



**AN BILLE RIALTAIS AITIUIL (PLEANAIL AGUS FORBAIRT), 1962.**  
**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) BILL, 1962.**

*Mar a ritheadh ag Dáil Éireann.*  
*As passed by Dáil Éireann.*

**EXPLANATORY MEMORANDUM.**

1. The main objects of the Bill are:—

- (i) to set up a new and more flexible planning system to be operated by local authorities throughout the country;
- (ii) to enable local authorities to facilitate industrial and commercial development and to secure the redevelopment of those parts of built-up areas which have become outmoded, uneconomic or congested;
- (iii) to secure that the amenities of town and countryside are preserved and improved;
- (iv) to relate compensation to property owners to the restrictions imposed on them by individual planning decisions rather than to provisions in planning schemes and to end their liability for betterment charges.

2. Chapter One of this memorandum outlines the principal effects of the Bill; Chapter Two contains a more detailed summary.

**CHAPTER ONE—EFFECTS OF THE BILL.**

**I. THE NEW PLANNING SYSTEM.**

*General.*

3. While the Bill proposes to repeal the Town and Regional Planning Acts, 1934 and 1939, the underlying aims of these Acts still hold good. Many features of the Acts are preserved and form the basis of provisions in the Bill.

County councils, county borough corporations, borough corporations and urban district councils will become planning authorities for their respective districts. This provision follows the Town and Regional Planning Acts. On the coming into operation of the Bill, however, every planning authority will have all the duties as well as all the powers for which the Bill provides. The Bill will not be an adoptive measure and, in this respect, there is a departure from the provisions of the present Planning Acts which come into operation only where the planning authority pass a resolution for the making of a planning scheme. (Such resolutions have not been passed by some authorities and, although a planning scheme was adopted for the Dublin County Borough, in no area has a planning scheme yet come into force.)

4. A planning scheme made under the Town and Regional Planning Acts would have the force of law and the provisions of the scheme would regulate rigidly the future development of the area. The Bill retains the idea of a plan but, apart from the preservation of certain existing rights of way, the development

plan which each planning authority will be obliged to make will not of itself confer any powers either to control or to carry out development. The development plans will rather form the framework against which decisions will be taken by planning authorities in respect of the development of land in their areas.

5. Under the present law eligibility for compensation for restrictions imposed by the planning authority on the development of land would (subject to certain limited exceptions) be determined by the provisions of the planning scheme itself. This system will be changed. Under the Bill the settlement of compensation claims will no longer be dependent on a planning scheme coming into force; a claim may be made at any time within six months of the planning restriction being imposed.

6. The system of control of development by planning authorities for which the Bill provides will operate in much the same way as interim development control under the Town and Regional Planning Acts operates now in respect of structural works. Provision is made for improving the machinery of development control and the right of appeal from decisions of the planning authority will be extended. The Bill also makes provision for improving the appeals system.

7. The Bill proposes to give planning authorities wide powers of positive planning including powers to acquire and develop land, especially for urban renewal, and to provide sites or buildings for the purpose of facilitating industrial, commercial and community development. Sites may be provided by them for the establishment or relocation of industries, businesses (including hotels), dwellings, offices, shops and other community facilities. Planning authorities may also provide buildings including factory buildings, office premises, shop premises, dwellings, buildings for the purpose of entertainment and for providing trade and professional services.

#### *The Development Plan.*

8. Each planning authority will be obliged to make a development plan within three years of the appointed day (or longer if, in any particular case, the Minister for Local Government allows) showing the objectives of the authority for the future development of their area. The plan will be subject to periodic review when objectives may be revised and new objectives added. The draft plans (and also any variations of the development plans following review) will be open to public inspection and the views of the public will be invited before the final plans are made. A ratepayer making objection may, if he wishes, make his case before a person or persons appointed by the planning authority. The Minister's approval to the plans will not be required but he will have power to prepare model plans and to secure that plans will be amended or that they will be co-ordinated in the interests of regional planning. The making of plans will be a function reserved to the elected members of the planning authorities. The planning authority will have the specific duty to take steps to secure the objectives contained in the plan.

9. The plans will be in the form of a written statement, supplemented by maps. The plans for cities and towns will show—

- (a) the different zones, residential, industrial and so on, into which the land available for use might best be allocated;
- (b) the proposals for dealing with traffic needs, both present and future, including the needs of the pedestrian;
- (c) the proposed redevelopment of areas which have become obsolete by reason of economic or social changes (for instance, congested central areas of cities and towns);
- (d) the amenities such as parks, and buildings or features of historic or artistic interest which should be preserved or developed, and the planning authority's proposals for controlling advertisements.

The plans may be made in stages, each dealing with a particular district or a particular aspect of planning, such as land use zoning, road traffic or urban renewal.

10. County councils will prepare plans for their areas including plans for scheduled towns of about 1,000 population or over, where the towns are not themselves planning authorities. The plans will show the objectives of the Council for the development and improvement of the county and the special features which should be preserved and improved. In particular they will record the objectives for preserving and extending amenities such as green belts, nature reserves, good scenery together with the objectives for redeveloping obsolete or unsightly areas, for controlling advertisements, for providing or extending water and sewerage services, for improving traffic conditions in the towns, and generally for providing more community facilities in rural areas. The plans may show in addition proposed industrial locations, including in particular those which offer prospects of becoming centres of industrial or commercial growth. The selection (on a regional or county basis) and the development of centres of potential economic expansion will be part of the planning process.

#### *Planning Control.*

11. Subject to the wide exemption for agricultural and other land uses provided for in the Bill, the undertaking of any development without the prior permission of the planning authority will be an offence. "Development" is defined as "the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land". Applications for planning permission will be decided by the planning authority who may attach conditions to the grant of permission; and the authority will have power to carry out works to secure compliance with the permission or the conditions and recover any expenses incurred. In dealing with applications for permission the planning authority will be restricted to considering the proper planning and development of their area (including the preservation and improvement of its amenities), regard being had to the development plan and to any special amenity area order (see paragraph 55 below). Where permission is refused or conditions are imposed the reasons must be stated. Appeals against orders and decisions may be made to the Minister by any person and the criteria governing the determination of applications for permission will apply also to the determination of appeals. At the request of any party to an appeal oral hearings will be arranged which will be conducted by a person appointed for that purpose by the Minister.

12. The Bill will apply to the erection or extension of buildings by State authorities. They will be required to consult with the planning authority and if any objections raised are not resolved, the State authority will consult with the Minister. Regulations may require planning authorities themselves to give public notice of specified classes of development proposed by them. If objection is raised to a proposed development, it may not be carried out except with the consent of the Minister.

#### *Amenities.*

13. In order to preserve and improve amenities planning authorities will be empowered—

- (a) to preserve areas of natural beauty or scenic or other amenity (including recreational utility) by making special amenity area orders;
- (b) to require the alteration or removal of existing buildings, advertisement hoardings or hedges or the discontinuance of existing uses which do not conform to planning requirements;
- (c) to preserve views and prospects;

- (d) to protect flora and fauna in conservation areas;
- (e) to protect amenity trees and woodlands;
- (f) to create and maintain new public rights of way;
- (g) to protect and maintain existing public rights of way to seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility.

The Bill also contains provisions designed to reduce injury to amenities from noise, litter and fly-posting. Planning authorities will be enabled to plant trees, shrubs and other plants and to contribute money or plants to private persons and local development associations. The controls will make it possible to secure the preservation of buildings of artistic, architectural or historic interest. Planning control will also operate to give more flexible and effective powers to regulate the display of advertisements in the interests of amenity.

#### *Building Regulations.*

14. It is proposed to empower the Minister to make building regulations which will be operated by planning authorities throughout the country, in place of bye-laws which each local authority is at present empowered to make. The regulations will enable the control of building to be kept in harmony with developments in building techniques and the use of new materials.

## II. LAND ACQUISITION AND DEVELOPMENT.

#### *Powers for Carrying Out Plans.*

15. As planning authorities will be required to take action towards putting the development plans into effect, the Bill, in conjunction with the Local Government (No. 2) Act, 1960, will empower them to acquire land compulsorily or by agreement for a wide variety of planning purposes, including the development and renewal of areas which are obsolete or badly laid out, the provision of areas of convenient shape for development and the preservation of buildings or of flora or fauna. They may develop the land themselves or may dispose of it to private developers who would be required to develop it in accordance with the development plan.

Central control over the disposal of land acquired or appropriated under the Bill whether by sale or lease, will be simplified. The Minister's consent to the disposal will not be necessary provided the price is the best obtainable and the development proposed for the land does not materially contravene the development plan.

#### *Pipelines, wires and cables.*

16. The Bill proposes that planning authorities shall have power to lay pipelines (e.g. for the carriage of merchandise) and wires or cables (e.g. for television relay purposes) over or under public roads or other land and power to permit the use of the cables, wires or pipelines and to make charges for their use.

17. Provision is made for the grant of licences by planning authorities for the placing on, over or under public roads of petrol pumps, oil pumps, wires or pipelines, etc. Fees may be charged by the planning authorities for the licences.

## III. COMPENSATION ETC.

#### *Compensation for Land Acquisition and Planning Restrictions.*

18. Where land is acquired compulsorily by a local authority, compensation is, in default of agreement, assessed in accordance with the rules laid down in the Acquisition of Land (Assessment of Compensation) Act, 1919. The basis of the compensation is market value. This basis is being preserved but the Bill recognises that

the comprehensive planning system now proposed will be a factor in calculating market value. It provides that regard must be had in calculating the value of land to planning considerations, but that no account shall be taken of any increase or decrease in value attributable to the land being indicated for any particular use in the development plan or being included in a special amenity area order. This amendment of the Act of 1919 will apply not only to land acquisition for planning purposes but also to compulsory land acquisition generally. Compensation payable in respect of planning restrictions will be assessed on the same basis and where the amount is disputed, the dispute will also be settled by arbitration under the Act of 1919 as amended by the Property Values (Arbitrations and Appeals) Act, 1960.

19. The Town and Regional Planning Acts provide that a planning scheme may contain declarations that no compensation shall be payable for a wide range of planning provisions included in the scheme. The Bill does not propose to extend materially these restrictions on compensation. It is necessary, however, to change the form in which they are expressed, because questions of compensation will in future be related to individual planning decisions or orders and not to the provisions contained in schemes. Thus, a planning scheme under the Acts could contain a declaration that no compensation shall be payable in respect of a provision relating to the reserving of particular land for structures of a particular class. The erection of a factory on a site, in, say, a residential area, could thus be prevented without compensation to the owner of the site. The new Bill contains a prohibition on compensation which is substantially similar in its effect, by providing that where permission is refused for the development of land, no compensation shall be payable if permission is available for an alternative development of the land for industrial, commercial or residential purposes. Other circumstances in which compensation is prohibited under the Bill include the refusal of permission for the display of advertisements and refusal of permission for the development of land where the development would endanger public safety by reason of traffic hazard or where the reason for the refusal is the necessity for preserving any view or prospect of special amenity value or interest, or where the development is proposed in an area which because of its natural beauty is included in a special amenity area order and would conflict with the development permitted by the order, or where the land is not adequately served with sanitary services.

#### *Requirement to purchase land.*

20. Where planning restrictions render property incapable of reasonably beneficial use in its existing state, the owner may require the planning authority to buy the property and, subject to confirmation by the Minister, the planning authority must do so.

#### *Betterment.*

21. The provisions of the 1934 Act in relation to the assessment and collection of betterment are not carried into the Bill. Experience elsewhere has shown that provisions of this nature are not workable. The Bill does, however, provide for contributions from developers in respect of benefits derived from the provision of public services.

#### *Grants.*

22. Planning authorities will be empowered to contribute to expenditure incurred by neighbouring planning authorities and by development associations, development companies set up for the purposes of the Tourist Traffic Acts, or private individuals, in preserving or developing amenities for the public benefit including the preservation of flora and fauna and of buildings of artistic or historic interest and the provision of parking places. They will also be empowered to contribute to the funds of any body which provides for training and research in relation to town and regional planning.

*Transitional.*

23. The Bill provides that owners of property which has been reduced in value by past planning decisions ("interim directions") may apply to the planning authority for compensation and may appeal to the Minister if compensation is refused. Eligibility for compensation will be determined under the appropriate sections of the 1934 Act as if a planning scheme containing provisions to the same effect as the interim directions had come into force.

CHAPTER TWO—SUMMARY OF THE BILL.

PART I—PRELIMINARY AND GENERAL.

24. Section 1 enables the Act to be brought into operation gradually but the intention is that it will apply to the country as a whole as soon as possible. The sections relating to building regulations will not commence until the regulations have been made.

Sections 2 and 3 contain the definitions. The "planning authorities" will be the county borough corporations, the borough corporations, the county councils and the urban district councils. Town commissioners will not be planning authorities. The administration of the Act in a town with town commissioners will be the responsibility of the county council.

For the definition of "development" see paragraph 25 below. Some of the other more important definitions are, in brief,—  
"land"—includes any structure and any land covered with water (whether inland or coastal);

"obsolete area" means an area of land which is badly laid out or the development of which has become obsolete;

"owner" means a person entitled to receive the rack rent of the land;

"structure" means any building, erection, structure, excavation or other thing constructed or made on or under any land;

"use", in relation to land, does not include the use of the land by the carrying out of any works on it;

"works"—includes any act of construction, excavation, demolition or repair.

*Meaning of "Development".*

25. As noted in Chapter One, "development" means the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land. Without prejudice to the generality of this definition, the Bill provides that the use of land will be taken as being materially changed (a) if any structure, tree or other object on the land becomes used for the exhibition of advertisements, (b) if the land becomes used for caravanning or camping, the storage of caravans or tents, or the sale of goods, or (c) if bodies of vehicles, industrial waste, rubble or debris is deposited on the land. It also provides that the use as two or more separate dwellings of any building previously used as a single dwelling involves a material change in the use of the building.

26. Certain developments are exempted from planning control (section 4).

These include—

- (a) development consisting of the use of land for the purposes of agriculture or forestry,
- (b) development in their districts by a county borough corporation, county council, borough corporation or urban district council,

- (c) the repair or renewal by statutory undertakers of pipes and cables,
- (d) works of maintenance or improvement of structures which do not render the external appearance of the structures inconsistent with their character or with the character of neighbouring structures,
- (e) the use of any structure or other land within the curtilage of a dwelling for any purpose incidental to the enjoyment of the dwelling.

In addition, the Minister may by regulations exempt any class of development (including changes of use) from control. Any question that may arise as to what is or is not "development" will be decided by the Minister and an appeal may be taken to the High Court within three months of the Minister's decision (section 5).

27. Planning authorities will have powers to carry out surveys including land use and sociological surveys and examinations of tourist potential, interest and need (section 6).

28. Section 7 regulates the service of notices and gives the Minister power to dispense with notices where reasonable grounds exist for doing so and he is satisfied that injury or wrong will not result.

29. Every planning authority will be obliged to keep a register (section 8) in which they will note applications for planning permission, planning decisions and particulars of compensation paid for planning restrictions. For a fee of 10/- a certificate of any entry in the register will be issued.

30. Section 9 empowers the planning authority to obtain information for the purposes of the Act (e.g. enforcement of planning control) from the owners and occupiers of structures or other land in regard to their interest in the property.

31. Section 10 provides for the making of regulations by the Minister and for the laying of regulations before each House of the Oireachtas.

## PART II—FINANCIAL PROVISIONS.

32. A planning authority will be able to assist town commissioners, local development associations, development companies set up to encourage tourism, and individuals in preserving, improving and maintaining local amenities and this assistance may be in money or kind or services (including the services of staff). The giving of assistance will be a function reserved to the elected representatives of the planning authority (section 14).

33. A planning authority will also be enabled to contribute to the funds of a body providing for training and research in relation to town and regional planning, subject to conditions fixed by the Minister (section 15). Contributing under this section will be a reserved function.

34. Section 16 provides that planning authorities may agree to share the cost of performing all or any of their functions under the Act. Where a planning authority perform a function wholly or partially in the interests of another authority, the latter shall defray the cost to such extent as, in default of agreement, may be determined by the Minister. The making of a sharing agreement under this section will be a reserved function.

35. Section 18 enables the Minister to award costs against the planning authority in the case of an appeal under the Act. In order to obviate frivolous appeals, costs may also be awarded against the appellant if his appeal fails. The planning authority

or the appellant (if his appeal fails), may be required to pay a specified sum towards the expenses incurred by the Minister in relation to the hearing of an appeal.

### PART III—DEVELOPMENT PLANS.

36. Section 19 requires every planning authority to make a development plan within three years from the appointed day (or within such longer period as the Minister may in any particular case allow). The development plan will consist of a written statement and a plan indicating the development objectives for the area.

In cities and towns the objectives must include—

- (i) zoning of land use for particular purposes whether residential, commercial, industrial, agricultural or otherwise,
- (ii) securing the greater convenience and safety of road users and pedestrians by the provision of parking places or road improvements or otherwise,
- (iii) development and renewal of obsolete areas,
- (iv) preserving and improving amenities.

In county areas the plans must include objectives under the headings of (iii) and (iv) above and also the objectives for the provision of new water supplies and sewerage services and the extension of existing supplies and services.

37. In addition, the development plan may indicate objectives for all or any of the purposes listed in the Third Schedule. These relate to Roads and Traffic (new roads, parking places, etc.), Structures (size and density, lay-outs, parking space, service roads, water supplies, etc.), Community Planning (lay-out of community areas and provision of schools, churches, recreational facilities, etc.), and Amenities (reserving of lands for open spaces, parks, wild life sanctuaries, preserving of artistic, etc. buildings and features, good scenery, amenity trees and existing public rights of way to seashore, mountain, or other place of natural beauty or recreational utility, restriction of advertisements, control of dumping and pollution).

38. A plan may be made in parts, each dealing with one or more of the objectives in paragraph 36 or with part of the planning authority's area. The county planning authorities must make plans for the towns specified in the First Schedule. These are towns with town commissioners and other towns of about 1,000 population upwards which have no separate local government authority. The Minister may by Order vary the list of towns in the Schedule but his Order will not come into force until it has been approved by each House of the Oireachtas (section 2).

39. The making of a development plan or any variation will be a reserved function (section 19). The planning authority must review the plan as occasion may require and at least once in every five years, and make any variations which they consider proper (section 20).

40. Provision is made in section 21 for public notice of the making of draft development plans (and draft variations of development plans), for inspection of the drafts by the public, for the sending of documents to the Minister and to authorities to be prescribed by him and for notification of owners and occupiers of artistic, etc. buildings which are listed for preservation in the draft plan. Planning authorities must take into consideration any objections or representations made to them within the period (at least three months) that the draft plan is available for inspection. Copies of the final plan must be kept available for public inspection.

Where the draft plan includes provision for the preservation of

an existing public right of way to seashore, mountain etc. or other area of natural beauty or recreational utility, the planning authority must notify the owner and occupier of the land who may make objections or representations to the planning authority and may appeal to the Circuit Court. If the Court is satisfied that no public right of way subsists, the provision must be excluded from the development plan.

41. Section 22 obliges the planning authority to take steps to secure the objectives of the development plan. The Minister may require two or more authorities to co-ordinate their plans in respect of matters and in a manner specified by him and he may require a planning authority to vary their plan.

42. Model forms of development plans together with general instructions in relation to the preparation of development plans may be prepared by the Minister for the guidance of planning authorities (section 23).

#### PART IV—CONTROL OF DEVELOPMENT AND OF RETENTION OF CERTAIN STRUCTURES, ETC.

##### *Permission to Develop Land.*

43. Section 24 provides that it will be an offence to carry out development of land without permission. This does not apply to development which is exempted from control or which commenced on or before the commencement of this Act. Permission will be required, however, for retaining a structure which was constructed or made without permission under the Town and Regional Planning Acts where those Acts were in force and which existed before the commencement of this Act.

44. Provision is made in section 25 for the making of regulations by the Minister governing the grant of outline permissions subject to the subsequent approval of detailed plans. Applicants may be required to publish notice of their applications for planning permission or planning authorities may be required to notify specified persons of, or publish specified notices with respect to, the applications or the decisions thereon.

45. When deciding planning applications, planning authorities will be restricted to considering the proper planning and development of their areas (including the preservation and improvement of its amenities), regard being had to the development plan, to any special amenity area order (see paragraph 55) and to certain matters which may require to be the subject of conditions. Conditions which may be attached to a permission include conditions—

- (a) for regulating the development or use of adjoining land which is under the control of the applicant,
- (b) for requiring works to be carried out including landscaping, planting, provision of open space and car parks,
- (c) for requiring contributions towards any expenditure on works carried out by any local authority within the previous seven years (not earlier than the 1st August, 1962) which have facilitated the development, or towards any expenditure on works to be carried out which will facilitate the development,
- (d) for requiring security for satisfactory completion of the proposed development (including maintenance until taken in charge by the local authority concerned of roads, open spaces, car parks, sewers, watermains or drains).

Where a planning authority refuse a permission or grant a permission subject to conditions they must state the reason for the refusal or for the imposition of conditions (section 26).

46. A permission for development which would materially contravene the development plan or a special amenity area order may not be given without the Minister's consent and any person may object to such consent being given. Unless the planning authority decide a planning application within two months or certain circumstances obtain in relation to the particular application, permission is regarded as having been given (section 26).

47. Sections 27 and 28 relate to permissions for retaining structures constructed or made without permission and for continuing unauthorised uses of land. Provision is made in section 30 for the revocation or modification of permissions and for making appeals relating thereto. Revocation or modification of permissions will be a reserved function.

#### *Appeals.*

48. Any person may appeal to the Minister against a decision of a planning authority on a planning application. The criteria which govern the deciding of planning applications by planning authorities and which are noted in the first sentence of paragraph 45 above will apply to the determining of appeals (section 26).

The Minister must by regulations provide for the oral hearing of any appeal in respect of which oral hearing is requested by any party. Where a question of law arises an appeal will lie to the High Court (section 82).

#### *Requirement to Purchase Land.*

49. Section 29 provides that where, on appeal, permission has been refused for development or conditions have been imposed and the land has become incapable of reasonably beneficial use in its existing state, the planning authority may be required by the owner to purchase the land. The planning authority may comply with the requirement or they may notify the Minister of their unwillingness to comply. The Minister may confirm the requirement to purchase or he may direct that the permission sought or, alternatively, permission for other development be granted.

#### *Enforcement of Planning Control.*

50. Sections 31, 32 and 35 provide that if any development is carried out without permission or without complying with the relevant permission or the conditions attached to such permission, the planning authority may, where necessary in the interests of proper planning and development, serve enforcement notices requiring the land to be restored to its former state, or the permission or conditions to be complied with. The Minister may require an enforcement notice to be served where unauthorised development has been carried out or development is not being carried out in conformity with the permission granted for the development. Section 33 contains similar provisions relating to removal or alteration of structures constructed or made without permission under the Town and Regional Planning Acts in areas where those Acts were in force, which were in existence before the commencement of this Act. The enforcement notice under this section can be served only within five years after the appointed day. If the Minister requires an enforcement notice to be served under this section, the approval of both Houses of the Oireachtas must be sought by him. This section provides in addition for an appeal to the Minister against an enforcement notice relating to an unauthorised structure. Penalties for not complying with enforcement notices are dealt with in section 34. The planning authority may be required to obtain a court order before entering on land in pursuance of an enforcement notice (section 81).

51. Sections 36 and 37 empower the planning authority to require the removal or alteration of any structure or the discontinuance of any use of land (not being unauthorised structures which could be compulsorily removed or altered under section 31

or section 33 or unauthorised uses which could be compulsorily discontinued under section 31), if it is necessary on planning grounds. They may also impose conditions on the continuance of any use. There is a right of appeal to the Minister. Provision is made for the payment of compensation (sections 60 and 61); and if, as a result of the planning authority's requirement, the land has become incapable of reasonably beneficial use, the authority may be required to purchase the land. Expenses incurred in removing or altering structures are payable.

52. Under section 38 a planning authority may make an agreement with a person interested in land for the purpose of regulating the development or use of the land and the agreement may be enforced against those deriving title under that person.

53. Section 39 provides that local authorities in carrying out development in their own areas shall not materially contravene the development plan.

54. Section 40 relates to certain uses of land which do not require permission. Section 41 prescribes the particulars relating to planning applications and decisions to be inserted in the register.

#### PART V—AMENITIES.

##### *Areas of Special Amenity.*

55. An area of special amenity by reason of its natural beauty or scenic or other amenities (including recreational utility) may be made the subject of an order by the planning authority under section 42. The order may provide in relation to development (other than exempted development) that no development or only specified development may be permitted in the area and maximum density may be fixed for structures in any specified part of the area. The order must be reviewed from time to time and at least once in every five years.

The making of an order under this section will be a reserved function.

56. Section 43 provides for public notice of the making of an order; for the receipt of objections; for submission of the order for confirmation to the Minister; for the holding of a public local inquiry if there are objections to the order; and for the laying of the Minister's order before each House of the Oireachtas.

57. Under section 44 hedges may be removed or altered (e.g. for the purpose of opening up scenic views). Provision is made for appeal to the Minister and for the payment of expenses incurred.

##### *Trees and Woodlands.*

58. The preservation of trees and woodlands on amenity grounds may be secured by order of the planning authority under section 45. Compensation is payable under the section except where the planning authority declare that the trees are of special amenity value or interest. In the case of trees in woodlands, compensation is not payable in respect of a condition comprising a requirement to replant which the planning authority declare is essential in the interests of amenity. An appeal lies to the Minister against the order (including any declaration affecting compensation) and against any refusal of consent for the cutting of trees.

##### *Conservation Orders.*

59. Planning authorities may secure the preservation of any rare species of fauna and flora in the interests of amenity by order under section 46. The compensation and appeal provisions are basically similar to those noted in paragraph 58 above.

The planning authority must consult authorities to be prescribed by the Minister before making a conservancy order and before granting a consent under an order.

#### *Public Rights of Way.*

60. A planning authority may enter into an agreement in relation to the dedication by a person of a public right of way over land (section 47). The authority may, if necessary, create a public right of way by order. There is a right of appeal to the Minister against the order (section 48). Where a public right of way is created or a public right of way is listed for preservation in the development plan, the way must be maintained by the planning authority, and penalties are provided for persons convicted of obstructing the right of way (section 49). Offences under this section may be prosecuted by the planning authority (section 80).

#### *Planting of Trees, Shrubs, etc.*

61. Section 50 enables the planning authority, for the purpose of preserving or enhancing the amenities or natural beauty of any land, to plant trees, shrubs or other plants and to assist any person or body by providing them with plants or by granting them money. The planning authority may, with the consent of the owner, plant land which does not belong to them and make an arrangement with the owner for the maintenance of the plants. The grant of money under this section will be a reserved function.

#### *Control of Noise and Vibration, Litter and Fly-posting.*

62. Section 51 provides that a person shall not in any public place or upon any premises by operating a wireless, machine or other appliance or by any other means cause noise or vibration which is so loud or at such times, etc. as to be an annoyance. The section does not apply to aircraft or to statutory undertakers. Section 52 prohibits the throwing of litter in public places.

The exhibition of advertisements and the defacing of structures, etc. by writing or other marks (without the consent of the owner or occupier) are prohibited by section 53 but a prosecution relating to an advertisement may not be brought by a planning authority except in respect of "exempted development" which would injure the amenities of their area. Control over advertising generally will be exercisable under Part IV but section 54 will enable the planning authority to have advertisement structures or advertisements repaired or tidied in the interests of public safety or amenity.

#### *Buildings of Architectural or Historic Interest.*

63. The demolition or alteration of a building (other than alterations exempted from control under section 4) requires planning permission. Where buildings of artistic, architectural or historic interest are proposed for preservation in the draft development plan, owners and occupiers must be notified (section 21) and the planning authority may assist in the preservation work (section 14).

### PART VI—COMPENSATION.

#### *Compensation for Future Planning Restrictions.*

64. Subject to the exceptions made by sections 56 and 57, provision is made in section 55 for the payment by the planning authority of compensation in respect of any reduction in the value of each interest in land resulting from a refusal of planning permission or a grant of permission subject to conditions, provided that a claim is made within six months and that the planning authority are not obliged to acquire the interest under section 29. Compensation is also payable to an occupier of the land who suffers any damage to his trade or business carried on on the land. In determining reduction of value regard must be had to any existing or potential permission for the development of the land.

65. Section 56 prohibits the payment of compensation in respect of the refusal of permission for any development that consists of or includes the making of any material change in the use of any structures on the land or in the use of the land. (Use of the structures or land does not involve the carrying out of any works thereon—see the reference to "use" in section 2).

66. Compensation is not payable if the reason or one of the reasons for the refusal of permission is—

- (a) that the development would be premature by reference to a deficiency in water supply or sewerage,
- (b) that a road layout for the area has not been approved or has not been indicated in the development plan,
- (c) that the development would endanger public safety by reason of traffic hazard or otherwise,
- (d) that the development is in an area included in a special amenity area order because of its natural beauty and the development is not development which under the terms of the order may be permitted,
- (e) that the development would contravene materially a condition attached to an existing permission for development,
- (f) the necessity of preserving any view or prospect of special amenity value or interest.

67. Compensation is not payable where permission is refused for the erection of any advertisement structure or the exhibition of an advertisement. A structure, addition or extension which is refused permission on certain specified grounds such as infringement of a building line or danger to health, may not give rise to a compensation liability.

68. Where conditions are imposed in a permission, no compensation is payable if the conditions relate to certain matters set out in the Third Schedule, including the design, density, height and lay-out of structures, provision of parking space, open space and sanitary facilities, preserving of trees and of views and amenities of places of natural beauty, restricting advertisements and prohibiting pollution of rivers, etc.

69. Compensation is payable where permission is refused for the replacement of a structure demolished or destroyed by fire in the two years preceding application.

70. Section 57 provides that compensation will not be payable for refusal of permission if permission or an undertaking to grant permission is available for alternative development of a residential, commercial or industrial character, or if compensation has been paid in respect of a previous refusal of permission in respect of the same land.

71. Notwithstanding the provisions of sections 56 and 57, the Minister is empowered under section 58 to make an order enabling a claim to be made if he is satisfied that it would not be just and reasonable in the particular circumstances that payment of compensation should be precluded.

72. Further provision for the payment of compensation is made in the following sections—

- (a) where a permission is revoked or modified (section 59),
- (b) where an authorised structure is compulsorily removed or altered (section 60),
- (c) where an authorised use of land is discontinued or conditions are imposed on its continuance (section 61),
- (d) where a hedge is removed or altered (section 62),
- (e) where a public right of way is created compulsorily (section 63),
- (f) where damage is caused under section 83 (authorised entry on land) (section 64),
- (g) where cables, wires or pipelines are laid (section 65).

### *Compensation for Past Planning Restrictions.*

73. Section 66 provides for compensation in respect of interim directions (refusal of permission, imposition of conditions or special prohibition) given under the Acts of 1934 and 1939. The compensation may relate to a reduction in value of property or to loss suffered by refraining from doing any particular work or by complying with a condition, and is subject to provisions similar to the provisions of the 1934 and 1939 Acts.

Provision is made for an appeal to the Minister against a decision of a planning authority on an application for compensation.

74. Section 67 provides for the making of regulations in relation to compensation which will provide not only as to the form of claims but also as to the furnishing of information as to other persons who may be entitled to compensation.

### *Assessment of Compensation.*

75. In default of agreement compensation claims under the Act will be determined by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919 (section 68). The compensation assessment rules are amended by section 69 and the Fourth Schedule. The main amendments are—

- (a) Regard shall be had to any restriction on the development of the land which could, without conferring a right to compensation, be imposed under any Act or under any order, regulation, rule or bye-law made under any Act.
- (b) Regard shall not be had to any depreciation or increase in value attributable to—
  - (i) the land, or any land in the vicinity thereof, being reserved for any particular purpose in a development plan, or
  - (ii) inclusion of the land in a special amenity area order.

The amended rules will apply to all future compensation assessments for land acquisition by local authorities generally.

76. Section 70 prohibits the payment of double compensation. Section 71 provides for the recovery of compensation payable by the planning authority. Under section 72 compensation for planning restrictions in excess of £20 must be noted in the planning authority's register.

77. Compensation paid because of a planning restriction must be repaid to the planning authority if development of the land is carried out within the subsequent fourteen years. The Minister may remit the repayment if he thinks it reasonable to do so having regard to the probable value of the development (section 73).

## PART VII—ACQUISITION OF LAND, ETC.

78. Planning authorities may appropriate for the purposes of the Act land which is vested in them for other purposes (section 74) and they may sell, lease or exchange any land acquired or appropriated by them for the purpose of securing the proper planning and development of their area (section 75). The Minister's consent will not be necessary unless the price or rent is not the best reasonably obtainable or the development proposed for the land would materially contravene the development plan. Where planning authorities grant leases pending the land being used for any of their functions, the Landlord and Tenant Acts and the Rent Restrictions Act will not apply to the leases. Under section 76 planning authorities may with the Minister's approval extinguish a public right of way; provision is made in the section for publication of the order and the holding of a public local inquiry.

*Sites and Buildings for Industries, etc.*

79. A planning authority may develop land themselves and may provide:—

- (a) sites for the establishment or relocation of industries, businesses (including hotels, motels and guest houses), dwellings, offices, shops, schools, churches and other community facilities and sites for such other structures, parks, etc. as are referred to in paragraph (b),
- (b) factory buildings, dwellings, office and shop premises, amusement parks and structures for the purpose of entertainment, buildings for providing accommodation, meals and refreshments and for providing trade and professional services, caravan parks and advertisement structures, and
- (c) any ancillary services.

They may maintain and manage any site, building, park or structure which they have provided and make charges in relation thereto. They may also make arrangements with any person or body for the development or management of land (section 77).

80. Section 77 also provides that the purposes for which planning authorities may develop or secure the development of land include the following:—

- (a) to improve the frontage of any public road,
- (b) to provide areas of convenient shape for development,
- (c) to secure the development and renewal of obsolete areas and the provision therein of open spaces,
- (d) to ensure the preservation of buildings, trees, flora or fauna.

81. Under section 78 local authorities who are planning authorities may be required by regulations to give public notice of development which they propose to carry out, indicating that persons may object to the proposed development. If objection is made, the authority may not carry out the development without the Minister's consent.

82. Rights to obtain a renewal of lease in respect of premises under the Landlord and Tenant Act, 1931, will be preserved when the lessee's interest in such premises is acquired by a planning authority (section 79). Section 15 of the Landlord and Tenant (Reversionary Leases) Act, 1958, is being amended to enable reversionary leases to be refused where the planning authority hold the lessor's interest and the premises are in an obsolete area which the development plan indicates is to be redeveloped. Compensation will be payable where a renewal is refused in such circumstances.

**PART VIII—MISCELLANEOUS.**

83. Section 80 provides for the prosecution of offences under the Act by the planning authority. Section 81 provides that where the exercise by the planning authority of a power of entry conferred by the Act is challenged, an order of the District Court must be obtained prior to entry. Where entry is approved by such order, it will be an offence to obstruct the entry.

*Appeals Procedure.*

84. Under section 82 regulations may provide for procedure in relation to appeals. Provision must be made in regulations for the oral hearing of an appeal where an oral hearing is requested by any party. The oral hearing will be conducted by a person appointed for the purpose who will report to the Minister. If a question of law arises on an appeal, an appeal will lie to the High Court. The person conducting an oral hearing may take evidence on oath and may require the attendance of any persons and the production of documents.

85. Section 83 provides for entry on land by persons appointed by the Minister or the planning authority and for the making of surveys, excavations, etc. on the land.

#### *Consultation by State Authorities.*

86. A Minister or the Commissioner of Public Works or the Land Commission must consult the planning authority before undertaking the construction or extension of any building (other than a building to be constructed or extended in connection with State afforestation) and if any objections raised by the planning authority are not resolved, the Minister for Local Government must be consulted (section 84).

87. A planning authority may place cables, wires or pipelines and incidental apparatus, on, under or over land. If the land-owner refuses consent, the matter may be appealed to the Minister who will determine whether consent is or is not unreasonably withheld. The planning authority may make charges for the use of any cable, wire or pipeline (section 85).

#### *Building Regulations.*

88. Under section 86 the Minister may make regulations prescribing standards (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to the matters specified in the Fifth Schedule. These include strength and stability, fire precautions, resistance to moisture, heat, sound and infestation, drainage, services, installations and ancillary equipment. The regulations may apply to existing buildings which though not constructed as such become used as houses or flats. The regulations which may contain different provisions for different areas will replace the building bye-laws made by sanitary authorities under the Local Government (Sanitary Services) Acts.

89. The Minister may, after consultation with the planning authority, dispense with any requirement in building regulations if he considers that the operation of the requirement would be unreasonable. In relation to specified requirements, the power to give a dispensation may be given to the planning authority (section 87). If the planning authority refuse to dispense with the requirement, an appeal may be made to the Minister (section 88).

#### *Structures on Public Roads.*

90. Under section 89 a planning authority may license the erection and maintenance on a public road of petrol pumps, oil pumps, etc., vending machines, town maps, hoardings, advertisement structures, cables, pipelines, etc., and they may themselves erect and maintain such structures and appliances on public roads. Conditions may be attached to licences, and fees may be charged in accordance with regulations made by the Minister. An appeal will lie to the Minister against the refusal or the grant of a licence or against conditions attached by the planning authority. It will be an offence to erect or maintain a structure or appliance on a public road without a licence after six months from the commencement of the Act. The six months' transitional period does not apply in the case of petrol pumps (or hoardings in Dublin City or Cork City) (section 92).

91. Section 90 provides that nothing in the Act shall restrict the functions of the Minister for Finance or the Commissioners of Public Works under the National Monuments Acts.

92. Plans lodged under building bye-laws require to be dealt with not later than one month after lodgement for approval. Section 91 extends the period to synchronise with that for a planning application and enables both aspects to be co-ordinated.

93. Section 92 provides for transitional matters relating to applications for permission and appeals under the 1934 Act and applications under building bye-laws and provisions proposed for

repeal by the Bill. A general or special permission granted under the 1934 Act will be treated as a permission granted under the Act. Thus the revocation and enforcement provisions of the Act will apply to such permissions.

*Repeals.*

94. Provisions repealed by section 11 are set out in the Second Schedule. They include the Town and Regional Planning Acts, 1934 and 1939, the Advertisements Regulation Act, 1907, and provisions of the Towns Improvement Acts and Public Health Acts, relating to control of building works.

DEPARTMENT OF LOCAL GOVERNMENT,  
July, 1963.

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