



**AN BILLE RIALTAIS AITIUIL (PLEANAIL AGUS  
FORBAIRT) (Uimh. 2), 1969**  
**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT)**  
**(No. 2) BILL, 1969**

**EXPLANATORY MEMORANDUM**

*General.* The main purpose of the Bill is to provide for the establishment of An Bord Achomharc Pleanála to deal with appeals, references and other matters under the Local Government (Planning and Development) Act, 1963. Other provisions relate to the criteria governing planning control decisions, the extension of the prescribed period for third party appeals and the giving of reasons for all decisions on appeals.

*Section 1.* Interpretation.

*Section 2.* The establishment day will be fixed by order of the Minister for Local Government. Thenceforth appeals and references will lie to the Board in lieu of the Minister (section 9) and the appeals and references then before him will be transferred to the Board (section 16). Powers available to the Minister will be conferred on the Board (paragraphs (d) to (h) of Section 14). These provisions will come into force on the establishment day (section 17).

*Section 3.* Provision for expenses of the Minister and the Board.

*Section 4.* This section provides for the establishment of An Bord Achomharc Pleanála. The main provisions set out in the Schedule are as follows:—

(a) *Chairman*—to be appointed in a whole-time capacity by the Government for such term of office as they may fix and to hold office on such terms and conditions as may be determined by the Minister with the consent of the Minister for Finance.

(b) *Deputy Chairman*—may be appointed by the Government if it appears to them to be necessary but he may act as a member of the Board only if the Chairman is temporarily unable to discharge his duties or the office of chairman is vacant or the Minister has directed that the Board should act by divisions under article 18 of the Schedule.

(c) *Ordinary members*—not less than two. To be appointed by the Minister from amongst his serving officers. Term of office not to exceed three years.

(d) *Removal from office*—the Government may remove a Chairman or Deputy Chairman and the Minister may remove an ordinary member. A statement in writing of the reasons for removal must be laid before each House of the



Oireachtas. Any member may resign at any time. A member ceases to hold office on becoming a member of a local authority or of either House of the Oireachtas.

(e) *Reappointment*—members are eligible for reappointment on expiry of their terms of office.

(f) *Procedure*—every question at a meeting of the Board shall be determined by a majority of the votes of the members present but section 6 contains special provisions where a reference or appeal is to be determined or decided. The chairman and one ordinary member form a quorum but if they disagree in regard to a reference or appeal, the Chairman must furnish a report of the disagreement to the Minister and the determination or decision then rests with the Minister. The same applies if there are more than two members at the meeting and a majority of the ordinary members disagree with the Chairman.

*Section 5.* This Section provides that a member may not act in relation to any matter in respect of which he has a material financial or other beneficial interest. The purpose of the section is to ensure that the Board will act objectively and without prejudice.

*Section 6.* The decision on an appeal or the determination of a reference under section 5 (1) of the Act of 1963 is required by this section to be made by the Minister if—

(a) there are only two members of the Board at a meeting and there is disagreement between the Chairman and the ordinary member, or

(b) there are more than two members at a meeting and all the ordinary members or a majority of them disagree with the Chairman.

The quorum for a meeting of the Board is two members but one of them must be the Chairman (or Deputy Chairman). Normally there will be two ordinary members attending meetings, and the agreement of one ordinary member with the Chairman will suffice for a decision on an appeal or reference. It is provided in Article 14 of the Schedule that a casual vacancy resulting in less than three members must be filled as soon as possible. The Minister may however appoint one or more additional ordinary members, e.g., to act as substitutes in case of absence due to illness, or to enable the Board to act by divisions.

In the event of a disagreement as at (a) or (b) above the Chairman must furnish a report to the Minister. It will not be open to any party at that stage to require a new oral hearing but before reaching a decision, the Minister may (if he thinks fit) refer the matter back to the Board for reconsideration and the submission by the Chairman of a further report. The decision will still rest with the Minister. The Board's Annual Report must include any report under this section and the relevant decision or determination by the Minister.

*Section 7.* The purpose of this section, which enables the Minister to assign staff to the Board, is to make it clear that in order to avoid the disruption which would be caused if the Board had to recruit and train new staff, the experienced personnel already available will service the Board.

*Section 8.* The Board are required by this section to make an annual report to the Minister which must be laid before each House of the Oireachtas. If during the preceding calendar year an appeal or reference was decided or determined by the Minister under section 6 the particulars specified in that section must be included in the report for that year, i.e.



- (a) the chairman's report of the Board's disagreement,
- (b) if the Minister refers the matter back for reconsideration, the further report of the chairman,
- (c) the Minister's decision on determination, and
- (d) in the case of an appeal under section 26 or 27 of the Act of 1963, a statement specifying the reasons for the decision (whether it be a grant or refusal of permission).

Formal provision is made enabling the Minister to obtain from the Board any necessary information in relation to its activities.

*Section 9.* This section will come into operation on the establishment day (section 17). A "relevant section" is one under the Act of 1963 which provides for an appeal, viz,

- 26. appeal against a decision of a planning authority on application for permission or approval to carry out development;
- 27. appeal against a decision of a planning authority on an application for permission for retention of an unauthorised structure which existed prior to the 1st October, 1964;
- 30. appeal against the revocation or modification of any permission granted;
- 33. appeal against an enforcement notice in respect of an unauthorised structure which existed prior to the 1st October, 1964;
- 36. appeal against a notice requiring removal or alteration of any structure;
- 37. appeal against a notice requiring discontinuance of use;
- 44. appeal against a notice requiring removal or alteration of a hedge;
- 45. appeal against a tree preservation order;
- 46. appeal against a conservation order; and
- 89. appeal in relation to the granting, refusing, withdrawing or continuing of a licence.

Subsection (1) provides for such appeals to be decided by the Board.

Subsection (2) provides for references to be determined by the Board.

Both provisions are, however, subject to section 6.

Section 26 (7) of the Act of 1963 provides for a determination by the Minister where there is disagreement as to the contribution to be made by a local authority to the cost of certain works. Section 56 (3) provides similarly in regard to any question or dispute as to whether a new structure is substantially a replacement of one demolished or destroyed. Under subsections (3) and (4) these determinations are to be made by the Board. Such matters rarely arise and do not involve questions of policy; accordingly section 6 of the Bill does not apply.

Subsection (6) contains the necessary consequential amendments.



*Section 10.* The Board will not simply act as an arbiter between parties. When an appeal under section 26 of the Act of 1963 is made to the Minister in relation to a decision by a planning authority on an application for permission, he determines the application as if it had been made to him in the first instance. Considerations relating to the proper planning and development of the area which are taken into account may include matters other than those put before him by the parties provided that they have been brought to the notice of the parties and they have been afforded an opportunity to make observations thereon. This section does not change the situation so far as the Minister is concerned but makes it clear that when the Board is the deciding authority, the same safeguards will obtain for the parties to an appeal.

*Section 11.* Decisions on applications for permission and approval and on appeals must be based on the criteria set out in Sections 26 and 27 of the Principal Act. Provision is made here for extending the criteria—

- (a) to make it clear that the social and economic needs of the planning district may be taken into account, and
- (b) where an application relates to land in the Gaeltacht, to enable the special interests of the Gaeltacht and the Irish language to be taken into account.

At present a planning authority (and the Minister) is restricted to considering the proper planning and development of its area (including the preservation and improvement of the amenities thereof), regard being had to the provisions of the development plan, the provisions of any special amenity area order relating to the said area and, in certain circumstances, to other specified matters. While "the proper planning and development of the area" should not normally exclude consideration of its social and economic needs, it is desirable that the Board which has no power to make or implement its own policies, should not be left in any doubt as to the relevance of these matters and their power to have regard to them.

The special interests of the Gaeltacht and the Irish language have been raised as an issue in some appeals and it is desirable that the national objectives in this regard should be borne in mind where material. Section 2 defines the Gaeltacht as the areas for the time being determined to be Gaeltacht areas under section 2 of the Ministers and Secretaries (Amendment) Act, 1956.

Sections of the Principal Act dealing with enforcement and other matters incorporate the same criteria as sections 26 and 27. The amendment now being made will apply equally in those cases.

*Section 12.* This section is a re-enactment of Section 18 of the Principal Act but the power to require contributions to the cost of appeals is here given to the Board. Section 18 of the Act of 1963 is not being repealed because it will be required for certain types of appeal not transferred to the Board. These are set out in the next paragraphs.

*Section 13.* For the time being it is not proposed to transfer the Minister's functions under certain sections of the Act of 1963 to the Board but provision is made in this section enabling the transfer to be made later by order of the Minister which must be approved by resolution of each House of the Oireachtas.

Section 29 relates to purchase notices. The Minister may confirm a purchase notice or, if it appears expedient, grant the permission originally sought or direct that permission be granted for an alternative development in the event of an application being made.



Appeals may arise under section 48 (compulsory powers for creation of public rights of way), section 76 (extinguishment of public rights of way) and section 85 (wayleaves for cables, etc.) but these are related more to compulsory acquisition of land than to planning. Appeals to the Minister under section 88 may arise when the new Building Regulations have come into operation.

*Section 14. Amendments of the Act of 1963:—*

- (a) A period of one month from the date of the decision of the planning authority is hereby substituted for the 21 days previously allowed for an appeal by a third party against a grant of permission.
- (b) This paragraph substitutes a new subsection (8) in section 26. The effect of the provision is that reasons must be stated for all decisions made on appeals under section 26.
- (c) This paragraph substitutes a new subsection (5) in section 27. The effect of the provision is that reasons must be stated for all decisions made on appeals under section 27.
- (d) Section 38 (3) provided that agreements under that section would not restrict powers exercisable by the Minister or the planning authority and this amendment applies the same provision to the Board.
- (e) Section 55 (5) refers to a decision of the Minister on appeal and it is necessary now to substitute "the Board or the Minister".
- (f) Section 55 (6) refers to a decision by the planning authority or the Minister and it is necessary now to add "the Board".
- (g) This amendment provides that certain references to the Minister shall be construed as including references to the Board. Section 7 (6) gives power to dispense with notices in certain circumstances and section 82 deals with appeal procedures. The Board is not substituted for the Minister because he still retains separate appeal functions—see note on section 13 of the Bill.
- (h) Section 83 (8) is here amended to enable the Board to authorise a person to enter on land for the purpose of investigating appeals, etc.

Subsection (2) provides that to be valid an appeal must be received not later than the third day after the period or last day specified for appealing.

*Section 15.* This section enables the Minister to make regulations. Provision is made for a register of the Board's decisions. It is intended also to provide for more flexibility in dealing with development proposals on appeal and to clarify the position in regard to the right of an applicant to appeal in certain cases. Where a permission or approval is given subject to a condition specifying that some aspect of the development requires a further approval, an appeal should lie against any subsequent refusal of the planning authority to grant such approval.

Regulations must be laid before each House of the Oireachtas.

*Section 16.* This section provides for the change-over on the establishment day—all appeals, etc., before the Minister immediately before that day will be transferred to the Board for decision.



**Section 17. (1) Short Title.**

(2) The Acts of 1963 and 1969 may be construed as one Act and cited together.

(3) Provision is here made that those parts of the Act enabling the Board to deal with appeals shall not operate until the establishment day appointed under section 2.

*An Roinn Rialtais Aitiúil,*

*Deireadh Fómhair, 1969.*