



**AN BILLE UM PLEANÁIL AGUS FORBAIRT (TALAMH
FORBRAÍOCHTA A FHÁIL) (CÚITEAMH A MHEASÚNÚ)
2003**

**PLANNING AND DEVELOPMENT (ACQUISITION OF
DEVELOPMENT LAND) (ASSESSMENT OF
COMPENSATION) BILL 2003**

EXPLANATORY MEMORANDUM

Purpose of Bill

The Bill seeks, as its long title spells out, to regulate by the principles of social justice and to delimit by law the exercise of the right of private ownership so far as those rights affect the assessment of compensation payable by planning or other local authorities in respect of development land compulsorily acquired, with a view to reconciling the exercise of those rights with the exigencies of the common good, and to provide for related matters.

It does so by setting out amended rules to govern the assessment of compensation for compulsory acquisition in such circumstances.

Provisions of Bill

Section 1 contains standard provisions relating to the short title and collective citation of the Bill.

Section 2 defines certain terms used in the Bill and its Schedule. In particular, it provides for the following terms:

- “current use value”, in relation to land, means the amount which would be the open market value of the land if the open market value were calculated on the assumption that it was and would remain unlawful to carry out any development in relation to the land other than exempted development;
- “development land” means land the open market value of which exceeds its current use value; and
- “open market value”, in relation to land, means the amount which the land if sold in the open market by a willing seller might be expected to realise.

Section 3 provides for the substitution of the rules set out in the Schedule for the rules previously in force (to be found in s. 2 of the Acquisition of Land (Assessment of Compensation) Act 1919, as amended by section 69(1) of the Local Government (Planning and Development Act 1963 and as applied by section 265(3) of the Planning and Development Act 2000), in all cases, subject to certain exceptions, where compensation is payable by a planning authority or any other local authority and the land in respect of which compensation is so payable is development land.

Section 4 provides that a party to an arbitration to which this Act applies may appeal to the High Court on a point of law from the decision of an arbitrator. In addition, an arbitrator may state a case for the opinion of the High Court on a question of law arising in such an arbitration.

The Schedule sets out the rules for the assessment of compensation in respect of the compulsory acquisition of development land. Rule 1 states that no allowance is to be made on account of the acquisition being compulsory; but these rules are not to affect the assessment of compensation for “disturbance” or any other matter not directly based on the value of the land.

By rule 2, in the case of land that was acquired by a claimant for compensation after the 4 October 2003 the compensation shall be 125 per cent of the current use value of the land.

Rule 3 provides that, where the land was acquired by a claimant on or before the 4 October 2003 the compensation shall be the greater of the amount assessed under rule 2 (125 per cent of current use value) or the amount arrived at by adding together—

- **either** the cost of acquiring the land, in a case where the land was acquired by the claimant through a bargain at arms length, **or** the amount which would be assessed by an arbitrator applying the rules previously in force as the open market value of the land on the date of its acquisition by the claimant, in a case where the land was acquired otherwise than through a bargain at arms length, plus
- the amount, if any, assessable in respect of improvements (other than work consisting only of maintenance, repairing, painting and decorating) which have added to the value of the land, plus
- an amount representing a return on investment in the land, calculated on the assumption that the amounts assessed above had been invested in securities yielding an annual rate of return 2 per cent. higher than could have been achieved by investing in government stock.

Rule 4 provides that the compensation shall not in any event be assessed as exceeding the open market value of the land on the date of the acquisition to which these rules apply.

By rule 5, in determining the value of land, regard shall, where relevant, be had to any restrictive covenant entered into by the planning or other local authority when the land was compulsorily acquired.

No account is to be taken of —

- any part of the value attributable to subsidies or grants from public moneys;
- whether the land, or any land in its vicinity, is reserved for any particular purpose in a development plan;
- inclusion of the land in a special amenity area;
- any increase in value attributable to an unauthorised structure on, or unauthorised use of, the land;

- the use of the land or of any structure thereon in a manner contrary to law or detrimental to health or safety or the environment;
- any improvements or other public works;
- proposals for the execution by or on behalf of a public body of improvements or other public works; or
- the possibility or probability of the land or other land becoming subject to a scheme of development undertaken by any person, including any public body.

All returns and assessments of capital value for taxation made or acquiesced in by the claimant may be considered.

Rule 6 provides that where land but for the compulsory acquisition would be devoted to a purpose in respect of which there is where there is no general demand or market, the compensation may, if reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement. In the case of buildings, the “reasonable cost of equivalent reinstatement” means a cost not exceeding the estimated cost of buildings capable of serving an equivalent purpose over the same period of time as the buildings compulsorily acquired would have done.

*An Teachta Éamon Mac Giollamóir,
Deireadh Fómhair, 2003.*