



Number 18 of 2021

Planning and Development (Amendment) Act 2021



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PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2021

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[No. 18.]

*Planning and Development
(Amendment) Act 2021.*

[2021.]

ACTS REFERRED TO

Interpretation Act 2005 (No. 23)

Planning and Development (Housing) and Residential Tenancies Act 2016 (No. 17)

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Number 18 of 2021

PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2021

An Act to amend the Planning and Development Act 2000; in response to disruption caused by restrictions introduced in response to the Covid-19 pandemic, to provide for an additional period for the preparation of development plans required by planning authorities, that planning authorities may extend the duration of existing development plans pending the preparation and making of new development plans, subject to the requirement to carry out certain environmental assessments, for notification of proposals to extend the duration of existing development plans to the Office of the Planning Regulator and other persons, for the further extension of the duration of the appropriate period of certain planning permissions; and to provide for amendments to section 181 of the Planning and Development Act 2000 to include statutory undertakers and to the Fifth Schedule to that Act to provide for an additional condition the imposition of which does not attract compensation; and to provide for related matters. [10th July, 2021]

WHEREAS the disease known as Covid-19 has presented and continues to present a serious risk to public health, and the transmission thereof has proven difficult to prevent;

AND WHEREAS it has been and continues to be necessary for the State to be in a position to respond quickly and to take extraordinary measures to mitigate, to the extent practicable, the adverse economic consequences resulting, or likely to result, from the spread of that disease and to mitigate its impact on planning authorities and disruption to the administration of the planning and development system and to put in place contingency measures in order to ensure the continued effective operation of aspects of the planning process and to take into account the disruption to construction work caused by restrictions introduced in response to the Covid-19 pandemic and that persons have suffered substantial restrictions on their rights because it has not been possible for them to commence or continue development authorised in accordance with the Planning and Development Act 2000;

AND WHEREAS the Oireachtas has, with regard to *sections 2 to 8* of this Act, taken account of the matters referred to in the foregoing recitals;

Be it enacted by the Oireachtas as follows:**Definitions****1.** In this Act—

“Act of 2000” means the Planning and Development Act 2000;

“Minister” means the Minister for Housing, Local Government and Heritage.

Modification to operation of section 9 of Act of 2000 having regard to Covid-19**2.** The Act of 2000 is amended by the insertion of the following section after section 9:

“**9A.** (1) Notwithstanding subsections (1), (1A) and (1B) of section 9 but subject to this section, where a review of a development plan and preparation of a new development plan referred to in paragraph (a), (aa) or (ab) of section 11(1) (as may be modified by section 11(1)(b)) or section 11B, or both as the case may be, was commenced but was not completed before the date of the coming into operation of *section 2* of the *Planning and Development (Amendment) Act 2021* a planning authority may decide, having regard to the extraordinary circumstances arising from the risk to public health posed by the spread of Covid-19 and the disruption to the completion of the review of the development plan and the preparation of a new development plan caused by restrictions introduced in response to the Covid-19 pandemic, that a further period of up to but not exceeding one year may be necessary and appropriate to complete the review and to prepare and make a new development plan for its functional area.

(2) Notwithstanding subsections (1), (1A) and (1B) of section 9 but subject to this section, where a review of a development plan and preparation of a new development plan referred to in paragraph (a), (aa) or (ab) of section 11(1) (as may be modified by section 11(1)(b)) or section 11B, or both as the case may be, was commenced but was not completed before the date of the coming into operation of *section 2* of the *Planning and Development (Amendment) Act 2021* the members of a planning authority may, by simple majority, approve a resolution, having regard to the extraordinary circumstances arising from the risk to public health posed by the spread of Covid-19 and the disruption to the completion of the review of the development plan and the preparation of a new development plan caused by restrictions introduced in response to the Covid-19 pandemic, that a further period of up to but not exceeding one year may be necessary and appropriate to complete the review and to prepare and make a new development plan for its functional area and submit that resolution to the chief executive of the planning authority, together with the reasons given by the members of the authority for reaching the resolution.

- (3) Notwithstanding subsections (1), (1A) and (1B) of section 9 but subject to this section and section 11D and having made a decision under section 11D(9) to extend the duration of its existing development plan or, where section 11B applies, existing development plans, the members of a planning authority may decide by resolution that a further period is necessary to complete the development plan review and to prepare and make a new development plan.
- (4) At any time after making a decision under subsection (3), a planning authority may decide, in accordance with that subsection, that a further period or periods may be necessary in addition to the period specified in the decision, but the cumulative period which the authority may decide is necessary to complete the development plan review and to prepare and make a new development plan shall not exceed one year.
- (5) Where a planning authority decides, in accordance with subsection (3), that a further period or periods is or are required to complete the development plan review and to prepare and make a new development plan, the planning authority concerned shall, as soon as may be after making the decision or decisions, as the case may be, notify the Office of the Planning Regulator of its decision or decisions and the planning authority shall provide to the Office of the Planning Regulator an indicative programme for the making of a new development plan within that further period or periods.
- (6) In this section, ‘Covid-19’ means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations.
- (7) This section shall cease to have effect on 1 January 2024.”.

Modification to operation of sections 11 and 11B of Act of 2000 having regard to Covid-19

3. The Act of 2000 is amended by the insertion of the following section after section 11C:

- “11D. (1) Notwithstanding paragraphs (a), (aa) and (ab) of subsection (1) of section 11 (as may be modified by section 11(1)(b)) and subsections (2), (3) and (4) of section 11B but subject to subsections (2) to (9), where a planning authority decides in accordance with section 9A(1) or members of the planning authority approve a resolution under section 9A(2) that it may be necessary to extend the period to complete the review of the existing development plan and to prepare a new development plan for its functional area pending the making by a planning authority of its new development plan, the planning authority may decide to extend the duration of the existing development plan for its area for a further period or periods which shall not exceed one year.

- (2) Before making a decision under subsection (9), the planning authority shall be satisfied that—
- (a) the effect of the proposed extension of the duration of the existing development plan for the area, when considered alone or, as appropriate, in combination with any previous extension of that plan, is not likely to have significant effects on the environment or to have a significant effect on a European site, or both, or
 - (b) a strategic environmental assessment or an appropriate assessment or both such assessments, as necessary, has or have been carried out in respect of the effect of the proposed extension of the duration of the existing development plan for the area, when considered alone or, as appropriate, in combination with any previous extension of that plan.
- (3) Where a planning authority proposes to extend the duration of an existing development plan, it shall—
- (a) give notice to the Minister, the Office of the Planning Regulator, the Board, the relevant regional assembly, and where appropriate, to any adjoining planning authority, the prescribed authorities, and any local community development committee within the area of the development plan, and
 - (b) publish notice of the proposed extension of the duration of the existing development plan in one or more newspapers circulating in that area.
- (4) A notice under subsection (3) shall—
- (a) state that the planning authority proposes to extend the duration of the existing development plan in order to provide a further period of time, the period of time being specified in the notice but not exceeding a period of one year, to complete the development plan review and to prepare and make a new development plan,
 - (b) state that a copy of any relevant assessment referred to in subsection (2) 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 the copy will be kept for inspection accordingly), and
 - (c) indicate that a submission or observation with respect to the proposed extension of the duration of the existing development plan made to the planning authority within a specified period which shall be not less than 4 weeks from the date of the notice, will be taken into consideration before a decision is made as to whether or not to extend the duration of the existing development plan.

- (5) (a) Not later than 8 weeks after giving notice under subsection (3), the chief executive 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 chief executive's report prepared for the purposes of paragraph (a) shall be published on the website of the planning authority concerned as soon as practicable following submission to the members of the authority under that paragraph.
- (c) A report under paragraph (a) shall—
- (i) list the persons or bodies who made submissions or observations under this section,
 - (ii) provide a summary of the issues raised in the submissions and observations made in relation to the proposal to extend the duration of the existing development plan in accordance with this section, and
 - (iii) give the response of the chief executive to the issues raised.
- (6) In considering whether to extend the duration of the existing development plan, the members of a planning authority shall be restricted to considering—
- (a) the reasons referred to in subsection (1) or (2) of section 9A for considering that a further period may be necessary to complete the development plan review and to prepare and make a new development plan, and
 - (b) whether the effect of the proposed extension of the duration of the existing development plan, when considered alone or, as appropriate, in combination with any previous extension of that plan, is likely to have—
 - (i) significant effects on the environment or a significant effect on a European site, or both, or
 - (ii) adverse effects on the integrity of a European site.
- (7) For the purposes of subsection (2)(a), in considering whether or not the extension of the duration of the existing development plan, when considered alone or, as appropriate, in combination with any previous extension of that plan, would have a significant effect on a European site, a planning authority shall carry out a screening for appropriate assessment in accordance with section 177U.
- (8) For the purposes of subsection (2)(b), where necessary, a planning authority shall carry out an appropriate assessment in respect of the extension of the duration of the existing development plan, when

considered alone or, as appropriate, in combination with any previous extension of that plan, in accordance with Part XAB.

- (9) (a) The members of a planning authority shall consider the proposed extension of the duration of the existing development plan and the report of the chief executive under subsection (5).
- (b) The members of the authority, having considered the proposed extension of the duration of the existing development plan and the chief executive's report may decide, by a vote in favour of the resolution by a simple majority of the members of the planning authority concerned present at an ordinary or special meeting, to extend the duration of the existing development plan for a period not exceeding one year.
- (10) (a) Where a planning authority extends the duration of the existing development plan under this section, it shall—
- (i) publish a notice to this effect in at least one newspaper circulating in its area, and
- (ii) notify the Minister, the Office of the Planning Regulator, the Board, the relevant regional assembly, and where appropriate, any adjoining planning authority, the prescribed authorities, and any local community development committee within the area of the development plan.
- (b) A notice under this subsection shall state that a copy of the development plan as extended is available for inspection at a stated place or places (and the copy shall be kept available for inspection accordingly).
- (11) A person shall not question the validity of the extension of the duration of a development plan by reason only that the procedures required by this section were not completed within the time required.
- (12) Where the duration of an existing development plan is extended under this section, that development plan shall continue to have effect until a new development plan takes effect under section 12, at which time the existing development plan shall cease to have effect.
- (13) Where a planning authority decides under section 9A(3) that a further period or periods is or are necessary to complete the review of the existing development plan and to prepare and make a new development plan, it may make a further decision in accordance with this section to extend the duration of the existing development plan but the cumulative period of any further extension or extensions of the duration of such plan shall not exceed one year.

(14) In this section, a reference to an existing development plan shall include, where section 11B applies, a reference to existing development plans.

(15) This section shall cease to have effect on 1 January 2024.”.

Modification to operation of section 12 of Act of 2000 having regard to Covid-19

4. Section 12 of the Act of 2000 is amended by the insertion of the following subsection after subsection (14):

“(14A) During the period beginning on the date on which *section 4* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on 31 December 2023, notwithstanding the expiration of the period referred to in subsection (14), the chief executive shall not make the development plan under subsection (14) (a) if, in a case where section 9A applies, the planning authority makes the plan during any period extended in accordance with that section 9A.”.

Modification of role of regional assembly having regard to Covid-19

5. The Act of 2000 is amended by the insertion of the following section after section 27C:

“27D. (1) Where a regional assembly receives a notice from a planning authority under section 11D(3) it shall prepare submissions and observations for the purposes of that provision.

(2) The regional assembly shall send a copy of the submissions and observations to the planning authority concerned, the Minister and the Office of the Planning Regulator.

(3) This section shall cease to have effect on 1 January 2024.”.

Modification to operation of section 31AM of Act of 2000 having regard to Covid-19

6. Section 31AM of the Act of 2000 is amended by the insertion of the following subsection after subsection (9):

“(9A) During the period beginning on the date on which *section 6* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on 31 December 2023—

(a) subsection (1) shall be construed and have effect as if the following paragraph were inserted after paragraph (a):

‘(aa) a notice given under section 11D(3) by a planning authority to the Office for the purposes of that section of the intention of the planning authority to extend the duration of its existing development plan,’.

- (b) subsection (4) shall be construed and have effect as if the following paragraph were inserted after paragraph (a):
 - ‘(aa) section 11D(5), in respect of an extension of the duration of an existing development plan,’
- and
- (c) subsection (5) shall be construed and have effect as if the following paragraph were inserted after paragraph (c):
 - ‘(d) any observations or submissions it makes to a planning authority under section 27D(2) in respect of the extension of the duration of an existing development plan.’”.

Modification to operation of section 42 of Act of 2000 having regard to Covid-19

7. The Act of 2000 is amended by the insertion of the following section after section 42:

“**42B.** During the period beginning on the date on which *section 7* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on 31 December 2023, section 42 shall be construed and have effect—

(a) as if the following subsection were inserted after subsection (1A):

‘(1B) Notwithstanding anything to the contrary in subsection (1), (1A) or (4) a planning authority shall—

(a) as regards a particular permission in respect of a development, and

(b) upon application being duly made to the authority setting out the reasons why the development cannot be reasonably completed within the appropriate period,

further extend the appropriate period, as extended or further extended, by such additional period not exceeding 2 years or until 31 December 2023, whichever first occurs, but the authority shall only so extend that period where the authority—

(i) is satisfied that an environmental impact assessment or an appropriate assessment would not be required in relation to the proposed extension of the appropriate period,

(ii) considers that the extension is required to enable the development to which the permission relates to be completed,

(iii) is satisfied that the application is in accordance with such regulations under the Planning and Development Acts 2000 to 2021 as apply to the application,

- (iv) is satisfied that any requirements of, or made under, those regulations are complied with as regards the application,
 - (v) is satisfied that the development to which the permission relates was—
 - (I) commenced, and
 - (II) substantial works were carried out,before the expiration of the appropriate period, as extended or further extended, and
 - (vi) is satisfied that in the case of a permission—
 - (I) where the expiry of the appropriate period as extended or further extended occurred or occurs during the period beginning on 8 January 2021 and ending on the day before the date on which *section 7* of the *Planning and Development (Amendment) Act 2021* comes into operation, the application is duly made within 6 months of the date on which the said *section 7* comes into operation, or
 - (II) where the appropriate period, as extended or further extended, expires on or after the date on which *section 7* of the *Planning and Development (Amendment) Act 2021* comes into operation, the application is duly made within the period prescribed for the purposes of *section 43(2)*.’,
- (b) as if in subsection (2)—
- (i) during the period beginning on the date on which *section 7* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on the date on which the amendments to *section 42* effected by *section 28(2)* of the *Planning and Development (Housing) and Residential Tenancies Act 2016* cease to have effect, there were substituted ‘subsection (1), (1A) or (1B)’ for ‘subsection (1) or (1A)’’, and
 - (ii) during the period beginning on the date that is the day after the date on which the amendments to *section 42* effected by *section 28(2)* of the *Planning and Development (Housing) and Residential Tenancies Act 2016* cease to have effect, there were substituted ‘subsection (1) or (1B)’ for ‘subsection (1)’’,
- and
- (c) as if in subsection (4)—
- (i) during the period beginning on the date on which *section 7* of the *Planning and Development (Amendment) Act 2021* comes

into operation and ending on the date on which the amendments to section 42 effected by section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016 cease to have effect, there were substituted ‘Except where subsection (1A) or (1B) applies, a decision’ for ‘Except where subsection (1A) applies, a decision’, and

- (ii) during the period beginning on the date that is the day after the date on which the amendments to section 42 effected by section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016 cease to have effect, there were substituted ‘Except where subsection (1B) applies, a decision’ for ‘A decision’.”.

Modification to operation of Part XAB of Act of 2000 having regard to Covid-19

8. Part XAB of the Act of 2000 is amended—

- (a) in section 177R, by the insertion of the following subsection after subsection (1):

“(1A) During the period beginning on the date on which *section 8* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on 31 December 2023—

- (a) the definition of ‘Land use plan’ in subsection (1) shall be construed and have effect as if the following paragraph were inserted after paragraph (e):

‘(f) a proposed extension of the duration of an existing development plan;’,

and

- (b) in this Part, a reference to ‘draft Land use plan’ or ‘Land use plan’ shall be construed and have effect as including a reference to a proposed extension of the duration of an existing development plan referred to in paragraph (f) of the definition of ‘Land use plan’ (inserted by *section 8* of the *Planning and Development (Amendment) Act 2021*).”,

and

- (b) in section 177S, by the insertion of the following subsection after subsection (2):

“(2A) During the period beginning on the date on which *section 8* of the *Planning and Development (Amendment) Act 2021* comes into operation and ending on 31 December 2023, the competent authority in the State referred to in subsection (2) shall be construed and have effect as if the following paragraph were inserted after paragraph (h):

‘(i) in relation to a proposed extension of the duration of an existing development plan, the planning authority for whose area the development plan is proposed to be extended in duration.’.’.

Amendment of section 181 of Act of 2000

9. Section 181 of the Act of 2000 is amended—

(a) in subsection (2)(a)—

- (i) by the substitution of “a Minister of the Government, the Commissioners or a statutory undertaker” for “a Minister of the Government or the Commissioners”, and
- (ii) by the insertion of “(other than sections 50, 50A, 50B and 181)” after “by order provide that this Act”,

(b) in subsection (2A)—

(i) in paragraph (a)—

- (I) by the substitution of “In subsections (2) to (2AA)” for “In this subsection and in subsections (2B) to (2AA)”,
- (II) in clause (II) of subparagraph (ii), by the substitution of “on their behalf, or” for “on their behalf, and”,
- (III) in subparagraph (ii), by the insertion of the following clause after clause (II):

“(III) where a statutory undertaker proposes to carry out a development referred to in this subsection or subsection (2) (a), or have it carried out on its behalf, the Minister of the Government responsible for the enactment or instrument under an enactment by or under which the statutory undertaker is authorised, and”,

- (IV) in subparagraph (iii), by the substitution of “Minister of the Government, the Commissioners or a statutory undertaker” for “Minister of the Government or the Commissioners”,

and

(ii) by the insertion of the following paragraph after paragraph (a):

“(aa) In this subsection, ‘enactment’ has the same meaning as it has in the Interpretation Act 2005.”,

- (c) in subsection (2A)(b), by the substitution of “Where development is proposed to be carried out by or on behalf of a Minister concerned or a statutory undertaker” for “Where development is proposed to be carried out by or on behalf of a Minister concerned”,

- (d) in subsection (2A)(e), by the substitution of “by or on behalf of the Minister concerned or a statutory undertaker” for “by or on behalf of the Minister”, and
- (e) in subsection (2L)(b), by the substitution of “The Minister concerned or a statutory undertaker” for “The Minister concerned”.

Amendment of Fifth Schedule to Act of 2000

10. The Fifth Schedule to the Act of 2000 is amended in paragraph 13—

- (a) in subparagraph (e), by the substitution of “separate units;” for “separate units.”, and
- (b) by the insertion of the following subparagraph after subparagraph (e):

“(f) the persons of a particular class or description to whom the use as a dwelling may be restricted.”.

Short title and commencement

- 11.** (1) This Act may be cited as the Planning and Development (Amendment) Act 2021.
- (2) This Act shall come into operation on such day or days as the Minister for Housing, Local Government and Heritage may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.