SEANAD ÉIREANN

AN BILLE UM PLEANÁIL AGUS FORBAIRT (BONNEAGAR STRAITÉISEACH) 2006
PLANNING AND DEVELOPMENT (STRATEGIC INFRASTRUCTURE) BILL 2006

LEASUITHE A RINNE AN DÁIL
AMENDMENTS MADE BY DÁIL

[*The page and line references in this list of amendments are to the text of the Bill as passed by Seanad Éireann.*]

[No. 5*b* of 2006] [06 July, 2006]

[Printers Reference]

SEANAD ÉIREANN

AN BILLE UM PLEANÁIL AGUS FORBAIRT (BONNEAGAR STRAITÉISEACH) 2006
[*BILLE SEANAID ARNA LEASÚ AG AN DÁIL*]

PLANNING AND DEVELOPMENT (STRATEGIC INFRASTRUCTURE) BILL 2006
[*SEANAD BILL AMENDED BY THE DÁIL*]

Leasuithe
Amendments

SECTION 3

1. In page 6, lines 27 and 28 deleted and the following substituted:

"(*b*) the development would contribute substantially to the fulfilment of any of".

2. In page 7, line 13, after "development", "or the environment" inserted.

3. In page 7, line 37, "subsection (4)(*b*)" deleted and "subsection (4)(*a*) or (*b*), as the case may be," substituted.

4. In page 7, line 39 deleted and the following substituted:

"(7) No application for permission in respect of a development referred to in subsection (1) shall be made to a planning authority unless or until a notice is served under subsection (4)(*b*) in relation to the development.

(8) In this section 'appropriate planning auth-".

5. In page 7, line 44, "that subsection" deleted and "subsection (1)" substituted.

6. In page 8, between lines 10 and 11, the following inserted:

"(4) The Board may consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under section 37B in relation to a proposed development.".

7. In page 8, lines 19 and 20 deleted and the following substituted:

"(2) On receipt of such a request the Board shall—

(*a*) consult with the requester and such bodies as may be specified by the Minister for the purpose, and

(*b*) comply with the request as soon as is practicable.".

8. In page 9, lines 2 and 3 deleted and the following substituted:

"(I) the person proposes to make an application to the Board for permission".

9. In page 9, line 5, "and" deleted.

10. In page 9, line 9, "development," deleted and the following substituted:

"development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,".

11. In page 9, line 19, "and" deleted.

12. In page 9, line 30, "if carried out," deleted and the following substituted:

"if carried out, and

(iv) specifying the types of decision the Board may make, under section 37G, in relation to the application,".

13. In page 9, line 36, "and" deleted.

14. In page 9, line 51, "if carried out." deleted and the following substituted:

"if carried out, and

(*d*) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (*a*)(ii), be made in writing to the Board.".

15. In page 10, lines 4 and 5, all words from and including "within" in line 4 down to and including "(3)(*b*)" in line 5 deleted and the following substituted:

"within 10 weeks from the making of the application to the Board under this section (or such longer period as may be specified by the Board)".

16. In page 10, line 8, after "on", "the environment and" inserted.

17. In page 10, line 22, after "recommendations" the following inserted:

"(together with the meetings administrator's record)".

18. In page 10, between lines 24 and 25, the following inserted:

"(7) In subsection (6) 'the meetings administrator's record' means a record prepared by the meetings administrator (within the meaning of section 46 of the Local Government Act 2001) of the views expressed by the members on the proposed development.".

19. In page 10, line 25 deleted and the following substituted:

"(8) In addition to the report referred to in sub-".

20. In page 12, line 34, after "recommendations", "and record" inserted.

21. In page 13, lines 15 to 22 deleted and the following substituted:

"(*g*) the matters referred to in section 143,

(*h*) any relevant provisions of this Act and".

22. In page 15, lines 4 to 10 deleted and the following substituted:

"(ii) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.".

23. In page 15, between lines 24 and 25, the following inserted:

"(10) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situate and the person carrying out the development; if that authority or those authorities and that person cannot agree on the matter the matter may be referred to the Board for determination.".

24. In page 15, line 25 deleted and the following substituted:

"(11) Without prejudice to the generality of".

25. In page 16, line 12, after "costs" the following inserted:

", but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144".

26. In page 16, line 14, after "shall" the following inserted:

"be made as soon as may be after the making of the relevant decision but shall".

27. In page 16, line 45, after "form,", "and" inserted.

28. In page 16, lines 46 to 49 deleted.

29. In page 17, line 1 deleted and the following substituted:

"(*b*) make provision for matters of pro-".

30. In page 18, lines 25 and 26, all words from and including "time" in line 25 down to and including "direct."." in line 26 deleted and the following substituted:

time taken to determine such matters as the Minister may direct.

Nuclear installations: no development in respect of them authorised.

37K.—Nothing in this Act shall be construed as enabling the authorisation of development consisting of an installation for the generation of electricity by nuclear fission.".

SECTION 4

[*SECTION 4*]

31. In page 18, lines 31 to 47, all words from and including "carry" in line 31 down to and including "development." in line 47 deleted and the following substituted:

"carry out development comprising or for the purposes of electricity transmission, (hereafter referred to in this section and section 182B as 'proposed development'), the undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

(2) In the case of development referred to in subsection (1) which belongs to a class of development identified for the purposes of section 176, the undertaker shall prepare, or cause to be prepared, an environmental impact statement in respect of the development.".

32. In page 19, line 16, "proposed development," deleted and the following substituted:

"proposed development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,".

33. In page 19, line 26, "and" deleted.

34. In page 19, lines 38 and 39 deleted and the following substituted:

"if carried out, and

(vi) specifying the types of decision the Board may make, under section 182B, in relation to the application,".

35. In page 20, line 6, "if carried out." deleted and the following substituted:

"if carried out, and

(*c*) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (*a*)(ii), be made in writing to the Board.".

36. In page 21, line 1, "effect" deleted and "effects" substituted.

37. In page 21, line 51, "subsection (4)(*b*)—" deleted and "subsection (4)(*b*) or (*c*)—" substituted.

38. In page 22, lines 24 to 26 deleted and the following substituted:

"means of—

(*a*) a high voltage line where the voltage would be 110 kilovolts or more, or

(*b*) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.".

39. In page 24, line 12, after "a", "substantial" inserted.

40. In page 24, lines 48 to 50 deleted and the following substituted:

"(*e*) the matters referred to in section 143, and".

41. In page 25, lines 3 to 5 deleted and the following substituted:

"(11) (*a*) No permission under section 34 or 37G shall be required for any development which is approved under this section.

(*b*) Part VIII shall apply to any case where development referred to in section 182A(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.".

42. In page 26, line 7, "development," deleted and the following substituted:

"development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,".

43. In page 26, line 17, "and" deleted.

44. In page 26, line 29, "if carried out," deleted and the following substituted:

"if carried out, and

(iv) specifying the types of decision the Board may make, under section 182D, in relation to the application,".

45. In page 26, line 37, "and" deleted.

46. In page 26, line 41, "the Commission," deleted and the following substituted:

"the Commission, and

(iv) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, the prescribed body of the relevant state or states,".

47. In page 27, line 46, "effect" deleted and "effects" substituted.

48. In page 31, line 14, after "a", "substantial" inserted.

49. In page 32, lines 1 to 3 deleted and the following substituted:

"(*e*) the matters referred to in section 143, and".

50. In page 32, lines 6 to 8 deleted and the following substituted:

"(11) (*a*) No permission under section 34 or 37G shall be required for any development which is approved under this section.

(*b*) Part VIII shall apply to any case where development referred to in section 182C(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.".

51. In page 32, line 29, after "development", "or the environment" inserted.

52. In page 32, line 38, "Board" deleted and the following substituted:

"Board, after consulting the prospective applicant and such bodies as may be specified by the Minister for the purpose,".

53. In page 33, lines 14 to 16 deleted and the following substituted:

"such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.

(7) The Board may, at its absolute discretion, consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under this section in relation to a proposed development.".".

SECTION 5

54. In page 35, lines 11 and 12, all words from and including "quays" in line 11 down to and including "length" in line 12 deleted and the following substituted:

"one or more quays which or each of which would exceed 100 metres in length".

SECTION 6

55. In page 37, lines 32 to 44 deleted and in page 38, lines 1 and 2 deleted and the following substituted:

"(*c*) any proposed state development referred to in section 181A(1),

(*d*) any proposed development referred to in section 182A(1),

(*e*) any proposed strategic gas infrastructure development referred to in section 182C(1),

(*f*) any scheme or proposed road development referred to in section 215,

(*g*) any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the *Planning and Development (Strategic Infrastructure) Act 2006*), or

(*h*) any compulsory acquisition of land referred to in section 214, 215A or 215B, being an acquisition related to development specified in any of the preceding paragraphs of this definition;".

SECTION 8

56. In page 38, between lines 40 and 41, the following subsection inserted:

"(2) Section 34(5) of the Principal Act is amended by substituting "the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination" for "the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.".".

SECTION 10

[*SECTION 10*]

57. In page 40, lines 27 and 28, after "paragraph (*c*)," the following inserted:

"being requirements of a general nature and for the purposes of promoting transparency and accountability in the operation of such organisations,".

SECTION 13

58. In page 41, line 9 deleted and "matter with which the Board is concerned," substituted.

59. In page 42, line 36, after "Court" the following inserted:

"(but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made)".

60. In page 42, lines 42 to 48 deleted and the following substituted:

"(2) An application for section 50 leave shall be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave)—

(*a*) if the application relates to a decision made or other act done by a planning authority or local authority in the performance or purported performance of a function under this Act, to the authority concerned and, in the case of a decision made or other act done by a planning authority on an application for permission, to the applicant for the permission where he or she is not the applicant for leave,

(*b*) if the application relates to a decision made or other act done by the Board on an appeal or referral, to the Board and each party or each other party, as the case may be, to the appeal or referral,

(*c*) if the application relates to a decision made or other act done by the Board on an application for permission or approval, to the Board and to the applicant for the permission or approval where he or she is not the applicant for leave,

(*d*) if the application relates to a decision made or other act done by the Board or a local authority in the performance or purported performance of a function referred to in section 50(2)(*b*) or (*c*), to the Board or the local authority concerned, and

(*e*) to any other person specified for that purpose by order of the High Court.

(3) The Court shall not grant section 50 leave unless it is satisfied that—".

61. In page 43, line 39 deleted and the following substituted:

"(4) A substantial interest for the purposes of sub-".

62. In page 43, line 40, “section (2)(*b*)(*i*)” deleted and “section (3)(*b*)(i)” substituted.

63. In page 43, line 42 deleted and the following substituted:

“(5) If the court grants section 50 leave, no grounds”.

64. In page 43, lines 45 and 46, “subsection (2)(*a*)” deleted and “subsection (3)(*a*)” substituted.

65. In page 43, line 47 deleted and the following substituted:

“(6) The Court may, as a condition for granting”.

66. In page 43, line 50 deleted and the following substituted:

“(7) The determination of the Court of an appli-”.

67. In page 44, line 5 deleted and the following substituted:

“(8) Subsection (7) shall not apply to a determi-”.

68. In page 44, line 9 deleted and the following substituted:

“(9) If an application is made for judicial review”.

69. In page 44, line 20 deleted and the following substituted:

“(10) The Court shall, in determining an application”.

70. In page 44, line 24 deleted and the following substituted:

“(11) On an appeal from a determination of the”.

71. In page 44, lines 25 and 26, “subsection (9)” deleted and “subsection (10)” substituted.

72. In page 44, line 29, “subsection (6)” deleted and “subsection (7)” substituted.

73. In page 44, line 35 deleted and the following substituted:

"(12) Rules of court may make provision for the".

SECTION 20

74. In page 47, line 47, after "37E" the following inserted:

"and any other matter with which the Board may be concerned".

SECTION 21

75. In page 48, before section 21, the following new section inserted:

"Amendment of section 128 of Principal Act.

21.—The following section is substituted for section 128 of the Principal Act:

"Submission of documents, etc. to Board by planning authorities.

128.—(1) Where an appeal or referral is made to the Board the planning authority concerned shall, within a period of 2 weeks beginning on the day on which a copy of the appeal or referral is sent to it by the Board, submit to the Board—

(*a*) in the case of an appeal under section 37—

(i) a copy of the planning application concerned and of any drawings, maps, particulars, evidence, environmental impact statement, other written study or further information received or obtained by it from the applicant in accordance with regulations under this Act,

(ii) a copy of any submission or observation made in accordance with regulations under this Act in respect of the planning application,

(iii) a copy of any report prepared by or for the planning authority in relation to the planning application, and

(iv) a copy of the decision of the planning authority in respect of the planning application and a copy of the notification of the decision given to the applicant,

(*b*) in the case of any other appeal or referral, any information or documents in its possession which is or are relevant to that matter.

(2) The Board, in determining an appeal or referral, may take into account any fact, submission or observation mentioned, made or comprised in any document or other information submitted under subsection (1).".".

[*SECTION 21*]

76. In page 50, line 10 deleted and the following substituted:

"134A.—(1) Where the".

SECTION 23

77. In page 51, before section 23, the following new section inserted:

"Amendment of section 138 of Principal Act.

23.—Section 138(1) of the Principal Act is amended by substituting the following paragraph for paragraph (*a*):

"(*a*) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,".".

78. In page 51, before section 23, the following new section inserted:

"Amendment of section 140 of Principal Act.

24.—Section 140 of the Principal Act is amended—

(*a*) by substituting the following subsection for subsection (1):

"(1) (*a*) A person who has made—

(i) an appeal,

(ii) a planning application to which an appeal relates,

(iii) a referral,

(iv) an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development, may withdraw, in writing, the appeal, application or referral at any time before that appeal, application, or referral is determined by the Board.

(*b*) as soon as maybe after receipt of a withdrawal, the Board shall notify each other party or person who has made submissions or observations on the appeal, application or referral of the withdrawal.",

and

(*b*) in subsection (2)(*a*), by inserting "an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development," after "a planning application to which an appeal relates,".".

SECTION 24

79. In page 52, before section 24, the following new section inserted:

"Amendment of section 144 of Principal Act.

24.—Section 144(1) of the Principal Act is amended—

(*a*) by inserting "or in respect of a strategic infrastructure development (including an application under section 146B or the submission of an environmental impact statement under 146C)" after "under section 37 (5)", and

(*b*) by substituting "appeals, referrals and applications" for "appeals and referrals".".

80. In page 52, before section 24, the following new section inserted:

"Amendment of section 145 of Principal Act.

25.—Section 145(1) of the Principal Act is amended by substituting the following paragraph for paragraph (*b*):

"(*b*) in case—

(i) the decision of the planning authority in relation to an appeal or referral is confirmed or varied and the Board, in determining the appeal or referral, does not accede in substance to the grounds of appeal or referral, or

(ii) the appeal or referral is decided, dismissed under section 138 or withdrawn under section 140 and the Board, in any of those cases, considers that the appeal or referral was made with the intention of delaying the development or securing a monetary gain by a party to the appeal or referral or any other person,

the Board may, if it so thinks proper, direct the appellant or person making the referral to pay—

(I) to the planning authority, such sum as the Board, in its absolute discretion, specifies as compensation to the planning authority for the expense occasioned to it in relation to the appeal or referral,

(II) to any of the other parties to the appeal or referral, such sum as the Board, in its absolute discretion, specifies as compensation to the party for the expense occasioned to him or her in relation to the appeal or referral, and

(III) to the Board, such sum as the Board, in its absolute discretion, specifies as compensation to the Board towards the expense incurred by the Board in relation to the appeal or referral.".".

81. In page 52, lines 11 to 22 deleted and the following substituted:

" "(3) Where, during the consideration by it of any matter falling to be decided by it in performance of a function under or transferred by this Act or any other enactment, the Board either—

(*a*) is required by or under this Act or that other enactment to supply to any person documents, maps, particulars or other information in relation to the matter, or

(*b*) considers it appropriate, in the exercise of its discretion,".

82. In page 52, lines 40 to 42 and in page 53, lines 1 to 11 deleted and the following substituted:

"(5) Within 3 days following the making of a decision on any matter falling to be decided by it in performance of a function under or transferred by this Act or under any other enactment, the documents relating to the matter—

(*a*) shall be made available by the Board for inspection at the offices of the Board by members of the public, and

(*b*) may be made available by the Board for such inspection—

(i) at any other place, or

(ii) by electronic means,

as the Board considers appropriate.".

83. In page 53, line 18, "paragraph (i)" deleted and "paragraph (*a*)" substituted.

84. In page 53, lines 20 and 21, all words from and including "decision" in line 20 down to and including "concerned" in line 21 deleted and "decision on the matter concerned" substituted.

SECTION 25

85. In page 53, lines 27 to 42 deleted and in page 54, lines 1 to 28 deleted and the following substituted:

"146A.—(1) Subject to subsection (2)—

(*a*) a planning authority or the Board, as may be appropriate, may amend a planning permission granted by it, or

(*b*) the Board may amend any decision made by it in performance of a function under or transferred by this Act or under any other enactment,

for the purposes of—

(i) correcting any clerical error therein,

(ii) facilitating the doing of any thing pursuant to the permission or decision where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission or decision or the terms of the permission or decision taken as a whole but which was not expressly provided for in the permission or decision, or

(iii) otherwise facilitating the operation of the permission or decision.

(2) A planning authority or the Board shall not exercise the powers under subsection (1) if to do so would, in its opinion, result in a material alteration of the terms of the development, the subject of the permission or decision concerned.

(3) A planning authority or the Board, before it decides whether to exercise the powers under subsection (1) in a particular case, may invite submissions in relation to the matter to be made to it by any person who made submissions or observations to the planning authority or the Board in relation to the permission or other matter concerned, and shall have regard to any submissions made to it on foot of that invitation.".

86. In page 54, line 37 deleted and the following substituted:

"(2) (*a*) As soon as practicable after the making of".

87. In page 54, between lines 42 and 43, the following inserted:

"(*b*) Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.".

88. In page 55, line 3, "section of the alteration," deleted and the following substituted:

"section, and the planning authority or each planning authority for the area or areas concerned, of the alteration,".

89. In page 55, line 46, "the request under this section of the alteration." deleted and the following substituted:

"the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.".

90. In page 56, lines 3 to 17 deleted and the following substituted:

"(8) (*a*) Before making a determination under subsection (3)(*b*) or (4), the Board shall—

(i) make, or require the person who made the request concerned under subsection (1) to make, such information relating to that request available for inspection for such period,

(ii) notify, or require that person to notify, such person, such class of person or the public (as the Board considers appropriate) that the information is so available, and

(iii) invite, or require that person to invite, submissions or observations (from any foregoing person or, as appropriate, members of the public) to be made to it in relation to that request within such period,

as the Board determines and, in the case of a requirement under any of the preceding subparagraphs, specifies in the requirement; such a requirement may specify the means by which the thing to which it relates is to be done.

(*b*) The Board shall have regard to any submissions or observations made to it in accordance with an invitation referred to in paragraph (*a*).

(*c*) The Board shall notify any person who made a submission or observation to it in accordance with that invitation of its determination under subsection (3)(*b*) or (4).".

91. In page 58, line 44, "effect" deleted and "effects" substituted.

92. In page 59, line 29, "adverse" deleted.

93. In page 59, line 51 and in page 60, lines 1 to 18, paragraphs (*g*) to (*l*) deleted and the following substituted:

"(*g*) the matters referred to in section 143;

(*h*) any social or economic benefit that would accrue to the State, a region of the State or the area were the development concerned to be carried out in the terms as they are proposed to be altered;

(*i*) commitments entered into and the stage at which the development concerned has progressed under the permission, approval or other consent in the terms as originally granted; and

(*j*) any relevant provisions of this Act and of any regulations made under this Act.".

94. In page 61, line 3, after "2001" the following inserted:

"(whether made before or after the amendment of that Act by the *Planning and Development (Strategic Infrastructure) Act 2006*)".

95. In page 61, line 16, “those sections” deleted and “section 146A” substituted.

96. In page 61, lines 18 and 19, “appeal, application, referral or decision” deleted and “permission or other matter” substituted.

97. In page 61, line 21, “Board” deleted and the following substituted:

“Minister for Transport or the Board, as the case may be,”.

SECTION 28

98. In page 62, lines 22 and 23, paragraph (*b*) deleted and the following substituted:

“(*b*) in subsection (2), by substituting “sections 34(3), 37G(2), 146C(6), 173 (1), 181B(1), 182B(1) and 182D(1)” for “sections 173(1) and 34(3)”, and”.

SECTION 29

99. In page 65, line 15, after “a”, “substantial” inserted.

SECTION 30

100. In page 65, before section 30, the following new section inserted:

“Amendment of section 181 of Principal Act.

30.—Section 181(1) of the Principal Act is amended—

(*a*) in paragraph (*a*), by inserting “and sections 181A to 181C” after “except for this section”, and

(*b*) in paragraph (*b*), by deleting subparagraph (iv).”.

101. In page 65, before section 30, the following new section inserted:

“Environmental impact assessment of certain State developments.

31.—The following sections are inserted after section 181 of the Principal Act:

“Approval of certain State development requiring environmental impact assessment.

181A.—(1) Subject to section 181B(4), where a State authority proposes to carry out or have carried out development—

(*a*) of a class specified in regulations made under section 181(1)(*a*), and

(*b*) identified as likely to have significant effects on the environment in accordance with section 176,

(hereafter referred to in this section and sections 181B and 181C as 'proposed development'), the authority shall prepare, or cause to be prepared, an application for approval of the development under section 181B and an environmental impact statement in respect of the development and shall apply to the Board for such approval accordingly.

(2) Subject to section 181B(4), the proposed development shall not be carried out unless the Board has approved it with or without modifications.

(3) Before a State authority makes an application for approval under subsection (1), it shall—

(*a*) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) an environmental impact statement has been prepared in respect of the proposed development,

(III) where relevant, the proposed development is likely to have significant effects on the environment in another Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the environmental impact statement may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely effects on the environment of the proposed development,

if carried out, and

(iv) specifying the types of decision the Board may make, under section 181B, in relation to the application,

(*b*) send a copy of the application and the environmental impact statement to the local authority or each local authority in whose functional area the proposed development would be situate and to any prescribed bodies, together with a notice stating that submissions or observations may, during the period referred to in paragraph (*a*)(ii), be made in writing to the Board in relation to—

(i) the implications of the proposed development for proper planning and sustainable development in the area concerned, and

(ii) the likely effects on the environment of the proposed development,

if carried out, and

(*c*) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (*a*)(ii), be made in writing to the Board.

(4) The Board may—

(*a*) if it considers it necessary to do so, require a State authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to the effects on proper planning and sustainable development or the environment of the proposed development as the Board may specify, or

(*b*) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the State authority that it is of that view and invite the State authority to make to the terms of the proposed development alterations specified in the notification and, if the State authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

(5) If a State authority makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (4), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 181B.

(6) The Board shall—

(*a*) where it considers that any further information received pursuant to a requirement made under subsection (4)(*a*) contains significant additional data relating to—

(i) the likely effects on the environment of the proposed development, and

(ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development,

or

(*b*) where the State authority has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (4)(*b*),

require the State authority to do the things referred to in subsection (7).

(7) The things which a State authority shall be required to do as aforesaid are—

(*a*) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—

(i) further information in relation to the proposed development has been furnished to the Board, or

(ii) the State authority has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a revised environmental impact statement in respect of the development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(*b*) to send to each prescribed authority to which a notice was given pursuant to subsection (3)(*b*) or (*c*)—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (*a*)(i) or the information or statement referred to in paragraph (*a*)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the State authority.

Section 181A: criteria for decision, certain exemptions, etc.

181B.—(1) Before making a decision in respect of a proposed development the subject of an application under section 181A, the Board shall consider—

(*a*) the environmental impact statement submitted pursuant to section 181A(1) or (4), any submissions or observations made in accordance with section 181A(3) or (7) and any other information furnished in accordance with section 181A(4) relating to—

(i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and

(ii) the likely effects on the environment of the proposed development,

and

(*b*) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may, where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under section 181A(1) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

(*a*) the effects, if any, of the proposed development on the environment should be assessed in some other manner, and

(*b*) the information arising from such an assessment should be made available to the members of the public,

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) The Minister for Defence may, in the case of proposed development in connection with, or for the purposes of, national defence, grant an exemption in respect of the development from a requirement under section 181A(1) to apply for approval and prepare an environmental impact statement if he or she is satisfied that the application of section 181A or 181C would have adverse effects on those purposes.

(5) Notice of any exemption granted under subsection (2) or (4), of the reasons for granting the exemption and, where appropriate, of any requirements applied under subsection (3) shall, as soon as may be—

(*a*) be published in Iris Oifigiúil and in at least one daily newspaper published in the State, and

(*b*) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3), to the Commission of the European Communities.

(6) The Board may, in respect of an application under section 181A for approval of proposed development—

(*a*) approve the proposed development,

(*b*) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,

(*c*) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or

(*d*) refuse to approve the proposed development,

and may attach to an approval under paragraph (*a*), (*b*) or (*c*) such conditions as it considers appropriate.

(7) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (6)(*a*), (*b*) or (*c*) a condition requiring—

(*a*) the construction or the financing, in whole or in part, of the construction of a facility, or

(*b*) the provision or the financing, in whole or in part, of the provision of a service,

in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(8) A condition attached pursuant to subsection (7) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(9) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of consultations under section 181C or applications for approval under section 181A.

(10) Without prejudice to the generality of subsection (9), regulations under that subsection may make provision for requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(11) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, or on the environment, the Board shall have regard to—

(*a*) the provisions of the development plan for the area,

(*b*) the provisions of any special amenity area order relating to the area,

(*c*) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(*c*), that fact,

(*d*) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(*c*), that fact,

(*e*) where relevant, the matters referred to in section 143, and

(*f*) the provisions of this Act and regulations under this Act where relevant.

(12) Regulations made under section 181(1)(*b*) shall not apply to any development which is approved under this section.

(13) Nothing in this section or section 181A or 181C shall require the disclosure by a State authority or the Board of details of the internal arrangements of a development which might prejudice the internal or external security of the development or facilitate any unauthorised entrance to, or exit from, the development of any person when it is completed.

(14) Without prejudice to the generality of section 18(*a*) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.

Procedures in advance of seeking approval under section 181B.

181C.—(1) A State authority (a 'prospective applicant') which proposes to apply for approval under section 181B shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

(*a*) the procedures involved in making the application, and

(*b*) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

(3) A prospective applicant may request the Board—

(*a*) to make a determination of whether a development of a class specified in regulations made under section 181 (1)(*a*) which it proposes to carry out or have carried out is likely to have significant effects on the environment in accordance with section 176 (and inform the applicant of the determination), or

(*b*) to give to the applicant an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact statement in relation to the proposed development.

(4) On receipt of such a request, the Board shall comply with it as soon as is practicable.

(5) A prospective applicant shall, for the purposes of—

(*a*) consultations under subsection (1), and

(*b*) the Board's complying with a request under subsection (3),

supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(6) Neither—

(*a*) the holding of consultations under subsection (1), nor

(*b*) the provision of an opinion under subsection (3),

shall prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(7) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed development relates.”.”.

102. In page 66, line 1, “section is” deleted and “sections are” substituted.

103. In page 66, between lines 36 and 37, the following inserted:

“Transfer of certain Ministerial functions under Air Navigation Act 1998.

215B.—(1) The functions of the Minister for Transport under section 17 of, and the Second Schedule to, the Air Navigation and Transport (Amendment) Act 1998, as amended, in relation to the compulsory acquisition of land for the purposes set out in section 18 of that Act, are transferred to, and vested in, the Board, and relevant references in that Act to the Minister for Transport shall be construed as references to the Board and any connected references shall be construed accordingly.

(2) The transfer of the functions of the Minister for Transport in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to substrata of land, easements, rights over land (including wayleaves and public rights of way), rights over land or water or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).”.

SECTION 31

104. In page 66, lines 37 to 47 deleted and the following substituted:

“31.—The following sections are inserted after section 217 of the Principal Act:

“Transferred functions under this Part: supplemental provisions.

217A.—(1) The Board may, in respect of any of the functions transferred under this Part concerning the confirming or otherwise of any compulsory acquisition, at its absolute discretion and at any time before making a decision in respect of the matter—

(*a*) request submissions or observations from any person who may, in the opinion of the Board, have information which is relevant to its decision concerning the confirming or otherwise of such compulsory acquisition (and may have regard to any submission or observation so made in the making of its decision), or

(*b*) hold meetings with the local authority, or in the case of section 215A the person who applied for the acquisition order, or any other person where it appears to the Board to be necessary or expedient for the purpose of—

(i) making a decision concerning the confirming or otherwise of such compulsory acquisition, or

(ii) resolving any issue with the local authority or the applicant, as may be appropriate, or any disagreement between the authority or the applicant, as may be appropriate, and any other person, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where the Board holds a meeting in accordance with subsection (1)(*b*), it shall keep a written record of the meeting and make that record available for inspection.

(3) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(*b*).

Section 215: supplemental provisions.

217B.—(1) The Board may, at its absolute discretion and at any time before making a decision on a scheme or proposed road development referred to in section 215—

(*a*) request further submissions or observations from any person who made submissions or observations in relation to the scheme or proposed road development, or any other person who may, in the opinion of the Board, have information which is relevant to its decision on the scheme or proposed road development, or

(*b*) hold meetings with the road authority or any other person where it appears to the Board to be necessary or expedient for the purpose of —

(i) making a decision on the scheme or proposed road development, or

(ii) resolving any issue with the road authority or any disagreement between the authority and any other person, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where the Board holds a meeting in accordance with subsection (1)(*b*), it shall keep a written record of the meeting and make that record available for inspection.

(3) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(*b*).

(4) The Board may—

(*a*) if it considers it necessary to do so, require a road authority that has submitted a scheme under section 49 of the Roads Act 1993 or made an application for approval under section 51 of that Act to furnish to the Board such further information in relation to—

(i) the effects on the environment of the proposed scheme or road development, or

(ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said scheme or road development of such scheme or road development,

as the Board may specify, or

(*b*) if it is provisionally of the view that it would be appropriate to approve the scheme or proposed road development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the road authority that it is of that view and invite the authority to make to the terms of the scheme or proposed road development alterations specified in the notification and, if the authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the scheme or road development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

(5) If a road authority makes the alterations to the terms of the scheme or proposed road development specified in a notification given to it under subsection (4), the terms of the scheme or road development as so altered shall be deemed to be the scheme or proposed road development for the purposes of sections 49, 50 and 51 of the Roads Act 1993.

(6) The Board shall—

(*a*) where it considers that any further information received pursuant to a requirement made under subsection (4)(*a*) contains significant additional data relating to—

(i) the likely effects on the environment of the scheme or proposed road development, and

(ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said scheme or road development of such scheme or road development,

or

(*b*) where the road authority has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (4)(*b*),

require the authority to do the things referred to in subsection (7).

(7) The things which a road authority shall be required to do as aforesaid are—

(*a*) to publish in one or more newspapers circulating in the area or areas in which the development to which the scheme relates or, as the case may be, the proposed road development would be situate a notice stating that, as appropriate—

(i) further information in relation to the scheme or proposed road development has been furnished to the Board, or

(ii) the road authority has, pursuant to an invitation of the Board, made alterations to the terms of the scheme or proposed road development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the scheme or road development as so altered or a revised environmental impact statement in respect of the scheme or development has been furnished to the Board,

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(*b*) to send to each body or prescribed authority to which a notice was given pursuant to section 51(3)(*b*) or (*c*) of the Roads Act 1993—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (*a*)(i) or the information or statement referred to in paragraph (*a*)(ii), and

(ii) a copy of that further information, information or statement,

and to indicate to the body or authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the road authority.

(8) The Board shall, in making its decision in respect of a scheme or proposed road development, have regard to any information submitted on foot of a notice under subsection (4), including any revised environmental impact statement or any submissions or observations made on foot of a request under subsection (1) or a notice under subsection (7).

Board's powers to make decisions on transferred functions.

217C.—(1) Notwithstanding any provision of any of the enactments referred to in section 214, 215A or 215B concerning the confirming or otherwise of any compulsory acquisition, the Board shall, in relation to any of the functions transferred under this Part respecting those matters, have the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof.".

105. In page 67, line 7, after "of", "the" inserted.

106. In page 67, line 19, after "a" , "substantial" inserted.

SECTION 32

107. In page 67, paragraph (*a*), line 31, "section 214, 215 or 215A" deleted and "section 214, 215, 215A or 215B" substituted.

108. In page 67, paragraph (*b*), line 38, " "sections 214, 215 and 215A" " deleted and " "sections 214 to 215 B" " substituted.

109. In page 67, paragraph (*b*), line 39 deleted and "for "sections 214 and 215" inserted.".

SECTION 33

110. In page 67, line 44, "section 214, 215 or 215A" deleted and "section 214, 215, 215A or 215B" substituted.

111. In page 67, line 47, after "215A", "or 215B" inserted.

SECTION 34

112. In page 68, paragraph (*a*), lines 37 and 38, " "section 214, 215 or 215A" " deleted and " "section 214, 215, 215A or 215B" " substituted.

113. In page 68, paragraph (*b*), lines 39 and 40, " "section 214, 215 or 215A" " deleted and " "section 214, 215, 215A or 215B" " substituted.

SECTION 35

114. In page 68, paragraph (*a*), line 42, "section 214, 215 or 215A" deleted and "section 214, 215, 215A or 215B" substituted.

115. In page 68, paragraph (*b*), line 46, "section 214, 215 or 215A" deleted and "section 214, 215, 215A or 215B" substituted.

SECTION 36

116. In page 68, before section 36, the following new section inserted:

"Amendment of section 226 of Principal Act.

36.—Section 226 of the Principal Act is amended—

(*a*) by substituting the following subsection for subsection (2):

"(2) (*a*) The Board may approve, approve subject to conditions, or refuse to approve a proposed development.

(*b*) Without prejudice to the generality of paragraph (*a*), the Board may attach to an approval under this section conditions for or in connection with the protection of the marine environment (including the protection of fisheries) or, if the subject of a recommendation by the Minister for Transport to the Board with regard to the exercise of the power under this subsection in the particular case (which recommendation that Minister of the Government may, by virtue of this subsection, make), the safety of navigation.",

(*b*) by substituting the following subsections for subsection (6):

"(6) (*a*) In the following case:

(i) the local authority concerned, if it is of the opinion that the development concerned would be likely to have significant effects on the environment, shall refer; or

(ii) the Minister for Communications, Marine and Natural Resources may refer;

to the Board for its determination the question of whether the following development would be likely to have significant effects on the environment.

(*b*) That case is one of development that is identified for the purposes of section 176 (other than development falling within a class of development identified for the purposes of that section) and which is proposed to be carried out wholly or partly on the foreshore—

(i) by a local authority that is a planning authority, whether in its capacity as a planning authority or otherwise, or

(ii) by some other person on behalf of, or jointly or in partnership with a local authority that is a planning authority, pursuant to an agreement entered into by that authority, whether in its capacity as a planning authority or otherwise.

(*c*) Where required by the Board, the local authority or the Minister for Communications, Marine and Natural Resources shall provide to the Board such information as may be specified by the Board in respect of the effects on the environment of the proposed development, the subject of the question referred to it under this subsection.

(7) (*a*) The Board shall consider and determine the question referred to it under subsection (6) and, where it determines that the development concerned would be likely to have significant effects on the environment, it shall—

(i) notify the local authority concerned (and, where the question has been referred by the Minister for Communications, Marine and Natural Resources, that Minister of the Government) that it has determined that the development would be likely to have those effects, and

(ii) specify, in that notification, that any application by the local authority concerned for approval under subsection (1) in respect of the development shall be accompanied by an environmental impact statement prepared or caused to be prepared by the authority in respect of the development,

and, where that notification so specifies, any such application shall be accompanied by such a statement accordingly.

(*b*) In making that determination, the Board shall have regard to the criteria for the purposes of determining which classes of development are likely to have significant effects on the environment set out in any regulations made under section 176.

(*c*) Notwithstanding any other enactment, the determination of the Board of a question referred to it under subsection (6) shall be final.

(8) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister, after consultation with the Minister for Communications, Marine and Natural Resources, to be necessary or expedient in respect of referring a question under subsection (6) or of making a determination under subsection (7).

(9) This section shall apply to proposed development—

(*a*) that, if carried out wholly within the functional area of a local authority that is a planning authority, would be subject to the provisions of section 175,

(*b*) that a local authority has been notified under paragraph (*a*)(i) of subsection (7) is one which the Board has determined under that subsection would be likely to have significant effects on the environment, or

(*c*) that is prescribed for the purposes of this section.".".

117. In page 68, before section 36, the following new section inserted:

"Amendment of section 227 of Principal Act.

37.—Section 227 of the Principal Act is amended—

(*a*) in subsection (5), by substituting "Minister for Communications, Marine and Natural Resources and the Minister for Transport" for "Minister for the Marine and Natural Resources",

(*b*) by substituting the following subsection for subsection (8):

"(8) (*a*) Subject to paragraph (*b*), the Foreshore Acts 1933 to 2005 shall not apply in relation to any application to the Board under section 226, or matters to which subsection (5)(*b*) applies or a scheme submitted under section 49 of the Roads Act 1993.

(*b*) In any case where a local authority that is a planning authority applies for an approval for proposed development under section 226 or has been granted such an approval by the Board, but has not sought the compulsory acquisition of any foreshore on which the proposed development would be carried out under an enactment specified in section 214, the authority may apply for a lease or licence under section 2 or 3 of the Foreshore Act 1933 in respect of that proposed development; in such cases, it shall not, notwithstanding the provisions of any other enactment, be necessary for—

(i) the local authority to submit an environmental impact statement in connection with its application for such lease or licence, or

(ii) the Minister for Communications, Marine and Natural Resources to consider the likely effects on the environment of the proposed development.",

and

(*c*) by deleting subsection (9).".

118. In page 68, before section 36, the following new section inserted:

[*SECTION 36*]

"Amendment of section 228 of Principal Act.

38.—Section 228 of the Principal Act is amended by adding the following subsection:

"(5) No licence shall be required under the Foreshore Act 1933 in respect of any such entry or any site investigations carried out in accordance with this section.".".

SECTION 37

119. In page 69, before section 37, the following new section inserted:

"Amendment of Part XIX of Principal Act.

47.—Part XIX of the Principal Act is amended by inserting the following section after section 270:

"Exempted developments not affected.

270A.—For the avoidance of doubt, any category of exempted development by virtue of section 4 or regulations thereunder is not affected by the amendments of this Act made by the *Planning and Development (Strategic Infrastructure) Act 2006*.".".

120. In page 69, between lines 12 and 13, the following subsection inserted:

"(2) Where the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919 fall to be applied in the assessment of any compensation that a person, other than a planning authority or other local authority, may be liable to pay, a like provision to the Rule inserted by *subsection (1)* shall be regarded as having effect in relation to the assessment of that compensation.".

SECTION 38

121. In page 69, lines 13 to 15 deleted and the following substituted:

"38.—The Transport (Railway Infrastructure) Act 2001 is amended—

(*a*) in section 2—

(i) in the definition of "environmental impact statement", by substituting "section 37(3)(*e*)" for "section 37(2)(*d*)",

(ii) by inserting after the definition of "planning authority" the following definition:

" 'prescribed', in Part 3, means prescribed by regulations made by the Minister for the Environment, Heritage and Local Government;",

and

(iii) in the definition of "railway undertaking", by substituting "section 43 (5)" for "section 43(6)",

and

(*b*) by substituting the following sections for sections 37 to 47 (as amended by the Railway Safety Act 2005):".

122. In page 70, line 32, "date" deleted and "data" substituted.

123. In page 72, line 54, "and" deleted.

124. In page 73, line 6, "copy or extract," deleted and the following substituted:

"copy or extract, and

(v) stating, if it be the case, that the proposed railway works are likely to have significant effects on the environment in Northern Ireland,".

125. In page 73, line 14, "and" deleted.

126. In page 73, line 20, "referred to in the draft order." deleted and the following substituted:

"referred to in the draft order, and

(*e*) in a case where—

(i) the proposed railway works are likely to have significant effects on the environment in Northern Ireland, or

(ii) the authority referred to subsequently in this paragraph requests that such a copy be so sent to it,

send a copy of the environmental impact statement to the prescribed authority in Northern Ireland, together with a notice, in such form as may be prescribed, stating that an application for approval of the said works has been made and that submissions may be made in writing to the Board (during the period specified in the notice referred to in subsection (1)(*b*)) in relation to the likely effects on the environment of the said works.".

127. In page 73, between lines 34 and 35, the following inserted:

"(4) Where the environmental impact statement and a notice referred to in subsection (1)(*e*) has been sent to the prescribed authority in Northern Ireland pursuant to that provision, the Agency, CIE, or the Board, in the case of any other applicant, as appropriate, shall enter into consultations with that authority regarding the potential effects on the environment of the proposed railway works and the measures envisaged to reduce or eliminate such effects.".

128. In page 75, lines 18 to 20 deleted and the following substituted:

"(*e*) any submission duly made to it by an authority referred to in section 40(1)(*c*) or (*e*);".

129. In page 75, lines 22 and 23 deleted and the following substituted:

"under section 41;

(*g*) the likely consequences for proper planning and sustainable development in the area in which it is proposed to carry out the railway works and for the environment of such works; and

(*h*) the matters referred to in section 143".

130. In page 75, lines 38 to 46 deleted and the following substituted:

"(3) (*a*) As soon as may be after the making of a railway order, the Board shall —

(i) publish a notice in at least 2 newspapers circulating in the area to which the order relates of the making of the railway order and of the places where, the period during which and the times at which copies thereof and any plan referred to therein may be inspected or purchased at a cost not exceeding the reasonable cost of making such copies, and

(ii) give notice to the prescribed authority in Northern Ireland of its decision in a case where a copy of the environmental statement has been sent to that authority in accordance with section 40(1)(*e*).

(*b*) A notice referred to in paragraph (*a*) shall state—

(i) the content and nature of the Board's decision including any conditions attached thereto,

(ii) that, in deciding whether to grant a railway order, the Board has had regard to the matters referred to in subsection 43(1), and

(iii) a description where necessary of the main measures to avoid any adverse effects of the proposed railway works.".

131. In page 76, line 47, "The" deleted and "Notwithstanding section 47(1), the" substituted.

132. In page 76, line 49, "this section" deleted and "subsection (6)" substituted.

133. In page 78, lines 37 to 39, all words from and including "the" in line 37 down to and including "Board" in line 39 deleted and "the Board," substituted.

134. In page 80, line 20, after "Court" the following inserted:

"(but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made)".

135. In page 80, lines 26 to 32 deleted and the following substituted:

"(2) An application for section 47 leave shall be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Board, to the applicant for the railway order, where he or she is not the applicant for leave, and to any other person specified for that purpose by order of the High Court, and the Court shall not grant section 47 leave unless it is satisfied that—".

136. In page 81, line 28, "the High Court, that Court" deleted and "the Court, the Court" substituted.

137. In page 81, line 31, "court" deleted and "Court" subsituted.

NEW SECTIONS

138. In page 82, after line 27, the following new section inserted:

"39.—The Transport (Railway Infrastructure) Act 2001 is further amended by inserting the following sections after section 47A (inserted by *section 38*):

"Discussions with Board before making an application.

47B.—(1) The Agency, CIE or any other person who proposes to apply for a railway order in accordance with section 37(1) shall, before making the application, enter into consultations with the Board in relation to the proposed railway works.

(2) Such a person is referred to subsequently in this section and in section 47C as a 'prospective applicant'.

(3) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

(*a*) the procedures involved in making an application under this Part and in considering such an application, and

(*b*) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

Section 47B: supplemental provisions.

47C.—(1) A prospective applicant shall, for the purposes of consultations under section 47B, supply to the Board sufficient information in relation to the proposed railway works so as to enable the Board to assess those works.

(2) The Board may, at its absolute discretion, consult with any other person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under section 47B in relation to the proposed railway works.

(3) The holding of consultations under section 47B shall not prejudice the performance by the Board of any other of its functions under this Act or the Planning and Development Act 2000 or regulations under either of those Acts and cannot be relied upon in the formal planning process or in legal proceedings.

(4) The Board shall keep a record in writing of any consultations under section 47B in relation to proposed railway works, including the names of those who participated in the consultations, and a copy of such record shall be placed and kept with the documents to which any application in respect of the proposed railway works relates.

Supplemental powers for the Board.

47D.—(1) Before determining an application for a railway order, the Board may, at its absolute discretion and at any time—

(*a*) request further submissions or observations from the applicant, any person who made submissions or observations in relation to the application or any other person who may, in the opinion of the Board, have information which is relevant to the determination of the application,

(*b*) without prejudice to section 41, make any information relating to the application available for inspection, notify any person or the public that the information is so available and, if it considers appropriate, invite further submissions or observations to be made to it within such period as it may specify, or

(*c*) hold meetings with the applicant or any other person where it appears to the Board to be necessary or expedient for the purpose of—

(i) determining the application, or

(ii) resolving any issue with the applicant or any disagreement between the applicant and any other party, including resolving any issue or disagreement in advance of an oral hearing.

(2) Where the Board holds a meeting in accordance with subsection (1)(*c*), it shall keep a written record of the meeting and make that record available for inspection.

(3) The Board, or an employee of the Board duly authorised by the Board, may appoint any person to hold a meeting referred to in subsection (1)(*c*).

(4) The Board may, if it is provisionally of the view that it would be appropriate to grant the railway order concerned were certain alterations (specified in the notification referred to in this subsection) to be made to the terms of the application in respect of it or the proposed order, notify the applicant that it is of that view and invite the applicant to make to the terms of the application or the proposed order alterations specified in the notification and, if the applicant makes those alterations, to furnish to it such information (if any) as it may specify in relation to the proposed application or order, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

(5) If the applicant makes the alterations to the terms of the application or proposed order specified in a notification given to the applicant under subsection (4), the terms of the application or order as so altered shall be deemed to be the application or order for the purposes of this Part.

(6) The Board shall, where the applicant has made the alterations to the terms of the application or proposed order specified in a notification given to the applicant under subsection (4), require the applicant—

(*a*) to publish in one or more newspapers circulating in the area or areas in which the proposed railway works would be situate a notice stating that the applicant has, pursuant to an invitation of the Board, made alterations to the terms of the application or order (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the application or order as so altered or a revised environmental impact statement in respect of the development has been furnished to the Board, indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(*b*) to send to the planning authority and each person to which a notice was served pursuant to section 40(1)(*c*) or (*e*), and to every (if any) occupier and every (if any) owner of land referred to in the order (being, if the terms of it have been so altered, the order as so altered) —

(i) a notice of the furnishing to the Board of the information or statement referred to in paragraph (*a*), and

(ii) a copy of that information or statement,

and to indicate to that authority or other person that submissions or observations in relation to that information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the authority or other person by the applicant.

(7) The Board shall, in deciding whether to grant the railway order to which the application concerned relates, have regard to any information submitted on foot of a notice under subsection (4), including any revised environmental impact statement, or any submissions or observations made on foot of a request under subsection (1) or a notice under subsection (6).

Objective of the Board in relation to railway orders.

47E.—(1) It shall be the duty of the Board to ensure that—

(*a*) consultations held under section 47B are completed, and

(*b*) a decision under section 43 on an application for a railway order is made,

as expeditiously as is consistent with proper planning and sustainable development and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the holding of those consultations or the making of that decision.

(2) Without prejudice to the generality of subsection (1) and subject to subsections (3) to (6), it shall be the objective of the Board to ensure that a decision under section 43 on an application for a railway order is made—

(*a*) within a period of 18 weeks beginning on the last day for making submissions or observations in accordance with the notice referred to in section 40(1)(*b*), or

(*b*) within such other period as the Minister for the Environment, Heritage and Local Government, having consulted with the Minister, may prescribe by regulations either generally or in respect of a particular class or classes of matter.

(3) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of the matter with which the Board is concerned, to determine the matter within the period referred to in paragraph (*a*) or (*b*) of subsection (2) as the case may be, the Board shall, by notice in writing served on the applicant, the Minister, any planning authority involved and any other person who submitted submissions or observations in relation to the matter before the expiration of that period, inform the Minister, the authority and those persons of the reasons why it would not be possible or appropriate to determine the matter within that period and shall specify the date before which the Board intends that the matter shall be determined.

(4) Where a notice has been served under subsection (3), the Board shall take all such steps as are open to it to ensure that the matter is determined before the date specified in the notice.

(5) The Minister for the Environment, Heritage and Local Government, having consulted the Minister, may by regulations vary the period referred to in subsection (2)(*a*) either generally or in respect of a particular class or classes of applications for railway orders, where it appears to him or her to be necessary, by virtue of exceptional circumstances, to do so and, for so long as the regulations are in force, this section shall be construed and have effect in accordance therewith.

(6) Where the Minister for the Environment, Heritage and Local Government, having consulted with the Minister, considers it to be necessary or expedient that a certain class or classes of application for a railway order that are of special strategic, economic or social importance to the State be determined as expeditiously as is consistent with proper planning and sustainable development, he or she may give a direction to the Board that priority be given to the determination of applications of the class or classes concerned, and the Board shall comply with such a direction.

(7) The Board shall include in each report made under section 118 of the Planning and Development Act 2000 a statement of the number of matters which the Board has determined within a period referred to in paragraph (*a*) or (*b*) of subsection (2) and such other information as to the time taken to determine such matters as the Minister for the Environment, Heritage and Local Government may direct.

Construction of certain references and transitional provision.

47F.—(1) References to the Minister in a railway order, being an order made before the amendment of this Act by the *Planning and Development (Strategic Infrastructure) Act 2006*, shall be construed as references to the Board.

(2) Notwithstanding the amendments of this Act made by the *Planning and Development (Strategic Infrastructure) Act 2006*, any thing commenced under this Part but not completed before the commencement of those amendments may be carried on and completed after the commencement of those amendments as if those amendments had not been made.

(3) The reference in subsection (2) to any thing commenced under this Part includes a reference to—

(*a*) an application that has been made under section 37 (being that section in the terms as it stood before the commencement of the amendments referred to in that subsection),

(*b*) an application that has been made under subsection (7) of section 47 (being that section in the terms as it stood before the commencement of those amendments), and

(*c*) any step (including the holding of a public inquiry) that has been taken in the making of a decision in relation to an application referred to in paragraph (*a*) or (*b*) or any step that has been taken on foot of the making of such a decision.

(4) For the avoidance of doubt, any questioning, after the commencement of the amendments referred to in subsection (2), by the procedures of judicial review under the Order (within the meaning of section 47) of the validity of any thing referred to in subsection (2) completed after that commencement, or being carried on after that commencement, shall be done in accordance with the provisions of this Part as amended by the *Planning and Development (Strategic Infrastructure) Act 2006*.".".

139. In page 82, after line 27, the following new section inserted:

"Amendment of Roads Act 1993.

40.—(1) In this section "Act of 1993" means the Roads Act 1993.

(2) Section 48 of the Act of 1993 is amended—

(*a*) in paragraph (*a*)(ii), by substituting "(not being less than 6 weeks)" for "(which shall not be less than one month)",

(*b*) in paragraph (*a*)(iii), by substituting "during such period" for "before a specified date (which shall be not less than two weeks after the end of the period for inspection)", and

(*c*) in paragraph (*b*), by substituting the following subparagraph for subparagraph (iii):

"(iii) the period (which shall be that referred to in paragraph (*a*)(ii)) within which objections may be made in writing to the Minister in relation to the scheme.".

(3) Section 51(3) of the Act of 1993 is amended—

(*a*) in paragraph (*a*)(iii), by substituting "(not being less than 6 weeks)" for "(which shall not be less than one month)",

(*b*) in paragraph (*a*)(iv), by deleting "and",

(*c*) in paragraph (*a*)(v), by substituting "during the period referred to in paragraph (*a*)(iii)" for "before a specified date (which shall be not less than two weeks after the end of the period for inspection)",

(*d*) by inserting the following subparagraphs after subparagraph (v) of paragraph (*a*):

"(vi) where relevant, stating that the proposed road development is likely to have significant effects on the environment in Northern Ireland, and

(vii) specifying the types of decision the Minister may make, under section 51(6), in relation to the application;"

and

(*e*) in paragraph (*b*), by substituting "within a specified period (which shall be that referred to in paragraph (*a*)(iii))" for "before a specified date (which shall be not less than two weeks after the end of the period for inspection referred to in subsection (3)(*a*)(iii))".".