- (f) information for the public on the procedures available to review the substantive and procedural legality of the decision, and
- (g) the views, if any, furnished by other Member States of the European Union pursuant to section 174.]

(2) In addition to the matters set out in *section 33(2)*, the Minister may make permission regulations in relation to the submission of planning applications which are to be accompanied by environmental impact statements.

(3) (a) At the request of an applicant or of a person intending to apply for permission, the Board may, having afforded the planning authority concerned an opportunity to furnish observations on the request, and where the Board is satisfied that exceptional circumstances so warrant, grant in respect of a proposed development an exemption from a requirement of or under regulations under this section to prepare an environmental impact statement, except that no exemption may be granted in respect of a proposed development if another Member State of the European Communities or other state party to the Transboundary Convention, having been informed about the proposed development and its likely effects on the environment in that State, has indicated that it intends to furnish views on those effects.

F226[(b) The Board shall, in granting an exemption under paragraph (a), —

- (i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other form, and
- (ii) make available to members of the public the information relating to the exemption decision referred to under paragraph (a), the reasons for

granting such exemption and the information obtained under any other form of assessment referred to in subparagraph (i),

and the Board may apply such requirements regarding these matters in relation to the application for permission as it considers necessary or appropriate.]

(c) The Board shall, as soon as may be, notify the planning authority concerned of the Board's decision on any request made under *paragraph (a)*, and of any requirements applied under *paragraph (b)*.

(d) Notice of any exemption granted under *paragraph (a)*, of the reasons for granting the exemption, and of any requirements applied under *paragraph (b)* shall, as soon as may be—

(i) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State,

(ii) be given, together with a copy of the information, if any, made available to the members of the public in accordance with *paragraph (b)*, to the Commission of the European Communities.

(4) (a) A person who makes a request to the Board for an exemption under *subsection (3)* shall, as soon as may be, inform the planning authority concerned of the making of the request and the date on which it was made.

(b) Notwithstanding *subsection (8)* of *section 34*, the period for making a decision referred to in that subsection shall not, in a case in which a request is made to the Board under *subsection (3)* of this section, include the period beginning on the day of the making of the request and ending on the day of receipt by the planning authority concerned of notice of the Board's decision on the request.

(5) In addition to the matters provided for under *Part VI, Chapter III*, the Minister may prescribe additional requirements in relation to the submission of appeals to the Board which are to be accompanied by environmental impact statements.

#### Annotations

#### Amendments:

**F222** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 54, S.I. No. 405 of 2010.

**F223** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 6.

**F224** Substituted (15.11.2011) by *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011* (S.I. No. 584 of 2011), reg. 5.

**F225** Inserted (31.10.2012) by *European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012* (S.I. No. 419 of 2012), reg. 2(c).

**F226** Substituted (19.12.2006) by *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006* (S.I. No. 659 of 2006), reg. 4, subject to transitional provision in reg. 2.

#### Editorial Notes:

**E146** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E147** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E148** Previous affecting provision: subss. (1)(a) and (b) substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 5; superseded as per F-note above.

**E149** Previous affecting provision: subss. (1A)(a)(i)(III), (b)(iv) and (1B) substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 54, S.I. No. 405 of 2010; substituted as per F-note above.

Permission for development requiring environmental impact assessment.

**173.—(1)** In addition to the requirements of *section 34(3)*, where an application in respect of which an environmental impact statement was submitted to the planning authority in accordance with *section 172*, the planning authority, and the Board on appeal, shall have regard to the statement, any supplementary information furnished relating to the statement and any submissions or observations furnished concerning the effects on the environment of the proposed development.

**F227[(2) (a)]** If an applicant or a person intending to apply for permission so requests, the planning authority concerned shall give a written opinion on the information to be contained in an environmental impact statement, subject to—

- (i) consultation with the Board, and
- (ii) any prescribed consultations,

to be carried out by the planning authority in relation to such an opinion, and the written opinion shall be given before the submission by that person of an application for the grant of planning permission.

(b) The giving of a written opinion in accordance with paragraph (a) shall not prejudice the exercise by the planning authority concerned or the Board of its powers under this Act, or any regulations made thereunder, to require the person who made the request to submit further information regarding the application concerned or, as the case may be, any appeal.

(c) The Minister may, by regulations, provide for additional, incidental, consequential or supplementary matters as regards procedures in respect of the provision of a written opinion under paragraph (a).]

(3) (a) Where a person is required by or under this Act to submit an environmental impact statement to the Board, he or she may, before submitting the statement, request the Board to provide him or her with its opinion as to the information that should be contained in such statement, and the Board shall on receipt of such a request provide such opinion in writing.

(b) The giving of a written opinion in accordance with *paragraph (a)* shall not prejudice the exercise by the Board of its powers pursuant to this Act or any regulations under this Act, to require the applicant to submit specified information in relation to any appeal to which the environmental impact statement relates.

(c) The Minister may make regulations in relation to the making of a request or providing an opinion to which this subsection relates.

#### Annotations

#### Amendments:

**F227** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 32, S.I. No. 684 of 2006.

**Editorial Notes:**

**E150** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E151** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**F228**[Environmental impact assessment and integrated pollution prevention and control licences.

**173A.** (1) In this section—

“Act of 1992” means the Environmental Protection Agency Act 1992;

“activity” shall have the meaning assigned to it by section 3 of the Act of 1992;

“application for a licence” means, in relation to an integrated pollution prevention and control licence under Part IV of the Act of 1992, an application made to the Environmental Protection Agency—

(a) for such a licence under section 83 of the Act of 1992, or

(b) by the licensee under section 90(1)(b) of the Act of 1992 for a review of such a licence or a revised licence;

“application for permission” means—

(a) an application for permission for development under Part III,

(b) an application for approval for development under section 175, 177AE, 181A, 182A, 182C or 226, or

(c) an application for substitute consent under section 177E;

“grant of permission” means—

(a) a grant of permission for development under Part III,

(b) an approval for development under section 175, 177AE, 181B, 182B, 182D or 226, or

(c) a grant of substitute consent under section 177K.

(2) Where a planning authority or the Board is considering an application for permission and is requested by the applicant for a grant of permission to confirm in writing that the development the subject of the application for permission relates to an activity in respect of which an integrated pollution prevention and control licence under Part IV of the Act of 1992 is required, the planning authority or the Board shall, as soon as possible, confirm in writing that the development the subject of the application for permission so relates to the activity.

(3) Where a request is made by an applicant under subsection (2) and the application for permission concerned was not accompanied by an environmental impact statement and the planning authority or the Board did not require the submission of an environmental impact statement, the planning authority or the Board shall on a request in that behalf made to it by the applicant, also provide written confirmation to the applicant that an environmental impact assessment in respect of the development concerned is not required by or under this Act.

(4) Where a grant of permission has been issued for a development comprising or for the purposes of an activity in respect of which an integrated pollution prevention and control licence under Part IV of the Act of 1992 is required and the relevant planning authority or the Board is requested by the Environmental Protection Agency, in connection with an application for a licence, to—

- (a) state whether the activity to which the application for a licence relates is permitted by the grant of permission that has been issued, and
- (b) furnish a copy of all documents relating to the environmental impact assessment carried out in respect of the proposed development, and
- (c) furnish any observations it has in relation to the application for a licence,

the planning authority or the Board shall comply with the request within the period specified in the request by the Environmental Protection Agency.

(5) Where a planning authority or the Board is considering an application for permission in respect of development—

- (a) of a class prescribed by regulations under section 176 that does not exceed a quantity, area or limit prescribed under those regulations,
- (b) in respect of which the planning authority or the Board is obliged under this Act to make a determination whether an environmental impact assessment is required, and
- (c) in respect of which application for permission the planning authority or the Board consider an integrated pollution prevention and control licence under Part IV of the Act of 1992 is required,

the planning authority or the Board shall request observations from the Agency to assist the planning authority or the Board in its deliberations in relation to the determination referred to in paragraph (b) and shall take into account any such observations when making that determination.

(6) Where a person makes an application for permission in respect of development under this Act and has made, intends to make or is considering making an application for an integrated pollution prevention and control licence under Part IV of the Act of 1992 in respect of an activity relating to that development, the person shall so notify the planning authority or the Board when making the application for permission.]

F229[(7) Where a planning authority receives a notification from the Environmental Protection Agency that it has received an application for a licence to which section 87(1I) of the Act of 1992 applies, the planning authority shall—

- (a) within 4 weeks of the date of receipt of the notification from the Environmental Protection Agency, respond to the Agency, forwarding any observations that it has in relation to the application for a licence including any observations on the environmental impact statement, and
- (b) enter into consultations with the Environmental Protection Agency, as the Agency considers appropriate, in relation to any environmental impacts of the proposed activity to which the application for a licence relates.]

**Annotations**

**Amendments:**

**F228** Inserted (30.09.2012) by *European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012* (S.I. No. 282 of 2012), reg. 8.

**F229** Inserted (15.11.2012) by *European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) (No. 2) Regulations 2012* (S.I. No. 457 of 2012), reg. 6.

F230[Environmental impact assessment and waste licences.

**173B.** (1) In this section—

“Act of 1996” means the Waste Management Act 1996;

“activity” shall be construed in accordance with section 4 of the Act of 1996;

“application for a licence” means, in relation to a waste licence under Part V of the Act of 1996, an application made to the Environmental Protection Agency—

(a) for such a licence under section 40 of the Act of 1996, or

(b) by the holder of the licence, for a review of a waste licence under section 46 of the Act of 1996;

“application for permission” means—

(a) an application for permission for development under Part III,

(b) an application for approval for development under section 175, 177AE, 181A, 182A, 182C or 226, or

(c) an application for substitute consent under section 177E;

“grant of permission” means—

(a) a grant of permission for development under Part III,

(b) an approval for development under section 175, 177AE, 181B, 182B, 182D or 226, or

(c) a grant of substitute consent under section 177K.

(2) Where a planning authority or the Board is considering an application for permission and is requested by the applicant for a grant of permission to confirm in writing that the development the subject of the application for permission relates to an activity in respect of which a waste licence under Part V of the Act of 1996 is required, the planning authority or the Board shall, as soon as possible, confirm in writing that the development the subject of the application for permission so relates to the activity.

(3) Where a request is made by an applicant under subsection (2) and the application for permission concerned was not accompanied by an environmental impact statement and the planning authority or the Board did not require the submission of an environmental impact statement, the planning authority or the Board shall on a request in that behalf made to it by the applicant, also provide written confirmation to the applicant that an environmental impact assessment in respect of the development concerned is not required by or under this Act.

(4) Where a grant of permission has been issued for a development comprising or for the purposes of an activity in respect of which a waste licence under Part V of the Act of 1996 is required and the relevant planning authority or the Board is requested by the Environmental Protection Agency, in connection with an application for a licence, to—

(a) state whether the activity to which the application for a licence relates is permitted by the grant of permission that has been issued, and

(b) furnish a copy of all documents relating to the environmental impact assessment carried out in respect of the proposed development, and

(c) furnish any observations it has in relation to the application for a licence,

the planning authority or the Board shall comply with the request within the period specified in the request by the Environmental Protection Agency.

(5) Where a planning authority or the Board is considering an application for permission in respect of development—

- (a) of a class prescribed by regulations under section 176 that does not exceed a quantity, area or limit prescribed under those regulations,
- (b) in respect of which the planning authority or the Board is obliged under this Act to make a determination whether an environmental impact assessment is required, and
- (c) in respect of which application for permission the planning authority or the Board consider a waste licence under Part V of the Act of 1996 is required,

the planning authority or the Board shall request observations from the Agency to assist the planning authority or the Board in its deliberations in relation to the determination referred to in paragraph (b) and shall take into account any such observations when making that determination.

(6) Where a person makes an application for permission in respect of development under this Act and has made, intends to make or is considering making an application for a waste licence under Part V of the Act of 1996 in respect of an activity relating to that development, the person shall so notify the planning authority or the Board when making the application for permission.]

#### Annotations

#### Amendments:

**F230** Inserted (30.09.2012) by *European Union (Environmental Impact Assessment) (Waste) Regulations 2012* (S.I. No. 283 of 2012), reg. 10.

Transboundary  
environmental  
impacts.

**174.—**(1) (a) The Minister may make regulations in respect of applications for development which require the submission of an environmental impact statement, where the planning authority F231[, or the Board in dealing with any application or appeal,] is aware that the development is likely to have significant effects on the environment in another Member State of the European Communities or a state which is a party to the Transboundary Convention or where the other State concerned considers that the development would be likely to have such effects.

(b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision for the following:

- (i) the notification of the Minister regarding the application;
- (ii) the submission of information to the Minister regarding the application;
- (iii) the notification of the other State involved and the provision of information to that State;
- (iv) the making of observations and submissions regarding the application from the other State involved and the entering into consultations with that State;

(v) the extension of time limits for the making of decisions under this Act.

(2) In addition to the requirements of F231[sections 34(3), 37G(2), 146C(6), 173(1), 181B(1), 182B(1) and 182D(1)], the planning authority or the Board, as the case may be, shall have regard, where appropriate, to the views of any Member State of the European Communities or other party to the Transboundary Convention in relation to the effects on the environment of the proposed development.

(3) Notwithstanding any other provisions of this Act, a planning authority or the Board, as the case may be, may, following the consideration of any submissions or observations received or any consultations entered into by a planning authority or the Board, impose conditions on a F231[grant of permission or approval] in order to reduce or eliminate potential transboundary effects of any proposed development.

F232[(4) In any case where -

(a) notification has been received from another Member State of the European Communities or other party to the Transboundary Convention, in respect of any development, or

(b) a planning authority or a State authority requests, or in any other case where the Minister otherwise decides,

the Minister may request another Member State of the European Communities or other party to the Transboundary Convention to forward information in respect of any development F233[which is subject to the Environmental Impact Assessment Directive or Transboundary Convention] and which is likely to have significant environmental effects in Ireland.]

(5) (a) The Minister or a State authority or planning authority having consulted with the Minister, may decide to forward submissions or observations to, or enter into discussions with, the other state involved in respect of the development referred to in *subsection (4)* regarding the potential transboundary effects of that development and the measures envisaged to reduce or eliminate those effects.

(b) The Minister may make regulations regarding the provision of public notification of any environmental impact statement or other information received by the Minister, State authority or planning authority under *subsection (4)*, and the making of submissions or observations regarding the information.

(6) The Minister may enter into an agreement with any other Member State of the European Communities or other party to the Transboundary Convention regarding the detailed procedures to be followed in respect of consultations regarding proposed developments which are likely to have significant transboundary effects.

#### Annotations

#### Amendments:

**F231** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 33, S.I. No. 684 of 2006.

**F232** Substituted (19.12.2006) by *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006* (S.I. No. 659 of 2006), reg. 5, subject to transitional provision in reg. 2.

**F233** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 55, S.I. No. 405 of 2010.

#### Editorial Notes:

**E152** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E153** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E154** Previous affecting provision: amendments to subs. (4) made (19.12.2006) by *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006* (S.I. No. 659 of 2006), reg. 5; substituted as per F-note above.



Environmental impact assessment of certain development carried out by or on behalf of local authorities.

**175.—(1)** Where development belonging to a class of development, identified for the purposes of *section 176*, is proposed to be carried out—

(a) by a local authority that is a planning authority, whether in its capacity as a planning authority or in any other capacity, or

(b) by some other person on behalf of, or jointly or in partnership with, such a local authority, pursuant to a contract entered into by that local authority whether in its capacity as a planning authority or in any other capacity,

within the functional area of the local authority concerned (hereafter in this section referred to as “proposed development”), the local authority shall prepare, or cause to be prepared, an environmental impact statement in respect thereof.

(2) Proposed development in respect of which an environmental impact statement has been prepared in accordance with *subsection (1)* shall not be carried out unless the Board has approved it with or without modifications.

(3) Where an environmental impact statement has been prepared pursuant to *subsection (1)*, the local authority shall apply to the Board for approval.

(4) Before a local authority makes an application for approval under *subsection (3)*, it shall—

(a) publish in one or more newspapers circulating in the area in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) an environmental impact statement has been prepared in respect of the proposed development,

F234[(III) it is notifying a Member State of the European Communities or any other party to the Transboundary Convention of its opinion that the proposed development to which the application for approval to An Bord Pleanála relates would be likely to have significant effects on the environment in that State,

(IV) the Board may give approval to the application for development with or without conditions or may refuse the application for development.]

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the environmental impact statement may be inspected free of charge or purchased, and

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area concerned, and

(II) the likely effects on the environment of the proposed development, if carried out,

F235[(iv) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986)

(v) stating where practical information on the review mechanism can be found.]

and

(b) send a copy of the application and the environmental impact statement to the prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in *paragraph (a)(ii)*, be made in writing to the Board in relation to—

(i) the likely effects on the environment of the proposed development, and

(ii) the implications of the proposed development for proper planning and sustainable development in the area concerned,

if carried out.

F236[(5) (a) The Board may—

(i) if it considers it necessary to do so, require a local authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to—

(I) the effects on the environment of the proposed development, or

(II) the consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development,

as the Board may specify, or

(ii) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this subparagraph) to be made to the terms of it, notify the local authority that it is of that view and invite the authority to make to the terms of the proposed development alterations specified in the notification and, if the authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

(b) If a local authority makes the alterations to the terms of the proposed development specified in a notification given to it under paragraph (a), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section.

(c) The Board shall—

(i) where it considers that any further information received pursuant to a requirement made under paragraph (a)(i) contains significant additional data relating to—

(I) the likely effects on the environment of the proposed development, and

(II) the likely consequences for the proper planning and sustainable development in the area in which it is proposed to situate the said development of such development,

or

(ii) where the local authority has made the alterations to the terms of the proposed development specified in a notification given to it under paragraph (a)(ii),

require the local authority to do the things referred to in paragraph (d).

(d) The things which a local authority shall be required to do as aforesaid are—

(i) to publish in one or more newspapers circulating in the area in which the proposed development would be situate a notice stating that, as appropriate—

(I) further information in relation to the proposed development has been furnished to the Board, or

(II) the local authority has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a revised environmental impact statement in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement referred to in clause (I) or (II) may be inspected free of charge or purchased and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(ii) to send to each prescribed authority to which notice was given pursuant to subsection (4)(b)—

(I) a notice of the furnishing to the Board of, as appropriate, the further information referred to in subparagraph (i)(I) or the information or statement referred to in subparagraph (i)(II), and

(II) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall not be less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the local authority.]

(6) Before making a decision in respect of a proposed development under this section, the Board shall consider—

(a) F236[the environmental impact statement submitted pursuant to subsection (1) or (5)(a)(ii), any submission or observations made in accordance with subsection (4) or (5)] and any other information furnished in accordance with subsection (5) relating to—

(i) the likely effects on the environment of the proposed development, and

(ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development,

(b) the views of any other Member State of the European Communities or a state which is a party to the Transboundary Convention to which a copy of the environmental impact statement was sent, and

(c) the report and any recommendations of the person conducting a hearing referred to in subsection (7) where evidence is heard at such a hearing relating to—

(i) the likely effects on the environment of the proposed development, and

(ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development.

(7) The person conducting an oral hearing in relation to the compulsory purchase of land which relates wholly or partly to a proposed development under this section in respect of which a local authority has applied for approval shall be entitled to hear evidence relating to—

- (a) the likely effects on the environment of the proposed development, and
- (b) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development.

(8) (a) The Board may where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under *subsection (1)* to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a State party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that State of the proposed development.

F237[(b) The Board shall, in granting an exemption under paragraph (a), —

- (i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other form, and
- (ii) make available to members of the public the information relating to the exemption decision referred to under paragraph (a), the reasons for granting such exemption and the information obtained under any other form of assessment referred to in subparagraph (i),

and the Board may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.]

(c) Notice of any exemption granted under *paragraph (a)* of the reasons for granting the exemption, and of any requirements applied under *paragraph (b)* shall, as soon as may be—

- (i) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (ii) be given, together with a copy of the information, if any, made available to the members of the public in accordance with *paragraph (b)*, to the Commission of the European Communities.

F236[(9) (a) The Board may, in respect of an application for approval under this section of proposed development—

- (i) approve the proposed development,
- (ii) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (iii) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (iv) refuse to approve the proposed development,

and may attach to an approval under subparagraph (i), (ii) or (iii) such conditions as it considers appropriate.

(b) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under paragraph (a)(i), (ii) or (iii) a condition requiring—

- (i) the construction or the financing, in whole or in part, of the construction of a facility, or
  - (ii) the provision or the financing, in whole or in part, of the provision of a service,
- in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.
- (c) A condition attached pursuant to paragraph (b) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval operates of the benefits likely to accrue from the grant of the approval.
- (9A) (a) The Board shall direct the payment of such sum as it considers reasonable by the local authority concerned to the Board towards the costs and expenses incurred by the Board in determining an application under this section for approval of a proposed development, including—
- (i) the costs of holding any oral hearing in relation to the application,
  - (ii) the fees of any consultants or advisers engaged in the matter, and
  - (iii) an amount equal to such portion of the remuneration and any allowances for expenses paid to the members and employees of the Board as the Board determines to be attributable to the performance of duties by the members and employees in relation to the application,
- and the local authority shall pay the sum.
- (b) If a local authority fails to pay a sum directed to be paid under paragraph (a), the Board may recover the sum from the authority as a simple contract debt in any court of competent jurisdiction.]
- (10) (a) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board shall not, where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of—
- (i) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or
  - (ii) controlling emissions related to or following the cessation of the operation of the activity.
- (b) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may, in respect of any proposed development comprising or for the purposes of the activity, decide to refuse the proposed development, where the Board considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development is or will be situated.
- (c) (i) Before making a decision in respect of proposed development comprising or for the purposes of an activity, the Board may request the Environmental Protection Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development.

- (ii) When making its decision the Board shall have regard to the observations, if any, received from the Agency within the period specified under *subparagraph (i)*.
- (d) The Board may, at any time after the expiration of the period specified by the Board under *paragraph (c)(i)* for making observations, make its decision on the application.
- (e) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under F238[the Environmental Protection Agency Act, 1992].
- (11) (a) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for approval under this section.
- (b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision for—
- (i) enabling a local authority to request the Board to give a written opinion on the information to be contained in an environmental impact statement,
- (ii) matters of procedure relating to the making of observations by the Environmental Protection Agency under this section and matters connected therewith,
- (iii) the notification of another Member State of the European Communities or other parties to the Transboundary Convention in relation to proposed development, receiving observations and submissions from the State or party and entering into consultations with them, and
- (iv) requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.
- (12) In considering under *subsection (6)* information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—
- (a) the provisions of the development plan for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of *section 10(2)(c)*, that fact,
- (d) where relevant, the policies of the Government, the Minister or any other Minister of the Government, and
- (e) the provisions of this Act and regulations under this Act where relevant.
- (13) A person who contravenes a condition imposed by the Board under this section shall be guilty of an offence.
- (14) This section shall not apply to proposed road development within the meaning of the Roads Act, 1993, by or on behalf of a road authority.

**Annotations****Amendments:**

**F234** Inserted (19.12.2006) by *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006* (S.I. No. 659 of 2006), reg. 6(1), subject to transitional provision in reg. 2.

- F235** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(c).
- F236** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 34, S.I. No. 684 of 2006.
- F237** Substituted (19.12.2006) by *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006* (S.I. No. 659 of 2006), reg. 6(2), subject to transitional provision in reg. 2.
- F238** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(g), S.I. No. 458 of 2001.

**Modifications (not altering text):**

- C47** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), regs. 41(1) and 43(1).

**Limitation of Act of 2000**

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

- (a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or
- (b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

**Consideration of proposals by planning authorities and An Bord Pleanála**

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

- C48** Application of subs. (3) restricted (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), reg. 22.

**Matters in an environmental impact statement to which the Agency shall have regard**

22. The Agency shall have regard to the matters mentioned in an environmental impact statement in respect of a development and in the decision of An Bord Pleanála on an application under section 175(3) of the Act of 2000 for approval of such development only in so far as they relate to the risk of environmental pollution of the receiving waters from the waste water discharge concerned.

- C49** Provision for consideration of waste management under section made by *Waste Management Act 1996* (10/1996), s. 22(10D) as inserted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 26(2)(d), S.I. No. 393 of 2004.

**Waste management plans.**

22.— ...

(10D) (a) In performing their functions under the Planning and Development Acts 2000 to 2002, and, in particular, their functions under Part III and sections 175 and 179 of the Planning and Development Act 2000, planning authorities and An Bord Pleanála shall ensure that such measures as are reasonably necessary are taken to secure appropriate provision for the management of waste (and, in particular, recyclable materials) within developments, including the provision of facilities for the storage, separation and collection of such waste (and, in particular, such materials) and the preparation by the appropriate persons of suitable plans for the operation of such facilities.

(b) The Minister may issue guidelines as to the steps that may be taken to comply with this subsection.

**Editorial Notes:**

**E155** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E156** Power pursuant to section exercised (21.12.2006, 31.01.2007 and 31.03.2007) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E157** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Prescribed classes of development requiring assessment.

**176.—F239**[The Minister shall, for the purpose of giving effect to the Environmental Impact Assessment Directive, make regulations—]

(a) identifying development which may have significant effects on the environment, and

(b) specifying the manner in which the likelihood that such development would have significant effects on the environment is to be determined.

(2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide for all or any one or more of the following matters:

(a) the establishment of thresholds or criteria for the purpose of determining which classes of development are likely to have significant effects on the environment;

(b) the establishment of different such thresholds or criteria in respect of different classes of areas;

(c) the determination on a case-by-case basis, in conjunction with the use of thresholds or criteria, of the developments which are likely to have significant effects on the environment;

(d) where thresholds or criteria are not established, the determination on a case-by-case basis of the developments which are likely to have significant effects on the environment;

(e) the identification of selection criteria in relation to—

(i) the establishment of thresholds or criteria for the purpose of determining which classes of development are likely to have significant effects on the environment, or

(ii) the determination on a case-by-case basis of the developments which are likely to have significant effects on the environment.

(3) Any reference in an enactment to development of a class specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations,



1989 (S.I. No. 349 of 1989), shall be deemed to be a reference to a class of development prescribed under this section.

#### Annotations

#### Amendments:

**F239** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 56, S.I. No. 405 of 2010.

#### Editorial Notes:

**E158** Power pursuant to section exercised (8.09.2011) by *Planning and Development (Amendment) (No. 2) Regulations 2011* (S.I. No. 454 of 2011).

**E159** Power pursuant to section exercised (14.07.2005) by *Planning and Development Regulations 2005* (S.I. No. 364 of 2005).

**E160** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Prescribed information regarding environmental impact statements.

**177.—(1)** The Minister may prescribe the information that is to be contained in an environmental impact statement.

(2) Any reference in an enactment to the information to be contained in an environmental impact statement specified under Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, shall be deemed to be a reference to information prescribed under this section.

#### Annotations

#### Editorial Notes:

**E161** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

## F240[PART XA

### SUBSTITUTE CONSENT

Interpretation.

**177A.— (1)** In this Part—

‘exceptional circumstances’ shall be construed in accordance with section 177D(2);

‘remedial environmental impact statement’ shall be construed in accordance with section 177F;

‘remedial Natura impact statement’ shall be construed in accordance with section 177G;

‘substitute consent’ means substitute consent granted under section 177K.

(2) Subject to this Part, a word or expression that is used in the Part and that is also used in the Birds Directive or the Habitats Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Birds Directive or the Habitats Directive.]

**Annotations**

**Amendments:**

**F240** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F241**[Application to apply for substitute consent where notice served by planning authority.

**177B.**— (1) Where a planning authority becomes aware in relation to a development in its administrative area for which permission was granted by the planning authority or the Board, and for which—

- (a) an environmental impact assessment,
- (b) a determination in relation to whether an environmental impact assessment is required, or
- (c) an appropriate assessment,

was or is required, that a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union has been made that the permission was in breach of law, invalid or otherwise defective in a material respect because of—

- (i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or
- (ii) any error of fact or law or procedural error,

it shall give a notice in writing to the person who carried out the development or the owner or occupier of the land as appropriate.

(2) The notice referred to in subsection (1) shall—

- (a) inform the person to whom it is given of the proceedings and findings referred to in subsection (1),
- (b) direct the person concerned to apply to the Board for substitute consent no later than 12 weeks from the date of the notice,
- (c) direct the person concerned to furnish with his or her application a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be,
- (d) advise the person concerned that he or she may make submissions or observations in writing to the planning authority no later than 4 weeks from the date of the notice.

(3) Not later than 8 weeks after the giving of the notice under subsection (1) the planning authority shall—

- (a) where no submissions or observations are made to the authority under subsection (2)(d), **F242**[confirm or amend the notice], or
- (b) where submissions or observations are made to it **F242**[under subsection (2)(d), confirm, amend or withdraw the notice].

(4) **F243**[...]

(5) The planning authority shall notify in writing the person to whom the notice under subsection (1) was given of F242[the withdrawal, amendment or confirmation of] the notice and the reasons therefor.

(6) F242[(a) Where the decision of the planning authority is to confirm or amend the notice under subsection (3)(a), the notification referred to in subsection (5) shall also contain—

(i) in a case where the notice is confirmed or amended under subsection (3)(a), a direction to apply for substitute consent not later than 12 weeks after the giving of the notification under subsection (2), or

(ii) at the discretion of the planning authority, and only in a case where the notice is amended under subsection (3)(a), a direction to apply for substitute consent not later than 12 weeks after the giving of the notification under subsection (5).]

(b) Where the decision of the planning authority is to confirm F244[or amend] the notice under subsection (3)(b), the notification referred to in subsection (5) shall also contain a direction to apply for substitute consent not later than 12 weeks after the giving of the notification under subsection (5).

(7) The planning authority shall send a copy of a notice given under subsection (2) or (5) to the Board.

(8) Details of the F242[confirmation, amendment] or withdrawal of the notice by the planning authority shall be entered by the authority in the register.

(9) For the purposes of this section and section 177C, a judgment shall be deemed to be a final judgment where—

(a) the time within which an appeal against the judgment may be brought has expired and no such appeal has been brought,

(b) there is no provision for appeal against such judgment, or

(c) an appeal against the judgment has been withdrawn.]

#### Annotations

#### Amendments:

**F241** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F242** Substituted (24.11.2011) by *European Union (Substitute Consent) Regulations 2011* (S.I. No. 609 of 2011), reg. 3(1)(a), (c), (d)(i) and (e), with transitional provision in reg. 3(2).

**F243** Deleted (24.11.2011) by *European Union (Substitute Consent) Regulations 2011* (S.I. No. 609 of 2011), reg. 3(1)(b), with transitional provision in reg. 3(2).

**F244** Inserted (24.11.2011) by *European Union (Substitute Consent) Regulations 2011* (S.I. No. 609 of 2011), reg. 3(1)(d)(ii), with transitional provision in reg. 3(2).

**F245**[Application for leave to apply for substitute consent where notice not served by planning authority.

**177C.**— (1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.

(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact

assessment is required, or an appropriate assessment, was or is required, and in respect of which—

(a) the applicant considers that a permission granted for the development by a planning authority or the Board may be in breach of law, invalid or otherwise defective in a material respect, whether pursuant to a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or a procedural error,

or

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

(3) An applicant for leave to apply for substitute consent under subsection (1) shall furnish the following to the Board:

(a) any documents that he or she considers are relevant to support his or her application;

(b) any additional information or documentation that may be requested by the Board, within the period specified in such a request.

(4) Where an applicant for leave to apply for substitute consent under subsection (1) fails to furnish additional information or documentation within the period specified in a request under subsection (3)(b), or such additional period as the Board may allow, the application shall be deemed to have been withdrawn by the applicant.

(5) The Board may seek information and documents as it sees fit from the planning authority for the administrative area in which the development the subject of the application under this section is situated, including information and documents in relation to a permission referred to in subsection (2)(a) and in relation to any other development that may have been carried out by the applicant and the planning authority shall furnish the information not later than 6 weeks after the information is sought by the Board.]

#### Annotations

#### Amendments:

**F245** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F246** [Decision of Board on whether to grant leave to apply for substitute consent.

**177D.**— (1) The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—

(a) that a permission granted for development by a planning authority or the Board is in breach of law, invalid or otherwise defective in a material respect whether by reason of a final judgment of a court of competent jurisdiction

in the State or the Court of Justice of the European Union, or otherwise, by reason of—

(i) any matter contained in or omitted from the application for the permission including omission of an environmental impact statement or a Natura impact statement or both of those statements as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

(ii) any error of fact or law or procedural error,

or

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.

(3) In deciding whether it is prepared to grant leave to apply for substitute consent under this section the Board shall have regard to any information furnished by the applicant under section 177C(3) and any information furnished by the planning authority under section 177C(5).

(4) The Board shall decide whether to grant leave to apply for substitute consent or to refuse to grant such leave.

(5) The decision of the Board under subsection (4) shall be made—

(a) 6 weeks after the receipt of an application under section 177C(1),

(b) 6 weeks after receipt of additional information from the applicant under section 177C(3)(b), or

(c) 6 weeks after receipt of information from the planning authority under section 177C(5),

whichever is the later.

(6) The Board shall give notice in writing to the applicant of its decision on the application for leave to apply for substitute consent and of the reasons therefor.

(7) Where the Board decides to grant leave to apply for substitute consent, the notice under subsection (6) shall also contain a direction—

(a) to apply for substitute consent not later than 12 weeks after the giving of the notice, and

(b) to furnish with the application a remedial environmental impact statement or a remedial Natura impact statement, or both of those statements as the Board considers appropriate.

(8) The Board shall give a copy of the notice of its decision under subsection (6) and direction under subsection (7) to the planning authority for the administrative area in which the development the subject of the application for leave to apply for substitute consent is situated and details of the decision and direction shall be entered by the authority in the register.]

**Annotations**

**Amendments:**

**F246** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F247**[Application for substitute consent.

**177E.**— (1) An application for substitute consent shall be made to the Board.

**F248**[(1A) The Board, at its own discretion and at the request of a person who has been given a notice by a planning authority under section 177B or who has received leave to apply for substitute consent under section 177D, may enter into consultations with the person before that person makes an application for substitute consent.]

(2) An application to the Board for substitute consent shall—

(a) be made pursuant to a notice given under section 177B or 261A or a decision to grant leave to apply for substitute consent under section 177D,

(b) state the name of the person making the application,

(c) in accordance with a direction of the planning authority under section 177B(2), **F249**[section 261A(3)(c), section 261A(10) or section 261A(12),] shall be accompanied by a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be,

(d) in accordance with a direction of the Board under section 177D(7), shall be accompanied by a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be,

(e) be accompanied by the fee payable in accordance with section 177M,

(f) comply with any requirements prescribed under section 177N, and

(g) be received by the Board within the period specified in section 177B, 177D or 261A, as appropriate.

(3) An application for substitute consent which does not comply with the requirements of subsection (2) shall be invalid **F248**[unless the Board considers that the matter may be remedied by the submission of further information by the applicant and such further information sought by the Board is submitted by the applicant within the period specified by the Board].

(4) The Board may at its own discretion, on request extend the period specified in section 177B, 177D or 261A, for the making of an application for substitute consent, by such further period as it considers appropriate.

(5) As soon as may be after receipt of an application for substitute consent under this section, which is not invalid, the Board shall send a copy of the application and all associated documentation, including the remedial environmental impact statement, or the remedial Natura impact statement, or both of those statements, as the case may be, to the planning authority for the area in which the development the subject of the application is situated and such documentation shall be placed on the register.]

#### Annotations

##### Amendments:

**F247** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F248** Inserted (24.11.2011) by *European Union (Substitute Consent) Regulations 2011* (S.I. No. 609 of 2011), reg. 4.

**F249** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 7.

F250 [Remedial environmental impact statement.

**177F.—** (1) A remedial environmental impact statement shall contain the following:

(a) a statement of the significant effects, if any, on the environment, which have occurred or which are occurring or which can reasonably be expected to occur because the development the subject of the application for substitute consent was carried out;

(b) details of—

(i) any appropriate remedial measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy any significant adverse effects on the environment;

(ii) the period of time within which any proposed remedial measures shall be carried out by or on behalf of the applicant;

(c) such information as may be prescribed under section 177N.

(2) (a) Before an applicant makes an application for substitute consent, he or she may request the Board to give to him or her an opinion in writing prepared by the Board on the information required to be contained in the remedial environmental impact statement in relation to the development the subject of the application and the Board shall, as soon as may be, comply with that request.

(b) An applicant shall, in connection with a request under paragraph (a), forward to the Board sufficient information in relation to the development the subject of the application for substitute consent to enable the Board to comply with that request, and shall forward any additional information requested by the Board.

(c) The provision of an opinion under this subsection shall not prejudice the performance by the Board of any of its functions under this Act or regulations under this Act and cannot be relied upon in the application for substitute consent or in any legal proceedings.]

**Annotations**

**Amendments:**

**F250** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F251**[Remedial  
Natura impact  
statement.

**177G.**— (1) A remedial Natura impact statement shall contain the following:

- (a) a statement of the significant effects, if any, on the relevant European site which have occurred or which are occurring or which can reasonably be expected to occur because the development the subject of the application for substitute consent was carried out;
- (b) details of—
  - (i) any appropriate remedial or mitigation measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy or mitigate any significant effects on the environment or on the European site;
  - (ii) the period of time within which any such proposed remedial or mitigation measures shall be carried out by or on behalf of the applicant;
- (c) such information as may be prescribed under section 177N;
- (d) and may have appended to it, where relevant, and where the applicant may wish to rely upon same:
  - (i) a statement of imperative reasons of overriding public interest;
  - (ii) any compensatory measures being proposed by the applicant.]

**Annotations**

**Amendments:**

**F251** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F252**[Submis-  
sions or observa-  
tions by person  
other than the  
applicant for  
substitute  
consent or plan-  
ning authority.

**177H.**— (1) Any person other than the applicant for substitute consent or a planning authority may make submissions or observations in writing to the Board in relation to an application for substitute consent.

(2) Submissions or observations that are made under this section shall not be considered by the Board if the person who submits them has not complied with any relevant requirements prescribed by regulations under section 177N.

(3) Subsection (2) shall not apply in relation to submissions or observations made by a Member State or another state which is a party to the Transboundary Convention, arising from consultation in accordance with the Environmental Impact Assessment Directive or the Transboundary Convention, as the case may be, in relation to the effects on the environment of the development to which an application for substitute consent relates.]



**Annotations**

**Amendments:**

**F252** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

F253 [Report of planning authority.

**177I.**— (1) No later than 10 weeks after receipt, under section 177E(5), by a planning authority of a copy of an application for substitute consent and a remedial environmental impact statement or a remedial Natura impact statement or both of those statements, as the case may be, a planning authority shall submit a report to the Board and the Board shall consider the report.

(2) The report referred to in subsection (1) shall include the following:

- (a) information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site where the development the subject of the application for consent is situated, and any application for permission made in relation to the site and the outcome of the application;
- (b) information relating to any warning letter, enforcement notice or proceedings relating to offences under this Act that relate to the applicant for substitute consent;
- (c) information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned;
- (d) any information that the authority may have concerning—
  - (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place and, if relevant, the area surrounding or near the development or site, or
  - (ii) any remedial measures recommended or undertaken;
- (e) the opinion, including reasons therefor, of the manager as to—
  - (i) whether or not substitute consent should be granted for the development, and
  - (ii) the conditions, if any, that should be attached to any grant of substitute consent.]

**Annotations**

**Amendments:**

**F253** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

F254 [Draft direction and direction to cease activity or operations.

**177J.**— (1) Where the Board has received an application for substitute consent made in accordance with section 177E and is considering that application, it may give a draft direction in writing to the person who made the application requiring the person to cease within the period specified in the draft direction, all or part of his or her activity or operations on or at the site of the development the subject of the application, where the Board forms the opinion that the continuation of all or part

of the activity or operations is likely to cause significant adverse effects on the environment or adverse effects on the integrity of a European site.

(2) The draft direction referred to in subsection (1) shall inform the applicant of the Board's reasons for its opinion that the continuation of all or part of the activity or operations is likely to cause significant adverse effects on the environment or adverse effects on the integrity of a European site.

(3) The person to whom the draft direction is given may make a submission or observation to the Board in relation to the draft direction within 2 weeks of receipt of the draft direction.

(4) The Board shall consider any submission or observation submitted to it under subsection (3) and may do one of the following:

- (a) give a direction to the applicant for substitute consent confirming the draft direction;
- (b) give a direction to the applicant varying the draft direction;
- (c) withdraw the draft direction,

and shall send a copy of the direction to the relevant planning authority, or inform the authority of its decision to withdraw the draft direction, as the case may be.

(5) A person who fails to comply with a direction given by the Board under subsection (4), within the time specified in the direction shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €12,600,000 or to imprisonment for a term not exceeding 2 years, or to both.

(6) Where a person is convicted of an offence referred to in subsection (5) and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on summary conviction, to a fine not exceeding €500 for each day on which the offence is so continued or to imprisonment for a term not exceeding 6 months, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 6 months, or
- (b) on conviction on indictment, to a fine not exceeding €12,600 for each day on which the offence is so continued, or to imprisonment for a term not exceeding 2 years, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 2 years.]

**Annotations**

**Amendments:**

**F254** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

F255[Decision of Board.

**177K.—** (1) Where an application is made to the Board for substitute consent in accordance with relevant provisions of the Act and any regulations made thereunder the Board may decide to grant the substitute consent, subject to or without conditions, or to refuse it.

(2) When making its decision in relation to an application for substitute consent, the Board shall consider the proper planning and sustainable development of the area, regard being had to the following matters:

- (a) the provisions of the development plan or any local area plan for the area;
- (b) the provisions of any special amenity area order relating to the area;
- (c) the remedial environmental impact statement, or remedial Natura impact statement, or both of those statements, as the case may be, submitted with the application;
- (d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out;
- (e) the report and the opinion of the planning authority under section 177I;
- (f) any submissions or observations made in accordance with regulations made under section 177N;
- (g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board;
- (h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact;
- (i) conditions that may be imposed in relation to a grant of permission under section 34(4);
- (j) the matters referred to in section 143;
- (k) the views of a Member State where the Member State is notified in accordance with regulations under this Act;
- (l) any relevant provisions of this Act and regulations made thereunder.

(3) The conditions referred to in subsection (1) may include—

- (a) one or more than one condition referred to in section 34(4),
- (b) a condition or conditions relating to remediation of all or part of the site on which the development the subject of the grant of substitute consent is situated,
- (c) a condition or conditions requiring a financial contribution in accordance with section 48, or
- (d) a condition or conditions requiring a financial contribution in accordance with a supplementary development contribution scheme under section 49.

(4) The Board shall send a notification of its decision under subsection (1) to the applicant, and such notification shall state—

- (a) the main reasons for and considerations on which the decision is made, and
- (b) where conditions are imposed in relation to the grant of substitute consent the main reasons for the imposition of any such conditions.

(5) The Board shall also send a copy of its decision under subsection (1) to the planning authority in whose area the development the subject of the application for substitute consent is situated and to any person who made submissions or observations in relation to the application.

(6) For the avoidance of doubt, there shall be no right to compensation under Part XII in respect of any of the following:

- (a) a decision by the Board under section 177D to refuse to grant leave to apply for substitute consent;
- (b) a direction of the Board to cease all or part of an activity or operations under section 177J;
- (c) a decision of the Board under this section to refuse an application for substitute consent under this section;
- (d) a decision of the Board under this section to grant substitute consent subject to one or more than one condition;
- (e) a direction of the Board to cease activity or operations or to take remedial measures under section 177L.]

**Annotations**

**Amendments:**

**F255** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F256** [Direction by Board to cease activity or operations or take remedial measures.

**177L.**— (1) Where the Board refuses an application for leave to apply for substitute consent under section 177D, or refuses to grant substitute consent under section 177K, it may give a draft direction in writing to the applicant concerned requiring him or her—

- (a) to cease within the period specified in the draft direction, all or part of his or her activity or operations on or at the site of the development the subject of the application, where the Board forms the opinion that the continuation of all or part of the activity or operations is likely to cause significant adverse effects on the environment or adverse effects on the integrity of a European site, or
- (b) to take such remedial measures, within the period specified in the draft direction, as the Board considers are necessary for either or both of the following:
  - (i) to restore the site on or at which the development referred to in the application is situated, to a safe and environmentally sustainable condition;
  - (ii) to avoid, in a European site the deterioration of natural habitats and the habitats of species or the disturbance of the species for which the site has been designated, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive.

(2) A draft direction referred to in subsection (1) shall give the reasons the Board considers that the specified measures are necessary and shall inform the person to whom the direction is sent that he or she may make submissions or observations to the Board in relation to the notice within 4 weeks of the date of the notice.

(3) Where the Board gives a draft direction to a person under subsection (1) it shall at the same time send a copy of the direction to the relevant planning authority and

shall inform the planning authority that it may make submissions or observations to the Board in relation to the direction within 4 weeks of the date of the notice.

(4) In relation to the remedial measures that may be specified a draft direction issued under subsection (1) shall direct the person to whom the direction is given—

- (a) to take the remedial measures specified in the draft direction,
- (b) to keep records of the remedial measures being carried out in accordance with the draft direction,
- (c) to carry out the remedial measures in such order, specified in the draft direction, as the Board considers appropriate,
- (d) to comply with any requirements relating to monitoring and inspection, by the relevant planning authority, of the remedial measures specified in the draft direction,
- (e) to carry out the remedial measures within the period of time specified in the draft direction.

(5) The Board shall consider any submissions or observations in relation to the draft direction made to it, within 4 weeks of the date of the draft direction by the person to whom the direction was issued or the relevant planning authority and shall, as soon as may be—

- (a) issue a direction to the applicant confirming the draft direction, or
- (b) issue a direction to the applicant varying the draft direction, or
- (c) withdraw the draft direction,

and shall send a copy of the direction to the relevant planning authority, or inform the authority of its decision to withdraw the draft direction, as the case may be.

(6) A person who fails to comply with a direction issued by the Board under subsection (4) within the period specified in the direction shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €12,600,000 or to imprisonment for a term not exceeding 2 years.

(7) Where a person is convicted of an offence referred to in subsection (6) and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on summary conviction, to a fine not exceeding €500 for each day on which the offence is so continued or to imprisonment for a term not exceeding 6 months, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 6 months, or
- (b) on conviction on indictment, to a fine not exceeding €12,600 for each day on which the offence is so continued, or to imprisonment for a term not exceeding 2 years, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 2 years.

(8) Insofar as a direction is issued requiring the taking of remedial measures in respect of a development referred to in section 157(4)(aa), such remedial measures

may be required in relation to such development that was carried out at any time, but not more than 7 years prior to the date on which this section comes into operation.

(9) Where monitoring and inspection of remedial measures by a planning authority are specified in a direction under this section, the planning authority shall carry out the monitoring and inspection in accordance with the direction.]

**Annotations**

**Amendments:**

**F256** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F257**[Fees and costs arising on an application for substitute consent.

**177M.**— (1) The fee payable to the Board in respect of an application for substitute consent shall be the same as the fee that would be payable to the planning authority under the permission regulations if the applicant were making an application for permission for the development under section 34(1) rather than an application for substitute consent.

(2) Where the Board grants an application for substitute consent under section 177K in a case where it granted leave to apply for substitute consent on the grounds that exceptional circumstances exist, or in a case where the application is made in compliance with a direction to apply for substitute consent under section 261A, it may determine that a sum or sums is or are required to be paid in order to defray some or all of the costs incurred by the Board or the planning authority during the course of consideration of the application and may direct the applicant to pay the sum or sums to the Board or the planning authority or both, as the case may be.

(3) A reference to costs in subsection (2) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(4) Where the Board directs an applicant to pay an additional sum or sums to it or the planning authority under subsection (2), it shall at the same time as notifying the applicant of its decision under section 177D(6), give to the applicant a notice requiring the payment of that sum or sums by the applicant and shall, if appropriate, give a copy of the notice to the planning authority for the area in which the development the subject of the application is situated.

(5) An applicant who receives a notification in relation to costs under subsection (2) may, within 2 weeks of the date of such notice, make submissions or observations to the Board in relation to the sum or sums so notified.

(6) The Board shall consider the submissions or observations made to it under subsection (5) and shall, as soon as may be, decide to confirm, vary or withdraw the notice under subsection (2) and shall give notice to the applicant of the Board's decision and the reasons therefore and shall give a copy of its decision to the relevant planning authority.

(7) Where an applicant for substitute consent fails to pay a sum or sums in respect of costs in accordance with a direction under subsection (2), the Board or the planning authority as may be appropriate may recover the sum or sums as a simple contract debt in any court of competent jurisdiction.]

**Annotations****Amendments:**

**F257** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

F258 [Regulations.

**177N.**— (1) The Minister shall by regulations make provision for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of this Part.

(2) Without prejudice to the generality of subsection (1) regulations under this section may provide for the following matters:

- (a) regarding the making of an application for leave to apply for substitute consent or for substitute consent;
- (b) requiring the submission of information in respect of an application referred to at paragraph (a);
- (c) requiring an applicant to publish a specified notice or notices relating to an application referred to at paragraph (a);
- (d) requiring an applicant for leave to apply for substitute consent or substitute consent to submit any further information or evidence with respect to his or her application (including any information as to any estate or interest in or right over land);
- (e) requiring the Board to notify prescribed authorities regarding applications for substitute consent and to give to them such documents, particulars, plans or other information in respect thereof as may be prescribed;
- (f) requiring the Board, in the case of applications for substitute consent where the development the subject of the application is likely to have had or likely to have significant effects on the environment of a Member State of the European Union or a state that is a party to the Transboundary Convention to notify that state;
- (g) the making available for inspection at the offices of the Board or the relevant planning authority, by members of the public, of any specified documents, particulars, plans or other information with respect to applications for substitute consent;
- (h) the making of submissions or observations to the Board in relation to applications for substitute consent;
- (i) the information to be contained in a remedial environmental impact statement;
- (j) the information to be contained in a remedial Natura impact statement;
- (k) requiring the Board to furnish to the Minister and to any other specified persons any specified information with respect to applications for leave to apply for substitute consent or applications for substitute consent and the manner in which they have been dealt with;
- (l) requiring the Board to publish or give notice of the Board's decisions in respect of applications for substitute consent, including the giving of notice thereof to prescribed bodies and to persons who made submissions or observations in the prescribed manner.]

**Annotations**

**Amendments:**

**F258** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**Editorial Notes:**

**E162** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**F259**[Enforcement.

**177O.—** (1) A grant of substitute consent shall have effect as if it were a permission granted under section 34 of the Act and where a development is being carried out in compliance with a substitute consent or any condition to which the consent is subject it shall be deemed to be authorised development.

(2) Where a development has not been or is not being carried out in compliance with a grant of substitute consent or any condition to which the substitute consent is subject it shall, notwithstanding any other provision in this Act, be unauthorised development.

(3) Where a person is required by a planning authority, under section 177B or section 261A, to make an application for substitute consent for a development and he or she—

(a) fails to make such an application in accordance with relevant provisions of this Part and regulations made under section 177N, or

(b) fails, having made an application, to furnish additional information as required under relevant provisions in this Part or in regulations made under section 177N,

the Board shall inform the planning authority for the area in which the development is situated of that fact and the development shall, notwithstanding any other provision in this Act, be unauthorised development.

(4) Where a planning authority is informed by the Board that paragraph (a) or (b) as appropriate, of subsection (3) apply to an application, the planning authority shall, as soon as may be, issue an enforcement notice under section 154 of this Act requiring the cessation of activity and the taking of such steps as the planning authority considers appropriate.

(5) Where an application or for substitute consent for a development is refused by the Board under section 177K the development shall, notwithstanding any other provision in this Act, be deemed to be unauthorised development and the relevant planning authority shall, as soon as may be after receipt of a copy of the relevant decision from the Board, issue an enforcement notice under section 154 of this Act requiring the cessation of activity and the taking of such steps as the planning authority considers appropriate.

(6) Where the Board has issued a direction to cease activity or operations or to take remedial measures under section 177L and the applicant has failed to comply with such a direction the relevant planning authority shall as soon as may be after receipt of a copy of the Board's direction issue an enforcement notice under section 154 requiring compliance with the Board's directions and the taking of any additional steps as the planning authority considers appropriate.]



**Annotations**

**Amendments:**

**F259** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F260**[Supplementary provisions relating to an application for substitute consent.

**177P.**— (1) Section 126 shall apply in relation to the duty of the Board to dispose of applications for substitute consent as it applies to the duty of the Board to dispose of appeals and referrals subject to the modification that references in that section to appeals and referrals shall be to applications for substitute consent and subject to any other necessary modifications.

(2) Section 130 (other than subsection (3)(b), (c) or (d)) shall apply in relation to making submissions or observations by any person other than the applicant for substitute consent or the relevant planning authority as it does to the making of submissions or observations by any person other than a party subject to the following and any other necessary modifications:

(a) references in that section to a party shall be construed as references to the applicant for substitute consent or the relevant planning authority, and

(b) references in that section to an environmental impact assessment shall be construed as references to a remedial environmental impact statement or a remedial Natura impact statement, or both such statements, as the case may be.

(3) Section 131 shall apply in relation to the Board requesting submissions or observations in relation to an application for substitute consent as it does in relation to an appeal or referral subject to the following and any other necessary modifications:

(a) references in that section to party to the appeal or referral shall be construed as references to applicant for substitute consent or the relevant planning authority, and

(b) references in that section to an appeal or referral shall be construed as references to an application for substitute consent.

(4) Section 132 shall apply in relation to the Board requiring a document, particulars or other information that it considers necessary to enable it to determine an application for substitute consent as it does in relation to requiring a document, particulars or other information as it considers necessary to enable it to determine an appeal or referral subject to the following and any other necessary modifications:

(a) references in that section to party shall be construed as references to applicant for substitute consent or the relevant planning authority, and

(b) references in that section to an appeal or referral shall be construed as references to an application for substitute consent.

(5) Section 133 shall apply in relation to the Board determining or dismissing an application for substitute consent as it applies in relation to the Board determining or dismissing an appeal or referral subject to the modification that references in that section to appeal or referral shall be construed as reference to an application for substitute consent and subject to any other necessary modifications.

(6) Section 135 shall apply in relation to the holding of an oral hearing of an application for substitute consent as it applies in relation to an oral hearing of an appeal, referral or application subject to the modification that references in that section to an appeal, referral or application shall be construed as references to an application for substitute consent and any other necessary modifications.]

**Annotations**

**Amendments:**

**F260** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F261** [Oral hearings of applications for substitute consent.

**177Q.**— (1) Where the Board considers it necessary or expedient for the purposes of making a determination in respect of an application for substitute consent it may, in its absolute discretion, hold an oral hearing and shall, in addition to any other requirements under this Act or other enactment, as appropriate, consider the report and any recommendations of the person holding the oral hearing before making its determination.

(2) (a) An applicant for substitute consent, a planning authority or a person who makes submissions or observations under section 130 (as modified by section 177P(2)) in relation to the application for substitute consent may request an oral hearing of the application.

(b) (i) A request for an oral hearing of an application shall be made in writing to the Board and shall be accompanied by such fee (if any) as may be payable in respect of the request in accordance with section 144.

(ii) A request for an oral hearing of an application for substitute consent which is not accompanied by such fee (if any) as may be payable in respect of the request shall not be considered by the Board.

(c) A request by an applicant for substitute consent, a planning authority, or by a person who makes a submission or observation in relation to the application, for an oral hearing of the application, shall be made within the period specified in regulations under section 177N and any such request received by the Board after the expiration of that period shall not be considered by the Board.

(3) Where the Board is requested to hold an oral hearing of an application for substitute consent and decides to determine the application without an oral hearing, the Board shall serve notice of its decision on—

(a) the person who requested the hearing,

(b) the relevant planning authority, and

(c) on each person who has made submissions or observations to the Board in relation to the application (other than the person making the request under subsection 2(a)).

(4) (a) A request for an oral hearing may be withdrawn at any time.

(b) Where, following a withdrawal of a request for an oral hearing under paragraph (a), the application for substitute consent falls to be determined without an oral hearing, the Board shall give notice to the applicant for substitute consent, the planning authority and to each person who has made submissions or observations to the Board in relation to the application.]

**Annotations**

**Amendments:**

**F261** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

## F262[PART XAB

## APPROPRIATE ASSESSMENT

Interpretation. **177R.**— (1) In this Part—

‘appropriate assessment’ shall be construed in accordance with section 177V;

‘candidate site of community importance’ means—

(a) a site—

(i) in relation to which the Minister has given notice pursuant to regulations under the European Communities Act 1972 that he or she considers the site may be eligible for identification as a site of Community importance pursuant to Article 4, paragraph 1 of the Habitats Directive, which notice may be amended in accordance with such regulations under the European Communities Act 1972,

(ii) that is included in a list transmitted to the Commission in accordance with Article 4, paragraph 1 of the Habitats Directive, or

(iii) that is added in accordance with Article 5 of the Habitats Directive, to the list transmitted to the European Commission pursuant to Article 4, paragraph 1 of the Habitats Directive,

but only until the adoption in respect of the site of a decision by the European Commission under Article 21 of the Habitats Directive for the purposes of the third paragraph of Article 4(2) of that Directive; or

(b) a site—

(i) which is subject to a consultation procedure in accordance with Article 5(1) of the Habitats Directive, or

(ii) in relation to which a Council decision is pending in accordance with Article 5(3) of the Habitats Directive;

F263[‘candidate special area of conservation’ means a site that is a candidate site of Community importance or a site of Community importance;]

F264[‘candidate special protection area’ means a site in relation to which the Minister for Arts, Heritage and the Gaeltacht has given notice pursuant to regulations under the European Communities Act 1972 that he or she considers that the site may be eligible for classification as a special protection area pursuant to Article 4 of the Birds Directive but only until the public notification of the making of a decision by that Minister to classify or not to classify such a site as a special protection area;]

‘compensatory measures’ shall be construed in accordance with section 177W(7) in relation to making Land use plans and in accordance with section 177AA(8) in relation to granting permission for proposed development;

‘competent authority’ shall be construed in accordance with section 177S;

‘consent for proposed development’ shall be construed in accordance with section 177U(8);

‘European site’ means—

(a) a candidate site of Community importance,

(b) a site of Community importance,

F263[(ba) a candidate special area of conservation,]

- (c) a special area of conservation,
- (d) a candidate special protection area,
- (e) a special protection area;

F263['foreshore' has the same meaning as it has in section 224;]

'Land use plan' means—

- (a) regional planning guidelines,
- (b) a planning scheme in respect of all or any part of a strategic development zone,
- (c) a development plan,
- (d) a variation of a development plan, or
- (e) a local area plan;

'Natura 2000 network' has the meaning assigned to it by Article 3, paragraph 1 of the Habitats Directive;

'Natura impact report' shall be construed in accordance with section 177T;

'Natura impact statement' shall be construed in accordance with section 177T;

'proposed development' means—

(a) a proposal to carry out one of the following:

- (i) development to which Part III applies,
- (ii) development that may be carried out under Part IX,

F265[(iii) development that may be carried out by a local authority under Part X or Part XAB or development that may be carried out under Part XI]

- (iv) development on the foreshore under Part XV,
- (v) development under section 43 of the Act of 2001,
- (vi) development under section 51 of the Roads Act 1993;

and

(b) notwithstanding that the development has been carried out, development in relation to which an application for substitute consent is required under Part XA;

F263['road authority' has the same meaning as it has in section 2 (amended by section 11 of the Roads Act 2007) of the Roads Act 1993;]

'screening for appropriate assessment' shall be construed in accordance with section 177U;

'site of community importance' means a site that has been included in the list of sites of Community importance as adopted by the Commission in accordance with the procedure laid down in Article 21 of the Habitats Directive;

'special area of conservation' means a site that has been designated by the Minister as a special area of conservation pursuant to Article 4, paragraph 4 of the Habitats Directive;

‘special protection area’ means an area classified by the Minister pursuant to Article 4, paragraph 1 or Article 4, paragraph 2 of the Birds Directive, as a special protection area;

F266[...]

(2) Subject to this Part, a word or expression that is used in this Part, and that is also used in the Habitats Directive or the Birds Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Habitats Directive or the Birds Directive, as the case may be.]

#### Annotations

#### Amendments:

**F262** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F263** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 8(a), (b), (c) and (e).

**F264** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 31, S.I. No. 474 of 2011.

**F265** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 8(d).

**F266** Deleted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 8(f).

F267[Competent Authority.

**177S.**— (1) A competent authority, in performing the functions conferred on it by or under this Part, shall take appropriate steps to avoid in a European site the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the site has been designated, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive.

(2) The competent authority in the State for the purposes of this Part and Articles 6 and 7 of the Habitats Directive, shall be—

- (a) in relation to draft regional planning guidelines, the regional authority for whose area the guidelines are made,
- (b) in relation to a draft planning scheme in respect of all or any part of a strategic development zone, the planning authority (which term shall be construed in accordance with section 168(5)) in whose area the strategic development zone is situate, or, on appeal the Board, as the case may be,
- (c) in relation to a draft development plan, the planning authority for whose area the development plan is made,
- (d) in relation to a proposed variation of a development plan, the planning authority for whose area the variation of the development plan is made,
- (e) in relation to a draft local area plan, the planning authority in whose area the local area plan concerned is situate,
- (f) in relation to a proposed development (other than development referred to in paragraph (g) or (h)), the planning authority to whom an application for permission is made or F268[...] the Board, as the case may be,
- (g) in relation to proposed development that is strategic infrastructure development, the Board, or

F269[(h) in relation to proposed development that may be carried out by a local authority under Part X or Part XAB, proposed development that may be carried out under Part XI or proposed local authority development on the foreshore, the Board.]]

#### Annotations

#### Amendments:

**F267** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F268** Deleted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 9(a).

**F269** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 9(b).

F270[Natura impact report and Natura impact statement.

#### 177T.— (1) In this Part—

(a) A Natura impact report means a statement for the purposes of Article 6 of the Habitats Directive, of the implications of a Land use plan, on its own or in combination with other plans or projects, for one or more than one F271[European site], in view of the conservation objectives of the site or sites.

(b) A Natura impact statement means a statement, for the purposes of Article 6 of the Habitats Directive, of the implications of a proposed development, on its own or in combination with other plans or projects, for one or more than one F271[European site], in view of the conservation objectives of the site or sites.

(2) Without prejudice to the generality of subsection (1), a Natura impact report or a Natura impact statement, as the case may be, shall include a report of a scientific examination of evidence and data, carried out by competent persons to identify and classify any implications for one or more than one F271[European site] in view of the conservation objectives of the site or sites.

(3) The following bodies shall prepare a Natura impact report in relation to a draft Land use plan—

(a) as respects draft regional planning guidelines, the regional authority for whose area the draft guidelines are made,

(b) as respects a draft planning scheme in respect of all or any part of a strategic development zone, the planning authority (which term shall be construed in accordance with section 168(5)) for whose area the draft scheme is made,

(c) as respects a draft development plan or draft variation of a development plan, the planning authority for whose area the draft plan or draft variation is made, and

(d) as respects a draft local area plan, the planning authority in whose area the local area concerned is situate.

(4) The applicant for consent for proposed development may, or if directed in accordance with subsection (5) by a competent authority, shall furnish a Natura impact statement to the competent authority in relation to the proposed development.

(5) At any time following an application for consent for proposed development a competent authority may give a notice in writing to the applicant concerned, directing him or her to furnish a Natura impact statement F272[...].

F271[(6) Where an applicant for consent for proposed development who, having been directed in accordance with subsection (5), fails to furnish a Natura impact statement within the period specified in the notice, or any further period as may be specified by the competent authority, the application for consent for the proposed development shall be deemed to be withdrawn.]

(7) (a) Without prejudice to subsection (1) a Natura impact report or a Natura impact statement shall include all information prescribed by regulations under section 177AD.

(b) Where appropriate, a Natura impact report or a Natura impact statement shall include such other information or data as the competent authority considers necessary to enable it to ascertain if the draft Land use plan or proposed development will not affect the integrity of the site.

(c) F272[...]

#### Annotations

#### Amendments:

**F270** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F271** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 10(a), (b) and (d).

**F272** Deleted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 10(c) and (e).

F273[Screening for appropriate assessment.

**177U.**— (1) A screening for appropriate F274[assessment of a draft Land use plan or application for consent for proposed development] shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

(2) A competent authority shall carry out a screening for appropriate assessment under subsection (1) before—

(a) a Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or

(b) consent for a proposed development is given.

(3) In carrying out screening for appropriate assessment of a proposed development a F274[competent authority] may request such information from the applicant as it may consider necessary to enable it to carry out that screening, and may consult with such persons as it considers appropriate F275[and where the applicant does not provide the information within the period specified, or any further period as may be specified by the authority, the application for consent for the proposed development shall be deemed to be withdrawn].

(4) The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is required if it cannot be excluded, on the basis of objective information, that the draft Land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.

(5) The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is not required if it can be excluded, on the basis of objective information, that the draft Land use

plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.

(6) (a) Where, in relation to a proposed development, a competent authority makes a determination that an appropriate assessment is required, the competent authority shall give notice of the determination, including reasons for the determination of the competent authority, to the following—

(i) the applicant,

(ii) if appropriate, any person who made submissions or observations in relation to the application to the competent authority, or

(iii) if appropriate, any party to an appeal or referral.

(b) Where a competent authority has determined that an appropriate assessment is required in respect of a proposed development it may direct in the notice issued under paragraph (a) that a Natura impact statement is required.

F275[(c) Paragraph (a) shall not apply in a case where the application for consent for the proposed development was accompanied by a Natura impact statement.]

F274[(7) A competent authority shall, as soon as may be after making the Land use plan or making a decision in relation to the application for consent for proposed development, make available for inspection by members of the public during office hours at the offices of the authority, and may also publish on the internet—

(a) any determination that it makes in relation to a draft Land use plan under subsection (4) or (5) as the case may be, and reasons for that determination, and

(b) any notice that it issues under subsection (6) in relation to a proposed development.]

F274[(8) In this section ‘consent for proposed development’ means, as appropriate—

(a) a grant of permission,

(b) a decision of the Board to grant permission on a planning application or an appeal,

(c) consent for development under Part IX,

(d) approval for development that may be carried out by a local authority under Part X or Part XAB or development that may be carried out under Part XI,

(e) approval for development on the foreshore under Part XV,

(f) approval for development under section 43 of the Act of 2001,

(g) approval for development under section 51 of the Roads Act 1993, or

(h) a substitute consent under Part XA.]

(9) In deciding upon F274[a declaration or a referral under section 5] of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.]



**Annotations****Amendments:**

**F273** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F274** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 11(a), (b)(i), (d), (e) and (f).

**F275** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 11(bii) and (c).

**F276**[Appropriate assessment. **177V.**— (1) An appropriate assessment carried out under this Part shall include a

determination by the competent authority under Article 6.3 of the Habitats Directive as to whether or not a draft Land use plan or proposed development would adversely affect the integrity of a European site and **F277**[an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under section 177U(4) that an appropriate assessment is required, before—]

(a) the draft Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or

(b) consent is given for the proposed development.

(2) In carrying out an appropriate assessment under subsection (1) the competent authority shall take into account each of the following matters:

(a) the Natura impact report or Natura impact statement, as appropriate;

(b) any supplemental information furnished in relation to any such report or statement;

(c) if appropriate, any additional information sought by the authority and furnished by the applicant in relation to a Natura impact statement;

(d) any additional information furnished to the competent authority at its request in relation to a Natura impact report;

(e) any information or advice obtained by the competent authority;

(f) if appropriate, any written submissions or observations made to the competent authority in relation to the application for consent for proposed development;

(g) any other relevant information.

(3) Notwithstanding any other provision of this Act, or, as appropriate, the Act of 2001, or the Roads Acts 1993 to 2007 **F278**[and save as otherwise provided for in sections 177X, 177Y, 177AB and 177AC], a competent authority shall make a Land use plan or give consent for proposed development only after having determined that the Land use plan or proposed development shall not adversely affect the integrity of a European site.

(4) Subject to the other provisions of this Act, consent for proposed development may be given in relation to a proposed development where a competent authority has made modifications or attached conditions to the consent where the authority is satisfied to do so having determined that the proposed development would not adversely affect the integrity of the European site if it is carried out in accordance with the consent and the modifications or conditions attaching thereto.

F277[(5) A competent authority shall give notice of its determination under subsection (1) in relation to a proposed development to the applicant for consent to the proposed development, giving reasons for the determination.

(6) A competent authority shall, as soon as may be after making the Land use plan or making a decision in relation to the application for consent for proposed development, make available for inspection by members of the public during office hours at the offices of the authority, and may also publish on the internet—

(a) any determination that it makes under subsection (1) as respects a Land use plan and reasons for that determination, and

(b) any notice given by the authority under subsection (5).]]

#### Annotations

#### Amendments:

**F276** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F277** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 12(a) and (c).

**F278** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 12(b).

F279 [Draft Land use plans and imperative reasons of overriding public interest.

**177W.**— (1) Where, notwithstanding a determination by a competent authority that a draft Land use plan or part thereof will adversely affect F280 [the integrity of] a European site, and in the absence of alternative solutions, a competent authority considers that a land use plan should nevertheless be made for imperative reasons of overriding public interest, the authority shall—

(a) F281 [set out the] imperative reasons of overriding public interest that necessitate the making of the Land use plan,

(b) propose the compensatory measures that are necessary to ensure that the overall coherence of the Natura 2000 network is protected,

(c) prepare a statement of case that imperative reasons of overriding public interest exist and of the compensatory measures that are required, and

(d) forward the said statement of case together with the draft Land use plan and Natura impact report to the Minister.

(2) A statement of case referred to in subsection (1)(c) shall specify—

(a) the considerations that led to the assessment by the competent authority that the draft Land use plan would adversely affect the integrity of a European site,

(b) the reasons for the forming of the view by the competent authority that there are no alternative solutions (including the option of not proceeding with the draft Land use plan or part thereof),

(c) the reasons for the forming of the view by the competent authority that imperative reasons of overriding public interest apply to the draft Land use plan, and

(d) the compensatory measures that are being proposed as necessary to ensure the overall coherence of F281 [the Natura 2000 network], including if appropriate, the provision of compensatory habitat.

(3) In relation to a European site that does not host a priority natural habitat type or priority species, the imperative reasons of overriding public interest may include those of a social or economic nature.

(4) In relation to a European site that hosts a priority natural habitat type or priority species, the only imperative reasons of overriding public interest that may be considered are those relating to—

- (a) human health,
- (b) public safety,
- (c) beneficial consequences of primary importance to the environment, or
- (d) subject to subsection (5), and having obtained an opinion from the European Commission, other imperative reasons of overriding public interest.

(5) In invoking imperative reasons of overriding public interest under subsection (4)(d) the competent authority shall advise the Minister why he or she should be satisfied to request an opinion from the European Commission.

**F281**[(6) A competent authority shall make a statement of case, referred to in subsection (1), available for inspection by members of the public at the offices of the authority during its public opening hours and may also publish the statement on the internet.]

(7) For the purposes of this section and section 177X or 177Y, ‘compensatory measures’ are measures proposed or considered, as the case may be, by a competent authority in the first instance, and by the Minister, as the case may be, for the purposes of ensuring that the overall coherence of **F281**[the Natura 2000 network] is protected and may include the provision of compensatory habitats.]

#### Annotations

#### Amendments:

**F279** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F280** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 13(a)(i).

**F281** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 13(a)(ii), (b), (c) and (d).

**F282**[European site that does not host priority habitat or species and draft Land use plan.

**F283**[**177X**.— (1) Where the Minister receives a statement of case under section 177W(1) relating to a European site that does not host a priority habitat type or priority species, he or she shall as soon as possible—

- (a) consider whether imperative reasons of overriding public interest exist,
- (b) consult with such other Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister, and
- (c) consider any views of a Minister of the Government consulted pursuant to paragraph (b) and which are received by the Minister before he or she issues a notice under subsection (5) or (6).

(2) (a) Where the Minister considers that imperative reasons of overriding public interest may exist, he or she shall as soon as possible request the views of the Minister for Arts, Heritage and the Gaeltacht as to whether the

compensatory measures specified in the statement of case are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(b) Following receipt of the views of the Minister for Arts, Heritage and the Gaeltacht, the Minister may enter into consultations with the competent authority, who may submit a revised or modified plan or revised or modified compensatory measures.

(c) The Minister may enter into consultations with the Minister for Arts, Heritage and the Gaeltacht and further consultations with the competent authority in relation to the draft Land use plan, or revised or modified draft Land use plan or the compensatory measures or revised or modified compensatory measures.

(3) The Minister for Arts, Heritage and the Gaeltacht, as soon as possible after the request of the Minister for views under subsection (2)(a) or, as the case may be, the completion of consultations with the Minister under subsection (2)(c) shall furnish an opinion to the Minister as to whether the compensatory measures, or revised or modified compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(4) The Minister for Arts, Heritage and the Gaeltacht, when giving his or her opinion on the compensatory measures under subsection (3), may also give his or her views as to whether imperative reasons of overriding public interest exist, and any such views shall be considered by the Minister before he or she issues a notice under subsection (5) or (6).

(5) Where the Minister forms the opinion that imperative reasons of overriding public interest exist, and the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister shall as soon as possible issue a notice to this effect to the competent authority and the competent authority may decide to make—

(a) the Land use plan, or

(b) that part of the Land use plan that would have an adverse effect on the integrity of a European site.

(6) Where the Minister forms the opinion that imperative reasons of overriding public interest do not exist, or the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures or revised or modified compensatory measures, as the case may be, are not sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister shall as soon as possible issue a notice to this effect to the competent authority and the competent authority shall not make—

(a) the Land use plan, or

(b) that part of the Land use plan that would have an adverse effect on the integrity of a European site.

(7) Where the Minister issues a notice under subsection (5) he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(8) The competent authority shall make available for inspection by members of the public during office hours at the office of the authority, and may also publish on the internet a notice issued to the authority under subsection (5) or (6).]]

**Annotations****Amendments:**

**F282** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F283** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 32, S.I. No. 474 of 2011.

**Editorial Notes:**

**E163** Previous affecting provision: original version of section inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011; substituted as per F-note above.

**F284** [European site that hosts priority habitat type or species and draft Land use plan.

**F285** [177Y.— (1) Where the Minister receives a statement of case under section 177W(1) relating to a European site that hosts a priority habitat type or priority species, he or she shall as soon as possible—

- (a) consider whether imperative reasons of overriding public interest exist,
- (b) consult with such other Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister, and
- (c) consider any views of a Minister of the Government consulted pursuant to paragraph (b) and which are received by the Minister before he or she issues a notice under subsection (6), (7) or (8).

(2) (a) Where the Minister considers that imperative reasons of overriding public interest may exist and may comprise or include a reason or reasons other than the reasons set out in section 177W(4)(a) to (c), the Minister shall consider whether the opinion of the Commission should be sought in relation to the matter.

(b) Where the Minister proposes not to seek the opinion of the Commission pursuant to paragraph (a) he or she shall, in addition to any consultation that may have taken place under subsection (1)(b), as soon as possible consult with such other Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister and request that the other Minister furnish his or her views as soon as possible.

(c) The Minister shall consider any views received from any other Minister of the Government consulted under paragraph (b) where those views are received by the Minister before he or she decides whether to seek the opinion of the Commission under paragraph (a).

(3) (a) Where the Minister considers that imperative reasons of overriding public interest may exist, he or she shall, as soon as possible, request the views of the Minister for Arts, Heritage and the Gaeltacht as to whether the compensatory measures specified in the statement of case are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(b) Following receipt of the views of the Minister for Arts, Heritage and the Gaeltacht, the Minister may enter into consultations with the competent authority, who may submit a revised or modified plan or revised or modified compensatory measures.

(c) The Minister may enter into consultations with the Minister for Arts, Heritage and the Gaeltacht and further consultations with the competent authority in relation to the draft Land use plan, or revised or modified draft Land use

plan or the compensatory measures or revised or modified compensatory measures.

(4) The Minister for Arts, Heritage and the Gaeltacht, as soon as possible after the request of the Minister for views under subsection (3)(a) or, as the case may be, the completion of consultations with the Minister under subsection (3)(c) shall furnish an opinion to the Minister as to whether the compensatory measures, or revised or modified compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(5) The Minister for Arts, Heritage and the Gaeltacht when giving his or her opinion on the compensatory measures under subsection (4), may also give his or her views as to whether imperative reasons of overriding public interest exist and any such views shall be considered by the Minister before he or she issues a notice under subsection (6), (7) or (8).

(6) Where the Minister forms the opinion that imperative reasons of overriding public interest comprising only a reason or reasons set out in section 177W(4)(a) to (c) exist, and the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister shall issue a notice to this effect to the competent authority and the competent authority may decide to make—

- (a) the Land use plan, or
- (b) that part of the Land use plan that would have an adverse effect on the integrity of a European site.

(7) Where—

- (a) the Minister forms the opinion that imperative reasons of overriding public interest, comprising or including a reason or reasons other than those in section 177W(4)(a) to (c) exist, and
- (b) the Minister has obtained the opinion of the Commission in relation to the matter, and
- (c) the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected,

the Minister shall issue a notice to this effect to the competent authority, accompanied by a copy of the opinion of the Commission, and the competent authority, only after having considered the opinion of the Commission, may decide to make—

- (i) the Land use plan, or
- (ii) that part of the Land use plan that would have an adverse effect on the integrity of a European site.

(8) Where—

- (a) the Minister forms the opinion that imperative reasons of overriding public interest do not exist, or
- (b) the Minister forms the opinion that the imperative reasons of overriding public interest comprise or include a reason or reasons other than those in section 177W(4)(a) to (c) and the Minister has decided not seek the opinion of the Commission in relation to the matter, or
- (c) the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures

as the case may be, are not sufficient to ensure that the overall coherence of the Natura 2000 network is protected,

the Minister shall issue a notice to this effect to the competent authority and the competent authority shall not make—

(i) the Land use plan, or

(ii) that part of the Land use plan that would have an adverse effect on the integrity of a European site.

(9) Where the Minister issues a notice under subsection (6) or (7) he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(10) The competent authority shall make available for inspection by members of the public during office hours at the office of the authority, and may also publish on the internet a notice issued to the authority under subsection (6), (7) or (8).]]

#### Annotations

#### Amendments:

**F284** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F285** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 33, S.I. No. 474 of 2011.

#### Editorial Notes:

**E164** Previous affecting provision: original version of section inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011; substituted as per F-note above.

**F286**[Making of Land use plans or part thereof.

**177Z.—F287**[(1) Where a competent authority has received a notice from the Minister under section 177X(6) or section 177Y(8) in relation to a draft Land use plan, and the authority is satisfied that the draft plan can be amended so that it no longer contains the parts or elements which were the subject of a determination under section 177V that the plan would adversely affect a European site, then the authority may make the plan having omitted those parts or elements therefrom.]

(2) Subject to the provisions of this Act, where a proposed part of a draft Land use plan is amended or omitted from the plan, its amendment or omission shall not affect the validity of the remainder of the Land use plan where it is made with the part thereof so amended under this section or without the part thereof so omitted under this section.

(3) Notwithstanding that a statement of case referred to in section 177W(1) regarding any part of a draft Land use plan has been submitted to the Minister under that section, the competent authority may proceed to make the plan other than the part thereof so submitted.

(4) Notwithstanding the requirements of this Act, any delay incurred in the making of a draft Land use plan or part thereof arising from compliance with this Part shall not invalidate the plan or part thereof.]

**Annotations****Amendments:**

**F286** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F287** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 34, S.I. No. 474 of 2011.

F288 [Proposed development and imperative reasons of overriding public interest.

**177AA.—** (1) Where, notwithstanding a determination by a competent authority that a proposed development will adversely affect F289 [the integrity of] a European site, and in the absence of alternative solutions, a competent authority considers that consent should nevertheless be given for the proposed development for imperative reasons of overriding public interest, the authority shall—

- (a) F290 [set out the] imperative reasons of overriding public interest that necessitate the giving of consent for the proposed development,
- (b) propose the compensatory measures that are necessary to ensure that the overall coherence of the Natura 2000 network is protected,
- (c) prepare a statement of case that imperative reasons of overriding public interest exist and of the compensatory measures that are required,
- (d) forward the said statement to the Minister together with a copy of the planning application and Natura impact statement.

(2) A statement of case referred to in subsection (1)(d) shall specify—

- (a) the considerations that led to the assessment by the competent authority that the proposed development would adversely affect the integrity of a European site,
- (b) the reasons for the forming of the view by the competent authority that there are no alternative solutions (including the option of not giving consent for the proposed development),
- (c) the reasons for the forming of the view by the competent authority that imperative reasons of overriding public interest apply to the proposed development,
- (d) compensatory measures that are being proposed as necessary to ensure the overall coherence of Natura 2000 including, if appropriate, the provision of compensatory habitat and the conditions to which any consent for proposed development shall be subject requiring that the compensatory measures are carried out.

(3) In relation to a European site that does not host a priority natural habitat type or priority species, the imperative reasons of overriding public interest may include those of a social or economic nature.

(4) In relation to a European site that hosts a priority natural habitat type or priority species, the only imperative reasons of overriding public interest that may be considered are those relating to—

- (a) human health,
- (b) public safety,
- (c) beneficial consequences of primary importance to the environment, or



(d) subject to subsection (7), having obtained an opinion from the European Commission other imperative reasons of overriding public interest.

(5) A competent authority shall furnish a copy of the statement of case referred to in subsection (1) to an applicant for consent for proposed development.

F290[(6) A competent authority shall make a statement of case, referred to in subsection (1), available for inspection by members of the public at the offices of the authority during its public opening hours and may also publish the statement on the internet.]

(7) In invoking imperative reasons of overriding public interest under subsection (4)(d) the competent authority shall advise the Minister why he or she should be satisfied to request an opinion from the European Commission.

(8) In this section and in sections 177AB and 177AC 'compensatory measures' are measures proposed in the first instance by the applicant and then by a competent authority or the Minister, as the case may be, for the purposes of ensuring that the overall coherence of Natura 2000 is protected and such measures may include the provision of compensatory habitat.

(9) For the purposes of this section and sections 177AB and 177AC a competent authority may attach a condition to a grant of consent for proposed development relating to compensatory measures that the authority or the Minister may require which may include a condition requiring the making of contributions to finance the provision of compensatory measures and any such condition shall have effect as if it was attached to the grant of consent for proposed development, pursuant to the relevant provisions of this Act, that apply to such a grant of consent.]

#### Annotations

#### Amendments:

**F288** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F289** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 14(a)(i).

**F290** Substituted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 14(a)(ii) and (b).

F291[European site that does not host priority habitat type or species.

F292[**177AB.**— (1) (a) Where the Minister receives a statement of case under section 177AA(1) relating to a European site that does not host a priority habitat type or priority species, he or she shall as soon as possible request the views of the Minister for Arts, Heritage and the Gaeltacht as to whether the compensatory measures are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(b) Following receipt of the views of the Minister for Arts, Heritage and the Gaeltacht, the Minister may enter into consultations with the competent authority, who having consulted with the applicant for consent for the proposed development, may submit to the Minister a modified proposal for the development, modified proposed conditions to be attached to the proposed development or modified or alternative proposed compensatory measures.

(c) The Minister may enter into consultations with the Minister for Arts, Heritage and the Gaeltacht and further consultations with the competent authority in relation to the proposal for the development or any modified proposal for the development, the proposed conditions or any modified proposed condi-

tions to be attached to the proposed development and the compensatory measures or any alternative proposed compensatory measures.

(2) The Minister for Arts, Heritage and the Gaeltacht as soon as possible after the request of the Minister for views under subsection (1)(a) or, as the case may be, the completion of consultations with the Minister under subsection (1)(c), shall furnish an opinion to the Minister as to whether the compensatory measures or modified or alternative proposed compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(3) Where the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister as soon as possible following the receipt of the opinion, shall issue a notice to this effect to the competent authority and the competent authority may decide to grant consent for the proposed development with or without conditions.

(4) Where the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures, as the case may be, are not sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister as soon as possible following the receipt of the opinion shall issue a notice to this effect to the competent authority and the competent authority shall not grant consent for the proposed development.

(5) Where the Minister issues a notice under subsection (3) he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(6) The competent authority shall make available for inspection by members of the public during office hours at the office of the authority, and may also publish on the internet a notice issued to the authority under subsection (3) or (4).]]

#### Annotations

#### Amendments:

**F291** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F292** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 35, S.I. No. 474 of 2011.

#### Editorial Notes:

**E165** Previous affecting provision: original version of section inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011; substituted as per F-note above.

**F293** [European site that hosts priority habitat type or species.

**F294** [177AC.— (1) (a) Where the Minister receives a statement of case under section 177AA(1) relating to a European site that hosts a priority habitat type or priority species he or she shall as soon as possible request the views of the Minister for Arts, Heritage and the Gaeltacht as to whether the compensatory measures are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(b) Following receipt of the views of the Minister for Arts, Heritage and the Gaeltacht, the Minister may enter into consultations with the competent authority, who having consulted with the applicant for consent for the proposed development, may submit to the Minister a modified proposal for the development, modified proposed conditions to be attached to the

proposed development, or modified or alternative proposed compensatory measures.

(c) The Minister may enter into consultations with the Minister for Arts, Heritage and the Gaeltacht and into further consultations with the competent authority in relation to the proposal for the development or any modified proposal for the development, the proposed conditions or any modified proposed conditions to be attached to the proposed development and the compensatory measures or any modified or alternative proposed compensatory measures.

(2) (a) Where the Minister considers that the imperative reasons of overriding public interest comprise or include a reason or reasons other than the reasons set out in section 177AA(4)(a) to (c), the Minister shall consider whether the opinion of the Commission should be sought in relation to the matter.

(b) Where the Minister proposes not to seek the opinion of the Commission he or she shall as soon as possible consult with such other Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister and request that other Minister to furnish his or her views as soon as possible.

(c) The Minister shall consider any views received from any other Minister of the Government consulted under paragraph (b) where those views are received by the Minister before he or she decides whether to seek the opinion of the Commission under paragraph (a).

(3) The Minister for Arts, Heritage and the Gaeltacht, as soon as possible after the request of the Minister for views under subsection (1)(a) or, as the case may be, the completion of consultations with the Minister under subsection (1)(c), shall furnish an opinion to the Minister as to whether the compensatory measures or modified or alternative proposed compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected.

(4) Where the Minister forms the opinion that the imperative reasons of overriding public interest comprise only a reason or reasons set out in section 177AA(4)(a) to (c) and the Minister for Arts, Heritage and the Gaeltacht has furnished an opinion that the compensatory measures, or revised or modified compensatory measures as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Minister shall issue a notice to this effect to the competent authority and the competent authority may decide to grant consent for the proposed development, with or without conditions.

(5) Where—

(a) the Minister forms the opinion that the imperative reasons of overriding public interest comprise or include a reason or reasons other than those in section 177AA(4)(a) to (c), and

(b) the Minister has obtained the opinion of the Commission in relation to the matter, and

(c) the Minister for Arts, Heritage and the Gaeltacht has given an opinion that the compensatory measures, or revised or modified compensatory measures as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected,

the Minister shall issue a notice to this effect to the competent authority, accompanied by a copy of the opinion of the Commission, and the competent authority, only after having considered the opinion of the Commission may decide to grant consent for the proposed development, with or without conditions.

(6) Where—

(a) the Minister forms the opinion that the imperative reasons of overriding public interest comprise or include a reason or reasons other than those in section 177AA(4)(a) to (c) and the Minister has decided not to seek the opinion of the Commission in relation to the matter, or

(b) the Minister for Arts, Heritage and the Gaeltacht has given as his or her opinion that the compensatory measures or modified or alternative proposed compensatory measures, as the case may be, are not sufficient to ensure the overall coherence of the Natura 2000 network is protected,

the Minister shall issue a notice to this effect to the competent authority and the competent authority shall not grant consent for the proposed development.

(7) Where the Minister issues a notice under subsection (4) or (5) he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(8) The competent authority shall make available for inspection by members of the public during office hours at the offices of the authority and may also publish on the internet a notice issued to the authority under subsection (6), (7) or (8).]]

#### Annotations

#### Amendments:

**F293** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F294** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 36, S.I. No. 474 of 2011.

#### Editorial Notes:

**E166** Previous affecting provision: original version of section inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011; substituted as per F-note above.

**F295**[Regulations.

**177AD.**— (1) The Minister may by regulations make provision for such matters of procedure and administration as appear to the Minister to be necessary or expedient for any matter referred to in this Part as prescribed or to be prescribed.

(2) Without prejudice to the generality of the forgoing, the Minister may make regulations, for the purpose of this Part, to give effect to a provision of the Treaty on the European Union, or a legislative act adopted by an institution of the European Union, including the Habitats and Birds Directives.

(3) Without prejudice to the generality of subsection (1) or (2), regulations under this section may—

(a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations,

(b) contain provisions repealing, amending or applying, with or without modification, other law, exclusive of the European Communities Act 1972 and the European Communities Act 2007,

(c) make provision for—

(i) compensatory measures including relating to provision of compensatory habitat, conditions that may be attached to a consent for proposed development, financial contributions, or bonds required in relation to

compensatory measures, implementation, management, and supervision of implementation of compensatory measures,

- (ii) conditions for the purposes of this Part that may be attached to a consent for proposed development, including in relation to protection of species or habitats of species,
- (iii) consultation between an applicant for consent for proposed development and a competent authority for any purpose under this Part,
- (iv) consultation between a competent authority and the Minister for any purpose required under this Part,
- (v) in relation to proposed development or classes of development, in addition to matters provided by or under this Act in relation to an application for consent for proposed development, the submission of a Natura impact statement with an application for consent,
- (vi) information or classes of information to be contained in a Natura impact statement or a Natura impact report,
- (vii) qualifications of persons or classes of persons who shall furnish information referred to in subparagraph (vi),
- (viii) information or classes of information to be contained in notices published under this Part,
- (ix) persons or classes of persons to be notified that an appropriate assessment or a screening appropriate assessment is to be carried out,
- (x) persons or classes of persons to be notified of the outcome of an appropriate assessment or a screening for appropriate assessment,
- (xi) records, or classes of records to be retained and the periods for which they should be retained by a competent authority in relation to appropriate assessment of Land use plans.]

#### Annotations

#### Amendments:

**F295** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

#### Editorial Notes:

**E167** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011*.

**F296**[Appropriate Assessment of certain development carried out by or on behalf of local authorities.

**177AE.—** (1) Where an appropriate assessment is required in respect of development—

- (a) by a local authority that is a planning authority, whether in its capacity as a planning authority or in any other capacity, or
- (b) by some other person on behalf of, or jointly or in partnership with, such a local authority, pursuant to a contract entered into by that local authority whether in its capacity as a planning authority or in any other capacity,

**F297**[within the functional area of the local authority concerned, or on the foreshore, (hereinafter in this section referred to as “proposed development”)], the local

authority shall prepare, or cause to be prepared, a Natura impact statement in respect thereof.

(2) Proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.

(3) Where a Natura impact statement has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.

(4) Before a local authority makes an application for approval under subsection (3), it shall—

(a) publish in one or more newspapers circulating in the area in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development, and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) a Natura impact statement has been prepared in respect of the proposed development,

(III) the Board may give approval to the application for development with or without conditions or may refuse the application for development,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the Natura impact statement may be inspected free of charge or purchased, and

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area concerned,

(II) the likely effects on the environment of the proposed development, and

(III) the likely significant effects of the proposed development on a European site,

if carried out,

and

(b) send a copy of the application and the Natura impact statement to the prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

(i) the likely effects on the environment of the proposed development,

(ii) the implications of the proposed development for proper planning and sustainable development in the area concerned, and

(iii) the likely significant effects of the proposed development on a European site,

if carried out.

(5) (a) The Board may—

- (i) if it considers it necessary to do so, require a local authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to—
    - (I) the effects on the environment of the proposed development, or
    - (II) the consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, or
    - (III) the likely significant effects of the proposed development on a European site,as the Board may specify, or
  - (ii) if it is provisionally of the view that it would be appropriate to approve the proposed development with certain alterations (specified in the notification referred to in this subparagraph) to be made to the terms of it, notify the local authority that it is of that view and invite the authority to make to the terms of the proposed development alterations specified in the notification and, if the authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised Natura impact statement in respect of it.
- (b) If a local authority makes the alterations to the terms of the proposed development specified in a notification given to it under paragraph (a), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section.
- (c) The Board shall—
- (i) where it considers that any further information received pursuant to a requirement made under paragraph (a)(i) contains significant additional data relating to—
    - (I) the likely effects on the environment of the proposed development,
    - (II) the likely consequences for the proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, and
    - (III) the likely significant effects of the proposed development on a European site,or
  - (ii) where the local authority has made the alterations to the terms of the proposed development specified in a notification given to it under paragraph (a)(ii),
- require the local authority to do the things referred to in paragraph (d).
- (d) The things which a local authority shall be required to do as aforesaid are—
- (i) to publish in one or more newspapers circulating in the area in which the proposed development would be situate a notice stating that, as appropriate—
    - (I) further information in relation to the proposed development has been furnished to the Board, or
    - (II) the local authority has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that

information in relation to the terms of the development as so altered or a revised Natura impact statement in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the Natura impact statement referred to in clause (I) or (II) may be inspected free of charge or purchased and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(ii) to send to each prescribed authority to which notice was given pursuant to subsection (4)(b)—

(I) a notice of the furnishing to the Board of, as appropriate, the further information referred to in subparagraph (i)(I) or the information or statement referred to in subparagraph (i)(II), and

(II) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall not be less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the local authority.

(6) Before making a decision in respect of a proposed development under this section, the Board shall consider—

(a) the Natura impact statement submitted pursuant to subsection (1) or (5)(a)(ii), any submission or observations made in accordance with subsection (4) or (5) and any other information furnished in accordance with subsection (5) relating to—

(i) the likely effects on the environment of the proposed development,

(ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, and

(iii) the likely significant effects of the proposed development upon a European site,

(b) the report and any recommendations of the person conducting a hearing referred to in subsection (7) where evidence is heard at such a hearing relating to—

(i) the likely effects on the environment of the proposed development,

(ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, and

(iii) the likely significant effects of the proposed development upon a European site.

(7) The person conducting an oral hearing in relation to the compulsory purchase of land which relates wholly or partly to a proposed development under this section in respect of which a local authority has applied for approval shall be entitled to hear evidence relating to—

(a) the likely effects on the environment of the proposed development,



- (b) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, and
  - (c) the likely significant effects of the proposed development upon a European site.
- (8) (a) The Board may, in respect of an application for approval under this section of proposed development—
  - (i) approve the proposed development,
  - (ii) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
  - (iii) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
  - (iv) refuse to approve the proposed development, and may attach to an approval under subparagraph (i), (ii) or (iii) such conditions as it considers appropriate.
- (b) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under paragraph (a)(i), (ii) or (iii) a condition requiring—
  - (i) the construction or the financing, in whole or in part, of the construction of a facility, or
  - (ii) the provision or the financing, in whole or in part, of the provision of a service,in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.
- (c) A condition attached pursuant to paragraph (b) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval operates of the benefits likely to accrue from the grant of the approval.
- (9) (a) The Board shall direct the payment of such sum as it considers reasonable by the local authority concerned to the Board towards the costs and expenses incurred by the Board in determining an application under this section for approval of a proposed development, including—
  - (i) the costs of holding any oral hearing in relation to the application,
  - (ii) the fees of any consultants or advisers engaged in the matter, and
  - (iii) an amount equal to such portion of the remuneration and any allowances for expenses paid to the members and employees of the Board as the Board determines to be attributable to the performance of duties by the members and employees in relation to the application, and the local authority shall pay the sum.
- (b) If a local authority fails to pay a sum directed to be paid under paragraph (a), the Board may recover the sum from the authority as a simple contract debt in any court of competent jurisdiction.
- (10) (a) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board shall not,

- where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of—
- (i) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or
  - (ii) controlling emissions related to or following the cessation of the operation of the activity.
- (b) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may, in respect of any proposed development comprising or for the purposes of the activity, decide to refuse the proposed development, where the Board considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development is or will be situate or is unacceptable on habitats grounds having regard to the provisions of Part XAB.
- (c) (i) Before making a decision in respect of proposed development comprising or for the purposes of an activity, the Board may request the Environmental Protection Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development.
- (ii) When making its decision the Board shall have regard to the observations, if any, received from the Agency within the period specified under subparagraph (i).
- (d) The Board may, at any time after the expiration of the period specified by the Board under paragraph (c)(i) for making observations, make its decision on the application.
- (e) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under the Environmental Protection Agency Act 1992.
- (11) (a) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications for approval under this section.
- (b) Without prejudice to the generality of paragraph (a), regulations under this subsection may make provision for—
- (i) enabling a local authority to request the Board to give a written opinion on the information to be contained in a Natura impact statement,
  - (ii) matters of procedure relating to the making of observations by the Environmental Protection Agency under this section and matters connected therewith, and
  - (iii) requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.
- (12) In considering under subsection (6) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—
- (a) the provisions of the development plan for the area,
  - (b) the provisions of any special amenity area order relating to the area,

(c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,

(d) where relevant, the policies of the Government, the Minister or any other Minister of the Government, and

(e) the provisions of this Act and regulations under this Act where relevant.

(13) A person who contravenes a condition imposed by the Board under this section shall be guilty of an offence.

**F297**[(14) This section shall apply to proposed road development, other than proposed road development within the meaning of section 2(1) of the Roads Act 1993, by or on behalf of a road authority.

(15) Where a proposed development to which this section applies is also required to be submitted to the Board under section 175, it shall be sufficient for the applicant to make one application to the Board provided that the applicant complies with this section and section 175 and in such a case the Board shall issue one decision in relation to the application under this section and section 175.

(16) Where a proposed development to which this section applies is also required to be submitted to the Board under section 226, it shall be sufficient for the applicant to make one application to the Board provided that the applicant complies with this section and section 226 and in such a case the Board shall issue one decision in relation to the application under this section and section 226.]]

#### Annotations

#### Amendments:

**F296** Inserted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 57, S.I. No. 475 of 2011.

**F297** Substituted and inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 15.

## PART XI

### DEVELOPMENT BY LOCAL AND STATE AUTHORITIES, ETC.

Restrictions on development by certain local authorities.

**178.—**(1) The council of a county shall not effect any development in its functional area, exclusive of any borough or urban district, which contravenes materially the development plan.

(2) The corporation of a county or other borough shall not effect any development in the borough which contravenes materially the development plan.

(3) The council of an urban district shall not effect any development in the district which contravenes materially the development plan.

Local authority own development.

**179.—**(1) (a) The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

(b) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under *paragraph (a)* (hereafter in this section referred to as “proposed development”) it shall in relation to the proposed development comply with this section and any regulations under this section.

(c) F298[...]

(d) This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.

(2) The Minister shall make regulations providing for any or all of the following matters:

(a) the publication by a local authority of any specified notice with respect to proposed development;

(b) requiring local authorities to—

(i) (I) notify prescribed authorities of such proposed development or classes of proposed development as may be prescribed, or

(II) consult with them in respect thereof,

and

(ii) give to them such documents, particulars plans or other information in respect thereof as may be prescribed;

(c) the making available for inspection, by members of the public, of any specified documents, particulars, plans or other information with respect to proposed development;

(d) the making of submissions or observations to a local authority with respect to proposed development.

(3) (a) The manager of a local authority shall, after the expiration of the period during which submissions or observations with respect to the proposed development may be made, in accordance with regulations under *subsection (2)*, prepare a written report in relation to the proposed development and submit the report to the members of the authority.

(b) A report prepared in accordance with *paragraph (a)* shall—

(i) describe the nature and extent of the proposed development and the principal features thereof, and shall include an appropriate plan of the development and appropriate map of the relevant area,

(ii) evaluate whether or not the proposed development would be consistent with the proper planning and sustainable development of the area to which the development relates, having regard to the provisions of the development plan and giving the reasons and the considerations for the evaluation.

(iii) list the persons or bodies who made submissions or observations with respect to the proposed development in accordance with the regulations under *subsection (2)*,

(iv) summarise the issues, with respect to the proper planning and sustainable development of the area in which the proposed development would be situated, raised in any such submissions or observations, and give the response of the manager thereto, and

- (v) recommend whether or not the proposed development should be proceeded with as proposed, or as varied or modified as recommended in the report, or should not be proceeded with, as the case may be.
- (4) (a) The members of a local authority shall, as soon as may be, consider the proposed development and the report of the manager under *subsection (3)*.
- (b) Following the consideration of the manager's report under *paragraph (a)*, the proposed development may be carried out as recommended in the manager's report, unless the local authority, by resolution, decides to vary or modify the development, otherwise than as recommended in the manager's report, or decides not to proceed with the development.
- (c) A resolution under *paragraph (b)* must be passed not later than 6 weeks after receipt of the manager's report.
- (5) F299[Sections 138, 139 and 140 of the Local Government Act, 2001,] shall not apply to development under this section.
- (6) This section shall not apply to proposed development which—
- F300[(a) consists of works of maintenance or repair other than works to a protected structure, or a proposed protected structure, which would materially affect the character of—
- (i) the structure, or
- (ii) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest,]
- (b) is necessary for dealing urgently with any situation which the manager considers is an emergency situation calling for immediate action,
- F301[(bb) consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994,]
- F302[(c) consists of works which a local authority is required to undertake—
- (i) by or under any enactment,
- (ii) by or under the law of the European Union, or a provision of any act adopted by an institution of the European Union, or
- (iii) by order of a court,
- (d) is development in respect of which an environmental impact statement is required under section 175 or under any other enactment, or
- (e) is development in respect of which an appropriate assessment is required under section 177AE, or under any other enactment.]

**Annotations****Amendments:**

**F298** Deleted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(h), S.I. No. 458 of 2001.

**F299** Substituted (1.01.2002) by *Local Government Act 2001* (37/2001), s. 5(3) and sch. 4, S.I. No. 588 of 2001.

**F300** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 58(a), S.I. No. 405 of 2010.

**F301** Inserted (1.01.2011) by *Public Transport Regulation Act 2009* (37/2009), s. 46(2), S.I. No. 615 of 2010.

**F302** Substituted (15.11.2011) by *European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011* (S.I. No. 584 of 2011), reg. 6.

**Modifications (not altering text):**

**Annotations**

**Modifications (not altering text):**

**C50** Application of section restricted by *Water Services Act 2007* (30/2007), s. 36(5)(b) and (21), not commenced as of 27.12.2012.

**Water services strategic plan.**

36.— ...

(5) ...

(b) A local authority (whether or not acting as a water services authority) shall not, by resolution, under section 139 or 140 of the Act of 2001 or section 179 of the Act of 2000—

(i) give a direction that works not be proceeded with, or

(ii) require any act, matter or thing to be done or effected,

where the effect of such direction or requirement would be contrary to, or inconsistent with, any provision (including any objective contained therein) of a water services strategic plan made by the water services authority, or would limit or restrict the proper implementation of such a provision and any resolution purporting to be passed under the said section 139, 140 or 179, as the case may be, which contravenes this paragraph is void.

...

(21) In considering a proposed development under section 179 of the Act of 2000 a local authority shall not decide that the development should not be proceeded with solely on the grounds that the said development is not specifically referred to in the water services strategic plan in force in relation to the functional area of the authority if the authority considers the development will facilitate the achievement of the objectives of that water services strategic plan.

**C51** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), reg. 41(1) and 43.

**Limitation of Act of 2000**

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

(a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or

(b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have

effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

#### Consideration of proposals by planning authorities and An Bord Pleanála

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

- C52** Provision for consideration of waste management under Part made by *Waste Management Act 1996* (10/1996), s. 22(10D) as inserted (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 26(2)(d), S.I. No. 393 of 2004.

#### Waste management plans.

##### 22.— ...

(10D) (a) In performing their functions under the Planning and Development Acts 2000 to 2002, and, in particular, their functions under Part III and sections 175 and 179 of the Planning and Development Act 2000, planning authorities and An Bord Pleanála shall ensure that such measures as are reasonably necessary are taken to secure appropriate provision for the management of waste (and, in particular, recyclable materials) within developments, including the provision of facilities for the storage, separation and collection of such waste (and, in particular, such materials) and the preparation by the appropriate persons of suitable plans for the operation of such facilities.

(b) The Minister may issue guidelines as to the steps that may be taken to comply with this subsection.

#### Editorial Notes:

- E168** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).
- E169** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E170** Previous affecting provision: subs. (6)(c) substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 58(b), S.I. No. 405 of 2010; substituted as per F-note above.

Taking in charge of estates.

**180.—(1)** Where a development for which permission is granted under *section 34* or under Part IV of the Act of 1963 includes the construction of 2 or more houses and the provision of new roads, open spaces, car parks, sewers, F303[**water mains**] or F303[**service connections (within the meaning of the Water Services Act 2007)**], and the development has been completed to the satisfaction of the planning authority in accordance with the permission and any conditions to which the permission is subject, the authority shall, where requested by the person carrying out the development, or, subject to *subsection (3)*, F304[**by the majority of the owners of the houses involved**], as soon as may be, initiate the procedures under section 11 of the Roads Act, 1993.

(2) (a) Notwithstanding *subsection (1)*, where the development F305[**referred to in subsection (1)**] has not been completed to the satisfaction of the planning authority and enforcement proceedings have not been commenced by the planning authority within seven years beginning on the expiration, as respects the permission authorising the development, of the appropriate period, within the meaning of *section 40* or the period as extended under

section 42, as the case may be, the authority shall, F304[where requested by the majority of owners of the houses involved], comply with section 11 of the Roads Act, 1993, except that subsection (1)(b)(ii) of that section shall be disregarded.

(b) In complying with *paragraph (a)*, the authority may apply any security given under *section 34(4)(g)* for the satisfactory completion of the development in question.

F305[(2A) (a) Notwithstanding subsections (1) or (2), where a development referred to in subsection (1) has not been completed to the satisfaction of the planning authority and either—

(i) enforcement proceedings have been commenced by the planning authority within seven years beginning on the expiration, as respects the permission authorising the development, of the appropriate period, or

(ii) the planning authority considers that enforcement proceedings will not result in the satisfactory completion of the development by the developer,

the authority may in its absolute discretion, at any time after the expiration as respects the permission authorising the development of the appropriate period, where requested by a majority of the owners of the houses in question, initiate the procedures under section 11 of the Roads Act 1993.

(b) In exercising its discretion and initiating procedures under section 11 of the Roads Act 1993, the authority may apply any security given under section 34(4)(g) for the satisfactory completion of the development in question.]

(3) (a) The planning authority may hold a plebiscite to ascertain F304[the wishes of the owners of the houses].

(b) The Minister may make or apply any regulations prescribing the procedure to be followed by the planning authority in ascertaining F304[the wishes of the owners of the houses].

F304[(4) (a) Where an order is made under section 11(1) of the Roads Act 1993 in compliance with subsection (1) or (2), the planning authority shall, in addition to the provisions of that section, take in charge—

(i) (subject to paragraph (c)), any sewers, watermains or service connections within the attendant grounds of the development, and

(ii) public open spaces or public car parks within the attendant grounds of the development.

(b) Where an order is made under section 11(1) of the Roads Act 1993 in compliance with subsection (2A), the planning authority may, in addition to the provisions of that section take in charge—

(i) (subject to paragraph (c)) some or all of the sewers, watermains or service connections within the attendant grounds of the development, and

(ii) some or all of the public open spaces or public car parks within the attendant grounds of the development,

and may undertake,

(I) any works which, in the opinion of the authority, are necessary for the completion of such sewers, watermains or service connections, public open spaces or public car parks within the attendant grounds of the development, or

(II) any works as in the opinion of the authority, are necessary to make the development safe,



and may recover the costs of works referred to in clause (I) or (II) from the developer as a simple contract debt in a court of competent jurisdiction.

(c) A planning authority that is not a water services authority within the meaning of section 2 of the Act of 2007 shall not take in charge any sewers, watermains or service connections under paragraph (a)(i) or (b)(i), but shall request the relevant water services authority to do so.

(d) In paragraph (a)(ii), 'public open spaces' or 'public car parks' means open spaces or car parks to which the public have access whether as of right or by permission.

(e) In this subsection, 'public open spaces' means open spaces or car parks to which the public have access whether as of right or by permission.]

(5) Where a planning authority acts in compliance with this section, references in section 11 of the Roads Act, 1993, to a road authority shall be deemed to include references to a planning authority.

F304[(6) In this section 'appropriate period' has the meaning given to the term in section 40, as extended under section 42 or 42A as the case may be.]

#### Annotations

#### Amendments:

**F303** Substituted (31.12.2007) by *Water Services Act 2007* (30/2007), s. 114(b)(i), S.I. No. 846 of 2007.

**F304** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 59(a), (b)(ii), (d), (e), (f), and (g), S.I. No. 477 of 2010.

**F305** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 59(b)(i), (c), S.I. No. 477 of 2010.

#### Editorial Notes:

**E171** Previous affecting provision: subs. (4) amended (31.12.2007) by *Water Services Act 2007* (30/2007), s. 114(b)(ii), S.I. No. 846 of 2007; substituted as per F-note above.

Development by  
State authorities.

**181.—(1)** (a) The Minister may, by regulations, provide that, except for this section F306[and sections 181A to 181C], the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

(b) The Minister may, by regulations, provide for any or all of the following matters in relation to any class or classes of development to which regulations under *paragraph (a)* apply:

(i) the publication by a State authority of any specified notice with respect to development that it proposes to carry out or to have carried out on its behalf;

(ii) the giving by a State authority, to the planning authority for the area in which proposed development is to be carried out, or any other specified person, of any specified notice, documents, particulars, plans or other information with respect to the proposed development;

- (iii) the making available for inspection by members of the public of any specified documents, particulars, plans or other information with respect to the proposed development;
  - (iv) F307[...]
  - (v) the making of submissions or observations to a State authority with respect to the proposed development;
  - (vi) the reference to a specified person of any dispute or disagreement, with respect to the proposed development, between a State authority and the planning authority for the area in which the proposed development is to be carried out;
  - (vii) requiring a State authority, in deciding whether the proposed development is to be carried out, to have regard to any specified matters or considerations.
- (2) (a) Where development is proposed to be carried out by or on behalf of a Minister of the Government or the Commissioners, the Minister of the Government concerned or, in the case of development proposed to be carried out by or on behalf of the Commissioners, the Minister for Finance, may, if he or she is satisfied that the carrying out of the development is required by reason of an accident or emergency, by order provide that this Act or, as may be appropriate, any requirement or requirements of regulations under *subsection (1)(b)* specified in the order, shall not apply to the development, and for so long as such an order is in force this Act or the said requirement or requirements, as the case may be, shall not apply to the development.
- (b) A Minister of the Government may by order revoke an order made by him or her under *paragraph (a)*.
- (c) A Minister of the Government shall cause an order made by him or her under this subsection to be published in *Iris Oifigiúil* and notice of the making of the order to be published in a newspaper circulating in the area of the development concerned.

**Annotations****Amendments:**

**F306** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 35(a), S.I. No. 684 of 2006.

**F307** Deleted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 35(b), S.I. No. 684 of 2006.

**Modifications (not altering text):**

**C53** Functions in relation to section transferred (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (S.I. No. 418 of 2011)*, arts. 2, 3 and sch. 1.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,  
are transferred to the Minister for Public Expenditure and Reform.

...

Schedule 1 Enactments

...

No. 30 of 2000	Planning and Development Act 2000	Sections 80, 116, 117, 120(2) and 181
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...

**C54** Application of regulations made under section restricted (1.05.2007) by *Prisons Act 2007* (10/2007), s. 28(1)(b)(i), S.I. No. 180 of 2007.

**Exemptions, etc., relating to development.**

**28.—**(1) A development—

(b) is not subject to—

(i) regulations under section 181 of the Planning and Development Act 2000,

...

**C55** Application of subs. (1) restricted by *Courts Service Act 1998* (8/1998), s. 33 as substituted (10.04.2002) by *Courts and Courts Officers Act 2002* (15/2002), s. 44, commenced on enactment .

**Service deemed State authority for planning and development purposes.**

**33.—**(1) The Service shall be deemed to be a State authority for the purposes of section 181(1) of the Act of 2000.

(2) (a) Notwithstanding subsection (1) of section 181 of the Act of 2000 or any regulations made under that subsection which provide for the giving of any specified notice with respect to proposed development consisting of the provision of temporary courthouses, it shall be necessary to give such notice of such proposed development once only.

...

(3) Where development is proposed to be carried out by or on behalf of the Service, the Minister may, if he or she is satisfied that the carrying out of the development is required by reason of an accident or emergency, by order provide that the Act of 2000 or, as may be appropriate, any requirement or requirements of regulations under section 181(1)(b) of the Act of 2000 specified in the order, shall not apply to the development, and for so long as such an order is in force the Act of 2000 or the said requirement or requirements, as the case may be, shall not apply to the development.

...

**Editorial Notes:**

**E172** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**F308**[Approval of certain State development requiring environmental impact assessment.

**181A.—** (1) Subject to section 181B(4), where a State authority proposes to carry out or have carried out development—

(a) of a class specified in regulations made under section 181(1)(a), and

(b) identified as likely to have significant **F309**[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] in accordance with section 176,

(hereafter referred to in this section and sections 181B and 181C as 'proposed development'), the authority shall prepare, or cause to be prepared, an application for approval of the development under section 181B and an F309[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of the development and shall apply to the Board for such approval accordingly.

(2) Subject to section 181B(4), the proposed development shall not be carried out unless the Board has approved it with or without modifications.

(3) Before a State authority makes an application for approval under subsection (1), it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) an F309[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] has been prepared in respect of the proposed development,

(III) where relevant, the proposed development is likely to have significant effects on the environment in another Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the F309[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely F309[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development,

if carried out, and

(iv) specifying the types of decision the Board may make, under section 181B, in relation to the application,

F310[(v) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and

(vi) stating where practical information on the review mechanism can be found.]

(b) send a copy of the application and the F309[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] to the local authority or each local authority in whose functional area the proposed development would be situate and to any prescribed bodies, together with a notice stating that submissions or observations may, during

the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

- (i) the implications of the proposed development for proper planning and sustainable development in the area concerned, and
  - (ii) the likely F309[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development,  
if carried out, and
- (c) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.

(4) The Board may—

- (a) if it considers it necessary to do so, require a State authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to the effects on proper planning and sustainable development or the environment of the proposed development as the Board may specify, or
- (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the State authority that it is of that view and invite the State authority to make to the terms of the proposed development alterations specified in the notification and, if the State authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a F309[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of it.

(5) If a State authority makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (4), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 181B.

(6) The Board shall—

- (a) where it considers that any further information received pursuant to a requirement made under subsection (4)(a) contains significant additional data relating to—
  - (i) the likely F309[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, and
  - (ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,

or

- (b) where the State authority has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (4)(b),

require the State authority to do the things referred to in subsection (7).

(7) The things which a State authority shall be required to do as aforesaid are—

- (a) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—
  - (i) further information in relation to the proposed development has been furnished to the Board, or
  - (ii) the State authority has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a F309[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the F309[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(b) to send to each prescribed authority to which a notice was given pursuant to subsection (3)(b) or (c)—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the State authority.]

#### Annotations

#### Amendments:

**F308** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 36, S.I. No. 684 of 2006.

**F309** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 37, S.I. No. 474 of 2011.

**F310** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(d).

#### Editorial Notes:

**E173** Previous affecting provision: substitutions made by *Planning and Development (Amendment) Act 2010* (30/2010), s. 60, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

F311[Section 181A: criteria for decision, certain exemptions, etc.

**181B.**— (1) Before making a decision in respect of a proposed development the subject of an application under section 181A, the Board shall consider—

- (a) the F312[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] submitted pursuant to section 181A(1) or (4), any submissions or observations made in accordance with section 181A(3) or (7) and any other information furnished in accordance with section 181A(4) relating to—
  - (i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and
  - (ii) the likely F312[effects on the environment or adverse effects on the integrity of a European site] of the proposed development,

and

- (b) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may, where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under section 181A(1) to prepare an F312[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

- (a) F312[the effects, if any of the proposed development on the environment or adverse effects, if any of the proposed development on the integrity of a European site] should be assessed in some other manner, and
- (b) the information arising from such an assessment should be made available to the members of the public,

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) The Minister for Defence may, in the case of proposed development in connection with, or for the purposes of, national defence, grant an exemption in respect of the development from a requirement under section 181A(1) to apply for approval and prepare an F312[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] if he or she is satisfied that the application of section 181A or 181C would have adverse effects on those purposes.

(5) Notice of any exemption granted under subsection (2) or (4), of the reasons for granting the exemption and, where appropriate, of any requirements applied under subsection (3) shall, as soon as may be—

- (a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3), to the Commission of the European Communities.

(6) The Board may, in respect of an application under section 181A for approval of proposed development—

- (a) approve the proposed development,
- (b) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (c) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (d) refuse to approve the proposed development,

and may attach to an approval under paragraph (a), (b) or (c) such conditions as it considers appropriate.

(7) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (6)(a), (b) or (c) a condition requiring—

- (a) the construction or the financing, in whole or in part, of the construction of a facility, or
- (b) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(8) A condition attached pursuant to subsection (7) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(9) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of consultations under section 181C or applications for approval under section 181A.

(10) Without prejudice to the generality of subsection (9), regulations under that subsection may make provision for requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(11) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, or on the environment, the Board shall have regard to—

- (a) the provisions of the development plan for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) where relevant, the matters referred to in section 143, and
- (f) the provisions of this Act and regulations under this Act where relevant.

(12) Regulations made under section 181(1)(b) shall not apply to any development which is approved under this section.

(13) Nothing in this section or section 181A or 181C shall require the disclosure by a State authority or the Board of details of the internal arrangements of a development which might prejudice the internal or external security of the development or facilitate



any unauthorised entrance to, or exit from, the development of any person when it is completed.

(14) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

**Annotations**

**Amendments:**

**F311** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 36, S.I. No. 684 of 2006.

**F312** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 38, S.I. No. 474 of 2011.

**Modifications (not altering text):**

**C56** Application of section restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(3), commenced on enactment.

**Certain development approvals under Part XI of Planning and Development Act 2000.**

**22.— ...**

(3) No approval shall be required under—

(a) section 181B,

...

in relation to development referred to in section 181A, 182A or 182C, respectively, if—

(i) in the case of development referred to in section 181A, a notification in respect of the development has been published, before the commencement of this section, in accordance with regulations under section 181(1)(b) of the Act of 2000 (whether or not the development has been commenced or completed before the commencement of this section),

(ii) in the case of development referred to in section 182A, the development has been the subject of—

(I) a grant of permission under section 34 of the Act of 2000 before the commencement of this section and that permission is in force immediately before such commencement, or

(II) an application made, before the commencement of this section, in accordance with the Act of 2000 and regulations thereunder for the grant of such a permission and that application does not stand withdrawn before the commencement of this section.

...

**Editorial Notes:**

**E174** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E175** Previous affecting provision: similar amendments to those made by 2011 Act made by *Planning and Development (Amendment) Act 2010* (30/2010), s. 61, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

**E176** Previous affecting provision: original versions of subs. (1)(a), (1)(a)(ii), (2), (3)(a) and (4) inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 36, S.I. No. 684 of 2006; substituted as per F-note above.

**F313**[Procedures in advance of seeking approval under section 181B.

**181C.**— (1) A State authority (a ‘prospective applicant’) which proposes to apply for approval under section 181B shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

(a) the procedures involved in making the application, and

(b) what considerations, related to proper planning and sustainable **F314**[development, the environment or a European site], may, in the opinion of the Board, have a bearing on its decision in relation to the application.

(3) A prospective applicant may request the Board—

(a) to make a determination of whether a development of a class specified in regulations made under section 181(1)(a) which it proposes to carry out or have carried out is likely to have significant **F314**[effects on the environment or adverse effects on the integrity of a European site as the case may be] in accordance with section 176 (and inform the applicant of the determination), or

(b) to give to the applicant an opinion in writing prepared by the Board on what information will be required to be contained in an **F314**[environmental impact statement or Natura impact statement or both of those statements as the case may be] in relation to the proposed development.

(4) On receipt of such a request, the Board shall comply with it as soon as is practicable.

(5) A prospective applicant shall, for the purposes of—

(a) consultations under subsection (1), and

(b) the Board’s complying with a request under subsection (3),

supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(6) Neither—

(a) the holding of consultations under subsection (1), nor

(b) the provision of an opinion under subsection (3),

shall prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(7) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.]

**Annotations****Amendments:**

**F313** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 36, S.I. No. 684 of 2006.

**F314** Substituted (21.09.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 62, S.I. No. 475 of 2011.

**Editorial Notes:**

**E177** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).

Cables, wires and pipelines.

**182.—(1)** A local authority may, with the consent of the owner and occupier of any land not forming part of a public road, place, construct or lay, as may be appropriate, cables, wires or pipelines (including water pipes, sewers or drains) and any ancillary apparatus on, under or over the land, and may, from time to time, inspect, repair, alter, renew or remove any such cables, wires or pipelines.

(2) A local authority may, with the consent of the owner and of the occupier of any structure, attach to the structure any bracket or other fixture required for the carrying or support of any cable, wire or pipeline placed, erected or constructed under this section.

(3) A local authority may erect and maintain notices indicating the position of cables, wires or pipelines placed, erected or constructed under this section and may, with the consent of the owner and of the occupier of any structure, affix such a notice to the structure.

(4) *Subsections (1) to (3)* shall have effect subject to the proviso that—

(a) a consent for the purposes of any of them shall not be unreasonably withheld,

(b) if the local authority considers that such a consent has been unreasonably withheld, it may appeal to the Board, and

(c) if the Board determines that such a consent was unreasonably withheld, it shall be treated as having been given.

(5) The local authority may permit the use of any cables, wires or pipelines placed, erected or constructed under this section and of any apparatus incidental to the cables, wires or pipelines subject to such conditions and charges as it considers appropriate.

F315[Electricity transmission lines.

**182A.— (1)** Where a person (hereafter referred to in this section as the ‘undertaker’) intends to carry out development comprising or for the purposes of electricity transmission, (hereafter referred to in this section and section 182B as ‘proposed development’), the undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

(2) In the case of development referred to in subsection (1) which belongs to a class of development identified for the purposes of section 176, the undertaker shall prepare, or cause to be prepared, an F316[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of the development.

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(4) Before an undertaker makes an application under subsection (1) for approval, it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) in the case of an application referred to in subsection (1)(a), an F316[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] has been prepared in respect of the proposed development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and any F316[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely F316[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development,

if carried out, and

(iv) specifying the types of decision the Board may make, under section 182B, in relation to the application,

F317[(v) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and

(vi) stating where practical information on the review mechanism can be found.]

(b) send a copy of the application and any F316[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] to the local authority or each local authority in whose functional area the proposed development would be situate and to the prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

(i) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

- (ii) the likely F316[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development,  
if carried out, and
  - (c) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.
- (5) The Board may—
  - (a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to—
    - (i) the F316[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, or
    - (ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,as the Board may specify, or
  - (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the statutory undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a F316[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of it.
- (6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182B.
- (7) The Board shall—
  - (a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to—
    - (i) the likely F316[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, and
    - (ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,or
  - (b) where the undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b),

require the undertaker to do the things referred to in subsection (8).

(8) The things which an undertaker shall be required to do as aforesaid are—

(a) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—

(i) further information in relation to the proposed development has been furnished to the Board, or

(ii) the undertaker has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a F316[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the F316[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(b) to send to each prescribed authority to which a notice was given pursuant to subsection (4)(b) or (c)—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the undertaker.

(9) In this section ‘transmission’, in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of—

(a) a high voltage line where the voltage would be 110 kilovolts or more, or

(b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.]

#### Annotations

#### Amendments:

**F315** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 4, S.I. No. 684 of 2006.

**F316** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 39, S.I. No. 474 of 2011.

**F317** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(e).

**Editorial Notes:**

**E178** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E179** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**E180** Previous affecting provision: similar amendments to those made by 2011 Act made by *Planning and Development (Amendment) Act 2010* (30/2010), s. 63, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

**F318**[Section 182A: criteria for decision, certain exemptions, etc.

**182B.**— (1) Before making a decision in respect of a proposed development the subject of an application under section 182A, the Board shall consider—

(a) the **F319**[environmental impact statement or Natura impact statement or both of those statements as the case may be] submitted pursuant to section 182A(1) or (5), any submissions or observations made in accordance with section 182A(4) or (8) and any other information furnished in accordance with section 182A(5) relating to—

(i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and

(ii) the likely **F319**[effects on the environment or adverse effects on the integrity of a European site as the case may be] of the proposed development,

and

(b) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may, where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of a proposed development from a requirement under section 182A(2) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

(a) **F319**[the effects, if any of the proposed development on the environment or adverse effects, if any, of the proposed development on the integrity of a European site] should be assessed in some other manner, and

(b) the information arising from such an assessment should be made available to the members of the public,

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) Notice of any exemption granted under subsection (2), of the reasons for granting the exemption, and of any requirements applied under subsection (3) shall, as soon as may be—

- (a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3) to the Commission of the European Communities.

(5) The Board may, in respect of an application under section 182A for approval of proposed development—

- (a) approve the proposed development,
- (b) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (c) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (d) refuse to approve the proposed development,

and may attach to an approval under paragraph (a), (b) or (c) such conditions as it considers appropriate.

F320[(5A) A decision of the Board under subsection (5) shall state—

- (a) the main reasons and considerations on which the decision is based,
- (b) where conditions are attached under subsection (5) or (6) the main reasons for attaching them,
- (c) the sum and direct the payment of the sum to be paid to the Board towards the costs incurred by the Board of—
  - (i) giving a written opinion in compliance with a request under section 182E(3) (inserted by section 4 of the Act of 2006),
  - (ii) conducting consultations under section 182E, and
  - (iii) determining the application made under section 182A (inserted by section 4 of the Act of 2006) under this section,

and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which the sums the Board may, by virtue of this subsection, require to be paid).

(5B) A reference to costs in subsection (5A)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(5C) A notice of a decision given under subsection (5) shall be furnished to the applicant as soon as may be after it is given but shall not become operative until any requirement under subsection (5A)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(5D) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement under subsection (5A)(c), the Board, the planning



authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.]

(6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(a), (b) or (c) a condition requiring—

(a) the construction or the financing, in whole or in part, of the construction of a facility, or

(b) the provision or the financing, in whole or in part, of the provision of a service, in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(7) A condition attached pursuant to subsection (6) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(8) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications under section 182A for approval.

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(10) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

(a) the provisions of the development plan for the area,

(b) the provisions of any special amenity area order relating to the area,

(c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,

(d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,

(e) the matters referred to in section 143, and

(f) the provisions of this Act and regulations under this Act where relevant.

(11) (a) No permission under section 34 or 37G shall be required for any development which is approved under this section.

(b) Part VIII shall apply to any case where development referred to in section 182A(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.

(12) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

**Annotations****Amendments:**

**F318** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

**F319** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 64(a) and (b), S.I. No. 405 of 2010.

**F320** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 64(c), S.I. No. 405 of 2010.

**Modifications (not altering text):**

**C57** Application of section restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(3), commenced on enactment.

**Certain development approvals under Part XI of Planning and Development Act 2000.**

**22.— ...**

(3) No approval shall be required under— ...

(b) section 182B, or

...

in relation to development referred to in section 181A, 182A or 182C, respectively, if— ...

(ii) in the case of development referred to in section 182A, the development has been the subject of—

(I) a grant of permission under section 34 of the Act of 2000 before the commencement of this section and that permission is in force immediately before such commencement, or

(II) an application made, before the commencement of this section, in accordance with the Act of 2000 and regulations thereunder for the grant of such a permission and that application does not stand withdrawn before the commencement of this section,

...

**Editorial Notes:**

**E181** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E182** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**F321**[Application for approval of strategic gas infrastructure development.

**182C.—** (1) Where a person (hereafter referred to in this section as the 'undertaker') intends to carry out a strategic gas infrastructure development (hereafter referred to in this section and section 182D as 'proposed development') **F322**], and where the Board determines following consultations under section 182E that the development comes within paragraph (a), (b) or (c) of section 37A(2),] the undertaker shall prepare, or cause to be prepared—

(a) an application for approval of the development under section 182D, and

(b) an **F323**[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of the development,

and shall apply to the Board for such approval accordingly, indicating in the application whether the application relates to a strategic upstream gas pipeline or a strategic downstream gas pipeline.

(2) An application under subsection (1) for approval of a proposed development shall, if it will consist of or include a pipeline, be accompanied by a certificate in relation to the pipeline provided under section 26 of the Gas Act 1976, as amended, or section 20 of the Gas (Amendment) Act 2000 by—

(a) in the case of a strategic upstream gas pipeline, the Minister for Communications, Marine and Natural Resources, or

(b) in the case of a strategic downstream gas pipeline, the Commission.

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(4) Before an undertaker makes an application for approval under subsection (1), it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) an F323[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] has been prepared in respect of the proposed development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the F323[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely F323[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development,

if carried out, and

(iv) specifying the types of decision the Board may make, under section 182D, in relation to the application,

F324[(v) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and

(vi) stating where practical information on the review mechanism can be found.]

and

(b) send a copy of the application and the F323[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] to—

(i) the local authority or each local authority in whose functional area the proposed development would be situate,

(ii) any prescribed bodies,

(iii) where the proposed development comprises or is for the purposes of a strategic downstream gas pipeline, the Commission, and

(iv) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, the prescribed body of the relevant state or states,

together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

(I) the implications of the proposed development for proper planning and sustainable development in the area concerned, and

(II) the likely effects on the environment of the proposed development,

if carried out.

(5) The Board may—

(a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to—

(i) the F323[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, or

(ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,

as the Board may specify, or

(b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised F323[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of it.

(6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182D.

(7) The Board shall—

(a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to—

(i) the likely F323[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, and

(ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,

or

(b) where the undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b),

require the undertaker to do the things referred to in subsection (8).

(8) The things which an undertaker shall be required to do as aforesaid are—

(a) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—

(i) further information in relation to the proposed development has been furnished to the Board, or

(ii) the undertaker has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or F323[a revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or F323[the revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(b) to send to each prescribed authority to which a notice was given pursuant to subsection (4)(b)—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the undertaker.

F325[(9) In the case of any application to the Board under this section, the Board shall request the Commission to make observations on safety or operational matters including any relevant safety advice or specific recommendations which the

Commission considers appropriate within such period as may be specified (which period shall not be less than 3 weeks from the date of the request).]

F322[(9A) In considering the likely effects of a proposed development on the environment or significant effects on a European site and the consequences of the development for proper planning and sustainable development, the Board shall have particular regard to the observations that the Commission considers it appropriate to make to the Board as requested under subsection (9).

(9B) Where the Board is considering not accepting the observations of the Commission it shall give notice to and consult with the Commission, giving its reasons and the Board shall request the Commission to respond within 3 weeks of the giving of notice under this subsection.

(9C) The Board shall consider any response given by the Commission under subsection (9B) before it makes a decision under section 182D.

(9D) The Board, in giving an approval for a proposed development under section 182D(5)(a), (b) or (c) or refusing to approve a proposed development under section 182D(5)(d), where it does not follow the observations of the Commission or part thereof, shall give reasons.

(9E) In making observations on safety or operational matters including any relevant safety advice or specific recommendations which the Commission considers appropriate under this section, the Commission may, without prejudice to the generality of the entitlement to make such observations, refer to such matters as it considers appropriate, including—

- (a) a safety framework established under section 13I of the Act of 1999,
- (b) directions made by the Minister for Communications, Energy and Natural Resources under section 13J of the Act of 1999,
- (c) guidelines issued under section 13L of the Act of 1999,
- (d) a safety case as defined by section 13A(1) of the Act of 1999,
- (e) a revised safety case within the meaning of section 13N of the Act of 1999,
- (f) a safety permit issued pursuant to section 13P of the Act of 1999,
- (g) an improvement notice issued under section 13Z of the Act of 1999,
- (h) a prohibition notice issued under section 13AA of the Act of 1999,
- (i) safety standards referred to in guidelines issued under section 13L of the Act of 1999,
- (j) standards and codes of practice referred to in section 13L(3)(c), and
- (k) conditions relating to petroleum authorisations.

(9F) In subsection (9E)—

- (a) ‘Act of 1999’ means the Electricity Regulation Act 1999;
- (b) a term or expression used in that subsection has the same meaning as it has in Part IIA of the Electricity Regulation Act 1999.]

(10) The Minister, after consultation with the Minister for Communications, Marine and Natural Resources, may make regulations to provide for matters of procedure in relation to the making of a request of the Commission under subsection (9) and the making of observations by the Commission on foot of such a request.

(11) In this section ‘Commission’ means the Commission for Energy Regulation.]

**Annotations**

**Amendments:**

- F321** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.
- F322** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(a) and (f), S.I. No. 477 of 2010.
- F323** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 40, S.I. No. 474 of 2011.
- F324** Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(f).
- F325** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(e), S.I. No. 477 of 2010.

**Modifications (not altering text):**

- C58** Application of section clarified (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(4), (5) and (6), commenced on enactment.

**Certain development approvals under Part XI of Planning and Development Act 2000.**

**22.— ...**

(4) Nothing in section 182C or any other provision of the Act of 2000 shall be read as meaning that, notwithstanding the permission granted under section 34 of the Act of 2000 in respect of that terminal before such commencement, a permission—

(a) under section 34 or 37G of the Act of 2000, and

(b) granted after the commencement of the amendments of that Act made by the Act of 2006, is required, either in circumstances generally or in the circumstances referred to in subsection (5), in respect of the terminal referred to in subsection (6).

(5) The circumstances mentioned in subsection (4) are that an application is made under section 182C in relation to a development which, if it is carried out, will consist of the alteration or modification of the terms of the strategic gas infrastructure development referred to in subsection (6) other than the terms of that development that comprise the terminal referred to in that subsection.

(6) The terminal mentioned in subsections (4) and (5) is a terminal comprised in a strategic gas infrastructure development (within the meaning of the Act of 2000) the pipeline comprised in which development has been the subject of a consent referred to in subsection (3)(iii)(I).

**Editorial Notes:**

- E183** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).
- E184** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E185** Previous affecting provision: section amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(b), (c) and (d), not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

F326[Section 182C: criteria for decision, certain exemptions, etc.

**182D.— (1)** Before making a decision in respect of a proposed development the subject of an application under section 182C, the Board shall consider—

(a) the F327[environmental impact statement or Natura impact statement or both of those statements as the case may be] submitted pursuant to section

182C(1) or (5), any submissions or observations made in accordance with section 182C(4), (8) or (9) and any other information furnished in accordance with section 182C(5) relating to—

- (i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and
- (ii) the likely F327[effects on the environment or adverse effects on the integrity of a European site as the case may be] of the proposed development,

and

- (b) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under section 182C(1) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

- (a) F327[the effects, if any of the proposed development on the environment or adverse effects, if any of the proposed development on the integrity of a European site] should be assessed in some other manner, and
- (b) the information arising from such an assessment should be made available to the members of the public,

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) Notice of any exemption granted under subsection (2), of the reasons for granting the exemption, and of any requirements applied under subsection (3) shall, as soon as may be—

- (a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3), to the Commission of the European Communities.

(5) The Board may, in respect of an application under section 182C for approval of proposed development—

- (a) approve the proposed development,
- (b) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (c) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (d) refuse to approve the proposed development,

and may attach to an approval under paragraph (a), (b) or (c) such conditions as it considers appropriate.



F328[(5A) A decision of the Board given under subsection (5) shall state—

- (a) the main reasons and considerations on which the decision was based,
- (b) where conditions are attached under subsection (5) or (6), the main reasons for attaching the conditions, and
- (c) the sum and direct the payment of the sum to be paid to the Board towards the costs incurred by the Board—
  - (i) in complying with its obligations under sections 146B, 146C, 146D (inserted by section 30 of the Act of 2006), and 181A (inserted by section 36 of the Act of 2006),
  - (ii) relating to the giving of a written opinion in compliance with a request made under section 182E(3) (inserted by section 4 of the Act of 2006),
  - (iii) of conducting consultations under section 182E,
  - (iv) of determining the application made under section 182C (inserted by section 4 of the Act of 2006) under this section,

and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which the sums the Board may, by virtue of this subsection, require to be paid).

(5B) A reference to costs in subsection (5A)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(5C) A notice of a decision given under subsection (5) shall be furnished to the applicant as soon as may be after it is given but shall not become operative until any requirement under subsection (5A)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(5D) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement under subsection (5A)(c), the Board, the planning authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.]

(6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(a), (b) or (c) a condition requiring—

- (a) the construction or the financing, in whole or in part, of the construction of a facility, or
- (b) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(7) A condition attached pursuant to subsection (6) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(8) The Minister may, after consultation with the Minister for Communications, Marine and Natural Resources, make regulations to provide for such matters of

procedure and administration as appear to the Minister to be necessary or expedient in respect of applications under section 182C for approval.

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(10) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

- (a) the provisions of the development plan for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) the matters referred to in section 143, and
- (f) the provisions of this Act and regulations under this Act where relevant.

(11) (a) No permission under section 34 or 37G shall be required for any development which is approved under this section.

(b) Part VIII shall apply to any case where development referred to in section 182C(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.

(12) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

#### **Annotations**

#### **Amendments:**

**F326** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

**F327** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 66(a) and (b), S.I. No. 405 of 2010.

**F328** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 66(c), S.I. No. 405 of 2010.

#### **Modifications (not altering text):**

**C59** Application of section restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(3), commenced on enactment.

#### **Certain development approvals under Part XI of Planning and Development Act 2000.**

**22.— ...**

(3) No approval shall be required under— ...

(c) section 182D,

in relation to development referred to in section 181A, 182A or 182C, respectively, if— ...

(iii) in the case of development referred to in section 182C, the development has been the subject of— ...

(I) a grant of consent under section 39A or 40 of the Act of 1976 before the commencement of this section and that consent is in force immediately before such commencement, or

(II) an application made, before the commencement of this section, in accordance with the Act of 1976 and regulations thereunder for the grant of such a consent and that application does not stand withdrawn before the commencement of this section.

...

**Editorial Notes:**

**E186** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

**E187** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

**F329**[Proce-  
dures in  
advance of  
seeking  
approval  
under section  
182B or  
182D.

**182E.—** (1) A person (a 'prospective applicant') who proposes to apply for approval under section 182B or 182D shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

(a) the procedures involved in making such an application, and

(b) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

(3) A prospective applicant may request the Board to give to him or her an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact statement in relation to the proposed development; on receipt of such a request the Board, after consulting the prospective applicant and such bodies as may be specified by the Minister for the purpose, shall comply with it as soon as is practicable.

(4) A prospective applicant shall, for the purposes of—

(a) consultations under subsection (1), and

(b) the Board's complying with a request under subsection (3),

supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(5) Neither—

(a) the holding of consultations under subsection (1), nor

(b) the provision of an opinion under subsection (3),

shall prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(6) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.

(7) The Board may, at its absolute discretion, consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under this section in relation to a proposed development.]

#### Annotations

#### Amendments:

**F329** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 4, S.I. No. 684 of 2006.

#### Editorial Notes:

**E188** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011 (S.I. No. 262 of 2011)*.

## PART XII

### COMPENSATION

#### CHAPTER I

##### *Compensation generally*

Compensation claims time limits.

**183.**—(1) Subject to *subsection (2)*, a claim for compensation under this Part shall be made not later than 6 months after—

- (a) in the case of a claim under *section 190*, the date of the decision of the Board,
- (b) in the case of a claim under *section 195*, the date of the decision of the planning authority or the Board, as the case may be,
- (c) in the case of a claim under *section 196*, the removal or alteration of the structure,
- (d) in the case of a claim under *section 197*, the discontinuance or compliance,
- (e) in the case of a claim referred to in *section 198*, the date of the approval of a scheme under *section 85* or the date of complying with a notice under *section 88*, as the case may be,
- (f) in the case of a claim under *section 199*, the date on which the action of the planning authority occurred,
- (g) in the case of a claim under *section 200*, the date on which the order creating the public right of way commences to have effect, and
- (h) in the case of a claim under *section 201*, the date on which the damage is suffered.

(2) The High Court may, where it considers that the interests of justice so require, extend the period within which a claim for compensation under this Part may be brought, upon application being made to it in that behalf.

Determination of compensation claim.

**184.**—A claim for compensation under this Part shall, in default of agreement, be determined by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919, but subject to—

- (a) the *Second Schedule* in respect of a reduction in the value of an interest in land,
- (b) the proviso that the arbitrator shall have jurisdiction to make a nil award, and
- (c) the application of the *Second Schedule* to a claim for compensation under *Chapter III* of this Part for a reduction in the value of an interest as if a reference to “the relevant decision under Part III” or to “the decision” was, in relation to each of the sections in that Chapter set out in column A of the Table to this section, a reference to the matter set out in column B of that Table opposite the reference in column A to that section.

**TABLE**

A Section	B
196	the removal or alteration of a structure consequent upon a notice under <i>section 46</i> .
197	the discontinuance with, or the compliance with conditions on the continuance, of the use of land consequent upon a notice under <i>section 46</i> .
198	the approval of a scheme under <i>section 85</i> or the compliance with a notice under <i>section 88</i> .
199	the action by the planning authority under <i>section 182</i> .
200	the making by the planning authority of an order under <i>section 207</i> .

Regulations in relation to compensation.

**185.**—The Minister may make regulations to provide for the following:

- (a) the form in which claims for compensation are to be made;
- (b) the provision by a claimant of evidence in support of his or her claim, and information as to his or her interest in the land to which the claim relates;
- (c) a statement by a claimant of the names and addresses of all other persons (so far as they are known to him or her) having an interest in the land to which the claim relates and, unless the claim is withdrawn, the notification by the planning authority or the claimant of every other person (if any) appearing to it or him or her to have an interest in the land.

**Annotations**

**Editorial Notes:**

**E189** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Prohibition of double compensation.

**186.**—Where a person would, but for this section, be entitled to compensation under this Part in respect of any matter or thing, and also to compensation under any other enactment in respect of the same matter or thing, he or she shall not be entitled to compensation in respect of the matter or thing both under this Part and under the other enactment, and shall not be entitled to any greater amount of compensation under this Part in respect of the matter or thing than the amount of the compensation to which he or she would be entitled under the other enactment in respect of the matter or thing.

Recovery of compensation from planning authority.

**187.—**(1) All compensation payable under this Part by the planning authority shall, when the amount thereof has been determined by agreement or by arbitration in accordance with this Part, be recoverable from that authority as a simple contract debt in any court of competent jurisdiction.

(2) All costs and expenses of parties to an arbitration to determine the amount of any compensation shall, in so far as the costs and expenses are payable by the planning authority, be recoverable from that authority as a simple contract debt in any court of competent jurisdiction.

(3) Section 69 to 79 of the Lands Clauses Consolidation Act, 1845, as amended or adapted by or under the Second Schedule to the Housing of the Working Classes Act, 1890, or any other Act, shall apply in relation to compensation by this section made recoverable as a simple contract debt, as if the compensation were a price or compensation under the Lands Clauses Consolidation Act, 1845, as so amended or adapted.

(4) Where money is paid into court by the planning authority under section 69 of the Lands Clauses Consolidation Act, 1845, as applied by this section, no costs shall be payable by that authority to any person in respect of any proceedings for the investment, payment of income, or payment of capital of that money.

Registration of compensation.

**188.—**(1) Where, on a claim for compensation under *Chapter II* of this Part, compensation has become payable of an amount exceeding £500, the planning authority shall prepare and retain a statement of that fact, specifying the refusal of permission or grant of permission subject to conditions, or the revocation or modification of permission, the land to which the claim for compensation relates, and the amount of the compensation.

(2) (a) A planning authority shall enter in the register particulars of a statement prepared by it under this section.

(b) Every entry under *paragraph (a)* shall be made within the period of 2 weeks beginning on the day of the preparation of the statement.

Recovery by planning authority of compensation on subsequent development.

**189.—**(1) No person shall carry out any development to which this section applies, on land in respect of which a statement (a “compensation statement”) stands registered (whether under section 72 of the Act of 1963, section 9 of the Act of 1990 or *section 188* of this Act) until that amount, as is recoverable under this section in respect of the compensation specified in the compensation statement, has been paid or secured to the satisfaction of the planning authority.

(2) This section applies to any development (other than exempted development) of a kind specified in *section 192(2)*, except that—

(a) this section shall not apply to any development by virtue of a permission to develop land under *Part III* referred to in *section 192(5)* where the permission was granted subject to conditions other than conditions of a class or description set out in the *Fifth Schedule*, and

(b) in a case where the compensation specified in the statement became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.

(3) Subject to *subsection (4)*, the amount recoverable under this section in respect of the compensation specified in a compensation statement—

(a) if the land on which the development is to be carried out (the “development area”) is identical with, or includes (with other land) the whole of the land comprised in the compensation statement, shall be the amount of compensation specified in that statement, or

- (b) if the development area forms part of the land comprised in the compensation statement, or includes part of that land together with other land not comprised in that statement, shall be so much of the amount of compensation specified in that statement as is attributable to land comprised in that statement and falling within the development area.
- (4) The attribution of compensation under *subsection (3)(b)* shall be in accordance with the following—
- (a) the planning authority shall (if it appears to it to be practicable to do so) apportion the amount of the compensation between the different parts of the land, according to the way in which those parts appear to it to be differently affected by the refusal of permission or grant of permission subject to conditions;
- (b) if no apportionment is made, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the statement relates;
- (c) if an apportionment is made, the compensation shall be treated as distributed in accordance with that apportionment, as between the different parts of the land by reference to which the apportionment is made, and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land;
- (d) if any person disputes an apportionment under this subsection, the dispute shall be submitted to and decided by a property arbitrator nominated under the Property Values (Arbitration and Appeals) Act, 1960.
- (5) Where, in connection with the development of any land, an amount becomes recoverable under this section in respect of the compensation specified in a compensation statement, then no amount shall be recoverable, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (6) An amount recoverable under this section in respect of any compensation shall be payable to the planning authority, and—
- (a) shall be so payable, either as a single capital payment or as a series of instalments of capital and interest combined (the interest being determined at the same rate as for a judgment debt), or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the planning authority may direct, after taking into account any representations made by the person by whom the development is to be carried out, and
- (b) except where the amount is payable as a single capital payment, shall be secured by that person in such manner (whether by mortgage, covenant or otherwise) as the planning authority may direct.
- (7) If any person initiates any development to which this section applies in contravention of *subsection (1)*, the planning authority may serve a notice upon him or her, specifying the amount appearing to it to be the amount recoverable under this section in respect of the compensation in question, and requiring him or her to pay that amount to the planning authority within such period, not being less than 12 weeks after the service of the notice, as may be specified in the notice, and, in default of the amount being paid to the planning authority within the period specified in the notice, it shall be recoverable as a simple contract debt in any court of competent jurisdiction.

## CHAPTER II

*Compensation in relation to decisions under Part III*

Right to compensation. **190.**—If, on a claim made to the planning authority, it is shown that, as a result of a decision on an appeal under *Part III* involving a refusal of permission to develop land or a grant of permission to develop land subject to conditions, the value of an interest of any person existing in the land to which the decision relates at the time of the decision is reduced, that person shall, subject to the other provisions of this Chapter, be entitled to be paid by the planning authority by way of compensation—

- (a) such amount, representing the reduction in value, as may be agreed,
- (b) in the absence of agreement, the amount of such reduction in value, determined in accordance with the *Second Schedule*, and
- (c) in the case of the occupier of the land, the damage (if any) to his or her trade, business or profession carried out on the land.

Restriction of compensation. **191.**—(1) Compensation under *section 190* shall not be payable in respect of the refusal of permission for any development—

- (a) of a class or description set out in the *Third Schedule*, or
- (b) if the reason or one of the reasons for the refusal is a reason set out in the *Fourth Schedule*.

(2) Compensation under *section 190* shall not be payable in respect of the refusal of permission for any development based on any change of the zoning of any land as a result of F330[the making of a new development plan under section 12 or the preparing, making, amending or revoking of a local area plan under section 18 or 20.]

(3) Compensation under *section 190* shall not be payable in respect of the imposition, on the granting of permission to develop land, of any condition of a class or description set out in the *Fifth Schedule*.

(4) Compensation under *section 190* shall not be payable in respect of the refusal of permission, or of the imposition of conditions on the granting of permission, for the retention on land of any unauthorised structures.

**Annotations**

**Amendments:**

**F330** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 67, S.I. No. 477 of 2010.

Notice preventing compensation. **192.**—(1) Where a claim for compensation is made under *section 190*, the planning authority concerned may, not later than 12 weeks after the claim is received, and having regard to all the circumstances of the case, serve a notice in such form as may be prescribed on the person by whom or on behalf of whom the claim has been made stating that, notwithstanding the refusal of permission to develop land or the grant of permission to develop land subject to conditions, the land in question is in its opinion capable of other development for which permission under *Part III* ought to be granted.

(2) For the purpose of *subsection (1)*, “other development” means development of a residential, commercial or industrial character, consisting wholly or mainly of the construction of houses, shops or office premises, hotels, garages and petrol filling stations, theatres or structures for the purpose of entertainment, or industrial buildings (including warehouses), or any combination thereof.



(3) A notice under *subsection (1)* shall continue in force for a period of 5 years commencing on the day of service of the notice, unless before the expiration of that period—

(a) the notice is withdrawn by the planning authority,

(b) a permission is granted under *Part III* to develop the land to which the notice relates in a manner consistent with the other development specified in the notice, subject to no conditions or to conditions of a class or description set out in the *Fifth Schedule*, or

(c) the notice is annulled by virtue of *subsection (5)*.

(4) Compensation shall not be payable on a claim made under *section 190* where—

(a) a notice under *subsection (1)* is in force in relation to that claim,

(b) a notice under *subsection (1)* was in force in relation to that claim but has ceased to be in force by reason of the expiration of the period referred to in *subsection (3)*, and an application for permission under *Part III* to develop the land to which the notice relates, in a manner consistent with the other development specified in the notice, has not been made within that period, or

(c) a notice under *subsection (1)* was in force in relation to the claim but has ceased to be in force by virtue of *subsection (3)(b)*.

(5) A notice under *subsection (1)* shall be annulled where, upon an application for permission under *Part III* to develop the land to which the notice relates in a manner consistent with the other development specified in the notice, the permission is refused or is granted subject to conditions other than conditions of a class or description set out in the *Fifth Schedule*.

(6) No claim for compensation under *section 190* shall lie in relation to a decision under *Part III* referred to in *subsection (5)*.

#### Annotations

#### Editorial Notes:

**E190** Power pursuant to section exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

Special provision for structures substantially replacing structures demolished or destroyed by fire.

**193.—(1)** Nothing in *section 191* shall prevent compensation being paid—

(a) in a case in which there has been a refusal of permission for the erection of a new structure substantially replacing a structure (other than an unauthorised structure) which has been demolished or destroyed by fire or otherwise than by an unlawful act of the owner or of the occupier with the agreement of the owner within the 2 years preceding the date of application for permission, or there has been imposed a condition in consequence of which the new structure may not be used for the purpose for which the demolished or destroyed structure was last used, or

(b) in a case in which there has been imposed a condition in consequence of which the new structure referred to in *paragraph (a)* or the front thereof, or the front of an existing structure (other than an unauthorised structure) which has been taken down in order to be re-erected or altered, is set back or forward.

(2) Every dispute and question as to whether a new structure would or does replace substantially within the meaning of *subsection (1)* a demolished or destroyed structure shall be referred to the Board for determination.

Restriction on assignment of compensation under *section 190*.

**194.**—A person shall not be entitled to assign to any other person all or any part of any prospective compensation under *section 190*, and every purported assignment or promise, express or implied, to pay any other person any money in respect of any such compensation is void.

Compensation where permission is revoked or modified.

**195.**—(1) Where permission to develop land has been revoked or modified by a decision under *section 44*—

- (a) if, on a claim made to the planning authority, it is shown that any person interested in the land has incurred expenditure or entered into a contract to incur expenditure in respect of works which are rendered abortive by the revocation or modification, the planning authority shall pay to that person compensation in respect of that expenditure or contract,
- (b) the provisions of this Part shall apply in relation to the decision where it revoked the permission or modified it by the imposition of conditions—
  - (i) in case it revoked the permission, as they apply in relation to refusal of permission to develop land, and
  - (ii) in case it modified the permission by the imposition of conditions, as they apply in relation to a grant of permission to develop land subject to conditions.

(2) For the purposes of this section, any expenditure reasonably incurred in the preparation of plans for the purposes of any works or upon other similar matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out those works but, no compensation shall be paid by virtue of this section in respect of any works carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission.

### CHAPTER III

#### *Compensation in relation to section 46, 85, 88, 182, 207 and 252*

Compensation regarding removal or alteration of structure.

**196.**—If, on a claim made to the planning authority, it is shown that, as a result of the removal or alteration of any structure consequent upon a notice under *section 46*, the value of an interest of any person in the structure existing at the time of the confirmation of the notice is reduced, or that any person having an interest in the structure at that time has suffered damage by being disturbed in his or her enjoyment of the structure, that person shall, subject to the other provisions of this Part, be entitled to be paid by the planning authority by way of compensation the amount of the reduction in value or the amount of the damage.

Compensation regarding discontinuance of use.

**197.**—(1) If, on a claim made to the planning authority, it is shown that, as a result of the discontinuance, or the compliance with conditions on the continuance, of any use of land consequent upon a notice under *section 46*, the value of an interest of any person in the land existing at the time of the confirmation of the notice is reduced, or that any person having an interest in the land at that time has suffered damage by being disturbed in his or her enjoyment of the land, that person shall, subject to the other provisions in this Part, be entitled to be paid by the planning authority by way of compensation the amount of the reduction in value or the amount of the damage.

(2) Notwithstanding *subsection (1)*, no compensation shall be paid under this section in relation to reduction in value or damage resulting from the imposition under *section 46* of conditions on the continuance of the use of land, being conditions imposed in order to avoid or reduce serious water pollution or the danger of such pollution.

(3) *Subsection (1)* shall not apply where the use of land is for the exhibition of advertising unless at the time of the discontinuance or compliance, the land has been used for the exhibition of advertising for less than 5 years, whether the use was continuous or intermittent or whether or not, while the land was being so used, advertising was exhibited at the same place on the land.

Compensation claim relating to area of special planning control.

**198.**—If, on a claim made to a planning authority, it is shown that—

- (a) the value of an interest of any person in land in an area of special planning control has been reduced, or
- (b) as a result of complying with a notice under *section 88*, the value of an interest of any person in the land existing at the time of the notice has been reduced, or that any person, having an interest in the land at the time, has suffered damage by being disturbed in his or her enjoyment of the structure or other land,

that person shall be paid by the planning authority, by way of compensation, a sum equal to the amount of the reduction in value or a sum in respect of the damage suffered.

Compensation regarding cables, wires and pipelines.

**199.**—If, on a claim made to the local authority, it is shown that, as a result of the action of the authority pursuant to *section 182* in placing, renewing or removing any cable, wire or pipeline, attaching any bracket or fixture or affixing any notice, the value of an interest of any person in the land or structure existing at the time of the action of the planning authority is reduced, or that any person having an interest in the land or structure at that time has suffered damage by being disturbed in his or her enjoyment of the land or structure, that person shall, subject to the other provisions of this Part, be entitled to be paid by the local authority by way of compensation the amount of the reduction in value or the amount of the damage.

Compensation regarding creation of public rights of way.

**200.**—If, on a claim made to the planning authority, it is shown that the value of an interest of any person in land, being land over which a public right of way has been created by an order under *section 207* made by that authority, is reduced, or that any person having an interest in the land has suffered damage by being disturbed in his or her enjoyment of the land, in consequence of the creation of the public right of way, that person shall, subject to the other provisions of this Part, be entitled to be paid by the planning authority by way of compensation the amount of the reduction in value or the amount of the damage.

Compensation regarding entry on land.

**201.**—If, on a claim made to the planning authority, it is shown that, as a result of anything done under *section 252* or *253*, any person has suffered damage, the person shall, subject to the other provisions of this Part, be entitled to be paid by the planning authority by way of compensation the amount of the damage.

PART XIII

AMENITIES

Area of special amenity.

**202.**—(1) Where, in the opinion of the planning authority, by reason of—

- (a) its outstanding natural beauty, or

(b) its special recreational value,

and having regard to any benefits for nature conservation, an area should be declared under this section to be an area of special amenity, it may, by resolution, make an order to do so and the order may state the objective of the planning authority in relation to the preservation or enhancement of the character or special features of the area, including objectives for the prevention or limitation of development in the area.

(2) Where it appears to the Minister that an area should be declared under this section to be an area of special amenity by reason of—

(a) its outstanding natural beauty, or

(b) its special recreational value,

and having regard to any benefits for nature conservation, he or she may, if he or she considers it necessary, direct a planning authority to make an order under this section in relation to an area specified in the direction and may, if he or she thinks fit, require that objectives specified in the direction be included by the planning authority in the order in respect of matters and in a manner so specified, and if the Minister gives a direction under this subsection the planning authority concerned shall comply with the direction.

(3) An order made pursuant to a direction under *subsection (2)* shall be revoked or amended only with the consent of the Minister.

(4) An order under this section shall come into operation on being confirmed, whether with or without modification, under *section 203*.

(5) Where the functional areas of two planning authorities are continuous, either authority may, with the consent of the other, make an order under this section in respect of an area in or partly in the functional area of the other.

(6) Any order under this section may be revoked or varied by a subsequent order under this section.

(7) Subject to *subsection (3)*, a planning authority may, from time to time, review an order made under this section (excepting any order merely revoking a previous order), for the purpose of deciding whether it is desirable to revoke or amend the order.

Confirmation of order under *section 202*.

**203.**—(1) As soon as may be after it has made an order under *section 202*, a planning authority shall publish in one or more newspapers circulating in the area to which the order relates a notice—

(a) stating the fact of the order having been made, and describing the area to which it relates,

(b) naming a place where a copy of the order and of any map referred to therein may be seen during office hours,

(c) specifying the period (not being less than 4 weeks) within which, and the manner in which, objections to the order may be made to the planning authority, and

(d) specifying that the order requires confirmation by the Board and that, where any objections are duly made to the order and are not withdrawn, an oral hearing will be held and the objections will be considered before the order is confirmed.

(2) As soon as may be after the period for making objections has expired, the planning authority may submit the order made under *section 202* to the Board for

confirmation, and, when making any such submission, it shall also submit to the Board any objections to the order which have been duly made and have not been withdrawn.

(3) (a) If no objection is duly made to the order, or if all objections so made are withdrawn, the Board may confirm the order made under *section 202*, with or without modifications, or refuse to confirm it.

(b) Where any objections to the order are not withdrawn, the Board shall hold an oral hearing and shall consider the objections, and may then confirm the order, with or without modifications, or refuse to confirm it.

(4) Any reference in this Act, or any other enactment, to a special amenity area order shall be construed as a reference to an order confirmed under this section.

Landscape  
conservation  
areas.

**204.**—(1) A planning authority may, by order, for the purposes of the preservation of the landscape, designate any area or place within the functional area of the authority as a landscape conservation area.

(2) (a) Notwithstanding any exemption granted under *section 4* or under any regulations made under that section, the Minister may prescribe development for the purpose of this section, which shall not be exempted development.

(b) Development prescribed under *paragraph (a)* may be subject to any conditions or restrictions that the Minister may prescribe.

(3) An order made by a planning authority under this section may specify, in relation to all or any part of the landscape conservation area, that any development prescribed by the Minister under *subsection (2)* shall be considered not to be exempted development in that area.

(4) Where a planning authority proposes to make an order under this section, it shall cause notice of the proposed order to be published in one or more newspapers circulating in the area of the proposed landscape conservation area.

(5) A notice under *subsection (4)* shall state that—

(a) the planning authority proposes to make an order designating a landscape conservation area, indicating the place or places and times at which a map outlining the area may be inspected, and shall give details of the location of the area and any prescribed development which it proposes to specify in the order, and

(b) submissions or observations regarding the proposed order may be made to the planning authority within a stated period of not less than 6 weeks, and that the submissions or observations will be taken into consideration by the planning authority.

(6) The members of a planning authority, having considered the proposed order and any submissions or observations made in respect of it, may, as they consider appropriate, by resolution, make the order, with or without modifications, or refuse to make the order.

(7) Where a planning authority wishes to amend or revoke an order made under this section, the planning authority shall give notice of its intention to amend or revoke the order, as the case may be.

(8) A notice under *subsection (7)* (which shall include particulars of the proposed amendment or revocation of the order) shall be published in one or more newspapers circulating in the landscape conservation area.

(9) A notice under *subsection (7)* shall state that—

(a) the planning authority proposes to amend or revoke the order, and

(b) submissions or observations regarding the proposed amendment or revocation of the order may be made to the planning authority within a stated period of not less than 6 weeks, and that the submissions or observations will be taken into consideration by the planning authority.

(10) The planning authority, having considered the proposed amendment or revocation of the order and any submissions or observations made in respect of it, may by resolution, as it considers appropriate, revoke the order or amend the order, with or without modifications, or refuse to make the order, as the case may be.

(11) Before making an order under this section, the planning authority shall consult with any State authority where it considers that any order relates to the functions of that State authority.

(12) (a) A planning authority shall give notice of any order made under this section in at least one newspaper circulating in its functional area, and the notice shall give details of any prescribed development which is specified in the order.

(b) Notice under this subsection shall also be given to the Board and to any other prescribed body which in the opinion of the planning authority has an interest in such notice.

(13) Where 2 or more planning authorities propose to jointly designate any area or place, which is situated within the combined functional area of the planning authorities concerned, as a landscape conservation area, the functions conferred on a planning authority under this section shall be performed jointly by the planning authorities concerned, and any reference to "planning authority" shall be construed accordingly.

(14) Particulars of an order under this section shall be entered in the register.

Tree preservation orders.

**205.—**(1) If it appears to the planning authority that it is expedient, in the interests of amenity or the environment, to make provision for the preservation of any tree, trees, group of trees or woodlands, it may, for that purpose and for stated reasons, make an order with respect to any such tree, trees, group of trees or woodlands as may be specified in the order.

(2) Without prejudice to the generality of *subsection (1)*, an order under this section may—

(a) prohibit (subject to any conditions or exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees, and

(b) require the owner and occupier of the land affected by the order to enter into an agreement with the planning authority to ensure the proper management of any trees, group of trees or woodlands (including the replanting of trees), subject to the planning authority providing assistance, including financial assistance, towards such management as may be agreed.

(3) (a) Where a planning authority proposes to make an order under this section, it shall—

(i) serve a notice (which shall include particulars of the proposed order) of its intention to do so on the owner and the occupier of the land affected by the order, and

(ii) cause notice of the proposed order to be published in one or more newspapers circulating in its functional area.

(b) A notice under *paragraph (a)(i)* shall be accompanied by a map indicating the tree, trees, group of trees or woodland to be preserved.

(4) A notice under *subsection (3)* shall state that—

- (a) the planning authority proposes to make an order preserving the tree, trees, group of trees or woodlands,
- (b) submissions or observations regarding the proposed order may be made to the planning authority within a stated period of not less than 6 weeks, and that the submissions or observations will be taken into consideration by the planning authority, and
- (c) any person who contravenes an order or, pending the decision of a planning authority, a proposed order under this section, shall be guilty of an offence.

(5) The planning authority, having considered the proposal and any submissions or observations made in respect of it, may by resolution, as it considers appropriate, make the order, with or without modifications, or refuse to make the order, and any person on whom notice has been served under *subsection (3)* shall be notified accordingly.

(6) Where a planning authority intends to amend or revoke an order made under this section, the planning authority shall give notice of its intention to amend or revoke the order, as the case may be.

(7) (a) A notice under *subsection (6)* (which shall include particulars of the proposed order) shall be—

- (i) served on the owner and the occupier of the land affected by the order, and on any other person on whom a notice was served under *subsection (3)*, and
- (ii) published in one or more newspapers circulating in the functional area of the planning authority.

(b) A notice under *subsection (6)* shall be accompanied by a map indicating the tree, trees, group of trees or woodland to be affected by the amendment or revocation of the order.

(8) A notice under *subsection (6)* shall state that—

- (a) the planning authority proposes to amend or revoke the order, and
- (b) submissions of observations regarding the proposal may be made to the planning authority within a stated period of not less than 6 weeks, and that the submissions or observations will be taken into consideration by the planning authority.

(9) The planning authority, having considered the proposal and any submissions or observations made in respect of it, may by resolution, as it considers appropriate, revoke the order or amend the order, with or without modifications, or refuse to make the order, as the case may be, and any person on whom notice has been served under *subsection (7)* shall be notified accordingly.

(10) Any person who contravenes an order or, pending the decision of a planning authority, a proposed order under this section, shall be guilty of an offence.

(11) Without prejudice to any other exemption for which provision may be made by an order under this section, no such order shall apply to the cutting down, topping or lopping of trees which are dying or dead or have become dangerous, or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by or under any enactment or so far as may be necessary for the prevention or abatement of a nuisance or hazard.

(12) Particulars of an order under this section shall be entered in the register.

Creation of public rights of way pursuant to agreement.

**206.**—(1) A planning authority may enter into an agreement with any person having the necessary power in that behalf for the creation, by dedication by that person, of a public right of way over land.

(2) An agreement made under this section shall be on such terms as to payment or otherwise as may be specified in the agreement, and may, if it is so agreed, provide for limitations or conditions affecting the public right of way.

(3) Where an agreement has been made under this section, it shall be the duty of the planning authority to take all necessary steps for securing that the creation of the public right of way is effected in accordance with the agreement.

(4) Particulars of an agreement made under this section shall be entered in the register.

Compulsory powers for creation of public rights of way.

**207.**—(1) If it appears to the planning authority that there is need for a public right of way over any land, the planning authority may, by resolution, make an order creating a public right of way over the land.

(2) (a) Where a planning authority proposes to make an order under this section, it shall—

(i) serve a notice (which shall include particulars of the proposed order) of its intention to do so on the owner and the occupier of the land over which the public right of way is proposed to be created and on any other person who in its opinion will be affected by the creation of the public right of way, and

(ii) cause notice of the proposed order to be published in one or more newspapers circulating in its functional area.

(b) A notice under *paragraph (a)(i)* shall be accompanied by a map indicating the public right of way to be created.

(3) A notice under *subsection (2)* shall state that—

(a) the planning authority proposes to make an order creating the public right of way, and

(b) submissions or observations regarding the proposed order may be made to the planning authority within a stated period of not less than 6 weeks and that the submissions or observations will be taken into consideration by the planning authority.

(4) The planning authority, having considered the proposal and any submissions or observations made in respect of it, may by resolution, as it considers appropriate, make the order, with or without modifications, or refuse to make the order and any person on whom notice has been served under *subsection (2)* shall be notified accordingly.

(5) Any person who has been notified of the making of an order under *subsection (4)* may appeal to the Board against the order within 4 weeks of being notified under that subsection.

(6) Where an appeal is brought under this section against an order, the Board may confirm the order with or without modifications or annul the order.

(7) An order under this section (other than an order which is annulled) shall take effect—

(a) in case no appeal against it is taken or every appeal against it is withdrawn before the expiration of the period for taking an appeal, on the expiration of the period for taking an appeal, or



(b) in case an appeal or appeals is or are taken against it and the appeal or appeals is or are not withdrawn during the period for taking an appeal, when every appeal not so withdrawn has been either withdrawn or determined.

(8) Particulars of a right of way created under this section shall be entered in the register.

(9) Any public right of way created under an enactment repealed by this Act that was in force immediately before the commencement of this section shall be deemed to have been made under this section.

Supplemental provisions with respect to public rights of way.

**208.—**(1) Where a public right of way is created pursuant to this Act, or where a provision in a development plan in force on the commencement of this section relates to the preservation of a public right of way, the way shall be maintained by the planning authority.

(2) (a) Where a right of way is required by this section to be maintained by the planning authority, a person shall not damage or obstruct the way, or hinder or interfere with the exercise of the right of way.

(b) A person who contravenes this subsection shall be guilty of an offence.

(3) Where, in the case of a right of way required by this section to be maintained by the planning authority, the way is damaged or obstructed by any person, the planning authority maintaining the right of way may repair the damage or remove the obstruction, and the expenses incurred by it in the repair or removal shall be paid to them by that person and, in default of being so paid, shall be recoverable from him or her as a simple contract debt in any court of competent jurisdiction.

Repair and tidying of advertisement structures and advertisements.

**209.—**(1) If it appears to a planning authority that, having regard to the interests of public safety or amenity, an advertisement structure or advertisement in its area should be repaired or tidied, the planning authority may serve on the person having control of the structure or advertisement a notice requiring that person to repair or tidy the advertisement structure or advertisement within a specified period.

(2) If it appears to a planning authority that any advertisement structure or advertisement is derelict, the planning authority may serve on the person having control of the structure or advertisement a notice requiring that person to remove the advertisement structure or advertisement within a specified period.

(3) If within the period specified in a notice under this section, the advertisement structure or advertisement is not repaired or tidied, or removed, as the case may be, the planning authority may enter on the land on which the structure is situate or the advertisement is exhibited and repair, tidy or remove the structure or advertisement and may recover as a simple contract debt in any court of competent jurisdiction from the person having control of the structure or advertisement any expenses reasonably incurred by it in that behalf.

## PART XIV

### ACQUISITION OF LAND, ETC.

Appropriation of land for local authority purposes.

**210.—**(1) Where—

(a) land is vested in a local authority for the purposes of its functions under this or any other enactment, and

(b) the local authority is satisfied that the land should be made available for the purposes of any of those functions,

the local authority may appropriate the land for those purposes.

(2) Where land is vested in a local authority by means of compulsory acquisition under any enactment, no claim shall be made for compensation or additional compensation and the acquisition shall not be challenged on account of any appropriation of land in accordance with *subsection (1)*.

Disposal of land  
by local authority.

**211.—**(1) Any land acquired for the purposes of or appropriated under this Act or any other Act or acquired otherwise, by a local authority, may be sold, leased or exchanged, subject to such conditions as it may consider necessary where it no longer requires the land for any of its functions, or in order to secure—

- (a) the best use of that or other land, and any structures or works which have been, or are to be, constructed, erected, made or carried out on, in or under that or other land, or
- (b) the construction, erection, making or carrying out of any structures or works appearing to it to be needed for the proper planning and sustainable development of its functional area.

(2) The consent of the Minister shall, subject to *subsection (3)*, be required for any sale, lease or exchange under *subsection (1)* in case the price or rent, or what is obtained by the local authority on the exchange, is not the best reasonably obtainable, but in any other case, shall not be required notwithstanding the provisions of any other enactment.

(3) The Minister may by regulations provide for the disposal of land under *subsection (1)* without the consent of the Minister as required by *subsection (2)* in such circumstances as may be specified in the regulations and subject to compliance with such conditions (including conditions for the giving of public notice) as may be so specified.

(4) Capital money arising from the disposal of land under *subsection (1)* shall be applied for a capital purpose for which capital money may be properly applied F331[, or for such purposes as may be approved by the Minister whether generally or in relation to specified cases or circumstances].

(5) (a) Where, as respects any land acquired for the purposes of or appropriated under this or any other Act or acquired otherwise by a local authority, the authority considers that it will not require the use of the land for any of its functions for a particular period, the authority may grant a lease of the land for that period or any lesser period and the lease shall be expressed as a lease granted for the purposes of this subsection.

(b) The Landlord and Tenant Acts, 1967 to 1994, shall not apply in relation to a lease granted under *paragraph (a)* for the purposes of this subsection.

**Annotations**

**Amendments:**

**F331** Inserted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(i), S.I. No. 458 of 2001.

**Modifications (not altering text):**

**C60** Prospective affecting provision: application of subs. (2) restricted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 27, not commenced as of 27.12.2012.

**Non-application of certain provisions to disposals for purposes of this Chapter.**

**27.—**Section 211 (2) of the *Planning and Development Act 2000* and section 183 of the *Local Government Act 2001* shall not apply to the disposal, for any of the purposes of this Chapter, of land or a dwelling by a housing authority.

**C61** Prospective affecting provision: application of subs. (2) restricted by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 83(5), not commenced as of 27.12.2012.

**Affordable dwelling purchase arrangements.**

**83.—** ...

(5) Section 211 (2) of the Planning and Development Act 2000 and section 183 of the Local Government Act 2001 shall not apply to the sale of a dwelling to an eligible household under an affordable dwelling purchase arrangement.

...

**C62** Application of subs. (2) restricted (1.01.2010 and 1.01.2012) by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), ss. 45(5) and 64(10), S.I. No. 540 of 2009 and S.I. No. 680 of 2011.

**Sale of dwelling by incremental purchase arrangement.**

**45.—** ...

(5) Section 211 (2) of the Planning and Development Act 2000 and section 183 of the Local Government Act 2001 shall not apply to the sale of a dwelling to an eligible household under this section.

...

**64.—** ...

(10) Section 211 (2) of the Planning and Development Act 2000 and section 183 of the Local Government Act 2001 shall not apply to the sale of an apartment to a tenant in accordance with this Part.

**C63** Application of subs. (2) restricted by *Housing Act 1966* (21/1966), s. 90(4A) as inserted (1.12.2009) by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 1 item 1.

**Power of housing authority to sell or lease certain dwellings provided under this Act.**

**90.—** ...

(4A) Section 211 (2) of the Planning and Development Act 2000 shall not apply to the sale of a dwelling under subsection (1)(a)(i).

Development by  
planning authority,  
etc.

**212.—**(1) A planning authority may develop or secure or facilitate the development of land and, in particular and without prejudice to the generality of the foregoing, may do one or more of the following:

- (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving;
- (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct;
- (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development;
- (d) provide, secure or facilitate the provision of areas of convenient shape and size for development;
- (e) secure, facilitate or carry out the development and renewal of areas in need of physical, social or economic regeneration and provide open spaces and other public amenities;
- (f) secure the preservation of any view or prospect, any protected structure or other structure, any architectural conservation area or natural physical feature, any trees or woodlands or any site of archaeological, F332[geological or historical interest;]

F333[(g) secure the creation, management, restoration or preservation of any site of scientific or ecological interest, including any Nature Conservation Site,]

(2) A planning authority may provide or arrange for the provision of—

- (a) sites for the establishment or relocation of industries, businesses (including hotels, motels and guesthouses), houses, offices, shops, schools, churches, leisure facilities and other community facilities and of such buildings, premises, houses, parks and structures as are referred to in *paragraph (b)*,
- (b) factory buildings, office premises, shop premises, houses, amusement parks and structures for the purpose of entertainment, caravan parks, buildings for the purpose of providing accommodation, meals and refreshments, buildings for the purpose of providing trade and professional services and advertisement structures,
- (c) transport facilities, including public and air transport facilities, and
- (d) any services which it considers ancillary to anything which is referred to in *paragraph (a), (b) or (c)*,

and may maintain and manage any such site, building, premises, house, park, structure or service and may make any charges which it considers reasonable in relation to the provision, maintenance or management thereof.

(3) A planning authority may, in connection with any of its functions under this Act, make and carry out arrangements or enter into agreements with any person or body for the development or management of land, and may incorporate a company for those purposes.

(4) A planning authority may use any of the powers available to it under any enactment, including any powers in relation to the compulsory acquisition of land, in relation to its functions under this section and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land.

F333[(5) In this section 'Nature Conservation Site' means—

- (a) a European site,
- (b) an area proposed as a natural heritage area and the subject of a notice made under section 16(1) of the Wildlife (Amendment) Act 2000,
- (c) an area designated as a natural heritage area by a natural heritage area order made under section 18 of the Wildlife (Amendment) Act 2000,
- (d) a nature reserve established under an establishment order made under section 15 (amended by section 26 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976,
- (e) a nature reserve recognised under a recognition order made under section 16 (amended by section 27 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976, or
- (f) a refuge for fauna or flora designated under a designation order made under section 17 (amended by section 28 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976.]

**Annotations****Amendments:**

**F332** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 68(a), S.I. No. 405 of 2010.

**F333** Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 68(b) and (c), S.I. No. 405 of 2010.

Land acquisition  
by local authorities.

**213.—**(1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.

(2) (a) A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under *section 94*, do all or any of the following:

- (i) acquire land, permanently or temporarily, by agreement or compulsorily,
- (ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,
- (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

and the performance of all or any of the functions referred to in *subparagraphs (i), (ii) and (iii)* are referred to in this Act as an “acquisition of land”.

- (b) A reference in *paragraph (a)* to acquisition by agreement shall include acquisition by way of purchase, lease, exchange or otherwise.
- (c) The functions conferred on a local authority by *paragraph (a)* may be performed in relation to—
  - (i) land, or
  - (ii) any easement, way-leave, water-right or other right to which that paragraph applies,

whether situated or exercisable, as the case may be, inside or outside the functional area of the local authority concerned.

(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required by the authority for that purpose in the future.

(b) The acquisition may be effected by agreement in respect of any land which, in the opinion of the local authority, it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land.

(c) *Paragraphs (a) and (b)* shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.

(4) A local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in *subsection (2)* of this section and section 10 (as amended by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, shall be construed so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in *subsection (2)* of this section.

**Annotations**

**Modifications (not altering text):**

**C64** Extent of functions clarified (1.01.2002) by *Local Government Act 2001* (37/2001), s. 184(2), S.I. No. 588 of 2001.

**Exercise of certain land functions.**

**184.— ...**

(2) For the avoidance of doubt it is hereby declared that the functions conferred on a local authority by section 213(2)(a) of the Act of 2000 may be performed in relation to any easement, way-leave, water right or other right to which that paragraph applies granted by or held from the local authority acquiring the land and “acquisition of land” shall be construed accordingly for the purposes of that Act.

...

Transfer of Minister's functions in relation to compulsory acquisition of land to Board.

**214.—(1)** The functions conferred on the Minister in relation to the compulsory acquisition of land by a local authority under the following enactments are hereby transferred to, and vested in, the Board and any reference in any relevant provision of those Acts to the Minister, or construed to be a reference to the Minister, shall be deemed to be a reference to the Board except that any powers under those enactments to make regulations or to prescribe any matter shall remain with the Minister:

Public Health (Ireland) Act, 1878;

Local Government (Ireland) Act, 1898;

Local Government Act, 1925;

Water Supplies Act, 1942;

Local Government (No. 2) Act, 1960;

Local Government (Sanitary Services) Act, 1964;

Housing Act, 1966;

Derelict Sites Act, 1990;

Roads Acts, 1993 and 1998;

Dublin Docklands Development Authority Act, 1997.

(2) For the purposes of the compulsory acquisition of land by a local authority the following constructions shall apply:

(a) the references construed to be references to the Minister in section 203 of the Public Health (Ireland) Act, 1878, shall be construed as referring to the Board and any connected references shall be construed accordingly;

(b) the references to the Minister in section 68 of, and in the Sixth Schedule to, the Local Government Act, 1925, shall be construed as referring to the Board and any connected references shall be construed accordingly;

- (c) the references to the Minister in sections 4, 8, 9 and 10 of, and in the Schedule to, the Water Supplies Act, 1942, shall be construed as referring to the Board and any connected references shall be construed accordingly;
- (d) the references to the Minister, or to the appropriate Minister, in section 10 (as amended by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, shall be construed as referring to the Board and any connected references shall be construed accordingly;
- (e) the references to the Minister in sections 7, 8, 9 and 16 of the Local Government (Sanitary Services) Act, 1964, shall be construed as referring to the Board and any connected references shall be construed accordingly;
- (f) (i) the references to the Minister, or to the appropriate Minister, in sections 76, 77, 78 F334[and 80] of, and the Third Schedule to, the Housing Act, 1966, shall be construed as referring to the Board and any connected references shall be construed accordingly;
- (ii) F335[...]
- (g) the references to the Minister in sections 16 and 17 of the Derelict Sites Act, 1990, shall be construed as referring to the Board and any connected references shall be construed accordingly;
- (h) the references to the Minister in section 27(1) of the Dublin Docklands Development Authority Act, 1997, shall be construed as referring to the Board and any connected references shall be construed accordingly.

(3) The transfer of the Minister's functions to the Board in relation to the compulsory purchase of land in accordance with *subsection (1)* shall include the transfer of all necessary ancillary powers in relation to substrata, easements, rights over land (including public rights of way), rights of access to land, the revocation or modification of planning permissions or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in *subsection (1)*.

(4) In this section and *section 216*, "local authority" includes the Dublin Docklands Development Authority.

**Annotations**

**Amendments:**

**F334** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(j)(i), S.I. No. 458 of 2001.

**F335** Deleted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(j)(ii), S.I. No. 458 of 2001.

Transfer of certain Ministerial functions under Roads Acts, 1993 and 1998, to Board.

**215.—(1)** The functions of the Minister in relation to a scheme or proposed road development under sections 49, 50 and 51 of the Roads Act, 1993, are hereby transferred to and vested in the Board and relevant references in that Act to the Minister shall be construed as references to the Board and any connected references shall be construed accordingly, except that any powers under those sections to make regulations or to prescribe any matter shall remain with the Minister.

(2) The references to the Minister in section 19(7) and paragraphs (a), (c), (e) and (f) of section 20(1) of the Roads Act, 1993, shall be deemed to be references to the Board.

F336 [Transfer of certain Ministerial functions under Gas Act 1976 to Board.]

**215A.—** (1) The functions of—

- (a) the Minister for Communications, Marine and Natural Resources,
- (b) any other Minister of the Government, or
- (c) the Commission for Energy Regulation,

under sections 31 and 32 of, and the Second Schedule to, the Gas Act 1976, as amended, in relation to the compulsory acquisition of land in respect of a strategic gas infrastructure development are transferred to, and vested in, the Board, and relevant references in that Act to the Minister for Communications, Marine and Natural Resources, any other Minister of the Government or the Commission for Energy Regulation shall be construed as references to the Board and any connected references shall be construed accordingly.

(2) The transfer of the functions of the Minister for Communications, Marine and Natural Resources, any other Minister of the Government or the Commission for Energy Regulation to the Board in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to deviation limits, substrata of land, easements, rights over land (including wayleaves and public rights of way), rights of access to land, the revocation or modification of planning permissions or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).

(3) Article 5 of the Second Schedule to the Gas Act 1976 shall not apply in respect of the function of compulsory acquisition transferred to the Board under subsection (1).]

**Annotations**

**Amendments:**

**F336** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 37, S.I. No. 684 of 2006.

F337 [Transfer of certain Ministerial functions under Air Navigation Act 1998.]

**215B.—** (1) The functions of the Minister for Transport under section 17 of, and the Second Schedule to, the Air Navigation and Transport (Amendment) Act 1998, as amended, in relation to the compulsory acquisition of land for the purposes set out in section 18 of that Act, are transferred to, and vested in, the Board, and relevant references in that Act to the Minister for Transport shall be construed as references to the Board and any connected references shall be construed accordingly.

(2) The transfer of the functions of the Minister for Transport in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to substrata of land, easements, rights over land (including wayleaves and public rights of way), rights over land or water or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).]

**Annotations**

**Amendments:**

**F337** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 37, S.I. No. 684 of 2006.



F338 [Transfer of certain Ministerial functions under Harbours Act 1996.]

**215C.—** (1) The functions of the Minister for Transport under section 16 of, and the Fourth Schedule to, the Harbours Act 1996, as amended, in relation to the compulsory acquisition of land for the purposes set out in that section are transferred to, and vested in, the Board and, subject to *section 7(3)* of the *Harbours (Amendment) Act 2009*, relevant references in that Act to the Minister for Transport shall be construed as references to the Board and any connected references shall be construed accordingly.

(2) The transfer of the functions of the Minister for Transport in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to substrata of land, easements, rights over land (including wayleaves and public rights of way), rights over land or water or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).]

**Annotations**

**Amendments:**

**F338** Inserted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s.7(2)(b), commenced on enactment.

Confirmation of compulsory purchase order where there are no objections.

**216.—**(1) Where a compulsory purchase order is made in respect of the acquisition of land by a local authority in accordance with any of the enactments referred to in *section 214(1)* and—

- (a) no objections are received by the Board or the local authority, as the case may be, within the period provided for making objections,
- (b) any objection received is subsequently withdrawn at any time before the Board makes its decision, or
- (c) the Board is of opinion that any objection received relates exclusively to matters which can be dealt with by a property arbitrator,

the Board shall, where appropriate, inform the local authority and the local authority shall, as soon as may be, confirm the order with or without modification, or it may refuse to confirm the order.

(2) *Subsection (1)* shall not prejudice any requirement to obtain approval for a scheme in accordance with section 49 of the Roads Act, 1993, or proposed road development in accordance with section 51 of the Roads Act, 1993, or for proposed development under *section 175* of this Act.

(3) This section shall not apply with respect to a compulsory purchase under the Derelict Sites Act, 1990.

Certain time limits in respect of compulsory purchase of land, etc.

**217.—**(1) Where an objection is made to a sanitary authority in accordance with section 6 of the Water Supplies Act, 1942, and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to the Board for a provisional order in accordance with section 8 of that Act.

(2) Where an objection is made to a sanitary authority in accordance with section 8 of the Local Government (Sanitary Services) Act, 1964, and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to the Board for its consent to the compulsory acquisition of the land in accordance with that section.

(3) Subject to *section 216*, where a local authority complies with the notification provisions in relation to a compulsory purchase order under paragraph 4 of the Third Schedule to the Housing Act, 1966, it shall, within 6 weeks of complying with those provisions, submit the compulsory purchase order to the Board for confirmation.

(4) Where a road authority complies with the notification provisions in relation to a scheme in accordance with section 48 of the Roads Act, 1993, it shall, within 6 weeks of complying with those provisions, submit the scheme to the Board for approval.

(5) A notice of the making of a confirmation order to be published or served, as the case may be, in accordance with section 78(1) of the Housing Act, 1966, shall be published or served within 12 weeks of the making of the confirmation order.

(6) Notwithstanding section 123 of the Lands Clauses Consolidation Act, 1845, where a compulsory purchase order or provisional order is confirmed by a local authority or the Board and becomes operative and the local authority decides to acquire land to which the order relates, the local authority shall serve any notice required under any enactment to be served in order to treat for the purchase of the several interests in the land (including under section 79 of the Housing Act, 1966) within 18 months of the order becoming operative.

F339[(6A) (a) Notwithstanding subsection (6), where legal proceedings are in being challenging the validity of either—

(i) the compulsory purchase order or provisional order concerned, or

(ii) permissions, consents or authorisations granted by or under this Act or by or under any other enactment relating to the project in respect of which, or being the purpose for which, the land concerned is to be acquired,

and a notice to treat is not served within the period of 18 months (in this subsection referred to as the 'first period'), the first period shall be extended for a further period (in this subsection referred to as the 'second period') beginning on the day immediately after the day on which the first period expires and expiring on the earlier of the following:

(I) 30 days after the day on which the legal proceedings are concluded;  
or

(II) 18 months after the day on which the first period expires.

(b) Where proceedings referred to in paragraph (a) have not been concluded during the second period, on an application to the High Court by the local authority before the expiration of the second period, that court may, if it considers that, in the particular circumstances there is good and sufficient reason for doing so, extend the second period by such further period from its expiration as it believes necessary in the circumstances provided that, having regard to all of the circumstances, it considers that it would be just and equitable to do so.]

(7) (a) A decision of the Board made in the performance of a function transferred to it under *section 214* or *215* shall become operative 3 weeks from the date on which notice of the decision is first published.

(b) *Subsections (8) and (9)* of section 52 of the Roads Act, 1993 (as inserted by section 5 of the Roads (Amendment) Act, 1998) and subsections (2) to (4) of section 78 of the Housing Act, 1966, shall not apply in relation to decisions of the Board under this Part.

**Annotations****Amendments:**

**F339** Inserted (7.07.2010) by *Compulsory Purchase Orders (Extension of Time Limits) Act 2010 (17/2010)*, s. 1, commenced on enactment.

**Editorial Notes:**

**E191** Previous affecting provision: similar insertion to that made by 17/2010 made by *Planning and Development (Amendment) Act 2010 (30/2010)*, s. 69, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011 (20/2011)*, s. 42, S.I. No. 474 of 2011.

**F340** [Transferred functions under this Part: supplemental provisions.]

**217A.—** (1) The Board may, in respect of any of the functions transferred under this Part concerning the confirming or otherwise of any compulsory acquisition, at its absolute discretion and at any time before making a decision in respect of the matter—

- (a) request submissions or observations from any person who may, in the opinion of the Board, have information which is relevant to its decision concerning the confirming or otherwise of such compulsory acquisition (and may have regard to any submission or observation so made in the making of its decision), or
- (b) hold meetings with the local authority, or in the case of section 215A the person who applied for the acquisition order, or any other person where it appears to the Board to be necessary or expedient for the purpose of—
  - (i) making a decision concerning the confirming or otherwise of such compulsory acquisition, or
  - (ii) resolving any issue with the local authority or the applicant, as may be appropriate, or any disagreement between the authority or the applicant, as may be appropriate, and any other person, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where the Board holds a meeting in accordance with subsection (1)(b), it shall keep a written record of the meeting and make that record available for inspection.

(3) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(b).]

**Annotations****Amendments:**

**F340** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 38, S.I. No. 684 of 2006.

**F341** [Section 215: supplemental provisions.]

**217B.—** (1) The Board may, at its absolute discretion and at any time before making a decision on a scheme or proposed road development referred to in section 215—

- (a) request further submissions or observations from any person who made submissions or observations in relation to the scheme or proposed road development, or any other person who may, in the opinion of the Board, have information which is relevant to its decision on the scheme or proposed road development, or

(b) hold meetings with the road authority or any other person where it appears to the Board to be necessary or expedient for the purpose of—

(i) making a decision on the scheme or proposed road development, or

(ii) resolving any issue with the road authority or any disagreement between the authority and any other person, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where the Board holds a meeting in accordance with subsection (1)(b), it shall keep a written record of the meeting and make that record available for inspection.

(3) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(b).

(4) The Board may—

(a) if it considers it necessary to do so, require a road authority that has submitted a scheme under section 49 of the Roads Act 1993 or made an application for approval under section 51 of that Act to furnish to the Board such further information in relation to—

(i) the effects on the environment of the proposed scheme or road development, or

(ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said scheme or road development of such scheme or road development,

as the Board may specify, or

(b) if it is provisionally of the view that it would be appropriate to approve the scheme or proposed road development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the road authority that it is of that view and invite the authority to make to the terms of the scheme or proposed road development alterations specified in the notification and, if the authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the scheme or road development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

(5) If a road authority makes the alterations to the terms of the scheme or proposed road development specified in a notification given to it under subsection (4), the terms of the scheme or road development as so altered shall be deemed to be the scheme or proposed road development for the purposes of sections 49, 50 and 51 of the Roads Act 1993.

(6) The Board shall—

(a) where it considers that any further information received pursuant to a requirement made under subsection (4)(a) contains significant additional data relating to—

(i) the likely effects on the environment of the scheme or proposed road development, and

(ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said scheme or road development of such scheme or road development,

or

(b) where the road authority has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (4)(b),

require the authority to do the things referred to in subsection (7).

(7) The things which a road authority shall be required to do as aforesaid are—

(a) to publish in one or more newspapers circulating in the area or areas in which the development to which the scheme relates or, as the case may be, the proposed road development would be situate a notice stating that, as appropriate—

(i) further information in relation to the scheme or proposed road development has been furnished to the Board, or

(ii) the road authority has, pursuant to an invitation of the Board, made alterations to the terms of the scheme or proposed road development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the scheme or road development as so altered or a revised environmental impact statement in respect of the scheme or development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(b) to send to each body or prescribed authority to which a notice was given pursuant to section 51(3)(b) or (c) of the Roads Act 1993—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the body or authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the road authority.

(8) The Board shall, in making its decision in respect of a scheme or proposed road development, have regard to any information submitted on foot of a notice under subsection (4), including any revised environmental impact statement or any submissions or observations made on foot of a request under subsection (1) or a notice under subsection (7).]

**Annotations**

**Amendments:**

**F341** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 38, S.I. No. 684 of 2006.

F342[Board's powers to make decisions on transferred functions.

**217C.**— (1) Notwithstanding any provision of any of the enactments referred to in F343[section 214, 215A, 215B or 215C] concerning the confirming or otherwise of any compulsory acquisition, the Board shall, in relation to any of the functions transferred under this Part respecting those matters, have the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof.

(2) Notwithstanding any provision of the Roads Act 1993 concerning the approval of any scheme or proposed road development, the Board shall, in relation to any of the functions transferred under this Part respecting those matters, have the power to approve the scheme or development or any part thereof, with or without conditions or modifications, or to refuse to approve the scheme or development or any part thereof.

(3) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to any approval of a scheme or proposed road development under the Roads Act 1993 a condition requiring—

(a) the construction or the financing, in whole or in part, of the construction of a facility, or

(b) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(4) A condition attached pursuant to subsection (3) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval operates of the benefits likely to accrue from the grant of the approval.]

#### Annotations

#### Amendments:

**F342** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 38, S.I. No. 684 of 2006.

**F343** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s.7(2)(c), commenced on enactment.

Oral hearings in relation to compulsory acquisition of land.

**218.—F344**[(1) Where, as a result of the transfer of functions under F345[**section 214, 215, 215A, 215B or 215C**], the Board would otherwise be required to hold a local inquiry, public local inquiry or oral hearing, that requirement shall not apply to the Board but the Board may, at its absolute discretion, hold an oral hearing in relation to the matter, the subject of the function transferred.]

(2) For the avoidance of doubt, it is hereby declared that the provisions of the Local Government Acts, 1941, 1946, 1955 and 1991, in relation to public local inquiries shall not apply in relation to oral hearings held by the Board in accordance with *subsection (1)*.

(3) For the purposes of this Part, the references to local inquiries or public local inquiries in the following provisions shall be deemed to be references to oral hearings under this section:

(a) section 10 of the Local Government (No. 2) Act, 1960;

(b) section 78 of, and the Third Schedule to, the Housing Act, 1966;

(c) Part IV of the Roads Act, 1993.

(4) *Sections 135, 143 and 146* shall apply and have effect in relation to the functions transferred to the Board under F345[**sections 214 to 215C**] and those sections shall be construed accordingly.

**Annotations****Amendments:**

**F344** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 39(a), S.I. No. 684 of 2006.

**F345** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s.7(2)(d), commenced on enactment.

**Editorial Notes:**

**E192** Previous affecting provision: subss. (1) and (4) amended (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 39, S.I. No. 684 of 2006; substituted as per F-notes above.

**F346** [Power to direct payment of certain costs.

**219.—** (1) Where the Board has made a decision in the performance of any functions transferred under **F347** [section 214, 215, 215A, 215B or 215C], it may at its absolute discretion direct the payment of such sum as it considers reasonable by the local authority concerned or, in the case of **F347** [section 215A, 215B or 215C], the person who applied for the acquisition order (hereafter in this section referred to as the ‘applicant’)—

(a) to the Board towards the costs and expenses incurred by the Board in determining the matter, including—

(i) the costs of holding any oral hearing in relation to the matter,

(ii) the fees of any consultants or advisers engaged in the matter, and

(iii) an amount equal to such portion of the remuneration and any allowances for expenses paid to the members and employees of the Board as the Board determines to be attributable to the performance of duties by the members and employees in relation to the matter,

and

(b) to any person appearing at an oral hearing held in relation to the matter as a contribution towards the costs, other than the costs referred to in section 135, incurred by that person of appearing at that hearing,

and the local authority or applicant, as appropriate, shall pay the sum.

(2) The reference in subsection (1)(b) to costs shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs.

(3) If a local authority or applicant, as appropriate, fails to pay a sum directed to be paid under subsection (1), the Board or any other person concerned, as the case may be, may recover the sum from the authority or applicant, as appropriate, as a simple contract debt in any court of competent jurisdiction.]

**Annotations****Amendments:**

**F346** Substituted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 40, S.I. No. 684 of 2006.

**F347** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s.7(2)(e), commenced on enactment.

Certain procedures to run in parallel.

**220.**—(1) The person holding an oral hearing in relation to the compulsory acquisition of land, which relates wholly or in part to proposed development by a local authority which is required to comply with *section 175* or any other statutory provision to comply with F348[*procedures for giving effect to the Environmental Impact Assessment Directive*], shall be entitled to hear evidence in relation to the likely effects on the environment of such development.

(2) Where an application for the approval of a proposed development which is required to comply with *section 175* is made to the Board and a compulsory purchase order or provisional order has been submitted to the Board for confirmation and where the proposed development relates wholly or in part to the same proposed development, the Board shall, where objections have been received in relation to the compulsory purchase order, make a decision on the confirmation of the compulsory purchase order at the same time.

**Annotations**

**Amendments:**

**F348** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 70, S.I. No. 405 of 2010.

Objective of the Board in relation to transferred functions.

**221.**—(1) It shall be the duty of the Board to ensure that any matters submitted in accordance with the functions transferred to it under F349[*section 214, 215, 215A, 215B or 215C*] are disposed of as expeditiously as may be and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of those matters.

(2) Without prejudice to the generality of *subsection (1)* and subject to *subsections (3), (4), (5) and (6)*, it shall be the objective of the Board to ensure that—

- (a) the matter is determined within a period of 18 weeks beginning on the last day for making objections, observations or submissions, as the case may be, in accordance with the relevant enactment referred to in F349[*section 214, 215, 215A, 215B or 215C*], or
- (b) the matter is determined within such other period as the Minister may prescribe in relation to *paragraph (a)*, either generally or in respect of a particular class or classes of matter.

(3) (a) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of the matter with which the Board is concerned, to determine the matter within the period prescribed under *subsection (2)*, the Board shall, by notice in writing served on any local authority involved and any other person who submitted objections, representations, submissions or observations in relation to the matter before the expiration of that period, inform the authority and those persons of the reasons why it would not be possible or appropriate to determine the matter within that period and shall specify the date before which the Board intends that the matter shall be determined.

(b) Where a notice has been served under *paragraph (a)*, the Board shall take all such steps as are open to it to ensure that the matter is determined before the date specified in the notice.

(4) The Minister may by regulations vary the period as specified in *subsection (2)* either generally or in respect of a particular class or classes of matters with which the Board is concerned, in accordance with the transferred functions under this Part, where it appears to him or her to be necessary, by virtue of exceptional circumstances,



to do so and, for so long as the regulations are in force, this section shall be construed and have effect in accordance therewith.

(5) Where the Minister considers it to be necessary or expedient that certain functions of the Board (being functions transferred under F349[[section 214, 215, 215A, 215B or 215C](#)]) performable in relation to matters of a class or classes that—

(a) are of special strategic, economic or social importance to the State, and

(b) are submitted to the Board for the performance by it of such functions,

be performed as expeditiously as is consistent with proper planning and sustainable development, he or she may give a direction to the Board that in the performance of the functions concerned priority be given to matters of the class or classes concerned, and the Board shall comply with such direction.

(6) *Subsection (2)* shall not apply in relation to the functions under the Public Health (Ireland) Act, 1878, the Local Government Act, 1925, or the Water Supplies Act, 1942, which are transferred to the Board under *section 214*.

(7) For the purposes of meeting its duty under this section, the chairperson may, or shall when so directed by the Minister, assign the functions transferred to the Board under F349[[section 214, 215, 215A, 215B or 215C](#)] to a particular division of the Board in accordance with *section 112*.

(8) The Board shall include in each report made under *section 118* a statement of the number of matters which the Board has determined within a period referred to in *paragraph (a) or (b) of subsection (2)* and such other information as to the time taken to determine such matters as the Minister may direct.

F350[(9) The Minister may by regulations provide for such additional, incidental, consequential or supplemental matters as regards procedure in respect of the functions transferred to the Board under *section 214 or 215* as appear to the Minister to be necessary or expedient.]

#### Annotations

#### Amendments:

**F349** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s. 7(2)(f), commenced on enactment.

**F350** Inserted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(k), S.I. No. 458 of 2001.

#### Editorial Notes:

**E193** Power pursuant to subs. (9) exercised (21.01.2001 and 11.03.2001) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E194** Previous affecting provision: subss. (1), (2), (5) and (7) amended (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 41, S.I. No. 684 of 2006; substituted as per F-note above.

Amendment of section 10 of Local Government (No. 2) Act, 1960.

**222.**—Section 10 (inserted by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, is hereby amended—

(a) by the deletion of subsection (2), and

(b) in subsection (4), by the substitution for paragraph (d) of the following paragraph:

“(d) Where—

- (i) an order is made by virtue of this section, and
- (ii) there is a public right of way over the land to which the order relates or any part thereof or over land adjacent to or associated with the land or any part thereof,

the order may authorise the local authority, by order made by them after they have acquired such land or part, to extinguish the right of way.”

References to transferred functions in regulations, etc.

**223.—**(1) A reference in any regulations, prescribed forms or other instruments made under the enactments referred to in F351[[section 214, 215, 215A, 215B or 215C](#)] to the Minister, and which relate to the functions transferred under those sections, shall be deemed to be references to the Board.

(2) A reference in any regulations, prescribed forms or other instruments made under the enactments referred to in F351[[section 214, 215, 215A, 215B or 215C](#)] to local inquiries or public local inquiries, and which relate to functions transferred to the Board under those sections, shall be deemed to be references to oral hearings by the Board.

**Annotations**

**Amendments:**

**F351** Substituted (21.07.2009) by *Harbours (Amendment) Act 2009* (26/2009), s. 7(2)(g), commenced on enactment.

**Editorial Notes:**

**E195** Previous affecting provision: section amended (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 42, S.I. No. 684 of 2006; substituted as per F-note above.

**PART XV**

**DEVELOPMENT ON THE FORESHORE**

Definition.

**224.—**In this Part—

“development” includes development consisting of the reclamation of any land on the foreshore;

“foreshore” has the meaning assigned to it by the Foreshore Act, 1933, but includes land between the line of high water of ordinary or medium tides and land within the functional area of the planning authority concerned that adjoins the first-mentioned land.

Obligation to obtain permission in respect of development on foreshore.

**225.—**(1) Subject to the provisions of this Act, permission shall be required under *Part III* in respect of development on the foreshore not being exempted development, in circumstances where, were such development carried out, it would adjoin—

(a) the functional area of a planning authority, or

(b) any reclaimed land adjoining such functional area,

and accordingly, that part of the foreshore on which it is proposed to carry out the development shall for the purposes of making an application for permission in respect

of such development be deemed to be within the functional area of that planning authority.

(2) That part of the foreshore on which a development has been commenced or completed pursuant to permission granted under *Part III* shall, for the purposes of this Act or any other enactment, whether passed before or after the passing of this Act, be deemed to be within the functional area of the planning authority that granted such permission.

(3) This section shall not apply to—

(a) development to which *section 226* applies, or

(b) development consisting of underwater cables, wires, pipelines or other similar apparatus used for the purpose of—

(i) transmitting electricity or telecommunications signals, or

(ii) carrying gas, petroleum, oil, or water,

or development connected to land within the functional area of a planning authority solely by means of any such cable, wire, pipeline or apparatus.

(4) This section is in addition to and not in substitution for the Foreshore Acts, 1933 to 1998.

Local authority  
development on  
foreshore.

**226.**—(1) Where development is proposed to be carried out wholly or partly on the foreshore—

(a) by a local authority that is a planning authority, whether in its capacity as a planning authority or otherwise, or

(b) by some other person on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to an agreement entered into by that local authority whether in its capacity as a planning authority or otherwise,

(hereafter in this section referred to as “proposed development”), the local authority concerned shall apply to the Board for approval of the proposed development.

F352[(2) (a) The Board may approve, approve subject to conditions, or refuse to approve a proposed development.

(b) Without prejudice to the generality of paragraph (a), the Board may attach to an approval under this section conditions for or in connection with the protection of the marine environment (including the protection of fisheries) or, if the subject of a recommendation by the Minister for Transport to the Board with regard to the exercise of the power under this subsection in the particular case (which recommendation that Minister of the Government may, by virtue of this subsection, make), the safety of navigation.]

(3) *Section 175* shall apply to proposed development belonging to a class of development, identified for the purposes of *section 176*, subject to—

(a) the modification that the local authority concerned shall not be required to apply for approval under *subsection (3)* of the said *section 175* in respect of the proposed development,

(b) the modification that the reference in *subsection (4)* to approval under *subsection (3)* shall be construed as a reference to approval under *subsection (1)* of this section,

(c) any modifications consequential upon *paragraph (a)*, and

(d) any other necessary modifications.

(4) *Subsections (4), (5), (6), (7), (9), (10), (11)(a), (11)(b)(ii), (11)(b)(iii), (12), (13) and (14) of section 175* shall apply to a proposed development other than one referred to in *subsection (3)*, subject to—

(a) the modification that the reference in *subsection (4)* of the said *section 175* to approval under *subsection (3)* shall be construed as a reference to approval under *subsection (1)* of this section,

(b) the modification that—

(i) references in *subsections (4) and (5)* of the said *section 175* to environmental impact statement shall be construed as references to such documents, particulars, plans or other information relating to the proposed development as may be prescribed,

(ii) references to likely effects on the environment shall be disregarded, and

(iii) the reference in *subsection (11)(a)* of the said *section 175* to applications for approval under this section shall be construed as references to applications for approval under *subsection (1)* of this section, and

(c) any other necessary modifications.

(5) *Sections 32 and 179* shall not apply to a proposed development.

F352[(6) (a) In the following case:

(i) the local authority concerned, if it is of the opinion that the development concerned would be likely to have significant effects on the environment, shall refer; or

(ii) the Minister for Communications, Marine and Natural Resources may refer;

to the Board for its determination the question of whether the following development would be likely to have significant effects on the environment.

(b) That case is one of development that is identified for the purposes of *section 176* (other than development falling within a class of development identified for the purposes of that section) and which is proposed to be carried out wholly or partly on the foreshore—

(i) by a local authority that is a planning authority, whether in its capacity as a planning authority or otherwise, or

(ii) by some other person on behalf of, or jointly or in partnership with a local authority that is a planning authority, pursuant to an agreement entered into by that authority, whether in its capacity as a planning authority or otherwise.

(c) Where required by the Board, the local authority or the Minister for Communications, Marine and Natural Resources shall provide to the Board such information as may be specified by the Board in respect of the effects on the environment of the proposed development, the subject of the question referred to it under this subsection.

(7) (a) The Board shall consider and determine the question referred to it under *subsection (6)* and, where it determines that the development concerned would be likely to have significant effects on the environment, it shall—

(i) notify the local authority concerned (and, where the question has been referred by the Minister for Communications, Marine and Natural

Resources, that Minister of the Government) that it has determined that the development would be likely to have those effects, and

(ii) specify, in that notification, that any application by the local authority concerned for approval under subsection (1) in respect of the development shall be accompanied by an environmental impact statement prepared or caused to be prepared by the authority in respect of the development,

and, where that notification so specifies, any such application shall be accompanied by such a statement accordingly.

(b) In making that determination, the Board shall have regard to the criteria for the purposes of determining which classes of development are likely to have significant effects on the environment set out in any regulations made under section 176.

(c) Notwithstanding any other enactment, the determination of the Board of a question referred to it under subsection (6) shall be final.

(8) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister, after consultation with the Minister for Communications, Marine and Natural Resources, to be necessary or expedient in respect of referring a question under subsection (6) or of making a determination under subsection (7).

(9) This section shall apply to proposed development—

(a) that, if carried out wholly within the functional area of a local authority that is a planning authority, would be subject to the provisions of section 175,

(b) that a local authority has been notified under paragraph (a)(i) of subsection (7) is one which the Board has determined under that subsection would be likely to have significant effects on the environment, or

(c) that is prescribed for the purposes of this section.]

#### Annotations

#### Amendments:

**F352** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 43, S.I. No. 525 of 2006.

#### Modifications (not altering text):

**C65** Application of section restricted and matters to be considered provided (27.09.2007) by *Waste Water Discharge (Authorisation) Regulations 2007* (S.I. No. 684 of 2007), regs. 41(1) and 43(1).

#### Limitation of Act of 2000

41. (1) Subject to Regulation 42(2), and notwithstanding sections 34, 37, 37E, 175 and 226 of the Act of 2000, or any other provision of that Act, where, under these Regulations, an authorisation has been granted in respect of a waste water discharge from a waste water works—

(a) a planning authority, or An Bord Pleanála, where it decides to grant a permission under section 34, 37 or 37E on appeal or otherwise, as the case may be, of the said Act, or

(b) An Bord Pleanála, where it decides to grant an approval under section 175 or 226 of the said Act,

in respect of a proposed development that involves a waste water discharge from a waste water works, shall not subject the permission or approval, as the case may be, to conditions which are for the purposes of controlling the waste water discharge.

(2) Where a permission or approval under the Act of 2000 has been subjected to conditions, other than conditions as referred to in paragraph (3)(b), that are for the purposes of controlling discharges from a development as described in paragraph (1), those conditions shall cease to have effect upon the granting of an authorisation under these Regulations in respect of the waste water discharges concerned.

...

**Consideration of proposals by planning authorities and An Bord Pleanála**

43. (1) Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach.

...

Acquisition of  
land etc. on fore-  
shore.

**227.—**(1) The powers of a local authority to compulsorily acquire land under the enactments specified in *section 214(1)* shall, where the local authority concerned is a planning authority and for the purposes specified in those enactments, extend to that part of the foreshore that adjoins the functional area of the local authority concerned.

(2) The functions of a road authority under sections 49, 50 and 51 of the Roads Act, 1993, shall extend to the foreshore adjoining the functional area of the road authority concerned.

(3) The functions transferred to the Board under *section 214* shall be performable by the Board in relation to any compulsory acquisition of land to which *subsection (1)* applies.

(4) The functions transferred to the Board under *section 215* shall be performable in relation to any scheme approved under section 49 of the Roads Act, 1993, relating to the foreshore.

(5) Where a local authority—

(a) applies for approval under *section 226*,

(b) in relation to land on the foreshore, submits any matter (howsoever described under the enactment concerned) to the Board in relation to which it falls to the Board to perform functions in respect thereof under an enactment specified in *section 214*, or

(c) submits a scheme under section 49 of the Roads Act, 1993,

it shall send copies of all maps, documents (including any environmental impact statement) and other materials sent to the Board in connection with the application or scheme concerned to the F353[Minister for Communications, Marine and Natural Resources and the Minister for Transport].

(6) The Board shall, before performing any function conferred on it by *section 226* or (in respect of land on the foreshore) under an enactment specified in *section 214(1)* or referred to in *subsection (5)*, by notice in writing, invite observations in relation to the application or scheme concerned from the Minister for the Marine and Natural Resources within such period as may be specified in the notice being a period of not less than 8 weeks from the date of receipt of the notice.

(7) The Board shall in the performance of the functions referred to in *subsection (6)* have regard to any observations made pursuant to a notice under that subsection.

F354[(8) (a) Subject to paragraph (b), the Foreshore Acts 1933 to 2005 shall not apply in relation to any application to the Board under section 226, or matters to which subsection (5)(b) applies or a scheme submitted under section 49 of the Roads Act 1993.

(b) In any case where a local authority that is a planning authority applies for an approval for proposed development under section 226 or has been granted such an approval by the Board, but has not sought the compulsory acquisition of any foreshore on which the proposed development would be carried out under an enactment specified in section 214, the authority may apply for a lease or licence under section 2 or 3 of the Foreshore Act 1933 in respect of that proposed development; in such cases, it shall not, notwithstanding the provisions of any other enactment, be necessary for—

(i) the local authority to submit an environmental impact statement in connection with its application for such lease or licence, or

(ii) the Minister for Communications, Marine and Natural Resources to consider the likely effects on the environment of the proposed development.]

(9) F355[...]

(10) Nothing in the State Property Act, 1954, shall operate to prevent a local authority compulsorily acquiring land on the foreshore.

(11) This section shall not apply to any application to the Minister for the Marine and Natural Resources for a lease under section 2 of the Foreshore Act, 1933, or for a licence under section 3 of that Act made before the coming into operation of this section.

#### Annotations

#### Amendments:

**F353** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 44(a), S.I. No. 525 of 2006.

**F354** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 44(b), S.I. No. 525 of 2006.

**F355** Deleted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 44(c), S.I. No. 525 of 2006.

Entering on foreshore for certain purposes.

**228.**—(1) Where a local authority proposes to enter onto the foreshore for the purposes of carrying out site investigations, it shall not later than 4 weeks before the carrying out of such investigations—

(a) publish in at least one newspaper circulating in the area of the proposed site investigations, and

(b) serve on the Minister for the Marine and Natural Resources and to the prescribed bodies,

a notice of its intention to so do, and where any such site investigations would involve excavations, borings or other tests that would be capable of causing disturbance to the marine environment, it shall inform that Minister and those bodies of the details of the proposed investigations.

(2) The Minister for the Marine and Natural Resources may make recommendations to the local authority concerned in relation to investigations referred to in *subsection*

(1) and the local authority shall have regard to any such recommendations when carrying out such investigations.

(3) Where there has been compliance with this section, *section 252* shall not apply in relation to entry onto the foreshore for the purposes specified in *subsection (1)*.

(4) Compliance with this section shall, in relation to entry onto the foreshore for the said purposes, constitute compliance with any other enactment requiring the giving of notice of entry on land by a local authority.

F356[(5) No licence shall be required under the Foreshore Act 1933 in respect of any such entry or any site investigations carried out in accordance with this section.]

#### Annotations

#### Amendments:

**F356** Inserted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)*, s. 45, S.I. No. 525 of 2006.

## PART XVI

### EVENTS AND FUNFAIRS

Interpretation. **229.**—In this Part—

“event” means—

(a) a public performance which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or similar temporary structure and which is comprised of music, dancing, displays of public entertainment or any activity of a like kind, and

(b) any other event as prescribed by the Minister under *section 241*;

“funfair” has the meaning assigned to it by *section 239*;

“licence” means a licence granted by a local authority under *section 231*;

“local authority” means—

(a) in the case of a county, the council of the county, and

(b) in the case of a county borough, the corporation of the borough.

Obligation to obtain a licence for holding of an event.

**230.**—(1) Subject to *subsection (4)*, a licence shall be required in respect of the holding of an event or class of event prescribed for the purpose of this section.

(2) When prescribing events or classes of events under *subsection (1)*, the Minister shall have regard to the size, location, nature or other attributes of the event or class of event.

(3) Any person who—

(a) organises, promotes, holds or is otherwise materially involved in the organisation of an event to which this section applies, or

(b) is in control of land on which an event to which this section applies is held,

other than under and in accordance with a licence, shall be guilty of an offence.



(4) A licence shall not be required for the holding of an event prescribed in accordance with *subsection (1)* by a local authority.

**Annotations**

**Editorial Notes:**

**E196** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E197** Previous affecting provision: power pursuant to section exercised (17.04.2001) by *Planning and Development (Licensing of Outdoor Events) Regulations 2001* (S.I. No. 154 of 2001); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Grant of licence. **231.—(1)** The Minister may by regulations provide for matters of procedure and administration in relation to applications for and the grant of licences for events.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for—

- (a) requiring the publication of a notice of intention to make an application for a licence,
- (b) requiring the notification of prescribed persons or bodies,
- (c) the form and content of an application for a licence,
- (d) the plans, documents and information to be submitted with an application for a licence,
- (e) the persons and bodies which must be consulted in relation to a licence,
- (f) enabling persons to make submissions or observations within a prescribed time,
- (g) requiring the applicant to submit any further information with respect to their application, and
- (h) the time within which a decision on an application for a licence must be made.

(3) (a) Where an application for a licence is made in accordance with regulations under this section, the local authority may decide to grant the licence, grant the licence subject to such conditions as it considers appropriate or refuse the licence.

(b) In considering an application for a licence under this section, the local authority shall have regard to—

- (i) any information relating to the application furnished to it by the applicant in accordance with *subsection (2)(d)* or *(g)*,
- (ii) any consultations under *subsection (2)(e)*,
- (iii) any submissions or observations made to it in accordance with *subsection (2)(f)*,
- (iv) whether events have previously been held on the land concerned,
- (v) the matters referred to in *subsection (4)*, and
- (vi) any guidelines or codes of practice issued by the Minister or by any other Minister of the Government.

(4) Without prejudice to the generality of *subsection (3)(a)*, conditions subject to which a licence is granted may relate to all or any of the following—

- (a) compliance with any guidelines or codes of practice issued by the Minister or any other Minister of the Government, or with any provisions of those guidelines or codes of practice;
- (b) securing the safety of persons at the place in connection with the event;
- (c) the provision of adequate facilities for the health and welfare of persons at the place in connection with the event, including the provision of sanitary facilities;
- (d) the protection of the environment in which the event is to be held, including the control of litter;
- (e) the maintenance of public order;
- (f) the avoidance or minimisation of disruption to the neighbourhood in which the event is to take place;
- (g) ensuring the provision of adequate means of transport to and from the place in which the event is to be held;
- (h) the number of events which are permitted at a venue within a specified period not exceeding one year;
- (i) the payment of a financial contribution to the authority of a specified amount or an amount calculated on a specified basis towards the estimated cost to the local authority of measures taken by the authority in connection with the event;
- (j) the payment of a financial contribution to a person or body consulted in accordance with *subsection (2)(e)* of a specified amount or an amount calculated on a specified basis towards the estimated cost to that person or body of measures taken by the person or body in connection with the event;
- (k) maintaining public liability insurance;
- (l) the display of notice for persons attending the event as to their obligations and conduct at the event.

(5) Conditions under *subsection (4)(i)* or *(j)* requiring the payment of a financial contribution may only relate to an event which is held wholly or mainly for profit.

(6) A person shall not be entitled solely by reason of a licence under this section to hold an event.

**Annotations**

**Editorial Notes:**

**E198** Power pursuant to section exercised (4.04.2012) by *Planning and Development (Amendment) Regulations 2012* (S.I. No. 116 of 2012).

**E199** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).

**E200** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E201** Previous affecting provision: power pursuant to section exercised (17.04.2001) by *Planning and Development (Licensing of Outdoor Events) Regulations 2001* (S.I. No. 154 of 2001); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Codes of practice in relation to events.

**232.**—(1) The Minister or any Minister of the Government may draw up and issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any of the relevant provisions of or under this Part.

(2) The Minister or any Minister of the Government, as appropriate, shall, before issuing a code of practice, consult any other Minister of the Government or other person or body that appears to that Minister to be appropriate.

(3) The Minister or any Minister of the Government, as appropriate, may amend or revoke any code of practice, following consultation with any other Minister of the Government or any other person or body that appears to the Minister to be appropriate.

Service of notice in relation to events.

**233.**—(1) Where a local authority has reason to believe that an event in respect of which a licence under *section 230* is required is occurring or is likely to occur—

(a) without such a licence, or

(b) in contravention of the terms of such a licence,

the authority may serve a notice under this section.

(2) A notice may require, as appropriate—

(a) the immediate cessation of any event or the discontinuation or alteration of any preparations which are being made in relation to an event,

(b) the removal of any temporary buildings, structures, plant, machinery or the like from land which the authority believes is intended to be used as the location of an event, and

(c) the restoration of the land to its prior condition.

(3) Any person who fails to comply with the requirements of the notice served under *subsection (1)* shall be guilty of an offence.

General obligations with regard to safety at events.

**234.**—(1) A person to whom a licence is granted under *section 231* shall take such care as is reasonable in all the circumstances, having regard to the care which a person attending the event may reasonably be expected to take for his or her own safety and, if the person is at the event in the company of another person, the extent of the supervision and control the latter person may be expected to exercise over the former person's activities, to ensure that persons on the land in connection with the event do not suffer injury or damage by reason of any danger arising out of the licensed event or associated activities.

(2) It shall be the duty of every person, being on land in connection with an event to which this section applies, to conduct himself or herself in such a way as to ensure that as far as reasonably practicable any person on the land is not exposed to danger as a consequence of any act or omission of his or hers.

Powers of inspection in connection with events.

**235.**—(1) An authorised person (subject to the production by him or her, if so requested, of his or her authority in writing) or a member of the Garda Síochána shall be entitled at all reasonable times to enter and inspect any land or any structure for any purpose connected with this Part.

(2) Without prejudice to the generality of *subsection (1)*, an authorised person or a member of the Garda Síochána shall, in the performance of his or her functions under *subsection (1)*, be entitled to—

(a) require the person in control of the land or structure concerned to—

(i) inform him or her of any matter which the authorised person or the member of the Garda Síochána considers to be relevant, or

(ii) provide such plans, documentation or other information as are necessary to establish that the requirements of this Part and any regulations made under this Part or any licence or any conditions to which the licence is subject are being complied with,

(b) take with him or her on to land such persons and equipment as he or she considers necessary and to carry out such tests or to do such other things which he or she considers necessary for the purposes referred to in *subsection (1)*.

(3) Any person who—

(a) refuses to allow an authorised person or a member of the Garda Síochána to enter any land in exercise of his or her powers under this section,

(b) obstructs or impedes an authorised person or a member of the Garda Síochána in exercise of his or her powers under this section, or

(c) wilfully or recklessly gives, either to an authorised person or a member of the Garda Síochána, information which is false or misleading in a material respect,

shall be guilty of an offence.

(4) In this section, “authorised person” means a person authorised for the purposes of this Act by a local authority.

Limitation of civil proceedings.

**236.**—(1) No action or other proceeding shall lie or be maintainable against the Minister or a local authority or any other officer or employee of a local authority or any person engaged by a local authority or a member of the Garda Síochána for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to exercise any function conferred or imposed on the local authority by or under this Part.

(2) A person shall not be entitled to bring any civil proceedings pursuant to this Part by reason only of the contravention of any provision of this Part, or of any regulations made thereunder.

Consequential provisions for offences.

**237.**—(1) The local authority by whom a licence under *section 231* was granted may revoke it if the person to whom the licence is granted is convicted of an offence under this Part.

(2) Proceedings for an offence under this Part may be brought by the local authority in whose area the offence is committed.

Holding of event by local authority.

**238.**—(1) An event that is prescribed in accordance with *section 230(1)* and is proposed to be carried out by a local authority (in this section referred to as a “proposed event”) shall be carried out in accordance with this section and any regulations made under *subsection (2)*.

(2) The Minister may make regulations providing for—

(a) the publication by the local authority of any specified notice with respect to the proposed event,

- (b) the notification or consultation by the local authority of any specified person or persons,
  - (c) the making available for inspection, by members of the public, of any specified documents, particulars, plans or other information with respect to the proposed event, and
  - (d) the making of submissions or observations to the local authority within a prescribed time with respect to the proposed event.
- (3) (a) The manager of a local authority shall, after the expiration of the period prescribed under *subsection (2)(d)* for the making of submissions or observations, prepare a written report in relation to the proposed event and submit the report to the members of the local authority.
- (b) A report prepared in accordance with *paragraph (a)* shall—
- (i) specify the proposed event,
  - (ii) specify the matters referred to in *section 231(4)* to which the holding of the proposed event will be subject,
  - (iii) list the persons or bodies who made submissions or observations with respect to the proposed event in accordance with the regulations made under *subsection (2)*,
  - (iv) summarise the issues raised in any such submissions or observations and state the response of the manager to them, and
  - (v) recommend whether or not the proposed event should be held.
- (c) The members of the local authority shall, as soon as may be, consider the proposed event and the report of the manager under *paragraph (a)*,
- (d) Following the consideration of the manager's report under *paragraph (c)*, the proposed event may be carried out as recommended in the manager's report, unless the local authority, by resolution, decides to vary or modify the event, otherwise than as recommended in the manager's report, or decides not to proceed with the event.
- (e) A resolution under *paragraph (d)* must be passed not later than 6 weeks after receipt of the manager's report.

**Annotations**

**Editorial Notes:**

- E202** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E203** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).
- E204** Previous affecting provision: power pursuant to section exercised (17.04.2001) by *Planning and Development (Licensing of Outdoor Events) Regulations 2001* (S.I. No. 154 of 2001); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

Control of  
funfairs.

**239.—(1)** In this section—

“fairground equipment” includes any fairground ride or any similar equipment which is designed to be in motion for entertainment purposes with members of the public

on or inside it, any equipment which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and any swings, dodgems and other equipment which is designed to be in motion wholly or partly under the control of, or to be put in motion by a member of the public or any equipment which may be prescribed, in the interests of public safety, for the purposes of this section;

“funfair” means an entertainment where fairground equipment is used.

(2) The organiser of a funfair and the owner of fairground equipment used at a funfair shall take such care as is reasonable in the circumstances, having regard to the care which a person attending the funfair may reasonably be expected to take for his or her own safety, and, if the person is at the event in the company of another person, the extent of the supervision and control the latter person may be expected to exercise over the former person’s activities to ensure that persons on the land in connection with the funfair do not suffer injury or damage by reason of any danger arising out of the funfair or associated activities.

(3) It shall be the duty of every person being on land in connection with a funfair to which this section applies to conduct himself or herself in such a way as to ensure that as far as is reasonably practicable any person on the land is not exposed to danger as a consequence of any act or omission of his or hers.

(4) (a) An organiser of a funfair or an owner of fairground equipment shall not make available for use by the public any fairground equipment unless such equipment has a valid certificate of safety in accordance with regulations made under *subsection (5)*.

(b) An organiser of a funfair or owner of fairground equipment who makes available for use by the public any fairground equipment otherwise than in accordance with *paragraph (a)*, shall be guilty of an offence.

(5) The Minister shall by regulations provide for such matters of procedure, administration and control as appear to the Minister to be necessary or expedient in relation to applications for and the grant of certificates of safety for fairground equipment.

(6) Without prejudice to the generality of *subsection (5)*, regulations under that subsection may provide for—

- (a) the class or classes of persons who are entitled to grant certificates of safety,
- (b) the matters to be taken into account in determining applications for safety certificates,
- (c) the payment of a prescribed fee for an application for a certificate of safety,
- (d) the period of validity of a certificate of safety, and
- (e) any class of fairground equipment to be exempt from the provisions of this section.

F357[(6A) Regulations under this section may be made to any extent by reference to a document published by or on behalf of the Minister.]

(7) (a) A person who intends to hold or organise a funfair, other than at a place where the operation of funfair equipment has been authorised by a permission under *Part III* of this Act or *Part IV* of the Act of 1963 or is not otherwise an unauthorised use, shall give 2 weeks notice (or such other period of notice as may be prescribed) in writing to the local authority in whose functional area the funfair is to be held.

(b) The notice referred to in *paragraph (a)* shall be accompanied by a valid certificate of safety for the fairground equipment to be used at the funfair

and shall give details of the names of the organiser of the funfair, the owner or owners of the fairground equipment to be used at the funfair and the location and dates on which the funfair is to be held.

- (8) (a) Where a local authority has reason to believe that a funfair is taking place, or is likely to take place, which is not in compliance with *subsection (4) or (7)*, the authority may serve a notice on any person it believes to be holding, organising or otherwise materially involved in the organisation of the funfair.
- (b) A notice under *paragraph (a)* may require, as appropriate—
- (i) the immediate cessation of any activity or any preparations which are being made in relation to the funfair within a specified time,
  - (ii) the immediate cessation of the use of any fairground equipment without a valid certificate of safety,
  - (iii) the removal, within a specified time, of any fairground equipment, temporary buildings or structures, plant, machinery or similar equipment which the authority believes is intended to be used in relation to the funfair, and
  - (iv) the restoration of the land to its prior condition within a specified time.
- (c) A person who is served with a notice under *paragraph (a)* and who fails to comply with the requirements of the notice shall be guilty of an offence.
- (d) Where a person fails to comply with a notice served on the person under this section, the local authority concerned may, through its employees or agents—
- (i) give effect to the terms of the notice, and
  - (ii) where necessary for that purpose, enter on the land concerned,
- and may recover the expenditure reasonably incurred by it in so doing from the person as a simple contract debt in any court of competent jurisdiction.
- (e) A person who obstructs or impedes the local authority in the performance of its functions under *paragraph (d)* shall be guilty of an offence.

**Annotations**

**Amendments:**

**F357** Inserted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 14, commenced on enactment.

**Modifications (not altering text):**

**C66** Application of section restricted (1.10.2003) by *Planning and Development Act 2000 (Certification of Fairground Equipment) Regulations 2003* (S.I. No. 449 of 2003), regs. 9 and 10.

9. A person who intends to hold or organise a funfair, other than at a place where the operation of funfair equipment has been authorised under a permission under Part III of the Act or Part IV of the Local Government (Planning and Development) Act, 1963, shall, notwithstanding section 239 (7)(a) of the Act give two working days notice in writing to the local authority in whose functional area the funfair is to be held. This notice shall be accompanied by a valid certificate of safety and shall include details of the location and dates on which the funfair is to be held in accordance with Section 239 (7) (b) of the Planning and Development Act, 2000.

10. The following class of fairground equipment shall be exempt from the provisions of section 239 of the Planning and Development Act, 2000 as amended by section 14 of the Planning and Development (Amendment) Act 2002; namely, playground equipment provided by a local authority.

**Editorial Notes:**

**E205** Power pursuant to section exercised (20.08.2007) by *Planning and Development Act 2000 (Certification of Fairground Equipment) (Amendment) Regulations 2007* (S.I. No. 590 of 2007).

**E206** Power pursuant to section exercised (1.10.2003) by *Planning and Development Act 2000 (Certification of Fairground Equipment) Regulations 2003* (S.I. No. 449 of 2003).

Exclusion of events and funfairs from planning control.

**240.**—(1) Subject to *subsection (2)*, the holding of an event to which this Part applies and works directly or solely relating to the holding of such an event shall not be construed as “development” within the meaning of this Act.

(2) (a) Notwithstanding *section 230* or *239*, the provisions of this Part shall not affect the validity of any planning permission granted under Part IV of the Act of 1963 for the holding of an event or events or for a funfair.

(b) Where a planning permission referred to in *paragraph (a)* has been granted for the holding of an event or events in respect of land, a licence under this Part shall be required for the holding of any additional event on the land concerned.

Regulations for event.

**241.**—The Minister may make regulations providing that any activity or class of activity to which the public have access and which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or other similar temporary structure to be an event for the purposes of this Part.

## PART XVII

### FINANCIAL PROVISIONS

Expenses of administration of Minister.

**242.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Charging of expenses of planning authority that is council of a county.

**243.**—Expenses under this Act of a planning authority that is the council of a county shall be charged on the county (exclusive of every borough and urban district therein).

Apportionment of joint expenses of planning authorities.

**244.**—(1) Two or more planning authorities may, by resolution, make and carry out an agreement for sharing the cost of performing all or any of their functions under this Act and, where an agreement has been made under this subsection, the planning authorities concerned may, by resolution, terminate it at any time if they so agree.

(2) Where a planning authority proposes to perform in its functional area a function under this Act at the request of or wholly or partially in the interests of the area of another planning authority (being a planning authority whose area is contiguous with the area of the first-mentioned planning authority), the other planning authority shall defray the cost of the performance of the function to such extent as may be agreed upon between the authorities or, in default of agreement, as may be determined by the Minister.

Power to set-off.

**245.**—Where a sum is due under this Act to any person by a planning authority and, at the same time, another sum under this Act is due by that person to that authority, the former sum may be set-off against the latter either, as may be appropriate, in whole or in part.



Fees payable to planning authorities.

**246.—(1)** The Minister may make regulations providing for—

- (a) the payment to planning authorities of prescribed fees in relation to applications for—
  - (i) permission under *Part III*, or
  - (ii) extensions or further extensions under *section 42*,
- (b) the payment to planning authorities of prescribed fees in relation to the making of submissions or observations respecting applications for permission referred to in *paragraph (a)*,
- (c) the payment to planning authorities of prescribed fees in relation to requests for declarations under *section 5*,
- (d) the payment to local authorities of prescribed fees in relation to applications for grants of licences under *section 231* or for certificates of safety under *section 239*, and
- (e) the payment to planning authorities of prescribed fees in relation to applications for grants of licences under *section 254*,

and the regulations may provide for the payment of different fees in relation to cases of different classes or descriptions, for exemption from the payment of fees in specified circumstances, for the waiver, remission or refund (in whole or in part) of fees in specified circumstances and for the manner in which fees are to be disposed of.

(2) The Minister may prescribe that the fee payable to the authority for an application for permission under *section 34(12)* shall be an amount which shall be related to the estimated cost of the development, or the unauthorised part thereof, as the case may be.

- (3) (a) Where, under regulations made under this section, a fee is payable to a planning authority or local authority by an applicant in respect of an application under *paragraph (a), (d) or (e) of subsection (1)* or by a person making a request for a declaration under *paragraph (c) of subsection (1)*, the application shall not be decided, or the declaration issued, unless the authority is in receipt of the fee.
- (b) With regard to applications under *paragraph (a) of subsection (1)*, notwithstanding anything contained in *section 34(8) or 42(2)*, a decision of a planning authority shall not be regarded, pursuant to any of those sections, as having been given on a day which is earlier than that which is 8 weeks after the day on which the authority is in receipt of the fee, and *section 34(8) and 42(2)* shall be construed subject to and in accordance with the provisions of this paragraph.

(4) Where under regulations under this section a fee is payable to a planning authority or local authority and the person by whom the fee is payable is not the applicant for a permission, approval or licence, submissions or observations made, as regards the relevant application, appeal or referral by or on behalf of the person by whom the fee is payable, shall not be considered by the planning authority or local authority unless the fee has been received by the authority.

(5) A planning authority shall specify fees for the making of copies under *sections 7, 16(1) and 38(4)*, not exceeding the reasonable cost of making such copies.

**Annotations****Editorial Notes:**

- E207** Power pursuant to section exercised (8.09.2011) by *Planning and Development (Amendment) (No. 2) Regulations 2011* (S.I. No. 454 of 2011).
- E208** Power pursuant to section exercised (22.04.2002) by *Planning and Development (No. 2) Regulations 2002* (S.I. No. 149 of 2002).
- E209** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

## PART XVIII

## MISCELLANEOUS

Consultations in relation to proposed development.

**247.—(1)** A person who has an interest in land and who intends to make a planning application may, with the agreement of the planning authority concerned (which shall not be unreasonably withheld), enter into consultations with the planning authority in order to discuss any proposed development in relation to the land and the planning authority may give advice to that person regarding the proposed application.

(2) In any consultations under *subsection (1)*, the planning authority shall advise the person concerned of the procedures involved in considering a planning application, including any requirements of the permission regulations, and shall, as far as possible, indicate the relevant objectives of the development plan which may have a bearing on the decision of the planning authority.

(3) The carrying out of consultations shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process or in legal proceedings.

(4) (a) In order to satisfy the requirements of this section, a planning authority may specify that consultations may be held at particular times and at particular locations and the authority shall not be obliged to enter into consultations otherwise than as specified by it.

(b) Where a planning authority decides to hold consultations in accordance with *paragraph (a)* it shall, at least once in each year, publish notice of the times and locations at which consultations are held in one or more newspapers circulating in the area of the authority.

(5) The planning authority shall keep a record in writing of any consultations under this section that relate to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any planning application in respect of the proposed development relates.

(6) A member or official of a planning authority is guilty of an offence if he or she takes or seeks any favour, benefit or payment, direct or indirect (on his or her own behalf or on behalf of any other person or body), in connection with any consultation entered into or any advice given under this section.

Information to be provided in electronic form.

**248.—(1)** Subject to *subsection (2)*, any document or other information that is required or permitted to be given in writing under this Act or any regulations made under this Act by the Minister, the planning authority, the Board or any other person, may be given in electronic form.

(2) A document or information referred to in *subsection (1)* may be given in electronic form only—

(a) if at the time it was given it was reasonable to expect that it would be readily accessible to the planning authority, Board or other person to whom it was directed, for subsequent reference or use,

(b) where such document or information is required or permitted to be given to a planning authority or the Board and the planning authority or the Board consents to the giving of the information in that form, but requires—

(i) the information to be given in accordance with particular information technology and procedural requirements, or

(ii) that a particular action be taken by way of verifying the receipt of the information,

if the requirements of the planning authority or the Board have been met and those requirements have been made public and are objective, transparent, proportionate and non-discriminatory, and

(c) where such document or such information is required or permitted to be given to a person who is neither a planning authority nor the Board, if the person to whom the document or other information is required or permitted to be given consents to the information being given in that form.

(3) A document or information that the planning authority or the Board is required or permitted to retain or to produce, whether for a particular period or otherwise, and whether in its original form or otherwise, may be so retained or produced, as the case may be, in electronic form.

(4) *Subsections (1), (2) and (3)* are without prejudice to any other law requiring or permitting documents or other information to be given, retained or produced, as the case may be, in accordance with specified procedural requirements or particular information technology.

(5) The Minister may make regulations providing for or requiring the use of particular information technology or other procedural requirements in relation to the giving, retaining or production of a specified class or classes of documents or other information in electronic form.

(6) Without prejudice to the generality of *subsection (5)*, the regulations may apply to a particular class or classes of documents or other information, or for a particular period.

(7) This section applies to a requirement or permission to give documents or other information whether the word “give”, “make”, “make available”, “submit”, “produce” or similar word or expression is used.

(8) (a) This section is without prejudice to the requirements under *section 250* in relation to the service or giving of a notice or copy of an order unless prescribed in regulations made under *paragraph (b)*.

(b) The Minister may by regulation extend the application of this section to the service or giving of a notice or copy of an order under *section 250*, where the Minister is of the opinion that the public interest would not be prejudiced by so doing and the section as so extended shall apply accordingly.

(9) In this section—

“documents or other information” includes but is not limited to—

(a) a development plan or any draft or variation of it,

(b) an application for permission or any other document specified in *section 38(1)*,

- (c) any map, plan or other drawing, and
- (d) written submissions or observations;

F358[...]

**Annotations**

**Amendments:**

**F358** Deleted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 71, S.I. No. 405 of 2010.

Additional requirements for public notification.

**249.**—(1) Where any provision of this Act requires notice to be given in one or more newspapers circulating in the area of a planning authority, the planning authority may, in addition to the requirements of the particular provision and to the extent they consider appropriate, give the notice or draw the attention of the public to the notice through other forms of media including the broadcast media and the use of electronic forms for the provision of information.

**F359**[(2) Where any provision of this Act, or of any regulations made thereunder, requires notice to be given to any person who has made representations, submissions or observations to a planning authority or the Board, the planning authority or the Board may dispense with that requirement where—

- (a) a large number of representations, submissions or observations are made as part of an organised campaign, or
- (b) it is not possible to readily ascertain the full name and address of those persons who made the representations, submissions or observations,

provided that the authority or the Board uses some other means of giving notice to the public that the authority or the Board is satisfied can adequately draw the attention of the public to that notice including, in the case of an organised campaign referred to in paragraph (a), giving notice to any person who, in the opinion of the planning authority or the Board, organised the campaign.]

**Annotations**

**Amendments:**

**F359** Substituted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(l), S.I. No. 458 of 2001.

Service of notices, etc.

**250.**—(1) Where a notice or copy of an order is required or authorised by this Act or any order or regulation made thereunder to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in one of the following ways—

- (a) where it is addressed to him or her by name, by delivering it to him or her;
- (b) by leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter addressed to him or her at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (d) where the address at which he or she ordinarily resides cannot be ascertained by reasonable inquiry and the notice or copy is so required or authorised to

be given or served in respect of any land or premises, by delivering it to some person over the age of 16 years resident or employed on the land or premises or by affixing it in a conspicuous place on or near the land or premises;

(e) in addition to the methods of service provided for in *paragraphs (a), (b), (c) and (d)*, by delivering it (in the case of an enforcement notice) to some person over the age of 16 years who is employed, or otherwise engaged, in connection with the carrying out of the development to which the notice relates, or by affixing it in a conspicuous place on the land or premises concerned.

(2) Where a notice or copy of an order is required by this Act or any order or regulation made under this Act to be served on or given to the owner or to the occupier of any land or premises and the name of the owner or of the occupier cannot be ascertained by reasonable inquiry, it may be addressed to “the owner” or “the occupier”, as the case may require, without naming him or her.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where a notice or copy of an order is served on or given to a person by affixing it under *subsection (1)(d)*, a copy of the notice or order shall, within two weeks thereafter, be published in at least one newspaper circulating in the area in which the person is last known to have resided.

(5) A person who, at any time during the period of 12 weeks after a notice is affixed under *subsection (1)(d)*, removes, damages or defaces the notice without lawful authority shall be guilty of an offence.

(6) A person who, without lawful authority, removes, damages or defaces a notice required to be erected at the site of a development under the permission regulations or by the Board under *section 142(4)*, shall be guilty of an offence.

(7) Where the Minister or the Board is satisfied that reasonable grounds exist for dispensing with the serving or giving under this Act or under any order or regulation made under this Act of a notice or copy of an order and that dispensing with the serving or giving of the notice or copy will not cause injury or wrong, the Minister or the Board may dispense with the serving or giving of the notice or copy and every such dispensation shall have effect according to the tenor thereof.

(8) A dispensation under *subsection (7)* may be given either before or after the time when the notice or copy would, but for the dispensation, be required to be served or given and either before or after the doing of any act to which the notice or copy would, but for the dispensation, be a condition precedent.

(9) In this section, “notice” includes a warning letter.

Calculation of appropriate period and other time limits over holidays.

**F360[251.—** Where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, the period between the 24th day of December and the first day of January, both days inclusive, shall be disregarded.]

**Annotations**

**Amendments:**

**F360** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 72, S.I. No. 477 of 2010.

Power of authorised person to enter on land.

**252.**—(1) An authorised person may, subject to the other provisions of this section, enter on any land at all reasonable times between the hours of 9 a.m. and 6 p.m., or during business hours in respect of a premises which is normally open outside those hours, for any purpose connected with this Act.

(2) An authorised person entering on land under this section may do all things reasonably necessary for the purpose for which the entry is made and, in particular, may survey, carry out inspections, make plans, take photographs, take levels, make excavations, and examine the depth and nature of the subsoil.

(3) Before an authorised person enters under this section on any land, the appropriate authority shall either obtain the consent (in the case of occupied land) of the occupier or (in the case of unoccupied land) the owner or shall give to the owner or occupier, as the case may be, not less than 14 days' notice in writing of the intention to make the entry.

(4) A person to whom a notice of intention to enter on land has been given under this section by the appropriate authority may, not later than 14 days after the giving of the notice, apply, on notice to the authority, to the judge of the District Court having jurisdiction in the district court district in which the land or part of the land is situated for an order prohibiting the entry, and, upon the hearing of the application, the judge may either wholly prohibit the entry or specify conditions to be observed by the person making the entry.

(5) Where a judge of the District Court prohibits under this section a proposed entry on land, it shall not be lawful for any person to enter under this section on the land, and where a judge of the District Court specifies conditions to be observed by persons entering on land, every person who enters under this section on the land shall observe the conditions so specified.

(6) (a) Where (in the case of occupied land) the occupier or (in the case of unoccupied land) the owner refuses to permit the exercise of a power conferred by this section on an authorised person, the appropriate authority may apply to the District Court to approve of the entry.

(b) An application under this subsection shall be made, on notice to the person who refused to permit the exercise of the power of entry, to the judge of the District Court having jurisdiction in the district court district in which the land or part of the land is situated.

(7) *Subsections (3), (4) and (5)* shall not apply to entry for the purposes of *Part III* and, in a case in which any such entry is proposed, if the occupier (in the case of occupied land) or the owner (in the case of unoccupied land) refuses to permit the entry—

(a) the entry shall not be effected unless it has been authorised by an order of the judge of the District Court having jurisdiction in the district court district in which the land or part of the land is situated and, in the case of occupied land, until after at least 24 hours' notice of the intended entry, and of the object thereof, has been given to the occupier,

(b) an application for such an order shall be made on notice (in the case of occupied land) to the occupier or (in the case of unoccupied land) to the owner.

(8) An authorised person may, in the exercise of any power conferred on him or her by this Act, where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by or under this Act, request a member of the Garda Síochána to assist him or her in the exercise of such a power and any member of the Garda Síochána of whom he or she makes such a request shall comply therewith.

(9) Every person who, by act or omission, obstructs an authorised person in the lawful exercise of the powers conferred by this section shall be guilty of an offence.

(10) Every authorised person shall be furnished with a certificate of his or her appointment and when exercising any power conferred on him or her by or under this Act, the authorised person shall, if requested by any person affected, produce the certificate to that person.

(11) In this section and *section 253*—

“appropriate authority” means—

- (a) in a case in which the authorised person was appointed by a local authority — that authority,
- (b) in a case in which the authorised person was appointed by the Minister — the Minister, and
- (c) in a case in which the authorised person was appointed by the Board — the Board;

“authorised person” means a member of the Board or a person who is appointed by a local authority, the Minister or the Board to be an authorised person for the purposes of this section and *section 253*.

Powers of entry  
in relation to  
enforcement.

**253.**—(1) Notwithstanding *section 252*, an authorised person may, for any purpose connected with *Part VIII*, at all reasonable times, or at any time if he or she has reasonable grounds for believing that an unauthorised development has been, is being or is likely to be carried out, F361[enter a premises or on land] and bring thereon such other persons (including members of the Garda Síochána) or equipment as he or she may consider necessary for the purpose.

(2) Subject to *subsection (4)*, an authorised person shall not, other than with the consent of the occupier, enter into a private house under *subsection (1)* unless he or she has given to the occupier of the house not less than 24 hours’ notice in writing of his or her intended entry.

(3) Whenever an authorised person F361[enters a premises or on land] pursuant to *subsection (1)*, the authorised person may exercise the powers set out in *section 252(2)* and, as appropriate, in addition—

- F361[(a) require from an occupier of the premises or land or any person employed on the premises or land or any other person on the premises or land such information, or]
- (b) require the production of and inspect such records and documents, and take copies of or extracts from, or take away, if it is considered necessary for the purposes of inspection or examination, any such records or documents,

as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her by or under this Act.

(4) (a) Where an authorised person in the exercise of his or her powers under *subsection (1)* is F361[prevented from entering a premises or on land] or has reason to believe that evidence related to a suspected offence under this Act may be F361[present in a premises or on land] and that the evidence may be removed therefrom or destroyed or that any particular structure may be damaged or destroyed, the authorised person or the person by whom he or she was appointed may apply to a judge of the District Court for a warrant under this subsection authorising the entry F361[by the authorised person in the premises or on the land].

(b) If on application being made to him or her under this subsection, a judge of the District Court is satisfied, on the sworn information of the applicant, that the authorised person concerned has been F361[prevented from entering a

premises or on land] or that the authorised person has reasonable grounds for believing the other matters referred to in *paragraph (a)*, the judge may issue a warrant under his or her hand authorising that person, accompanied, if the judge considers it appropriate so to provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of the issue of the warrant, on production, if so requested, of the warrant, F361[to enter the premises or on the land concerned, if need be by force] and exercise the powers referred to in *subsection (3)*.

**Annotations**

**Amendments:**

**F361** Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 73, S.I. No. 405 of 2010.

Licensing of appliances and cables, etc., on public roads.

**254.—(1)** Subject to *subsection (2)*, a person shall not erect, construct, place or maintain—

- (a) a vending machine,
- (b) a town or landscape map for indicating directions or places,
- (c) a hoarding, fence or scaffold,
- (d) an advertisement structure,
- (e) a cable, wire or pipeline,
- F362[(ee) overground electronic communications infrastructure and any associated physical infrastructure,]
- (f) a telephone kiosk or pedestal, or
- (g) any other appliance, apparatus or structure, which may be prescribed as requiring a licence under this section,

on, under, over or along a public road save in accordance with a licence granted by a planning authority under this section.

(2) This section shall not apply to the following—

- (a) an appliance, apparatus or structure which is authorised in accordance with a planning permission granted under *Part III*;
- (b) a temporary hoarding, fence or scaffold erected in accordance with a condition of planning permission granted under *Part III*;
- (c) the erection, construction, placing or maintenance under a public road of a cable, wire or pipeline by a statutory undertaker.

(3) A person applying for a licence under this section shall furnish to the planning authority such plans and other information concerning the position, design and capacity of the appliance, apparatus or structure as the authority may require.

(4) A licence may be granted under this section by the planning authority for such period and upon such conditions as the authority may specify, including conditions in relation to location and design, and where in the opinion of the planning authority by reason of the increase or alteration of traffic on the road or of the widening of the road or of any improvement of or relating to the road, the appliance, apparatus or structure causes an obstruction or becomes dangerous, the authority may by notice



in writing withdraw the licence and require the licensee to remove the appliance, apparatus or structure at his or her own expense.

(5) In considering an application for a licence under this section a planning authority, or the Board on appeal, shall have regard to—

- (a) the proper planning and sustainable development of the area,
- (b) any relevant provisions of the development plan, or a local area plan,
- (c) the number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and
- (d) the convenience and safety of road users including pedestrians.

(6) (a) Any person may, in relation to the granting, refusing, withdrawing or continuing of a licence under this section or to the conditions specified by the planning authority for such a licence, appeal to the Board.

(b) Where an appeal under this section is allowed, the Board shall give such directions with respect to the withdrawing, granting or altering of a licence under this section as may be appropriate, and the planning authority shall comply therewith.

(7) Development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

(8) A person shall not be entitled solely by reason of a licence under this section to erect, construct, place or maintain on, under, over or along a public road any appliance, apparatus or structure.

(9) Subject to *subsection (10)*, any person who—

- (a) erects, constructs, places or maintains an appliance, apparatus or structure referred to in *subsection (1)* on, under, over or along any public road without having a licence under this section to do so,
- (b) erects, constructs, places or maintains such an appliance, apparatus or structure on, under, over or along any public road otherwise than in accordance with a licence under this section, or
- (c) contravenes any condition subject to which a licence has been granted to him or her under this section,

shall be guilty of an offence.

(10) (a) A planning authority may, by virtue of this subsection, itself erect, construct, place or maintain, on, under, over or along a public road any appliance, apparatus or structure referred to in *subsection (1)*, and it shall not be necessary for the planning authority to have a licence under this section.

(b) Nothing in this subsection shall be construed as empowering a planning authority to hinder the reasonable use of a public road by the public or any person entitled to use it or as empowering a planning authority to create a nuisance to the owner or occupier of premises adjacent to the public road.

(11) Where a planning authority is not the road authority for the purposes of national or regional roads in its area, it shall not grant a licence under this section in respect of any appliance, apparatus or structure on, under, over or along a national or regional road or erect, construct or place any appliance, apparatus or structure on, under, over or along a national or regional road except after consultation with the authority which is the road authority for those purposes.

**Annotations****Amendments:**

**F362** Inserted (27.04.2002) by *Communications Regulation Act 2002* (20/2002), s. 54(1), commenced on enactment.

**Modifications (not altering text):**

**C67** Application of section restricted (31.12.2007) by *Water Services Act 2007* (30/2007), s. 41(9), S.I. No. 846 of 2007.

**Installation of pipes.****41.— ...**

(9) A requirement to hold a licence under section 254 of the Act of 2000 in respect of works on, under, over or along a public road shall not apply to a person who has obtained the consent of a road authority under this section, in respect of the works to which the consent relates.

...

**C68** Application of subs. (1)(e) restricted (27.04.2002) by *Communications Regulation Act 2002* (20/2002), s. 53(17), now subs. (20), commenced on enactment, as substituted (16.03.2010) by *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010), s. 21(2), commenced on enactment.

**[Opening of public road for establishment of underground electronic communications infrastructure.****53.— ...**

(20) The requirement to hold a licence under section 254 of the Act of 2000 in respect of subsection (1)(e) of that section does not apply where a network operator has obtained a consent.

... ]

**C69** Application of subs. (4) restricted (27.04.2002) by *Communications Regulation Act 2002* (20/2002), s. 55, commenced on enactment, as substituted (16.03.2010) by *Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010* (2/2010), s. 21(3), commenced on enactment.

**Cost apportionment for electronic communications infrastructure relocation due to road improvements.**

**55.—** (1) Notwithstanding section 254(4) of the Act of 2000 and subject to this section, where an authority undertakes work for the purposes of improving a public road, it shall pay to a network operator all reasonable costs incurred by the operator in the relocation (except in relation to the relocation of ducts as referred to in subsection (2)) of its electronic communications infrastructure and any associated physical infrastructure necessitated by and directly attributable to that work.

...

**Editorial Notes:**

**E210** Power pursuant to section exercised (22.04.2002) by *Planning and Development (No. 2) Regulations 2002* (S.I. No. 149 of 2002).

**E211** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).

**E212** Previous affecting provision: application of section modified (25.07.2003) by *European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003* (S.I. No. 306 of 2003), reg. 15(3); revoked (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011* (S.I. No. 335 of 2011), reg. 28(2), subject to transitional provision in reg. 27.

Performance of functions by planning authorities.

**255.—(1)** A planning authority shall supply the Minister with such information relating to the performance of its functions as he or she may from time to time request.

(2) (a) A planning authority shall conduct, at such intervals as it thinks fit or the Minister directs, reviews of its organisation and of the systems and procedures used by it in relation to its functions under this Act.

(b) Where the Minister gives a direction under this subsection, the planning authority shall report to the Minister the results of the review conducted pursuant to the direction and shall comply with any directive which the Minister may, after consultation with the planning authority as regards those results, give in relation to all or any of the matters which were the subject of the review.

(3) The Minister may appoint a person or body, not being the planning authority concerned, to carry out a review in accordance with *subsection (2)*.

(4) Without prejudice to the powers of the Minister under the Local Government Act, 1941, if the Minister has formed the opinion from information available to him or her that—

(a) a planning authority may not be carrying out its functions in accordance with the requirements of or under this Act,

(b) a planning authority is not in compliance with guidelines issued under *section 28*, a directive issued under *section 29*, or a direction issued under *section 31*,

(c) there may be impropriety in the conduct of any of its functions by a planning authority, or

(d) there are serious diseconomies or inefficiencies in the conduct of its functions by a planning authority,

he or she may, where he or she considers it necessary or appropriate, for stated reasons appoint a commissioner to carry out and have full responsibility for all or any one or more of the functions of the planning authority under this Act and in doing so may distinguish between reserved functions and other functions.

(5) In considering whether it is necessary or expedient to appoint a commissioner under this section, the Minister may have regard to any loss of public confidence in the carrying out of its functions by the planning authority and the need to restore that confidence.

(6) A commissioner appointed under this section shall be appointed in accordance with such terms and conditions and for such period as may be specified by the Minister.

(7) A planning authority may on stated grounds based on the provisions of *subsection (4)*, by resolution, request the Minister to appoint a commissioner to carry out all or any of the functions of the authority under this Act and the Minister shall have regard to any such request.

(8) It shall be the duty of every member and every official of a planning authority to co-operate with any commissioner appointed under this section.

Amendment of Environmental Protection Agency Act, 1992.

**256.—F363[...]**

**Annotations**

**Amendments:**

**F363** Repealed (12.07.2004) by *Protection of the Environment Act 2003* (27/2003), s. 3 and sch. 2 part 1, S.I. No. 393 of 2004.

Amendment of  
Waste Manage-  
ment Act, 1996.

**257.**—The Waste Management Act, 1996, is hereby amended in section 54—

(a) by the substitution for subsection (3) of the following subsections:

“(3) Notwithstanding *section 34* of the *Planning and Development Act, 2000*, or any other provision of that Act, where a waste licence has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under *section 34* of that Act in respect of any development comprising the activity or for the purposes of the activity, subject the permission to conditions which are for the purposes of—

(a) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or

(b) controlling emissions related to or following the cessation of the operation of the activity.

(3A) Where a waste licence has been granted under this Part or is or will be required in relation to an activity, a planning authority or An Bord Pleanála may, in respect of any development comprising the activity or for the purposes of the activity, decide to refuse a grant of permission under *section 34* of the *Planning and Development Act, 2000*, where the authority or An Bord Pleanála considers that the development, notwithstanding the licensing of the activity under this Part, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development is or will be situate.

(3B) (a) Before making a decision in respect of a development comprising or for the purposes of an activity, a planning authority or An Bord Pleanála may request the Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the authority or the Board in relation to the development, including in relation to any environmental impact statement submitted.

(b) When making its decision, the authority or An Bord Pleanála, as the case may be, shall have regard to the observations, if any, received from the Agency within the period specified under paragraph (a).

(3C) The planning authority or An Bord Pleanála may, at any time after the expiration of the period specified by the authority or An Bord Pleanála under subsection (3B)(a) for making observations, make its decision on the application or appeal.

(3D) The Minister may make regulations making such incidental, consequential, or supplementary provision as may appear to him or her to be necessary or proper to give full effect to any of the provisions of this section.

(3E) Without prejudice to the generality of subsection (3D), regulations made under this section may provide for matters of procedure in relation to the request for or the making of observations from or by the Agency under this section and related matters.

(3F) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under this Act.”,

(b) in subsection (4), by the substitution for “Part IV of the Act of 1963” of “*section 34 of the Planning and Development Act, 2000*” in each place it occurs, and

(c) in subsection (5), by the substitution for “the Local Government (Planning and Development) Acts, 1963 to 1993, and a condition attached to a permission granted under Part IV of the Act of 1963” of “*the Planning and Development Act, 2000*, and a condition attached to a permission under *section 34* of that Act”.

Limitation on connection to sanitary authority sewers.

**258.—F364[...]**

**Annotations**

**Amendments:**

**F364** Repealed (31.12.2007) by *Water Services Act 2007* (30/2007), s. 4(1) and sch. 1, S.I. No. 846 of 2007.

Limitation of section 53 of the Waterworks Clauses Act, 1847.

**259.—F365[...]**

**Annotations**

**Amendments:**

**F365** Repealed (31.12.2007) by *Water Services Act 2007* (30/2007), s. 4(1) and sch. 1, S.I. No. 846 of 2007.

Saving for national monuments.

**260.—**Nothing in this Act shall restrict, prejudice, or affect the functions of the Minister for Arts, Heritage, Gaeltacht and the Islands under the National Monuments Acts, 1930 to 1994, in relation to national monuments as defined by those Acts or any particular monuments.

**Annotations**

**Modifications (not altering text):**

**C70** Functions in relation to section transferred (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2, 3 and sch. Note that name of Department of and Minister for Tourism, Culture and Sport changed to Department of and Minister for Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011).

2. (1) The administration and business in connection with the exercise, performance or execution of any powers, duties and functions transferred by this Order are transferred to the Department of Tourism, Culture and Sport.

(2) References to the Department of the Environment, Heritage and Local Government contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Tourism, Culture and Sport.

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12 (3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

#### Schedule Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Sections 51 (2) (in so far as it relates to being consulted under that subsection), 52 (1) (in so far as it relates to the issuing of guidelines), 52 (2), 53, 55, 80 and 260 of the Planning and Development Act 2000 (No. 30 of 2000).

#### Part 2

Regulations, powers, duties and functions under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Regulations 13A(4)(a)(ii), 28(1)(c), 28(1)(n), 55(a), 82(3)(c), 82(3)(n), 88(2), 121(1)(c), 121(1)(n), 179(2)(g), 179(2)(j) and 213(1)(a) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001);

...

#### Editorial Notes:

**E213** Previous affecting provision: functions and powers in relation to *National Monuments (Amendment) Act 1994* (17/1994), ss. 5(5) and 6(2) transferred to Department of and Minister for Arts, Sport and Tourism (10.07.2002) by *National Monuments (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 358 of 2002).

**E214** Previous affecting provision: name of Department of and Minister for Arts, Heritage, Gaeltacht and the Islands changed to Department of and Minister for Community, Rural and Gaeltacht Affairs (19.06.2002) by *Arts, Heritage, Gaeltacht and The Islands (Alteration of Name of Department and Title of Minister) Order 2002* (S.I. No. 308 of 2002).

Control of quarries.

**261.**—(1) The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with *section 7*, enter it in the register.

(2) Without prejudice to the generality of *subsection (1)*, information provided under that subsection shall specify the following—

- (a) the area of the quarry, including the extracted area delineated on a map,
  - (b) the material being extracted and processed (if at all),
  - (c) the date when quarrying operations commenced on the land (where known),
  - (d) the hours of the day during which the quarry is in operation,
  - (e) the traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry,
  - (f) the levels of noise and dust generated by the operations in the quarry,
  - (g) any material changes in the particulars referred to in *paragraphs (a) to (f)* during the period commencing on the commencement of this section and the date on which the information is provided,
  - (h) whether—
    - (i) planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, or
    - (ii) the operation of the quarry commenced before 1 October 1964,
- and
- (i) such other matters in relation to the operations of the quarry as may be prescribed.

(3) A planning authority may require a person who has submitted information in accordance with this section to submit such further information as it may specify, within such period as it may specify, relating to the operation of the quarry concerned and, on receipt thereof, the planning authority shall enter the information in the register.

(4) (a) A planning authority shall, not later than 6 months from the registration of a quarry in accordance with this section, publish notice of the registration in one or more newspapers circulating in the area within which the quarry is situated.

(b) A notice under *paragraph (a)* shall state—

- (i) that the quarry has been registered in accordance with this section,
- (ii) where planning permission has been granted in respect of the quarry, that it has been so granted and whether the planning authority is considering restating, modifying or adding to conditions attached to the planning permission in accordance with *subsection (6)(a)(ii)*, or
- (iii) where planning permission has not been granted in respect of the quarry, that it has not been so granted and whether the planning authority is considering—
  - (I) imposing conditions on the operation of the quarry in accordance with *subsection (6)(a)(i)*, or
  - (II) requiring the making of a planning application and the preparation of an environmental impact statement in respect of the quarry in accordance with *subsection (7)*,
- (iv) the place or places and times at which the register may be inspected,

- (v) that submissions or observations regarding the operation of the quarry may be made to the planning authority within 4 weeks from the date of publication of the notice.
- (c) A notice under this subsection may relate to one or more quarries registered in accordance with this section.
- (5) (a) Where a planning authority proposes to—
- (i) impose, restate, modify or add to conditions on the operation of the quarry under this section, or
  - (ii) require, under *subsection (7)*, a planning application to be made and an environmental impact statement to be submitted in respect of the quarry in accordance with this section,
- it shall, as soon as may be after the expiration of the period for making observations or submissions pursuant to a notice under *subsection (4)(b)*, serve notice of its proposals on the owner or operator of the quarry.
- (b) A notice referred to in *paragraph (a)*, shall state—
- (i) the reasons for the proposals, and
  - (ii) that submissions or observations regarding the proposals may be made by the owner or operator of the quarry to the planning authority within such period as may be specified in the notice, being not less than 6 weeks from the service of the notice.
- (c) Submissions or observations made pursuant to a notice under *paragraph (b)* shall be taken into consideration by a planning authority when performing its functions under *subsection (6) or (7)*.
- (6) (a) Not later than 2 years from the registration of a quarry under this section, a planning authority may, in the interests of proper planning and sustainable development, and having regard to the development plan and submissions or observations (if any) made pursuant to a notice under *subsection (4) or (5)*—
- (i) in relation to a quarry which commenced operation before 1 October 1964, impose conditions on the operation of that quarry, or
  - (ii) in relation to a quarry in respect of which planning permission was granted under Part IV of the Act of 1963 restate, modify or add to conditions imposed on the operation of that quarry,
- and the owner and operator of the quarry concerned shall as soon as may be thereafter be notified in writing thereof.
- F366[(aa) Notwithstanding any other provisions of this Act, the operation of a quarry in respect of which the owner or operator fails to comply with conditions imposed under paragraph (a)(i) shall be unauthorised development.]
- F367[(b) Where, in relation to a grant of planning permission conditions have been restated, modified or added in accordance with paragraph (a), the planning permission shall be deemed, for the purposes of this Act, to have been granted under section 34, on the date the conditions were restated, modified or added, and any condition so restated, modified or added shall have effect as if imposed under section 34.]
- (c) Notwithstanding *paragraph (a)*, where an integrated pollution control licence has been granted in relation to a quarry, a planning authority or the Board



on appeal shall not restate, modify, add to or impose conditions under this subsection relating to—

- (i) the control (including the prevention, limitation, elimination, abatement or reduction) of emissions from the quarry, or
- (ii) the control of emissions related to or following the cessation of the operation of the quarry.

(7) (a) Where the continued operation of a quarry—

- (i) (I) the extracted area of which is greater than 5 hectares, or
- (II) that is situated on a European site or any other area prescribed for the purpose of *section 10(2)(c)*, or land to which an order under section 15, 16 or 17 of the Wildlife Act, 1976, applies,

and

- (ii) that commenced operation before 1 October 1964,

would be likely to have significant effects on the environment (having regard to any selection criteria prescribed by the Minister under *section 176(2)(e)*), a planning authority shall not impose conditions on the operation of a quarry under *subsection (6)*, but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of service of the notice, or such other period as may be agreed with the planning authority.

(b) *Section 172(1)* shall not apply to development to which an application made pursuant to a requirement under *paragraph (a)* applies.

(c) A planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under *paragraph (a)*, have regard to the existing use of the land as a quarry.

F366[(d) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which a notification under *paragraph (a)* applies, unless a planning application in respect of the quarry is submitted to the planning authority within the period referred to in that paragraph, shall be unauthorised development.

(e) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which the owner or operator has been refused permission in respect of an application for permission made on foot of a notification under *paragraph (a)* shall be unauthorised development.

(f) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which the owner or operator fails to comply with conditions attached to a permission granted in respect of an application for permission made on foot of a notification under *paragraph (a)* shall be unauthorised development.]

(8) (a) Where, in relation to a quarry for which permission was granted under Part IV of the Act of 1963, a planning authority adds or modifies conditions under this section that are more restrictive than existing conditions imposed in relation to that permission, the owner or operator of the quarry may claim compensation under *section 197* and references in that section to compliance with conditions on the continuance of any use of land consequent upon a notice under *section 46* shall be construed as including references to compliance with conditions so added or modified, save that no such claim may be made in respect of any condition relating to a matter specified in

*paragraph (a), (b) or (c) of section 34(4), or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.*

- (b) Where, in relation to a quarry to which *subsection (7)* applies, a planning authority, or the Board on appeal, refuses permission for development under *section 34* or grants permission thereunder subject to conditions on the operation of the quarry, the owner or operator of the quarry shall be entitled to claim compensation under *section 197* and for that purpose the reference in *subsection (1)* of that section to a notice under *section 46* shall be construed as a reference to a decision under *section 34* and the reference in *section 197(2)* to *section 46* shall be construed as a reference to *section 34* save that no such claim may be made in respect of any condition relating to a matter specified in *paragraph (a), (b) or (c) of section 34(4), or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.*

F366[(c) Where, in relation to a quarry which commenced operation before 1 October 1964 a planning authority imposes conditions under *subsection (6)(a)(i)* on the operation of the quarry, the owner or operator of the quarry may claim compensation under *section 197* and references in that section to compliance with conditions on the continuance of any use of land consequent upon a notice under *section 46* shall be construed as including references to compliance with conditions so added or modified, save that no such claim may be made in respect of any condition relating to a matter specified in *paragraph (a), (b) or (c) of section 34(4), or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.*]

- (9) (a) A person who provides information to a planning authority in accordance with *subsection (1)* or in compliance with a requirement under *subsection (3)* may appeal a decision of the planning authority to impose, restate, add to or modify conditions in accordance with *subsection (6)* to the Board within 4 weeks from the date of receipt of notification by the authority of those conditions.

- (b) The Board may at the determination of an appeal under *paragraph (a)* confirm with or without modifications the decision of the planning authority or annul that decision.

F367[(10) Notwithstanding any other provision of this Act, a quarry to which this section applies in respect of which the owner or operator fails to provide information in relation to the operation of the quarry in accordance with *subsection (1)* or in accordance with a requirement under *subsection (3)* shall be unauthorised development.]

(11) This section shall apply to—

- (a) a quarry in respect of which planning permission under Part IV of the Act of 1963 was granted more than 5 years before the coming into operation of this section, and
- (b) any other quarry in operation on or after the coming into operation of this section, being a quarry in respect of which planning permission was not granted under that Part.

(12) The Minister may issue guidelines to planning authorities regarding the performance of their functions under this section and a planning authority shall have regard to any such guidelines.

(13) In this section—

“emission” means—

- (a) an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act, 1987,
- (b) a discharge of polluting matter, sewage effluent or trade effluent within the meaning of the Local Government (Water Pollution) Act, 1977, to waters or sewers within the meaning of that Act,
- (c) the disposal of waste, or
- (d) noise;

“operator” means a person who at all material times is in charge of the carrying on of quarrying activities at a quarry or under whose direction such activities are carried out;

“quarry” has the meaning assigned to it by section 3 of the Mines and Quarries Act, 1965.

**Annotations**

**Amendments:**

**F366** Inserted (15.11.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 74(a)(i), (b) and (c), S.I. No. 582 of 2011.

**F367** Substituted (15.11.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 74(a)(ii) and (d), S.I. No. 582 of 2011.

**F368** Deleted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 74(e), not commenced as of 27.12.2012.

**Modifications (not altering text):**

**C71** Prospective amending provision: definitions of “operator” and “quarry” deleted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 74(e), not commenced as of 27.12.2012.

F368[...]

F368[...]

F369[Further matters in relation to control of quarries.

**261A.—** (1) Each planning authority shall, not later than 4 weeks after the coming into operation of this section, publish a notice in one or more than one newspaper circulating in its administrative area and on the authority’s website, stating—

- (a) that it intends to examine every quarry in its administrative area to determine, in relation to that quarry, whether having regard to the Environmental Impact Assessment Directive and the Habitats Directive, one or more than one of the following was required but was not carried out—
  - (i) an environmental impact assessment;
  - (ii) a determination as to whether an environmental impact assessment is required;
  - (iii) an appropriate assessment,
- (b) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the planning authority also decides that—

- (i) the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 or Part IV of the Local Government (Planning and Development) Act 1963,
- and
- (ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were fulfilled,
- the planning authority will issue a notice to the owner or operator of the quarry requiring him or her to submit an application to the Board for substitute consent, such application to be accompanied by a remedial environmental impact statement or a remedial Natura impact statement or both of those statements, as appropriate,
- (c) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the planning authority also decides that —
- (i) the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 or Part IV of the Local Government (Planning and Development) Act 1963,
- or
- (ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were not fulfilled,
- the planning authority will issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate,
- (d) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether an environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the planning authority also determines that the development in question was carried out after 3 July 2008, the planning authority will issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate,
- (e) that submissions or observations may be made in writing to the planning authority in relation to any quarry in its administrative area, by any person, not later than 6 weeks after the date of the publication of the notice under paragraph (a), that no fee in relation to the making of the submissions or observations shall be payable and that such submissions or observations will be considered by the planning authority,
- (f) that a copy of any notice that is issued to the owner or operator of a quarry under this section, directing him or her to apply to the Board for substitute consent or informing him or her that the planning authority intends to issue an enforcement notice under section 154 in respect of the quarry, shall be given to a person who, not later than 6 weeks after the date of the publication of the notice under paragraph (a) made submissions or observations, and
- (g) that an owner or operator of a quarry to whom a notice is issued, and any person to whom a copy of such a notice is given, may apply to the Board for a review of a determination or a decision, or both, of the planning authority

- referred to in the notice and that no fee in relation to the application for a review shall be payable.
- (2) (a) Each planning authority shall, not later than 9 months after the coming into operation of this section examine every quarry within its administrative area and make a determination as to whether—
- (i) development was carried out after 1 February 1990 F370[...] which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or
  - (ii) development was carried out after 26 February 1997, F370[...] which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.
- (b) In making a determination under paragraph (a), the planning authority shall have regard, to the following matters:
- (i) any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a);
  - (ii) any information submitted to the authority in relation to the registration of the quarry under section 261;
  - (iii) any relevant information on the planning register;
  - (iv) any relevant information obtained by the planning authority in an enforcement action relating to the quarry;
  - (v) any other relevant information.
- (3) (a) Where a planning authority makes a determination under subsection (2)(a) that subparagraph (i) or (ii) or both, if applicable, of that paragraph apply in relation to a quarry (in this section referred to as a 'determination under subsection (2)(a)'), and the authority also decides that—
- (i) either the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
  - (ii) if applicable, the requirements in relation to registration under section 261 were fulfilled,
- the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry.
- (b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).
- (c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:
- (i) the determination under subsection (2)(a) and the reasons therefor;
  - (ii) the decision of the planning authority under paragraph (a) and the reasons therefor;

- (iii) that the person is directed to apply to the Board for substitute consent in respect of the quarry, under section 177E, F371[with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),] not later than 12 weeks after the date of the notice, or such further period as the Board may allow;
  - (iv) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination of the planning authority under subsection (2)(a) or the decision of the planning authority under paragraph (a), and that no fee in relation to either application for a review shall be payable.
- (d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—
- (i) give a copy of the notice to any person who not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), made submissions or observations to the authority in relation to the quarry,
  - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination under subsection (2)(a) or the decision of the authority under paragraph (a) and that no fee in relation to either application for a review shall be payable, and
  - (iii) forward a copy of the notice to the Board.
- (4) (a) Where a planning authority makes a determination under subsection (2)(a) and the authority also decides that—
- (i) the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or
  - (ii) if applicable, the requirements in relation to registration under section 261 were not fulfilled,
- the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry.
- (b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it, including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).
- (c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:
- (i) the determination under subsection (2)(a) and the reasons therefor;
  - (ii) the decision of the planning authority under paragraph (a) and the reasons therefor;
  - (iii) that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the authority considers appropriate;
  - (iv) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination under subsection (2)(a) or the decision of the planning authority under paragraph (a), and that no fee in relation to either application for a review shall be payable.

- (d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—
- (i) give a copy of the notice to any person who not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), made submissions or observations to the authority in relation to the quarry, and
  - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination of the planning authority under subsection (2)(a) or the decision of the planning authority under paragraph (a) and that no fee in relation to either application for a review shall be payable.
- (5) (a) Notwithstanding anything contained in subsection (3) or (4), where a planning authority makes a determination under subsection (2)(a) and the authority further determines that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008, the authority shall also decide whether—
- (i) the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
  - (ii) if applicable, the requirements in relation to registration under section 261 were fulfilled,
- and shall issue a notice not later than 9 months after the coming into operation of this section to the owner or operator of the quarry.
- (b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it, including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).
- (c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:
- (i) the determination of the planning authority under subsection (2)(a) and the reasons therefor;
  - (ii) the determination of the planning authority under paragraph (a) that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008, and the reasons therefor;
  - (iii) the decision of the planning authority under paragraph (a) and the reasons therefor;
  - (iv) that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the authority considers appropriate;
  - (v) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination of the planning authority under subsection (2)(a), the determination of the planning authority under paragraph (a), or the decision of the planning authority under paragraph (a), and that no fee in relation to any application for a review shall be payable.
- (d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—

- (i) give a copy of the notice to any person who made submissions or observations to the authority in relation to the quarry not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), and
  - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination under subsection (2)(a), F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008 or the decision of the planning authority under paragraph (a), and that no fee in relation to any application for a review shall be payable.
- (6) (a) A person to whom a notice was issued under subsection (3)(a), (4)(a) or (5)(a), or a person to whom a copy of such a notice was given under subsection (3)(d), (4)(d) or (5)(d), may not later than 21 days after the date of the notice so issued or given to him or her, apply to the Board for a review of one or more than one, of the following, referred to in the notice:
- (i) a determination under subsection (2)(a);
  - (ii) a decision of the planning authority under subsection (3)(a);
  - (iii) a decision of the planning authority under subsection (4)(a);
  - (iv) a determination of the planning authority under subsection (5)(a) that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008;
  - (v) a decision of the planning authority under subsection (5)(a).
- (b) Where an application for a review is made to the Board under paragraph (a) any person may make submissions or observations not later than 21 days after the date of the notice issued under subsection (3)(a), (4)(a) or (5)(a), as the case may be.
- (c) Where an application for a review is made under paragraph (a), the Board shall inform the planning authority and shall request the planning authority to furnish to it such information as the Board considers necessary to make a decision in relation to the review, and the planning authority shall comply with that request within the period specified in the request.
- (d) The Board in making a decision on an application for a review under paragraph (a) shall consider any documents or evidence submitted by the person or persons who applied for the review, any submissions or observations received under paragraph (b) and any information furnished by the planning authority under paragraph (c).
- (e) The Board shall make a decision as soon as may be whether to confirm or set aside the determination or decision of the planning authority to which the application for a review refers.
- (f) As soon as may be after the Board makes its decision under paragraph (e) it shall give notice of its decision to the person or persons who applied for the review, and to the planning authority concerned, and the giving of the notice shall, for the purposes of this section be considered to be the disposal, by the Board, of the review.
- (g) The application to the Board for a review under paragraph (a) shall have the effect of suspending the operation of a direction contained in a notice issued under subsection (3)(a) until the review is disposed of.
- (h) Where the decision of the Board is to set aside a determination under subsection (2)(a) a direction to apply for substitute consent contained in a notice issued under subsection (3)(a) shall cease to have effect.



(7) Where in relation to a quarry in respect of which a notice has been issued under subsection (3)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) either no application has been made to the Board for a review of a decision of the planning authority under subsection (3)(a) or the Board in making a decision in relation to such a review has confirmed the decision of the planning authority,

the person to whom the notice was issued under subsection (3)(a) shall apply to the Board for substitute consent under section 177E not later than 12 weeks after the date of the giving of the notice of its decision under subsection (6)(f) by the Board, or such further period as the Board may allow, save that where no application for review was made to the Board the person to whom the notice was issued under subsection (3)(a) shall apply to the Board for substitute consent within the period specified in that notice.

(8) Where in relation to a quarry in respect of which a notice has been issued under subsection (3)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a), or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board in making a decision in relation to a review of a decision of the planning authority under subsection (3)(a) has set aside the decision of the planning authority,

the direction to apply for substitute consent contained in the notice issued under subsection (3)(a) shall cease to have effect and the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue an enforcement notice under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the planning authority considers appropriate.

(9) Where in relation to a quarry in respect of which a notice has been issued under subsection (4)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a) or the Board in making a decision in relation to such a review has confirmed the decision of the planning authority,

the planning authority shall, as soon as may be after the expiration of the period for applying for a review or the date of the giving of the notice of its decision by the Board under subsection (6)(f), as the case may be, issue an enforcement notice under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the planning authority considers appropriate.

(10) Where in relation to a quarry in respect of which a notice has been issued under subsection (4)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to

such a review has confirmed the determination of the planning authority, and

- (b) the Board in making a decision in relation to a review of a decision under subsection (4)(a) has set aside the decision of the planning authority, and
- (c) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a)(i) that the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
- (d) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a)(ii) that if applicable, the requirements in relation to registration under section 261 were fulfilled, or the Board in a review of such a decision has decided that, if applicable, the requirements in relation to registration under section 261 were fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue a notice to the owner or operator of the quarry directing him or her to apply to the Board for substitute consent under section 177E F371[with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),] not later than 12 weeks after the date of the notice issued by the planning authority under this subsection or such further period as the Board may allow.

(11) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) either no application has been made to the Board for a review of a determination of the planning authority under subsection (5)(a) that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008 or the Board has confirmed the determination of the planning authority under subsection (5)(a),

the planning authority shall, as soon as may be after the expiration of the period for applying for a review or the date of the giving of the notice of its decision by the Board under subsection (6)(f), as the case may be, issue an enforcement notice under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the planning authority considers appropriate.

(12) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a) and—

- (a) either no application has been made to the Board for a review of the determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board, in making a decision in relation to a review of such a notice has set aside the determination of the planning authority under subsection (5)(a) that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008, and

- (c) either no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(i) that the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
- (d) either no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(ii) that if applicable, the requirements in relation to registration under section 261 were fulfilled or the Board in a review of such a decision has decided that if applicable, the requirements in relation to registration under section 261 were fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue a notice to the owner or operator of the quarry directing him or her to apply to the Board for substitute consent under section 177E F371[with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a),] not later than 12 weeks after the date of the notice issued by the planning authority under this subsection, or such further period as the Board may allow.

(13) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a)—

- (a) either no application has been made to the Board for a review of the determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board, in making a decision in relation to a review has set aside the determination of the planning authority under subsection (5)(a) that F372[subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which] took place after 3 July 2008, and

(c) either—

- (i) no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(i) that the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or
- (ii) no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(ii) that if applicable, the requirements in relation to registration under section 261 were not fulfilled, or the Board in a review of such a decision has decided that, if applicable, the requirements in relation to registration under section 261 were not fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue an enforcement notice under section 154 requiring F372[the cessation of the unauthorised quarrying] and the taking of such steps as the planning authority considers appropriate.

(14) Where an application for substitute consent is required to be made under this section it shall be made in relation to that development in respect of which the planning authority has made a determination under subsection (2)(a).

(15) The provisions of Part XA shall apply, as appropriate, to an application for substitute consent made in accordance with a direction under subsection (3), (10) or (12).]

F373[(16) On or before 15 August 2012, notwithstanding sections 177C and 177D, the Board shall refuse to consider, in respect of a quarry, an application for leave to apply for substitute consent under section 177C made to the Board during the period commencing on 15 November 2011 and ending on 15 August 2012 and shall return any such application to the person who makes the application.

(17) Nothing in subsection (16) shall prevent the Board from considering, in respect of a quarry, an application for leave to apply for substitute consent under section 177C made to the Board after 15 August 2012.

(18)(a) The Board, before considering any application, in respect of a quarry, for leave to apply for substitute consent under section 177C shall make enquiries and request information of the applicant or planning authority concerned as to whether one of the following has occurred:

(i) the planning authority, under this section, has decided that no notice is required to be issued in respect of the quarry concerned;

(ii) a notice was issued by the planning authority under subsection (4) or (5) and no application was made to the Board for a review of such notice within the period specified in subsection (6)(a);

(iii) a notice was issued by the planning authority under subsection (3), (4) or (5) and an application was made to the Board for a review of such notice within the period specified in subsection (6)(a);

(iv) an enforcement notice was issued by the planning authority under subsection (8), (9), (11) or (13), which notice has or has not been complied with.

(b) When the information requested at paragraph (a) has been received by the Board it may proceed to consider the application for leave to apply for substitute consent, save that where a notice under subsection (3), (4) or (5) has been referred to the Board for a review under subsection (6), it may not proceed to consider the application for leave concerned until it has made a decision on the application for a review under subsection (6).

(c) The Board shall, when considering an application for leave to apply for substitute consent in relation to a quarry, in addition to any matter referred to in sections 177C and 177D, take into account the matters referred to at paragraph (a) including any decision made by the Board under subsection (6) on an application for a review of a notice issued by a planning authority referred to it under that subsection.

(19) Section 177D(5) shall apply in relation to an application, in respect of a quarry, for leave to apply for substitute consent subject to the modification that it shall be read as if in that subsection the following subparagraph were included and subject to any other necessary modifications:

“(aa) 6 weeks after the Board has received information following enquiries under section 261A(18) or 6 weeks after the Board makes a decision on an application for a review under section 261A(6) of a notice issued by a planning authority whichever shall be later.”.]

**Annotations****Amendments:**

- F369** Inserted (15.11.2011) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 75, S.I. No. 582 of 2011.
- F370** Deleted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 16(a) and (b).
- F371** Inserted (21.09.2011) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2011* (S.I. No. 473 of 2011), reg. 16(c), (d) and (e).
- F372** Substituted (9.07.2012) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2012* (S.I. No. 246 of 2012), reg. 3(a) and (b).
- F373** Inserted (9.07.2012) by *European Union (Environmental Impact Assessment and Habitats) Regulations 2012* (S.I. No. 246 of 2012), reg. 3(c).

Regulations generally.

**262.**—(1) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed or to be prescribed, or in relation to any matter referred to in this Act as the subject of regulations.

(2) Regulations under this Act may contain such incidental, supplemental and consequential provisions as appear to the Minister to be necessary or expedient.

(3) Before making any regulations under this Act, the Minister shall consult with any relevant State authority where the regulations relate to the functions of that State authority.

(4) Where regulations are proposed to be made under *section 4(2), 19(3), 25(5), 100(1)(b), (c) or (d), 126(4), 176, 179(1), F374[181(1)(a)], 221(4), 230(1) or 246*, a draft of the regulations shall be laid before both Houses of the Oireachtas and the regulations shall not be made unless a resolution approving the draft has been passed by each such House.

(5) Every regulation made under this Act (other than a regulation referred to in *subsection (4)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

**Annotations****Amendments:**

- F374** Substituted (24.12.2002) by *Planning and Development (Amendment) Act 2002* (32/2002), s. 15, commenced on enactment.
- F375** Inserted by *Planning and Development (Amendment) Act 2010* (30/2010), s. 76, not commenced as of 27.12.2012.

**Modifications (not altering text):**

- C72** Prospective amending provision: subs. (4) amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 76, not commenced as of 27.12.2012.

(4) Where regulations are proposed to be made under *section 4(2), F375[4(4)(b),] 19(3), 25(5), F375[96(3)(da),] 100(1)(b), (c) or (d), 126(4), 176, 179(1), F374[181(1)(a)], 221(4), 230(1) or 246*,

a draft of the regulations shall be laid before both Houses of the Oireachtas and the regulations shall not be made unless a resolution approving the draft has been passed by each such House.

**Editorial Notes:**

- E215** Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).
- E216** Power pursuant to section exercised (8.09.2011) by *Planning and Development (Amendment) (No. 2) Regulations 2011* (S.I. No. 454 of 2011).
- E217** Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).
- E218** Power pursuant to section exercised (3.05.2011) by *Planning and Development (Strategic Environmental Assessment) (Amendment) Regulations 2011* (S.I. No. 201 of 2011).
- E219** Power pursuant to section exercised (10.07.2008) by *Planning and Development (Amendment) Regulations 2008* (S.I. No. 256 of 2008).
- E220** Power pursuant to section exercised (2.07.2008) by *Planning and Development Regulations 2008* (S.I. No. 235 of 2008).
- E221** Power pursuant to section exercised (20.08.2007) by *Planning and Development Act 2000 (Certification of Fairground Equipment) (Amendment) Regulations 2007* (S.I. No. 590 of 2007).
- E222** Power pursuant to section exercised (31.03.2007) by *Planning and Development (No. 2) Regulations 2007* (S.I. No. 135 of 2007).
- E223** Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).
- E224** Power pursuant to section exercised (14.07.2005) by *Planning and Development Regulations 2005* (S.I. No. 364 of 2005).
- E225** Power pursuant to section exercised (21.07.2004) by *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No. 436 of 2004).
- E226** Power pursuant to section exercised (1.10.2003) by *Planning and Development Act 2000 (Certification of Fairground Equipment) Regulations 2003* (S.I. No. 449 of 2003).
- E227** Power pursuant to section exercised (6.03.2003) by *Planning and Development Regulations 2003* (S.I. No. 90 of 2003).
- E228** Power pursuant to section exercised (22.04.2002) by *Planning and Development (No. 2) Regulations 2002* (S.I. No. 149 of 2002).
- E229** Power pursuant to section exercised (11.03.2002) by *Planning and Development Regulations 2002* (S.I. No. 70 of 2002).
- E230** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001).
- E231** Previous affecting provision: power pursuant to section exercised (20.07.2001) by *Planning and Development (Appointment of Chairperson and Ordinary Members of an Board Pleanála) Regulations 2001* (S.I. No. 336 of 2000); revoked (21.02.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.
- E232** Previous affecting provision: power pursuant to section exercised (17.04.2001) by *Planning and Development (Licensing of Outdoor Events) Regulations 2001* (S.I. No. 154 of 2001); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.
- E233** Previous affecting provision: power pursuant to section exercised (1.01.2001) by *Planning and Development (No. 2) Regulations 2000* (S.I. No. 457 of 2000); revoked (21.01.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

**E234** Previous affecting provision: power pursuant to section exercised (1.11.2000) by *Planning and Development Regulations 2000* (S.I. No. 350 of 2000); revoked (21.02.2002) by *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), reg. 4 and sch. 1.

## PART XIX

### COMMENCEMENT, REPEALS AND CONTINUANCE

Interpretation. **263.**—In this Part, “repealed enactments” means the enactments specified in *column (2)* of the *Sixth Schedule*.

Repeals. **264.**—The enactments specified in *column (2)* of the *Sixth Schedule* are hereby repealed to the extent specified in *column (3)* of that Schedule.

Continuity of repealed enactments. **265.**—(a) Nothing in this Act shall affect the validity of anything done under the Local Government (Planning and Development) Acts, 1963 to 1999, or under any regulations made under those Acts.

(b) Any order, regulation or policy directive made, or any other thing done, under the Local Government (Planning and Development) Acts, 1963 to 1999, that could have been made or done under a corresponding provision of this Act, shall not be invalidated by any repeal effected by this Act but shall, if in force immediately before that repeal was effected, have effect as if made or done under the corresponding provision of this Act, unless otherwise provided.

(2) The continuity of the operation of the law relating to the matters provided for in the repealed enactments shall not be affected by the substitution of this Act for those enactments, and—

(a) so much of any enactment or document (including enactments contained in this Act) as refers, whether expressly or by implication, to, or to things done or falling to be done under or for the purposes of, any provision of this Act, shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or, as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision,

(b) so much of any enactment or document (including repealed enactments and enactments and documents passed or made after the commencement of this Act) as refers, whether expressly or by implication, to, or to things done or falling to be done under or for the purposes of, any provision of the repealed enactments shall, if and so far as the nature of the subject matter of the enactment or document permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or, as the case may be, to things done or deemed to be done or falling to be done under or for the purposes of, that corresponding provision.

(3) Section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by section 69(1) of the Act of 1963 shall, notwithstanding the repeal of section 69 of the Act of 1963 by the Act of 1990, apply to every case, other than a case F376[under Part XII] or the Act of 1990, where any compensation assessed will be payable by a planning authority or any other local authority.

(4) In the case of any application to a planning authority, or any appeal or any other matter with which the Board is concerned which is received by the planning authority or the Board, as the case may be, before the repeal of the relevant provisions or the revocation of any associated regulations, the provisions of the Local Government (Planning and Development) Acts, 1963 to 1999, and regulations made thereunder shall continue to apply to the application, appeal or other matter notwithstanding the repeal of any enactment or revocation of any regulation.

#### Annotations

#### Amendments:

**F376** Substituted (17.10.2006) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 46, S.I. No. 525 of 2006.

Transitional provisions regarding development plans.

**266.**—(a) Notwithstanding the repeal of any enactment by this Act, development plans made under Part III of the Act of 1963 shall continue in force and shall be deemed to have been made under and in compliance with this Act.

(b) Notwithstanding the repeal of any enactment by this Act, where a planning authority has given notice under section 21 of the Act of 1963 of the preparation of a draft development plan, Part III of the Act of 1963 shall continue to apply in respect of that draft development plan until the making of such plan.

(2) (a) Where, on the commencement of *Part II*, a development plan is in force for longer than 4 years, the planning authority concerned shall, not later than one year after such commencement, initiate the notification procedures under *section 11*.

(b) Except as is provided in *paragraph (a)* and in *subsection (1)(b)*, the provisions of *Part II* in relation to the review of development plans and the preparation of new plans shall apply to all existing development plans.

(c) For the purposes of *paragraphs (a)* and *(b)*, the reference to the development plan shall be a reference to the development plan in force for the functional area of the planning authority which covers all, or the greater part of, that functional area and—

(i) a development plan for a scheduled town, within the meaning of section 2 of the Act of 1963, or

(ii) a development plan covering part only of the functional area of the authority (not being the greater part),

shall be deemed not to be a development plan for the purposes of those paragraphs.

(3) A reference in any enactment or instrument to a development plan shall be deemed to be a reference to a development plan as defined in this Act.

Transitional provisions respecting compulsory acquisition of land.

**267.**—(1) Where, before the transfer of functions to the Board in accordance with *sections 214* and *215*, any matter was to be determined by the Minister under the enactments referred to in those sections, the Board shall, in lieu of the Minister, determine the matter in accordance with those sections.

(2) *Sections 217, 218, 219, 220, 221* and *222* shall not apply to matters referred to in *subsection (1)* to be determined by the Board in accordance with that subsection.



Miscellaneous transitional provisions.

**268.**—(1) Notwithstanding the repeal of any enactment by this Act—

- (a) subsections (2) to (5) of section 38 of the Act of 1999 continue to apply to a planning authority until the planning authority has made the decisions required by those subsections and served them on the appropriate owners and occupiers,
- (b) a scheme for the granting of pensions, gratuities or other allowances in respect of the chairperson and ordinary members or in respect of wholetime employees of the Board under an Act repealed by this Act shall continue in force and shall be deemed to be a scheme under *section 119* or *121*, as appropriate,
- (c) a special amenity area order or tree preservation order confirmed or made under an Act repealed by this Act that is in force immediately before the commencement of this section shall be deemed to have been confirmed or made under *section 203* or *205*, as appropriate,
- (d) paragraph 12 of the Third Schedule to the Act of 1990 shall continue to apply for a period of 3 years from the commencement of this section, and
- (e) section 55A (inserted by the Roads (Amendment) Act, 1998) of the Roads Act, 1993 (as inserted by section 6 of the Roads (Amendment) Act, 1998) shall continue to apply in relation to an order of the Minister under section 49(3) or 51(6) of that Act.

(2) Any codes of practice concerning the holding of events issued by the Minister or any other Minister of the Government prior to the coming into force of this Act shall be deemed to be codes of practice under *section 232*.

(3) (a) Notwithstanding *section 191*, compensation shall be payable under *section 190* where there has been a refusal of permission under *Part III* on the grounds specified in *paragraph 5* of the *Fourth Schedule*, and where—

- (i) the development plan contained, prior to the coming into operation of *section 10*, an objective for the zoning of the land to which the application concerned related for use solely or primarily for the purpose for which the application was made, and
- (ii) the application for permission was made not later than 3 years after the coming into operation of this section.

(b) *Paragraph (a)* shall not apply to a refusal of permission if—

- (i) the development is of a class or description set out in the *Third Schedule*, or
- (ii) the refusal was on grounds specified in the *Fourth Schedule* (other than *paragraph (a)*).

Regulations to remove difficulties.

**269.**—If any difficulty arises during the period of 3 years from the commencement of this Act in bringing any provision of this Act into operation or in relation to the operation of any provision, the Minister may by regulations do anything which appears to the Minister to be necessary or expedient for the purposes of removing the difficulty, bringing that provision into operation, or securing or facilitating its operation.

Commencement.

**270.**—(1) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and provisions.

(2) An order under *subsection (1)* may, in respect of the repeals effected by *section 264* of the enactments mentioned in the *Sixth Schedule*, fix different days for the repeal of different enactments or for the repeal for different purposes of any enactment.

**Annotations**

**Editorial Notes:**

**E235** Power pursuant to section exercised (28.04.2004) by *Planning and Development Act 2000 (Commencement) Order 2004* (S.I. No. 152 of 2004).

2. On 28 April 2004, section 261 of the Planning and Development Act 2000 shall come into operation.

**E236** Power pursuant to section exercised (24.09.2003) by *Planning and Development Act, 2000 (Commencement) Order 2003* (S.I. No. 450 of 2003).

2. On 24th September, 2003, section 239 of the Planning and Development Act, 2000 shall come into operation.

**E237** Power pursuant to section exercised (21.01.2002 and 11.03.2002) by *Planning and Development Act 2000 (Commencement) (No. 3) Order 2001* (S.I. No. 599 of 2001).

2. On 21 January, 2002, the following provisions of the Planning and Development Act, 2000 shall come into operation—

- (a) section 2, insofar as it relates to the sections referred to in paragraphs (b) to (i) of this article,
- (b) sections 3, 4, 6 and 8,
- (c) Part IV, insofar as not previously commenced,
- (d) Chapter II of Part VI,
- (e) Part VII,
- (f) sections 156, 157 and 158, insofar as they relate to prosecutions for offences under sections 58, 63, 91, 113, 114, 147, 148, 205 and 208,
- (g) section 180,
- (h) Part XIII,
- (i) section 264 and the Sixth Schedule insofar as they relate to the repeals effected by article 4 of this Order, and
- (j) section 268(1)(a), (b) and (c).

3. On 11 March, 2002, the following provisions of the Planning and Development Act, 2000, insofar as not previously commenced, shall come into operation—

- (a) section 2,
- (b) sections 5 and 7,
- (c) Part III,
- (d) Chapter III of Part VI,
- (e) Part VIII,
- (f) Part X,
- (g) Part XI,

- (h) Part XII and the Second, Third, Fourth and Fifth Schedules,
- (i) Part XV,
- (j) Part XVII,
- (k) Part XVIII, other than section 261,
- (l) section 264 and the Sixth Schedule, insofar as they relate to the repeals effected by article 5 of this Order,
- (m) section 265(1), (2) and (4), and
- (n) section 268(1)(d) and (3).

**E238** Power pursuant to section exercised (20.07.2001) by *Planning and Development Act 2000 (Commencement) (No. 2) Order 2001* (S.I. No. 335 of 2001).

2. The following provisions of the Planning and Development Act, 2000 shall come into operation—

- (a) section 2 insofar as it relates to the sections referred to in paragraphs (b) and (c) of this article,
- (b) Chapter I of Part VI, and
- (c) section 264 and the Sixth Schedule insofar as they relate to the repeals effected by article 3 of this Order.

3. Section 3 of the Local Government (Planning and Development) Act, 1976 (No. 20 of 1976) and sections 2, 3 (as inserted by section 1 (a) of the Local Government (Planning and Development) Act, 1998 (No. 9 of 1998)), 5, 7, 8 (as amended by section 1 (b) of the Local Government (Planning and Development) Act, 1998) and 12 of the Local Government (Planning and Development) Act, 1983 (No. 28 of 1983) are repealed.

**E239** Power pursuant to section exercised (17.04.2001) by *Planning and Development Act, 2000 (Commencement) Order 2001* (S.I. No. 153 of 2001).

2. On 17th April, 2001, the following sections of the Planning and Development Act, 2000 shall come into operation —

- (a) section 2 insofar as it relates to the sections referred to in paragraphs (b) to (e) of this article,
- (b) sections 156, 157 and 158 insofar as they relate to prosecutions under sections 230, 233 or 235,
- (c) Part XVI (other than section 239),
- (d) subsections (1) (other than paragraphs (a), (b), (c) and (e) of that subsection) and (3)(a) of section 246, and
- (e) section 268(2).

**E240** Power pursuant to section exercised (1.01.2001) by *Planning and Development Act 2000 (Commencement) (No. 2) Order 2000* (S.I. No. 449 of 2000).

3. On 1 January, 2001, sections 2 (insofar as it relates to the sections commenced on that date), 50 (insofar as it relates to decisions under subsection (2)(b)(iii) of that section), 71, 72, 73, 74, 75, 76, 77, 78, 182, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 263, 264 (insofar as it relates to the repeal of Section 55A of the Roads Act, 1993, as inserted by section 6 of the Roads (Amendment) Act, 1998), 265(3), 267, 268(1) (other than paragraphs (a), (b), (c) and (d) of that subsection), 271, 272, 273, 274, 275, 276 and 277 of the Act shall come into operation.

**E241** Power pursuant to section exercised (1.11.2000 and 1.01.2001) by *Planning and Development Act 2000 (Commencement) Order 2000* (S.I. No. 349 of 2000).

3. On 1 November, 2000, sections 1, 2 (insofar as it relates to the sections commenced on that date), 13, 28, 29, 30, 93, 94, 95, 96, 97, 98, 99, 100, 101, 165, 166, 167, 168, 169, 170, 171, 262, 266, 269, and 270 of the Act shall come into operation.

4. On 1 January, 2001, sections 2 (insofar as it relates to the sections commenced on that date), 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31 and the First Schedule of the Act shall come into operation.

**F377**[Exempted developments not affected.] **270A.**— For the avoidance of doubt, any category of exempted development by virtue of section 4 or regulations thereunder is not affected by the amendments of this Act made by the *Planning and Development (Strategic Infrastructure) Act 2006*.]

**Annotations**

**Amendments:**

**F377** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 47, S.I. No. 684 of 2006.

PART XX

AMENDMENTS OF ROADS ACT, 1993

Amendment of section 57 of Roads Act, 1993.

**271.**—Section 57 of the Roads Act, 1993, is hereby amended—

(a) by the substitution of the following for subsection (1):

“(1) A road authority may prepare a scheme for the establishment of a system of tolls in respect of the use of a public road.”,

(b) in subsection (2), by the substitution for “In making a toll scheme” of “In preparing a scheme under subsection (1)”,

(c) in subsection (3), by the substitution for “toll scheme” of “scheme prepared under subsection (1)”,

(d) in subsection (4), by the substitution for “toll scheme” of “scheme under subsection (1)”,

(e) by the substitution of the following for subsection (5):

“(5) A road authority may prepare a scheme amending a toll scheme adopted by it under section 58.”,

(f) in subsection (6), by the substitution for “toll scheme” of “scheme prepared under subsection (1)”, and

(g) by the substitution of the following for subsection (7):

“(7) (a) The Authority shall, before adopting, under section 58, a scheme prepared under subsection (1) in relation to a national road, send a copy of the scheme to the appropriate road authority under section 13 and serve a notice on the road authority stating—

(i) that a scheme under subsection (1) has been prepared, and

(ii) that representations may be made in writing to the Authority in relation to the scheme before such date as is specified in the notice (being not less than 6 weeks from the date of service of the notice).

(b) The Authority shall consider any representations made to it pursuant to a notice under paragraph (a).

(c) The making of representations by a road authority under this subsection shall be a reserved function and shall be without prejudice to the right of that authority to make objections to the Authority under section 58.”.

Scheme prepared under section 57 of Roads Act, 1993, to be adopted by road authority.

**272.**—The Roads Act, 1993, is hereby amended by the substitution of the following section for section 58:

“58.—(1) A road authority shall publish in one or more newspapers circulating in the area where the proposed toll road is located or is to be located a notice—

(a) stating that a draft toll scheme has been prepared,

(b) indicating the times at which, the period (being a period of not less than one month from the first publication of the notice) during which, and the place at which a copy of the scheme prepared under section 57, any map referred to therein and the explanatory statement relating to the scheme may be inspected, and

(c) stating that objections to the draft toll scheme may be made in writing to the road authority before such date as is specified in the notice (being not less than 2 weeks from the end of the period for inspection referred to in paragraph (b)).

(2) (a) Subject to paragraph (b), a road authority may adopt a scheme prepared by it under subsection (1), with or without modifications and, subject to subsection (3), a scheme so adopted is hereafter in this Act referred to as a “toll scheme”.

(b) If an objection to a draft toll scheme is made to the road authority and the objection is not withdrawn, the road authority shall, before deciding whether to adopt the draft toll scheme or not, cause an oral hearing to be held into the matters to which the objection relates, by a person appointed by the road authority, and shall consider the report of and any recommendation made by the person so appointed.

(3) (a) A toll scheme adopted by the road authority under this section shall come into force with the modifications, if any, therein made by the road authority on such day as may be determined by the road authority.

(b) Notice of the day on which a toll scheme is to come into force shall be published by the road authority at least one month before such day in one or more newspapers circulating in the area in which the toll road to which the scheme relates is located or will be located.”.

Amendment of section 60 of Roads Act, 1993

**273.**—Section 60 of the Roads Act, 1993, is hereby amended by the substitution of the following for that section:

“60.—(1) A road authority may by order revoke a toll scheme adopted by it under section 58.

(2) Where a road authority proposes to make an order under subsection (1) it shall, before so making the order, publish in one or more newspapers circulating in the area where the toll road is located a notice—

- (a) stating that it proposes to revoke the scheme,
- (b) indicating the times at which, the period (being not less than one month from the first publication of the notice) during which, and the place at which, a copy of the proposal may be inspected,
- (c) stating that objections or representations may be made in writing to the road authority in relation to the proposal before such date as is specified in the notice (being a date that falls not less than 2 weeks from the end of the period for inspection of the proposal).

(3) Before making an order under subsection (1), the road authority shall consider any objections or representations made to it in accordance with a notice under subsection (2).

(4) A road authority may at its discretion cause an oral hearing to be held into any matter to which objections or representations, made in accordance with a notice under subsection (2) and not withdrawn, relate, by a person appointed by the road authority, and where a road authority causes an oral hearing to be so held it shall, before revoking the toll scheme under subsection (3), consider the report of and any recommendation made by that person.

(5) The road authority shall publish in one or more newspapers circulating in the area where the toll road is located notice of the making of any order under subsection (1).

(6) The making of an order under this section in relation to a regional road or a local road shall be a reserved function.”.

Amendment of  
section 61 of  
Roads Act, 1993.

**274.**—Section 61 of the Roads Act, 1993, is hereby amended—

- (a) by the deletion of subsection (5),
- (b) by the substitution of the following subsection for subsection (6):
  - “(6) Before making bye-laws, a road authority shall publish in one or more newspapers circulating in the area where the toll road to which the bye-laws relate is located or is to be located a notice—
    - (a) indicating that it is proposed to make such bye-laws and stating the purpose of the bye-laws,
    - (b) indicating the times at which, the period (being a period of not less than one month from the date of the first publication of the notice) during which, and the place at which, a copy of the draft bye-laws may be inspected,
    - (c) stating that objections or representations may be made in writing to the road authority in relation to the draft bye-laws before such date as is specified in the notice (being a date that falls not less than 2 weeks from the end of the period for inspection of the draft bye-laws), and
    - (d) stating that a copy of the draft bye-laws may be purchased on payment of such fee as is specified in the notice not exceeding the reasonable cost incurred in the making of such copy.”,
- (c) by the substitution of the following subsection for subsection (7):
  - (7) Before making bye-laws the road authority shall consider any objections or representations which have been made to it in accordance with a notice under subsection (6) and not withdrawn.”,
- (d) by the substitution of the following subsection for subsection (8):

(8) Bye-laws made by a road authority under this section shall come into effect on such date as is specified in those bye-laws.”,

and

(e) in subsection (9), by the substitution for “approved” of “made”.

Amendment of section 63 of Roads Act, 1993.

**275.**—Section 63 of the Roads Act, 1993, is hereby amended—

(a) in subsection (1), by the substitution for “Where a toll scheme is approved by the Minister, a road authority may, with the consent of the Minister,” of “Where a toll scheme is adopted by a road authority, the road authority may”, and

(b) in subsection (3), by the deletion of “, with the consent of the Minister,”.

Amendment of section 65 of Roads Act, 1993.

**276.**—The Roads Act, 1993, is hereby amended in section 65 by the substitution for “section 57” of “section 58”.

Further amendment of Part V of Roads Act, 1993.

**277.**—Part V of the Roads Act, 1993, is hereby amended by the insertion after section 66 of the following sections—

“Ministerial policy directives on road tolling.

6A.—(1) The Minister may, from time to time, issue policy directives to road authorities regarding the exercise of any of their functions under Part V or any matter connected therewith and road authorities shall comply with any such directives.

(2) The Minister may revoke or amend a policy directive issued under this section.

(3) The Minister shall cause a copy of any policy directive issued under this section to be laid before each House of the Oireachtas.

(4) A road authority shall make available for inspection by members of the public any policy directive issued to it under this section.

(5) The Minister shall not issue a directive relating to a particular tolling scheme.

Continuance of existing schemes, bye-laws and agreements.

66B.—Notwithstanding this Part, every agreement entered into and every toll scheme or bye-law made by a road authority and in force immediately before the commencement of this section shall continue in force as if made or entered into under this Part as amended by the *Planning and Development Act, 2000*.

Transitional provisions regarding toll schemes.

66C.—Where, before the commencement of *Part XX* of the *Planning and Development Act, 2000*, any toll scheme, proposal to revoke a toll scheme or bye-law has been submitted to the Minister under Part V and the matter has not been determined by the Minister, the determination of the matter shall continue to rest with the Minister and Part V as amended by *Part XX* of the *Planning and Development Act, 2000*, shall not apply with respect to the matter..

## Section 10.

## FIRST SCHEDULE

## PURPOSES FOR WHICH OBJECTIVES MAY BE INDICATED IN DEVELOPMENT PLAN

## PART I

*Location and Pattern of Development*

1. Reserving or allocating any particular land, or all land in any particular area, for development of a specified class or classes, or prohibiting or restricting, either permanently or temporarily, development on any specified land.

2. F378[...]

3. Preserving the quality and character of urban or rural areas.

4. Regulating, restricting or controlling retail development.

5. Regulating, promoting or controlling tourism development.

F379[6. Carrying out flood risk assessment for the purpose of regulating, restricting and controlling development in areas at risk of flooding (whether inland or coastal).]

7. Regulating, restricting and controlling the development of coastal areas and development in the vicinity of inland waterways.

8. Regulating, restricting and controlling development on the foreshore, or any part of the foreshore.

9. Giving effect to the European Spatial Development Perspective towards balanced and sustainable development of the territory of the European Union, adopted by the meeting of Ministers responsible for Regional/Spatial Planning of the European Union at Potsdam, 10 and 11 May, 1999.

10. Regulating, restricting or controlling development in order to reduce the risk of serious danger to human health or the environment.

11. Regulating, promoting or controlling the exploitation of natural resources.

F380[12. Regulating, restricting and controlling development in areas at risk of erosion and other natural hazards.

13. Reserving land for use and cultivation as allotments and regulating, promoting, facilitating or controlling the provision of land for that use.]

**Annotations****Amendments:**

**F378** Deleted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 77(a)(i), S.I. No. 477 of 2010.

**F379** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 77(a)(ii), S.I. No. 477 of 2010.

**F380** Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 77(a)(iii), S.I. No. 477 of 2010.

## PART II



*Control of Areas and Structures*

1. Regulating and controlling the layout of areas and structures, including density, spacing, grouping and orientation of structures in relation to roads, open spaces and other structures.
2. Regulating and controlling the design, colour and materials of structures and groups of structures, including streets and townscapes, and structures and groups of structures in rural areas.
3. Promoting design in structures for the purposes of flexible and sustainable use, including conservation of energy and resources.
4. Limiting the number of structures, or the number of structures of a specified class, which may be constructed, erected or made on, in or under any area.
5. Regulating and controlling, either generally or in particular areas, all or any of the following matters:
  - (a) the size, height, floor area and character of structures;
  - (b) building lines, coverage and the space about houses and other structures;
  - (c) the extent of parking places required in, on or under structures of a particular class or size, or services or facilities for the parking, loading, unloading or fuelling of vehicles;
  - (d) the objects which may be affixed to structures;
  - (e) the purposes for and the manner in which structures may be used or occupied, including, in the case of a house, the letting thereof in separate units.
6. Regulating and controlling, in accordance with the principles of proper planning and sustainable development, the following:
  - (a) the disposition or layout of land and structures or structures of any specified class, including the reservation of sufficient open space in relation to the number, class and character of structures in any particular development proposal, road layout, landscaping and planting;
  - (b) the provision of water, waste water, waste and public lighting facilities;
  - (c) the provision of service roads and the location and design of means of access to transport networks, including public transport;
  - (d) the provision of facilities for parking, unloading, loading and fuelling of vehicles on any land.
7. The removal or alteration of structures which are inconsistent with the development plan.

## PART III

*Community Facilities*

1. Facilitating the provision and siting of services and facilities necessary for the community, including the following:
  - (a) hospitals and other healthcare facilities;

- (b) centres for the social, economic, recreational, cultural, environmental, or general development of the community;
  - (c) facilities for the elderly and for persons with disabilities;
  - (d) places of public worship and meeting halls;
  - (e) recreational facilities and open spaces, including caravan and camping parks, sports grounds and playgrounds;
  - (f) shopping and banking facilities.
2. Ensuring the provision and siting of sanitary services.
  3. Reserving of land for burial grounds.

#### PART IV

##### *Environment and Amenities*

1. Protecting and preserving the quality of the environment, including the prevention, limitation, elimination, abatement or reduction of environmental pollution and the protection of waters, groundwater, the seashore and the atmosphere.
2. Securing the reduction or prevention of noise emissions or vibrations.
3. Prohibiting, regulating or controlling the deposit or disposal of waste materials, refuse and litter, the disposal of sewage and the pollution of waters.
4. Protecting features of the landscape which are of major importance for wild fauna and flora.
5. (a) Preserving and protecting flora, fauna and ecological diversity.  
(b) Preserving and protecting trees, shrubs, plants and flowers.
6. Protecting and preserving (either *in situ* or by record) places, caves, sites, features and other objects of archaeological, geological, historical, scientific or ecological interest.
7. Preserving the character of the landscape, including views and prospects, and the amenities of places and features of natural beauty or interest.
- F381[8. Preserving public rights of way other than those referred to in section 10(2)(o).]
9. Reserving land as open spaces, whether public or private (other than open spaces reserved under *Part II* of this Schedule) or as a public park, public garden or public recreation space.
10. Prohibiting, restricting or controlling, either generally or in particular places or within a specified distance of the centre line of all roads or any specified road, the erection of all or any particular forms of advertisement structure or the exhibition of all or any particular forms of advertisement.
11. Preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any structure or from the objectionable or neglected condition of any land.

**Annotations****Amendments:**

**F381** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 77(b), S.I. No. 477 of 2010.

## PART V

*Infrastructure and Transport*

1. Reserving land for transport networks, including roads, rail, light rail and air and sea transport, for communication networks, for energy generation and for energy networks, including renewable energy and for other networks, and for ancillary facilities to service those networks.
2. Facilitating the provision of sustainable integrated transport, public transport and road traffic systems and promoting the development of local transport plans.
3. Securing the greater convenience and safety of users of all transport networks and of pedestrians and cyclists.
4. Establishment of public rights of way and extinguishment of public and private rights of way.
5. Construction, alteration, closure or diversion of roads, including cycleways and busways.
6. Establishing—
  - (a) the line, width, level and construction of,
  - (b) the means of access to and egress from, and
  - (c) the general dimensions and character of,
 roads, including cycleways and busways, and, where appropriate, other transport networks, whether new or existing.
7. Providing for the management and control of traffic, including the provision and control of parking areas.
8. Providing for works incidental to the making, improvement or landscaping of any transport, communication, energy or other network.

*Section 184.*

## SECOND SCHEDULE

## RULES FOR THE DETERMINATION OF THE AMOUNT OF COMPENSATION

1. The reduction in value shall, subject to the other provisions of this Schedule, be determined by reference to the difference between the antecedent and subsequent values of the land, where—

- (a) the antecedent value of the land is the amount which the land, if sold in the open market by a willing seller immediately prior to the relevant decision under *Part III* (and assuming that the relevant application for permission had not been made), might have been expected to realise, and
- (b) the subsequent value of the land is the amount which the land, if sold in the open market by a willing seller immediately after that decision, might be expected to realise.

2. In determining the antecedent value and subsequent value of the land for the purposes of *paragraph 1*—

(a) regard shall be had to—

- (i) any contribution which a planning authority might have required or might require as a condition precedent to development of the land,
- (ii) any restriction on the development of the land which, without conferring a right to compensation, could have been or could be imposed under any Act or under any order, regulations, rule or bye-law made under any Act,
- (iii) the fact that exempted development might have been or may be carried out on the land, and
- (iv) the open market value of comparable land, if any, in the vicinity of the land whose values are being determined;

(b) no account shall be taken of—

- (i) any part of the value of the land attributable to subsidies or grants available from public moneys, or to any tax or rating allowances in respect of development, from which development of the land might benefit,
- (ii) the special suitability or adaptability of the land for any purpose if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any statutory body as defined in *paragraph 5*:

Provided that any bona fide offer for the purchase of the land which may be brought to the notice of the arbitrator shall be taken into consideration,

- (iii) any increase in the value of land attributable to the use thereof or of any structure thereon in a manner which could be restrained by any court, or is contrary to law, or detrimental to the health of the inmates of the structure, or to public health or safety, or to the environment,
- (iv) any depreciation or increase in value attributable to the land, or any land in the vicinity, being reserved for a particular purpose in a development plan,
- (v) any value attributable to any unauthorised structure or unauthorised use,
- (vi) the existence of proposals for development of the land or any other land by a statutory body, or
- (vii) the possibility or probability of the land or other land becoming subject to a scheme of development undertaken by a statutory body;

and

(c) all returns and assessments of capital value for taxation made or acquiesced in by the claimant may be considered.

3. (1) In assessing the possibilities, if any, for developing the land, for the purposes of determining its antecedent value, regard shall be had only to such reasonable possibilities as, having regard to all material considerations, could be judged to have existed immediately prior to the relevant decision under *Part III*.

(2) Material considerations for the purposes of *subparagraph (1)* shall, without prejudice to the generality thereof, include—

(a) the nature and location of the land,

(b) the likelihood or unlikelihood, as the case may be, of obtaining permission or further permission, to develop the land in the light of the provisions of the development plan,

(c) the assumption that, if any permission to develop the land were to be granted, any conditions which might reasonably be imposed in relation to matters referred to in the *Fifth Schedule* (but no other conditions) would be imposed, and

(d) any permission to develop the land, not being permission for the development of a kind specified in *section 192(2)*, already existing at the time of the relevant decision under *Part III*.

4. (1) In determining the subsequent value of the land in a case in which there has been a refusal of permission—

(a) it shall be assumed, subject to *subparagraph (2)*, that, after the refusal, permission under *Part III* would not be granted for any development of a kind specified in *section 192(2)*,

(b) regard shall be had to any conditions in relation to matters referred to in the *Fifth Schedule* (but no other conditions) which might reasonably be imposed in the grant of permission to develop the land.

(2) In a case in which there has been a refusal of permission in relation to land in respect of which there is in force an undertaking under Part VI of the Act of 1963, it shall be assumed in determining the subsequent value of the land that, after the refusal, permission under *Part III* of this Act would not be granted for any development other than development to which the undertaking relates.

5. (1) In *paragraph 2*, “statutory body” means—

(a) a Minister of the Government,

(b) the Commissioners,

(c) a local authority within the meaning of the Local Government Act, 1941,

(d) a harbour authority within the meaning of the Harbours Act, 1946,

(e) a health board established under the Health Act, 1970,

(f) a vocational education committee within the meaning of the Vocational Education Act, 1930,

(g) a board or other body established by or under statute,

(h) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or

(i) a company in which all the shares are held by a board, company, or other body referred to in *subparagraph (g) or (h)*.

(2) In *clauses (h) and (i) of subparagraph (1)*, “company” means a company within the meaning of section 2 of the Companies Act, 1963.

Section 191.

### THIRD SCHEDULE

#### DEVELOPMENT IN RESPECT OF WHICH A REFUSAL OF PERMISSION WILL NOT ATTRACT COMPENSATION

1. Any development that consists of or includes the making of any material change in the use of any structures or other land.
2. The demolition of a habitable house.
3. Any development which would materially affect a protected structure or proposed protected structure.
4. The erection of any advertisement structure.
5. The use of land for the exhibition of any advertisement.
6. Development in an area to which a special amenity area order relates.
7. Any development on land with respect to which there is available (notwithstanding the refusal of permission) a grant of permission under *Part III* for any development of a residential, commercial or industrial character, if the development consists wholly or mainly of the construction of houses, shops or office premises, hotels, garages and petrol filling stations, theatres or structures for the purpose of entertainment, or industrial buildings (including warehouses), or any combination thereof, subject to no conditions other than conditions of the kind referred to in the *Fifth Schedule*.
8. Any development on land with respect to which compensation has already been paid under *section 190*, section 11 of the Act of 1990 or under section 55 of the Act of 1963, by reference to a previous decision under *Part III* of this Act or under Part IV of the Act of 1963 involving a refusal of permission.

Section 191.

### FOURTH SCHEDULE

#### REASONS FOR THE REFUSAL OF PERMISSION WHICH EXCLUDE COMPENSATION

1. Development of the kind proposed on the land would be premature by reference to any one or combination of the following constraints and the period within which the constraints involved may reasonably be expected to cease—
  - (a) an existing deficiency in the provision of water supplies or sewerage facilities,
  - (b) the capacity of existing or prospective water supplies or sewerage facilities being required for prospective development as regards which a grant of a permission under *Part III* of this Act, an undertaking under Part VI of the Act

- of 1963 or a notice under section 13 of the Act of 1990 or *section 192* of this Act exists,
- (c) the capacity of existing or prospective water supplies or sewerage facilities being required for the prospective development of another part of the functional area of the planning authority, as indicated in the development plan,
  - (d) the capacity of existing or prospective water supplies or sewerage facilities being required for any other prospective development or for any development objective, as indicated in the development plan,
  - (e) any existing deficiency in the road network serving the area of the proposed development, including considerations of capacity, width, alignment, or the surface or structural condition of the pavement, which would render that network, or any part of it, unsuitable to carry the increased road traffic likely to result from the development,
  - (f) any prospective deficiency (including the considerations specified in *subparagraph (e)*) in the road network serving the area of the proposed development which—
    - (i) would arise because of the increased road traffic likely to result from that development and from prospective development as regards which a grant of permission under *Part III*, an undertaking under Part VI of the Act of 1963 or a notice under section 13 of the Act of 1990 or *section 192* exists, or
    - (ii) would arise because of the increased road traffic likely to result from that development and from any other prospective development or from any development objective, as indicated in the development plan, and
 would render that road network, or any part of it, unsuitable to carry the increased road traffic likely to result from the proposed development.
2. Development of the kind proposed would be premature pending the determination by the planning authority or the road authority of a road layout for the area or any part thereof.
3. Development of the kind proposed would be premature by reference to the order of priority, if any, for development indicated in the development plan or pending the adoption of a local area plan in accordance with the development plan.
4. The proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.
5. The proposed development—
- (a) could, due to the risk of a major accident or if a major accident were to occur, lead to serious danger to human health or the environment, or
  - (b) is in an area where it is necessary to limit the risk of there being any serious danger to human health or the environment.
6. The proposed development is in an area which is at risk of flooding.
7. The proposed development, by itself or by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the use of a national road or other major road by traffic.
8. The proposed development would interfere with the character of the landscape or with a view or prospect of special amenity value or natural interest or beauty, any of which it is necessary to preserve.

9. The proposed development would cause serious air pollution, water pollution, noise pollution or vibration or pollution connected with the disposal of waste.

10. In the case of development including any structure or any addition to or extension of a structure, the structure, addition or extension would—

- (a) infringe an existing building line or, where none exists, a building line determined by the planning authority or by the Board,
- (b) be under a public road,
- (c) seriously injure the amenities, or depreciate the value, of property in the vicinity,
- (d) tend to create any serious traffic congestion,
- (e) endanger or interfere with the safety of aircraft or the safe and efficient navigation thereof,
- (f) endanger the health or safety of persons occupying or employed in the structure or any adjoining structure, or
- (g) be prejudicial to public health.

11. The development would contravene materially a condition attached to an existing permission for development.

12. The proposed development would injure or interfere with a historic monument which stands registered in the Register of Historic Monuments under section 5 of the National Monuments (Amendment) Act, 1987, or which is situated in an archaeological area so registered.

13. The proposed development would adversely affect an architectural conservation area.

14. The proposed development would adversely affect the linguistic or cultural heritage of the Gaeltacht.

15. The proposed development would materially contravene an objective indicated in a local area plan for the area.

16. The proposed development would be contrary to any Ministerial guidelines issued to planning authorities under *section 28* or any Ministerial policy directive issued to planning authorities under *section 29*.

17. The proposed development would adversely affect a landscape conservation area.

18. In accordance with *section 35*, the planning authority considers that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with any permission or any condition to which such a permission would be subject.

19. The proposed development—

- (a) would contravene materially a development objective indicated in the development plan for the conservation and preservation of a European site insofar as the proposed development would adversely affect one or more specific—
  - (i) (I) natural habitat types in Annex I of the Habitats Directive, or
  - (II) species in Annex II of the Habitats Directive which the site hosts,



and which have been selected by the Minister for Arts, Heritage, Gaeltacht and the Islands in accordance with Annex III (Stage 1) of that Directive,

(ii) species of bird or their habitat or other habitat specified in Article 4 of the Birds Directive, which formed the basis of the classification of that site,

or

(b) would have a significant adverse effect on any other areas prescribed for the purpose of *section 10(2)(c)*.

20. The development would contravene materially a development objective indicated in the development plan for the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise or a mixture of such uses).

F382[20A. The proposed development would not be consistent with a planning scheme in force in respect of a strategic development zone.]

F383[20B. The proposed development would not be consistent with the transport strategy of the DTA.]

21. (a) Subject to *paragraph 22*, *paragraphs 19* and *20* shall not apply in a case where a development objective for the use specified in *paragraph 20* applied to the land at any time during the period of a development plan and the development objective of which was changed as a result of a variation of the plan during such period prior to the date on which the relevant application for permission was made to develop the land, and the development would not have contravened materially that development objective.

(b) *Paragraph 20* shall not apply in a case where, as a result of a direction by the Minister under *section 31(2)* given within one year of the making of a development plan, a planning authority amends or revokes a development objective referred to in *paragraph 19* but without prejudice to any right of compensation which may otherwise arise in respect of any refusal of permission under *Part III* in respect of an application made before such direction was issued by the Minister.

22. *Paragraph 21* shall not apply in a case where a person acquired his or her interest in the land—

(a) after the objective referred to in *paragraph 19* or *20* has come into operation,  
or

(b) after notice has been published,

(i) in accordance with *section 12* or *13*, of a proposed new development plan or of proposed variations of a development plan, as the case may be, or

(ii) in accordance with *section 12*, of a material alteration of the draft concerned,

indicating in draft the development objective referred to in *paragraph 19* or *20*, or

(c) in the case of *paragraph 19*, after notice has been published by the Minister for Arts, Heritage, Gaeltacht and the Islands of his or her intention to propose that the land be selected as a European site.

23. For the purposes of *paragraph 22*, the onus shall be on a person to prove all relevant facts relating to his or her interest in the land to the satisfaction of the planning authority.

24. In this Schedule, “road authority” and “national road” have the meanings assigned to them in the Roads Act, 1993.

**Annotations**

**Amendments:**

**F382** Inserted (9.10.2001) by *Local Government Act 2001* (37/2001), s. 247(m), S.I. No. 458 of 2001.

**F383** Inserted (4.01.2010) by *Dublin Transport Authority Act 2008* (15/2008), s. 94, S.I. No. 574 of 2009.

Section 191.

FIFTH SCHEDULE

CONDITIONS WHICH MAY BE IMPOSED, ON THE GRANTING OF PERMISSION TO DEVELOP  
LAND, WITHOUT COMPENSATION

1. A condition, under *paragraph (g) and (j) of section 34(4)*, requiring the giving of security for satisfactory completion of the proposed development (including maintenance until taken in charge by the local authority concerned of roads, open spaces, carparks, sewers, watermains or drains).

2. A condition, included in a grant of permission pursuant to *section 48 or 49*, requiring the payment of a contribution for public infrastructure benefitting the development.

3. A condition, under *paragraph (n) of section 34(4)*, requiring the removal of an advertisement structure.

4. Any condition under *paragraph (n) of section 34(4)* in a case in which the relevant application for permission relates to a temporary structure.

5. Any condition relating to the reservation or allocation of any particular land, or all land in any particular area, for development of a specified class or classes, or the prohibition or restriction either permanently or temporarily, of development on any specified land.

6. Any condition relating to the preservation of the quality and character of urban or rural areas.

7. Any condition relating to the regulation, restriction and control of development of coastal areas or development in the vicinity of inland waterways.

8. Any provision relating to the protection of the linguistic or cultural heritage of the Gaeltacht.

9. Any condition relating to reducing the risk or limiting the consequences of a major accident, or limiting the risk of there being any serious danger to human health or the environment.

10. Any condition regulating, restricting or controlling development in areas at risk of flooding.

11. Any condition relating to—

- (a) the regulation and control of the layout of areas and structures, including density, spacing, grouping and orientation of structures in relation to roads, open spaces and other structures,
  - (b) the regulation and control of the design, colour and materials of structures and groups of structures,
  - (c) the promotion of design in structures for the purposes of flexible and sustainable use, including conservation of energy and resources.
12. Any condition limiting the number of structures or the number of structures of a specified class which may be constructed, erected or made on, in or under any area.
13. Any condition regulating and controlling all or any of the following matters—
- (a) the size, height, floor area and character of structures;
  - (b) building lines, coverage and the space about houses and other structures;
  - (c) the extent of parking places required in, on or under structures of a particular class or size or services or facilities for the parking, loading, unloading or fuelling of vehicles;
  - (d) the objects which may be affixed to structures;
  - (e) the purposes for and the manner in which structures may be used or occupied, including, in the case of dwellings, the letting thereof in separate units.
14. Any condition relating to the alteration or removal of unauthorised structures.
15. Any condition relating to the provision and siting of sanitary services and waste facilities, recreational facilities and open spaces.
16. Any condition relating to the protection and conservation of the environment including the prevention of environmental pollution and the protection of waters, groundwater, the seashore and the atmosphere.
17. Any condition relating to measures to reduce or prevent the emission or the intrusion of noise or vibration.
18. Any condition prohibiting, regulating or controlling the deposit or disposal of waste materials and refuse, the disposal of sewage and the pollution of rivers, lakes, ponds, gullies and the seashore.
19. Any condition relating to the protection of features of the landscape which are of major importance for wild fauna and flora.
20. Any condition relating to the preservation and protection of trees, shrubs, plants and flowers.
21. Any condition relating to the preservation (either *in situ* or by record) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.
22. Any condition relating to the conservation and preservation of—
- (a) one or more specific—
    - (i) (I) natural habitat types in Annex I of the Habitats Directive, or
    - (II) species in Annex II of the Habitats Directive which the site hosts,

contained in a European site selected by the Minister for Arts, Heritage, Gaeltacht and the Islands in accordance with Annex III (Stage 1) of that Directive,

(ii) species of bird or their habitat or other habitat contained in a European site specified in Article 4 of the Birds Directive, which formed the basis of the classification of that site,

or

(b) any other area prescribed for the purpose of *section 10(2)(c)*.

23. Any condition relating to the preservation of the landscape in general, or a landscape conservation order in particular, including views and prospects and amenities of places and features of natural beauty or interest.

24. Any condition for preserving any existing public right of way.

25. Any condition reserving, as a public park, public garden or public recreation space, land normally used as such.

26. Any condition prohibiting, restricting or controlling, either generally or within a specified distance of the centre line of any specified road, the erection of all or any particular forms of advertisement structure or the exhibition of all or any particular forms of advertisement.

27. Any condition preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any structure, or from the objectionable or neglected condition of any land attached to a structure or abutting on a public road or situate in a residential area.

28. Any condition relating to a matter in respect of which a requirement could have been imposed under any other Act, or under any order, regulation, rule or bye-law made under any other Act, without liability for compensation.

29. Any condition prohibiting the demolition of a habitable house.

30. Any condition relating to the filling of land.

31. Any condition in the interest of ensuring the safety of aircraft or the safe and efficient navigation thereof.

32. Any condition determining the sequence in which works shall be carried out or specifying a period within which works shall be completed.

33. Any condition restricting the occupation of any structure included in a development until the completion of other works included in the development or until any other specified condition is complied with or until the planning authority consents to such occupation.

34. Any conditions relating to the protection of a protected structure or a proposed protected structure.

*Section 264.*

SIXTH SCHEDULE

ENACTMENTS REPEALED

Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)
No. 28 of 1963	Local Government (Planning and Development) Act, 1963	The whole Act.
No. 20 of 1976	Local Government (Planning and Development) Act, 1976	The whole Act.
No. 21 of 1982	Local Government (Planning and Development) Act, 1982	The whole Act, other than section 6.
No. 28 of 1983	Local Government (Planning and Development) Act, 1983	The whole Act.
No. 11 of 1990	Local Government (Planning and Development) Act, 1990	The whole Act.
No. 11 of 1991	Local Government Act, 1991	Sections 44 and 45.
No. 14 of 1992	Local Government (Planning and Development) Act, 1992	The whole Act.
No. 12 of 1993	Local Government (Planning and Development) Act, 1993	The whole Act, other than section 4.
No. 14 of 1993	Roads Act, 1993	Section 55A (as inserted by section 6 of the Roads (Amendment) Act, 1998).
No. 9 of 1998	Local Government (Planning and Development) Act, 1998	The whole Act.
No. 17 of 1999	Local Government (Planning and Development) Act, 1999	The whole Act.

## Section 37A.

## F384[SEVENTH SCHEDULE

## INFRASTRUCTURE DEVELOPMENTS FOR THE PURPOSES OF SECTIONS 37A AND 37B

*Energy Infrastructure*

1.—Development comprising or for the purposes of any of the following:

- An installation for the onshore extraction of petroleum or natural gas.
- A crude oil refinery (excluding an undertaking manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
- A thermal power station or other combustion installation with a total energy output of 300 megawatts or more.
- An industrial installation for the production of electricity, steam or hot water with a heat output of 300 megawatts or more.
- An industrial installation for carrying gas, steam or hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables, where the voltage would be 220 kilovolts or more, but excluding any proposed development referred to in section 182A(1).

- An oil pipeline and any associated terminals, buildings and installations, where the length of the pipeline (whether as originally provided or as extended) would exceed 20 kilometres.
- An installation for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.
- An installation for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes.
- An installation for the surface storage of oil or coal, where the storage capacity would exceed 100,000 tonnes.
- An installation for hydroelectric energy production with an output of 300 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel.
- F385[An installation for the harnessing of wind power for energy production (a wind farm) with more than 25 turbines or having a total output greater than 50 megawatts.]
- An onshore terminal, building or installation, whether above or below ground, associated with a natural gas storage facility, where the storage capacity would exceed 1mscm.
- An onshore terminal, building or installation, whether above or below ground, associated with an LNG facility and, for the purpose of this provision, ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading and re-gasification of liquefied natural gas, including ancillary services.

*Transport Infrastructure*

2.— Development comprising or for the purposes of any of the following:

- An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area.
- A terminal, building or installation associated with a long-distance railway, tramway, surface, elevated or underground railway or railway supported by suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, but excluding any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the Planning and Development (Strategic Infrastructure) Act 2006).
- An airport (with not less than 2 million instances of passenger use per annum) or any runway, taxiway, pier, car park, terminal or other facility or installation related to it (whether as regards passenger traffic or cargo traffic).

F385[A harbour or port installation (which may include facilities in the form of loading or unloading areas, vehicle queuing and parking areas, ship repair areas, areas for berthing or dry docking of ships, areas for the weighing, handling or transport of goods or the movement or transport of passengers (including customs or passport control facilities), associated administrative offices or other similar facilities directly related to and forming an integral part of the installation)—

- (a) where the area or additional area of water enclosed would be 20 hectares or more, or

- (b) which would involve the reclamation of 5 hectares or more of land, or
- (c) which would involve the construction of one or more quays which or each of which would exceed 100 metres in length, or
- (d) which would enable a vessel of over 1350 tonnes to enter within it.]

*Environmental Infrastructure*

3.— Development comprising or for the purposes of any of the following:

—A waste disposal installation for—

- (a) the incineration, or
- (b) the chemical treatment (within the meaning of Annex IIA to Council Directive 75/442/EEC<sup>1</sup> under heading D9), or
- (c) the landfill,  
of hazardous waste to which Council Directive 91/689/EEC<sup>2</sup> applies (other than an industrial waste disposal installation integrated into a larger industrial facility).

—A waste disposal installation for—

- (a) the incineration, or
- (b) the chemical treatment (within the meaning of Annex IIA to Council Directive 75/442/EEC under heading D9),  
of non-hazardous waste with a capacity for an annual intake greater than 100,000 tonnes.

—An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.

—A groundwater abstraction or artificial groundwater recharge scheme, where the annual volume of water abstracted or recharged is equivalent to or exceeds 2 million cubic metres.

—Any works for the transfer of water resources between river basins, where the annual volume of water abstracted or recharged would exceed 2 million cubic metres.

—A waste water treatment plant with a capacity greater than a population equivalent of 10,000 and, for the purpose of this provision, population equivalent shall be determined in accordance with Article 2, point 6, of Council Directive 91/271/EEC<sup>3</sup>.

—A sludge-deposition site with the capacity for the annual deposition of 50,000 tonnes of sludge (wet).

—Any canalisation or flood relief works where—

- (a) the immediate contributing sub-catchment of the proposed works (namely the difference between the contributing catchments at the upper and lower extent of the works) would exceed 1000 hectares, or
- (b) more than 20 hectares of wetland would be affected, or

<sup>1</sup>O.J. No. L194/39 25.7.1975

<sup>2</sup>O.J. No. L377/20 31.12.1991

<sup>3</sup>O.J. No. L135/40 30.5.1991

- (c) the length of river channel on which works are proposed would be greater than 2 kilometres.
- A dam or other installation designed for the holding back or the permanent or long-term storage of water, where the new or extended area of water impounded would be 30 hectares or more or where a new or additional amount of water held back or stored would exceed 10 million cubic metres.
  - An installation of overground aqueducts each of which would have a diameter of 1,000 millimetres or more and a length of 500 metres or more.
  - Any coastal works to combat erosion or maritime works capable of altering the coast through the construction, for example, of dikes, moles, jetties and other sea defence works, where in each case the length of coastline on which the works would take place would exceed 1 kilometre, but excluding the maintenance or reconstruction of such works or works required for emergency purposes.

**F386[Health Infrastructure**

4. Development comprising the following:

A health care facility (other than a development which is predominantly for the purposes of providing care services (within the meaning of section 3 of the Nursing Homes Support Scheme Act 2009)) which, whether or not the facility is intended to form part of another health care facility, shall provide in-patient services and shall have not fewer than 100 beds in order to so provide.]]

**Annotations**

**Amendments:**

**F384** Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 5, S.I. No. 684 of 2006.

**F385** Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 78(a) and (b), S.I. No. 477 of 2010.

**F386** Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 41, S.I. No. 474 of 2011.

**Editorial Notes:**

**E242** Previous affecting provision: art. 4 inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 78(c), S.I. No. 477 of 2010; substituted as per F-note above.