



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

*Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann*

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Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5, c. 57
Civil Service Regulation Act 1956	1956, No. 46
Data Protection Acts 1988 to 2003	
Electricity Regulation Act 1999	1999, No. 23
Gas Act 1976	1976, No. 30
Gas (Amendment) Act 2000	2000, No. 26
Housing Act 1966	1966, No. 21
Interpretation Act 2005	2005, No. 23
Local Government (No. 2) Act 1960	1960, No. 40
Local Government Act 2001	2001, No. 37
Planning and Development Act 2000	2000, No. 30
Planning and Development Acts 2000 to 2004	
Railway Safety Act 2005	2005, No. 31
Roads Act 1993	1993, No. 14
Transport (Railway Infrastructure) Act 2001	2001, No. 55



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(BONNEAGAR STRAITÉISEACH) 2006
PLANNING AND DEVELOPMENT (STRATEGIC
INFRASTRUCTURE) BILL 2006**

BILL

entitled

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AN ACT TO PROVIDE, IN THE INTERESTS OF THE COMMON GOOD, FOR THE MAKING DIRECTLY TO AN BORD PLEANÁLA OF APPLICATIONS FOR PLANNING PERMISSION IN RESPECT OF CERTAIN PROPOSED DEVELOPMENTS OF STRATEGIC IMPORTANCE TO THE STATE; TO MAKE PROVISION FOR THE EXPEDITIOUS DETERMINATION OF SUCH APPLICATIONS, APPLICATIONS FOR CERTAIN OTHER TYPES OF CONSENT OR APPROVAL AND APPLICATIONS FOR PLANNING PERMISSIONS GENERALLY; FOR THOSE PURPOSES AND FOR THE PURPOSE OF EFFECTING CERTAIN OTHER CHANGES TO THE LAW OF PLANNING AND DEVELOPMENT TO AMEND AND EXTEND THE PLANNING AND DEVELOPMENT ACTS 2000 TO 2004; TO AMEND THE TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 AND THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT 1919 AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Planning and Development (Strategic Infrastructure) Act 2006.

Short title,
collective citation
and
commencement.

30 (2) The Planning and Development Acts 2000 to 2004 and this Act may be cited together as the Planning and Development Acts 2000 to 2006.

35 (3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

2.—In this Act—

“Minister” means the Minister for the Environment, Heritage and Local Government;

“Principal Act” means the Planning and Development Act 2000.

PART 2

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STRATEGIC INFRASTRUCTURE DEVELOPMENTS - JURISDICTION OF AN BORD PLEANÁLA UNDER PRINCIPAL ACT TO DEAL WITH THEM

Permissions for strategic infrastructure development.

3.—The Principal Act is amended by inserting the following sections after section 37:

“Board’s jurisdiction in relation to certain planning applications.

37A.—(1) An application for permission for any development specified in the Seventh Schedule (inserted by the *Planning and Development (Strategic Infrastructure) Act 2006*) shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority.

(2) That condition is that, following consultations under section 37B, the Board serves on the prospective applicant a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the following paragraphs, namely—

(a) the development would be of strategic economic or social importance to the State or the region in which it would be situate,

(b) the development would contribute significantly to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional planning guidelines in force in respect of the area or areas in which it would be situate,

(c) the development would have a significant effect on the area of more than one planning authority.

(3) In subsection (2) ‘prospective applicant’ means the person referred to in section 37B(1).

Discussions with Board before making of application.

37B.—(1) A person who proposes to apply for permission for any development specified in the Seventh Schedule shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) Such a person is referred to subsequently in this section and in sections 37C and 37D 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—

5 (a) whether the proposed development would, if carried out, fall within one or more of paragraphs (a) to (c) of section 37A(2),

10 (b) the procedures involved in making a planning application and in considering such an application, and

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

(4) Where, following consultations under this section, the Board is of the opinion that the proposed development would, if carried out—

20 (a) fall within one or more of paragraphs (a) to (c) of section 37A(2), it shall serve a notice in writing on the prospective applicant stating that it is of that opinion, or

25 (b) not fall within any of those paragraphs, it shall serve a notice in writing on the prospective applicant stating that it is of that opinion.

30 (5) A notice under subsection (4)(b) shall include a statement that the prospective applicant's application for permission, if it is proceeded with, must be made to the appropriate planning authority (and such an application, if it is proceeded with, shall be made to that planning authority accordingly).

(6) The Board shall serve a copy of a notice under subsection (4)(b) on the appropriate planning authority.

40 (7) In this section 'appropriate planning authority' means whichever planning authority would, but for the enactment of *section 3* of the *Planning and Development (Strategic Infrastructure) Act 2006*, be the appropriate planning authority to deal with the application referred to in that subsection.

45 Section 37B:
supplemental
provisions.

37C.—(1) A prospective applicant shall, for the purposes of consultations under section 37B, supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

50 (2) The holding of consultations under section 37B shall not prejudice the performance by the Board of any other of its functions under this Act

or regulations under this Act and cannot be relied upon in the formal planning process or in legal proceedings.

(3) The Board shall keep a record in writing of any consultations under section 37B 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 planning application in respect of the proposed development relates.

Opinion by Board on information to be contained in environmental impact statement.

37D.—(1) Where a notice has been served under section 37B(4)(a) in relation to proposed development, a prospective applicant may request the Board to give to him or her 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 development.

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

(3) A prospective applicant shall, for the purposes of the Board's complying with a request under this section, supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(4) The provision of an opinion under this section shall not prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act and cannot be relied upon in the formal planning process or in legal proceedings.

Application to Board.

37E.—(1) An application for permission for development in respect of which a notice has been served under section 37B(4)(a) shall be made to the Board and shall be accompanied by an environmental impact statement in respect of the proposed development.

(2) The Board may refuse to deal with any application made to it under this section where it considers that the application for permission or the environmental impact statement is inadequate or incomplete, having regard in particular to the permission regulations and any regulations made under section 177 or to any consultations held under section 37B.

(3) Before a person applies for permission to the Board under this section, he or she 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) the person proposes to seek permission from the Board for the proposed development, and

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

(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), and

(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, and

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

if carried out,

(b) send a prescribed number of copies of the application and the environmental impact statement to the planning authority or authorities in whose area or areas the proposed development would be situated, and

(c) send a prescribed number of copies of the application and the environmental impact statement to any prescribed authorities 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, and

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

if carried out.

(4) The planning authority for the area (or, as the case may be, each planning authority for the areas) in which the proposed development would be situated shall, within 10 weeks from the receipt of the application under subsection (3)(b), prepare and submit to the Board a report setting out the views of the authority on the effects of the proposed development on the proper planning and sustainable development of the area of the authority, having regard in particular to the matters specified in section 34(2). 5 10

(5) The manager of a planning authority shall, before submitting any report in relation to a proposed development to the Board under subsection (4), submit the report to the members of the authority and seek the views of the members on the proposed development. 15

(6) The members of the planning authority may, by resolution, decide to attach recommendations specified in the resolution to the report of the authority; where the members so decide those recommendations shall be attached to the report submitted to the Board under subsection (4). 20

(7) In addition to the report referred to in subsection (4), the Board may, where it considers it necessary to do so, require the planning authority or authorities referred to in that subsection or any planning authority or authorities on whose area or areas it would have a significant effect to furnish to the Board such information in relation to the effects of the proposed development on the proper planning and sustainable development of the area concerned and on the environment as the Board may specify. 25 30 35

Section 37E:
supplemental
provisions.

37F.—(1) Before determining any application for permission under section 37E the Board may, at its absolute discretion and at any time—

(a) require the applicant for permission to submit further information, including a revised environmental impact statement, 40

(b) indicate that it is considering granting permission, subject to the applicant for permission submitting revised particulars, plans or drawings in relation to the development, 45

(c) request further submissions or observations from the applicant for permission, any person who made submissions or observations, or any other person who may, in the opinion of the Board, have information which is relevant to the determination of the application, 50 55

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(d) without prejudice to subsections (2) and (3), 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

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(e) hold meetings with the applicant for permission or any other person—

(i) where it appears to the Board to be expedient for the purpose of determining the application, or

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(ii) where it appears to the Board to be necessary or expedient for the purpose of resolving any issue with the applicant for permission or any disagreement between the applicant and any other party, including resolving any issue or disagreement in advance of an oral hearing.

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(2) Where an applicant submits a revised environmental impact statement to the Board in accordance with subsection (1)(a) or otherwise submits further information or revised particulars, plans or drawings in accordance with subsection (1), which, in the opinion of the Board, contain significant additional information on the effect of the proposed development on the environment to that already submitted, the Board shall—

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(a) make the information, particulars, plans or drawings, as appropriate, available for inspection,

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(b) give notice that the information, particulars, plans or drawings are so available, and

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(c) invite further submissions or observations to be made to it within such period as it may specify.

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

(4) 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)(e).

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(5) Before making a decision under section 37G in respect of proposed development comprising or for the purposes of an activity for which an integrated pollution control licence or a waste

licence is required, the Board may request the Environmental Protection Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development. 5

(6) When making its decision under section 37G on the application the Board shall have regard to the observations, if any, received from the Environmental Protection Agency within the period specified under subsection (5). 10

(7) The Board may, at any time after the expiration of the period specified in a notice under section 37E(3)(a) for making submissions or observations, make its decision under section 37G on the application. 15

(8) The making of observations by the Environmental Protection Agency under this section shall not prejudice any other function of the Agency.

Decision by Board on application under section 37E.

37G.—(1) When making a decision in respect of a proposed development for which an application is made under section 37E, the Board may consider any relevant information before it or any other matter to which, by virtue of this Act, it can have regard. 20
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(2) Without prejudice to the generality of subsection (1), the Board shall consider—

(a) the environmental impact statement submitted under section 37E(1), any submissions or observations made, in response to the invitation referred to in section 37E(3), within the period referred to in that provision, the report (and the recommendations, if any, attached to it) submitted by a planning authority in accordance with section 37E(4), any information furnished in accordance with section 37F(1) and any other relevant information before it relating to— 30
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(i) the likely consequences of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the development, 45
and

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

(b) any report or recommendation prepared in relation to the application in accordance with section 146, including the report of the person conducting any oral hearing of the proposed 50

development and the written record of any meeting referred to in section 37F(3),

- (c) the provisions of the development plan or plans for the area,
- (d) the provisions of any special amenity area order relating to the area,
- (e) 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,
- (f) 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,
- (g) the national interest,
- (h) the National Spatial Strategy and any regional planning guidelines in force for the area,
- (i) any relevant policies of the Government, the Minister or any other Minister of the Government, and
- (j) any relevant provisions of this Act and of any regulations made under this Act.

(3) The Board may, in respect of an application under section 37E for permission—

- (a) decide—
 - (i) to grant the permission, or
 - (ii) to make such modifications to the proposed development as it specifies in its decision and grant permission in respect of the proposed development as so modified, or
 - (iii) to grant permission in respect of part of the proposed development (with or without specified modifications of it of the foregoing kind),

or

- (b) decide to refuse to grant the permission,

and a decision to grant permission under paragraph (a)(i), (ii) or (iii) may be subject to or without conditions.

(4) Where an application under section 37E relates to proposed development which comprises or is for the purposes of an activity for which an

integrated pollution control licence or a waste licence is required, the Board shall not, where it decides to grant permission, subject that permission to conditions which are for the purposes of— 5

(a) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or 10

(b) controlling emissions related to or following the cessation of the operation or the activity.

(5) Where an application under section 37E relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board may, in respect of that development, decide to refuse a grant of permission under this section, where the Board considers that the development, notwithstanding the licensing of the activity, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development will be situated. 15 20 25

(6) The Board may decide to grant a permission for development, or any part of a development, under this section even if the proposed development, or part thereof, contravenes materially the development plan relating to any area in which it is proposed to situate the development. 30

(7) Without prejudice to the generality of the Board's powers to attach conditions under subsection (3) the Board may attach to a permission for development under this section— 35

(a) a condition with regard to any of the matters specified in section 34(4),

(b) a condition requiring the payment of a contribution or contributions of the same kind as the appropriate planning authority could require to be paid under section 48 or 49 (or both) were that authority to grant the permission (and the scheme or schemes referred to in section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions), 40 45

(c) a condition requiring the applicant to submit further information to it or any other local or state authority, as the Board may specify before commencing development, or 50

(d) a condition requiring—

- (i) the construction or the financing, in whole or in part, of the construction of a facility, or
- (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 gain to the community.

(8) A condition attached pursuant to subsection (7)(d) 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 permission operates of the benefits likely to accrue from the grant of the permission.

(9) In subsection (7)(b) ‘appropriate planning authority’ means whichever planning authority would, but for the enactment of *section 3 of the Planning and Development (Strategic Infrastructure) Act 2006*, be the appropriate planning authority to grant the permission referred to in this section.

(10) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section or sections 37H to 37J 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.

Section 37G:
supplemental
provisions.

37H.—(1) The Board shall send a copy of a decision under section 37G to the applicant, to any planning authority in whose area the development would be situated and to any person who made submissions or observations on the application for permission.

(2) A decision given under section 37G and the notification of the decision shall state—

- (a) the main reasons and considerations on which the decision is based,
- (b) where conditions are imposed in relation to the grant of any permission, the main reasons for the imposition of any such conditions, and
- (c) the sum due to be paid to the Board towards the costs to the Board of determining the application under section 37E, and, in such amount as the Board considers to be reasonable, to any planning authority that incurred

costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which sums the Board may, by virtue of this subsection, require to be paid). 5

(3) A reference to costs in subsection (2)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs. 10

(4) A grant of permission under section 37G shall not become operative until any requirement made under subsection (2)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with. 15

(5) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement made under subsection (2)(c) the Board, the authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction. 20

(6) A person shall not be entitled solely by reason of a permission under section 37G to carry out any development. 25

Regulations.

37I.—(1) 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— 30

- (a) consultations under section 37B,
- (b) the giving of an opinion under section 37D,
- (c) applications for permission under section 37E, and 35
- (d) decisions under section 37G.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) make provision for matters of procedure in relation to the making of an application under section 37E, including the giving of public notice and the making of applications in electronic form, 40
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- (b) require an applicant under section 37E to pay a specified fee in respect of the making of the application thereunder, and

- (c) make provision for matters of procedure relating to the making of observations by the Environmental Protection Agency under section 37F(5) and matters connected therewith.

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Objective of the Board in relation to applications under section 37E.

37J.—(1) It shall be the duty of the Board, having regard to the special importance of applications relating to development that may fall within section 37A(2), to ensure that—

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- (a) consultations held on foot of a request under section 37B are completed, and

- (b) a decision under section 37G on an application made under section 37E is made,

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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.

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(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 37G on an application made under section 37E is made—

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- (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 37E(3)(a), or

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- (b) within such other period as the Minister may prescribe either generally or in respect of a particular class or classes of matter.

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(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 for permission, 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 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.

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(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 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 referred to in section 37E, 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. 5

(6) Where the Minister considers it to be necessary or expedient that a certain class or classes of application under section 37E 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. 10 15

(7) The Board shall include in each report made under section 118 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 may direct.”. 20 25

Provision of electricity transmission and gas infrastructure.

4.—Part XI of the Principal Act is amended by inserting the following sections after section 182:

“Electricity transmission lines.

182A.—(1) Where a person (hereafter referred to in this section as the ‘undertaker’) intends to carry out development comprising or for the purposes of electricity transmission, being development— 30

(a) belonging to a class of development identified for the purposes of section 176, or 35

(b) which would be situated in the area of more than one planning authority,

(hereafter referred to in this section 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. 40

(2) In the case of development referred to in subsection (1)(a), the undertaker shall prepare, or cause to be prepared, an environmental impact statement in respect of the development. 45

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications. 50

(4) Before an undertaker makes an application under subsection (1) for approval, it shall—

5 (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—

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

15 (II) in the case of an application referred to in subsection (1)(a), an environmental impact statement has been prepared in respect of the proposed development,

20 (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 any 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

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

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

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

if carried out,

and

40 (b) send a copy of the application and any environmental impact statement to the local authority or each local authority in whose functional area the proposed development would be situate and to the prescribed authorities 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—

45 (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, 5

if carried out.

(5) The Board may—

- (a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to— 10

- (i) the effects on the environment of the proposed 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 development of such development, 15

as the Board may specify, or 20

- (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 statutory undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker 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. 25 30 35

(6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182B. 40

(7) The Board shall—

- (a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to— 45

- (i) the likely effect 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 undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b),

require the undertaker to do the things referred to in subsection (8).

(8) The things which an undertaker 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 undertaker 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 (4)(b)—

(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 5

(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 undertaker. 10 15

(9) In this section ‘transmission’, in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of an interconnector, whether ownership of the interconnector will be vested in the undertaker concerned or not. 20 25

Section 182A: criteria for decision, certain exemptions, etc. 182B.—(1) Before making a decision in respect of a proposed development the subject of an application under section 182A, the Board shall consider— 30

(a) the environmental impact statement submitted pursuant to section 182A(1) or (5), any submissions or observations made in accordance with section 182A(4) or (8) and any other information furnished in accordance with section 182A(5) relating to— 35

(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 40

(ii) the likely effects on the environment of the proposed development, 45

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 a proposed development 50

5 from a requirement under section 182A(2) 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.

10 (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

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

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

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

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

30 (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.

35 (5) The Board may, in respect of an application under section 182A for approval of proposed development—

(a) approve the proposed development,

40 (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

45 (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.

(6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(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 5

(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 gain to the community. 10

(7) A condition attached pursuant to subsection (6) 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. 15 20

(8) 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 applications under section 182A for approval. 25

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought. 30

(10) 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, the Board shall have regard to— 35

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

(b) the provisions of any special amenity area order relating to the area, 40

(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, 45

(e) where relevant, the policies of the Government, the Minister or any other Minister of the Government, and 50

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

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

(12) 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.

Application for approval of strategic gas infrastructure development.

182C.—(1) Where a person (hereafter referred to in this section as the ‘undertaker’) intends to carry out a strategic gas infrastructure development (hereafter referred to in this section and section 182D as ‘proposed development’), the undertaker shall prepare, or cause to be prepared—

(a) an application for approval of the development under section 182D, and

(b) an environmental impact statement in respect of the development,

and shall apply to the Board for such approval accordingly, indicating in the application whether the application relates to a strategic upstream gas pipeline or a strategic downstream gas pipeline.

(2) An application under subsection (1) for approval of a proposed development shall, if it will consist of or include a pipeline, be accompanied by a certificate in relation to the pipeline provided under section 26 of the Gas Act 1976, as amended, or section 20 of the Gas (Amendment) Act 2000 by—

(a) in the case of a strategic upstream gas pipeline, the Minister for Communications, Marine and Natural Resources, or

(b) in the case of a strategic downstream gas pipeline, the Commission.

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(4) Before an undertaker 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, 5
- (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), and 10 15
- (iii) inviting the making, during such period, of submissions and observations to the Board relating to— 20
 - (I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and 25
 - (II) the likely effects on the environment of the proposed development,
- if carried out,
- and 30
- (b) send a copy of the application and the environmental impact statement to—
 - (i) the local authority or each local authority in whose functional area the proposed development would be situate, 35
 - (ii) any prescribed bodies, and
 - (iii) where the proposed development comprises or is for the purposes of a strategic downstream gas pipeline, the Commission, 40
- 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— 45
- (I) the implications of the proposed development for proper planning and sustainable development in the area concerned, and 50

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

if carried out.

(5) The Board may—

5 (a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to—

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

15 (ii) the 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,

as the Board may specify, or

20 (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 undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker 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.

35 (6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182D.

40 (7) The Board shall—

45 (a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to—

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

50 (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 undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b), 5

require the undertaker to do the things referred to in subsection (8).

- (8) The things which an undertaker shall be required to do as aforesaid are— 10

- (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— 15

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

- (ii) the undertaker 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, 20

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 30

- (b) to send to each prescribed authority to which a notice was given pursuant to subsection (4)(b)— 45

- (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 50

(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 undertaker.

(9) In the case of a proposed development comprising or for the purposes of a strategic downstream pipeline, the Board shall request the Commission to make observations within such period (which period shall not be less than 3 weeks from the date of the request) as may be specified by the Board in relation to the proposed development, including observations in relation to any safety or operational matters.

(10) The Minister, after consultation with the Minister for Communications, Marine and Natural Resources, may make regulations to provide for matters of procedure in relation to the making of a request of the Commission under subsection (9) and the making of observations by the Commission on foot of such a request.

(11) In this section ‘Commission’ means the Commission for Energy Regulation.

Section 182C:
criteria for
decision,
certain
exemptions, etc.

182D.—(1) Before making a decision in respect of a proposed development the subject of an application under section 182C, the Board shall consider—

(a) the environmental impact statement submitted pursuant to section 182C(1) or (5), any submissions or observations made in accordance with section 182C(4), (8) or (9) and any other information furnished in accordance with section 182C(5) 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 182C(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) Notice of any exemption granted under subsection (2), of the reasons for granting the exemption, and 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.

(5) The Board may, in respect of an application under section 182C 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.

5 (6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(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

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

15 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 gain to the community.

20 (7) A condition attached pursuant to subsection (6) 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.

25 (8) The Minister may, after consultation with the Minister for Communications, Marine and Natural Resources, make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications under section 182C for approval.

30 (9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

35 (10) 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, 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,

45 (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,

50 (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 policies of the Government, the Minister or any other Minister of the Government, and

(f) the provisions of this Act and regulations under this Act where relevant. 5

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

(12) 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 15 construed accordingly.

Procedures in advance of seeking approval under section 182B or 182D.

182E.—(1) A person (a ‘prospective applicant’) who proposes to apply for approval under section 182B or 182D shall, before making the application, enter into consultations with the Board in relation to 20 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— 25

(a) the procedures involved in making such an application, and

(b) what considerations, related to proper planning and sustainable development, may, in the opinion of the Board, have 30 a bearing on its decision in relation to the application.

(3) A prospective applicant may request the Board to give to him or her an opinion in writing prepared by the Board on what information will be 35 required to be contained in an environmental impact statement in relation to the proposed development; on receipt of such a request the Board shall comply with it as soon as is practicable.

(4) A prospective applicant shall, for the purposes of— 40

(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 45 to the proposed development so as to enable the Board to assess the proposed development.

(5) Neither—

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

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

5 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.

10 (6) 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.”.

5.—The Principal Act is amended by inserting the following Schedule after the Sixth Schedule: Addition of Seventh Schedule to Principal Act.

Section 37A.

“SEVENTH SCHEDULE

20 Infrastructure Developments for the purposes of sections 37A and 37B

Energy Infrastructure

1.— Development comprising or for the purposes of any of the following:

25 —An installation for the onshore extraction of petroleum or natural gas.

30 —A crude oil refinery (excluding an undertaking manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

—A thermal power station or other combustion installation with a total energy output of 300 megawatts or more.

35 —An industrial installation for the production of electricity, steam or hot water with a heat output of 300 megawatts or more.

40 —An industrial installation for carrying gas, steam or hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables, where the voltage would be 220 kilovolts or more, but excluding any proposed development referred to in section 182A(1).

45 —An oil pipeline and any associated terminals, buildings and installations, where the length of

the pipeline (whether as originally provided or as extended) would exceed 20 kilometres.

- An installation for surface storage of natural gas, where the storage capacity would exceed 200 tonnes. 5
- An installation for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes.
- An installation for the surface storage of oil or coal, where the storage capacity would exceed 100,000 tonnes. 10
- An installation for hydroelectric energy production with an output of 300 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel. 15
- An installation for the harnessing of wind power for energy production (a wind farm) with more than 50 turbines or having a total output greater than 100 megawatts. 20
- An onshore terminal, building or installation, whether above or below ground, associated with a natural gas storage facility, where the storage capacity would exceed 1mscm. 25
- An onshore terminal, building or installation, whether above or below ground, associated with an LNG facility and, for the purpose of this provision, ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading and re-gasification of liquefied natural gas, including ancillary services. 30

Transport Infrastructure

- 2.— Development comprising or for the purposes of any of the following: 35
 - An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area. 40
 - A terminal, building or installation associated with a long-distance railway, tramway, surface, elevated or underground railway or railway supported by suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, but excluding 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*). 45 50

5 —An airport (with not less than 2 million instances of passenger use per annum) or any runway, taxiway, pier, car park, terminal or other facility or installation related to it (whether as regards passenger traffic or cargo traffic).

—A harbour or port installation—

(a) where the area or additional area of water enclosed would be 20 hectares or more, or

10 (b) which would involve the reclamation of 5 hectares or more of land, or

(c) which would involve the construction of quays each of which would exceed 100 metres in length, or

(d) which would enable a vessel of over 1350 tonnes to enter within it.

15 *Environmental Infrastructure*

3.— Development comprising or for the purposes of any of the following:

—A waste disposal installation for—

(a) the incineration, or

20 (b) the chemical treatment (within the meaning of Annex IIA to Council Directive 75/442/EEC¹ under heading D9), or

(c) the landfill,

25 of hazardous waste to which Council Directive 91/689/EEC² applies (other than an industrial waste disposal installation integrated into a larger industrial facility).

—A waste disposal installation for—

(a) the incineration, or

30 (b) the chemical treatment (within the meaning of Annex IIA to Council Directive 75/442/EEC¹ under heading D9),

of non-hazardous waste with a capacity for an annual intake greater than 100,000 tonnes.

35 —An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.

40 —A groundwater abstraction or artificial groundwater recharge scheme, where the annual volume of water abstracted or recharged is equivalent to or exceeds 2 million cubic metres.

¹O.J. No. L194/39 25.7.1975

²O.J. No. L377/20 31.12.1991

- Any works for the transfer of water resources between river basins, where the annual volume of water abstracted or recharged would exceed 2 million cubic metres.

- A waste water treatment plant with a capacity greater than a population equivalent of 10,000 and, for the purpose of this provision, population equivalent shall be determined in accordance with Article 2, point 6, of Council Directive 91/271/EEC³.

- A sludge-deposition site with the capacity for the annual deposition of 50,000 tonnes of sludge (wet).

- Any canalisation or flood relief works where—
 - (a) the immediate contributing sub-catchment of the proposed works (namely the difference between the contributing catchments at the upper and lower extent of the works) would exceed 1000 hectares, or

 - (b) more than 20 hectares of wetland would be affected, or

 - (c) the length of river channel on which works are proposed would be greater than 2 kilometres.

- A dam or other installation designed for the holding back or the permanent or long-term storage of water, where the new or extended area of water impounded would be 30 hectares or more or where a new or additional amount of water held back or stored would exceed 10 million cubic metres.

- An installation of overground aqueducts each of which would have a diameter of 1,000 millimetres or more and a length of 500 metres or more.

- Any coastal works to combat erosion or maritime works capable of altering the coast through the construction, for example, of dikes, moles, jetties and other sea defence works, where in each case the length of coastline on which the works would take place would exceed 1 kilometre, but excluding the maintenance or reconstruction of such works or works required for emergency purposes.”.

³O.J. No. L135/40 30.5.1991

PART 3

AMENDMENTS OF PRINCIPAL ACT (INCLUDING AMENDMENTS
CONSEQUENTIAL ON *Part 2*)

6.—Section 2(1) of the Principal Act is amended—

Amendment of
section 2 of Principal
Act.

5 (a) by inserting the following definition after the definition of
“Minister”:

10 “ ‘National Spatial Strategy’ means the ‘National Spatial
Strategy: 2002 – 2020’ published by the Government on 28
November 2002, or any document published by the Govern-
ment which amends or replaces that Strategy;”,

(b) by inserting the following definition after the definition of
“party to an appeal or referral”:

“ ‘permission’ means a permission granted under section 34
or 37G, as appropriate;”,

15 (c) by inserting the following definitions after the definition of
“statutory undertaker”:

20 “ ‘strategic downstream gas pipeline’ means any proposed gas
pipeline, other than an upstream gas pipeline, which is
designed to operate at 16 bar or greater, and is longer than
20 kilometres in length;

25 ‘strategic gas infrastructure development’ means any pro-
posed development comprising or for the purposes of a strate-
gic downstream gas pipeline or a strategic upstream gas
pipeline, and associated terminals, buildings and installations,
whether above or below ground, including any associated dis-
charge pipe;

‘strategic infrastructure development’ means—

30 (a) any proposed development in respect of which a
notice has been served under section 37B(4)(a),

(b) any proposed development by a local authority
referred to in section 175(1) or 226(6),

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

35 (d) any proposed strategic gas infrastructure develop-
ment referred to in section 182C(1),

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

40 (f) 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

(g) any compulsory acquisition of land referred to in
section 214 or 215A, being an acquisition related

to development specified in any of the preceding paragraphs of this definition;

‘Strategic Infrastructure Division’ means the division of the Board referred to in section 112A(1);

‘strategic upstream gas pipeline’ means so much of any gas pipeline proposed to be operated or constructed— 5

- (a) as part of a gas production project, or
- (b) for the purpose of conveying unprocessed natural gas from one or more than one such project to a processing plant or terminal or final coastal landing terminal, 10

as will be situate in the functional area or areas of a planning authority or planning authorities;”,

and

- (d) in the definitions of “unauthorised structure”, “unauthorised use” and “unauthorised works”, by substituting “or under section 34 or 37G of this Act” for “or under section 34 of this Act” in each place where those words occur. 15

Amendment of section 7 of Principal Act. 7.—Section 7(2) of the Principal Act is amended by inserting the following paragraph after paragraph (t): 20

“(t) particulars of any development referred to in section 179(4)(b);”.

Amendment of section 34 of Principal Act. 8.—Section 34(4) of the Principal Act is amended by substituting the following paragraph for paragraph (a):

“(a) conditions for regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant if the imposition of such conditions appears to the planning authority— 25

(i) to be expedient for the purposes of or in connection with the development authorised by the permission, or 30

(ii) to be appropriate, where any aspect or feature of that adjoining, abutting or adjacent land constitutes an amenity for the public or a section of the public, for the purposes of conserving that amenity for the public or that section of the public (and the effect of the imposition of conditions for that purpose would not be to burden unduly the person in whose favour the permission operates);”. 35 40

Amendment of section 35 of Principal Act. 9.—Section 35 of the Principal Act is amended by substituting the following subsections for subsections (4) to (6):

“(4) If the planning authority considers that there are good grounds for its being able to form the opinion under subsection (1) in relation to an application for permission in respect of the 45

development concerned and, accordingly, to exercise the power under subsection (5) to refuse that permission, it shall serve a notice in writing on the applicant to that effect and that notice shall—

- 5 (a) specify the failures to comply that the authority intends to take into consideration with regard to the proposed exercise of that power, and
- 10 (b) invite the applicant to make submissions to the authority, within a period specified in the notice, as to why the applicant considers that the authority should not exercise that power (whether because the applicant contends the views of the authority in relation to compliance by the applicant or any other person with any previous permission, or any condition to which it is subject, are incorrect or that there are not good grounds for forming the opinion under subsection (1)).

20 (5) If the planning authority, having considered any submissions made to it in accordance with a notice under subsection (4), proceeds to form the opinion under subsection (1) in relation to the application concerned it shall decide to refuse to grant the permission concerned and notify the applicant accordingly.

25 (6) The applicant may, within 8 weeks from the receipt of that notification, notwithstanding sections 50 and 50A, apply, by motion on notice to the planning authority, to the High Court for an order annulling the planning authority's decision and, on the hearing of such application, the High Court may, as it considers appropriate, confirm the decision of the authority, annul the decision and direct the authority to consider the applicant's application for planning permission without reference to the provisions of this section or make such other order as it thinks fit.

30 (6A) If, in pursuance of subsection (6), the High Court directs the planning authority to consider the applicant's application for planning permission without reference to the provisions of this section, the planning authority shall make its decision on the application within the period of 8 weeks from the date the order of the High Court in the matter is perfected but this subsection is subject to the provisions of section 34(8) as applied to the foregoing case by subsection (6B).

(6B) For the purposes of the foregoing case the provisions of section 34(8) shall apply with the following modifications:

- 40 (a) in paragraph (a) of section 34(8), after “paragraphs (b), (c), (d) and (e)”, there shall be inserted “and section 35(6A)”,
- 45 (b) for the reference in paragraph (b) of section 34(8) to “8 weeks of the receipt of a planning application” there shall be substituted “8 weeks of the date the order of the High Court in the matter is perfected”,
- 50 (c) in paragraph (f) of section 34(8), after “paragraph (a), (b), (c), (d) or (e)”, there shall be inserted “, the period specified in section 35(6A) or, as the case may be, the period specified in paragraph (b), (c), (d) or (e) as that paragraph is applied by virtue of section 35(6B)”, and
- (d) any other necessary modifications.

(6C) No appeal shall lie to the Board from a decision of a planning authority to refuse to grant planning permission under subsection (5).”.

Amendment of
section 37 of
Principal Act.

10.—Section 37(4) of the Principal Act is amended by inserting the following paragraphs after paragraph (b): 5

“(c) Notwithstanding subsection (1), a body or organisation referred to in paragraph (d) shall be entitled to appeal to the Board against a decision by a planning authority on an application for development (being development in respect of which an environmental impact statement was required to be submitted to the planning authority in accordance with section 172) before the expiration of the appropriate period within the meaning of that subsection. 10

(d) The body or organisation mentioned in paragraph (c) is a body or organisation (not being a State authority, a public authority or a governmental body or agency)— 15

(i) the aims or objectives of which relate to the promotion of environmental protection,

(ii) which has, during the period of 12 months preceding the making of the appeal, pursued those aims or objectives, and 20

(iii) which satisfies such additional requirements (if any) as are prescribed under paragraph (e).

(e) The Minister may prescribe additional requirements which a body or organisation of the foregoing kind must satisfy in order to make an appeal under paragraph (c), including requirements— 25

(i) in relation to its membership,

(ii) that the pursuit of its aims or objectives be otherwise than for profit, 30

(iii) in relation to the possession of a specified legal personality and the possession of a constitution or rules,

(iv) that the area of environmental protection to which its aims or objectives relate is relevant to the class of matter into which the decision, the subject of the appeal, falls. 35

(f) The Board may dismiss any appeal made under paragraph (c) where it considers that the body or organisation concerned does not satisfy the requirements of paragraph (d)(i), (ii) or (iii).” 40

Amendment of
section 38 of
Principal Act.

11.—Section 38(2) of the Principal Act is amended by inserting “and the Data Protection Acts 1988 and 2003” after “those regulations,”.

12.—Section 41 of the Principal Act is amended—

Amendment of section 41 of Principal Act.

(a) by substituting “section 34, 37 or 37G” for “sections 34 and 37” in each place where those words occur, and

(b) by inserting “or the Board” after “planning authority” where those words secondly occur.

13.—The following sections are substituted for section 50 of the Principal Act:

Judicial review of, and determination of questions of law arising in, certain matters.

“Judicial review of applications, appeals, referrals and other matters.

50.—(1) Where a question of law arises on any appeal or referral or application under section 37E, the Board may refer the question to the High Court for decision.

(2) A person shall not question the validity of any decision made or other act done by—

(a) a planning authority, a local authority or the Board in the performance or purported performance of a function under this Act,

(b) the Board in the performance or purported performance of a function transferred under Part XIV, or

(c) a local authority in the performance or purported performance of a function conferred by an enactment specified in section 214 relating to the compulsory acquisition of land,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the ‘Order’).

(3) Subsection (2)(a) does not apply to an approval or consent referred to in Chapter I or II of Part VI.

(4) A planning authority, a local authority or the Board may, at any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (2) applies and which relates to a matter for the time being before the authority or the Board, as the case may be, apply to the High Court to stay the proceedings pending the making of a decision by the authority or the Board in relation to the matter concerned.

(5) On the making of such an application, the High Court may, where it considers that the matter before the authority or the Board is within the jurisdiction of the authority or the Board, make an order staying the proceedings concerned on such terms as it thinks fit.

(6) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(a) applies shall be made within the period of 8 weeks beginning on the date of the decision or, as the case may be, the date of the doing of the act by the planning authority, the local authority or the Board, as appropriate. 5

(7) Subject to subsection (8), an application for leave to apply for judicial review under the Order in respect of a decision or other act to which subsection (2)(b) or (c) applies shall be made within the period of 8 weeks beginning on the date on which notice of the decision or act was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred under Part XIV or which is specified in section 214, was first published). 10 15

(8) The High Court may extend the period provided for in subsection (6) or (7) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that— 20

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension. 25

(9) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court. 30

Section 50:
supplemental
provisions.

50A.—(1) In this section—

‘Court’, where used without qualification, means the High Court; 35

‘Order’ shall be construed in accordance with section 50;

‘section 50 leave’ means leave to apply for judicial review under the Order in respect of a decision or other act to which section 50(2) applies. 40

(2) The provisions of the Order with respect to an application for leave to apply for judicial review being made by motion ex parte and the manner in which such an application is to be grounded shall apply to an application for section 50 leave but the Court shall not grant section 50 leave unless it is satisfied that— 45

(a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and 50

(b) (i) the applicant has a substantial interest in the matter which is the subject of the application, or

5 (ii) where the decision or act concerned relates to a development identified in or under regulations made under section 176, for the time being in force, as being development which may have significant effects on the environment, the applicant—

10 (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection,

15 (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives, and

20 (III) satisfies such requirements (if any) as a body or organisation, if it were to make an appeal under section 37(4)(c), would have to satisfy by virtue of section 37(4)(d)(iii) (and, for this purpose, any requirement prescribed under section 37(4)(e)(iv) shall apply as if the reference in it to the class of matter into which the decision, the subject of the appeal, falls were a reference to the class of matter into which the decision or act, the subject of the application for section 50 leave, falls).

25 (3) A substantial interest for the purposes of subsection (2)(b)(i) is not limited to an interest in land or other financial interest.

30 (4) If the court grants section 50 leave, no grounds shall be relied upon in the application for judicial review under the Order other than those determined by the Court to be substantial under subsection (2)(a).

35 (5) The Court may, as a condition for granting section 50 leave, require the applicant for such leave to give an undertaking as to damages.

40 (6) The determination of the Court of an application for section 50 leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Supreme Court in either case save with leave of the Court which leave shall only be granted where

the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(7) Subsection (6) shall not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution. 5

(8) If an application is made for judicial review under the Order in respect of part only of a decision or other act to which section 50(2) applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate. 10 15

(9) The Court shall, in determining an application for section 50 leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice. 20

(10) On an appeal from a determination of the Court in respect of an application referred to in subsection (9), the Supreme Court shall— 25

(a) have jurisdiction to determine only the point of law certified by the Court under subsection (6) (and to make only such order in the proceedings as follows from such determination), and 30

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(11) Rules of court may make provision for the expeditious hearing of applications for section 50 leave and applications for judicial review on foot of such leave.”. 35

Amendment of section 104 of Principal Act.

14.—Section 104(1) of the Principal Act is amended by substituting “9 ordinary members” for “7 other ordinary members”. 40

Amendment of section 106 of Principal Act.

15.—Section 106 of the Principal Act is amended—

(a) by substituting the following subsections for subsections (1) and (2):

“(1) The Minister shall appoint the 9 ordinary members of the Board as follows: 45

(a) 2 members shall be appointed from amongst persons nominated for such appointment by such organisations that, in the Minister’s opinion, are representative of persons whose professions or

occupations relate to physical planning, engineering and architecture as may be prescribed;

5 (b) 2 members shall be appointed from amongst persons nominated for such appointment by such organisations that, in the Minister's opinion, are concerned with economic development, the promotion of and carrying out of development, the provision of infrastructure or the development of land or otherwise connected with the construction industry as may be prescribed;

10 (c) 2 members shall be appointed from among persons nominated for such appointment by such—

15 (i) organisations that, in the Minister's opinion, are representative of the interests of local government,

(ii) bodies representing farming, and

(iii) trade unions,

as may be prescribed;

20 (d) 2 members shall be appointed from among persons nominated for such appointment by such—

(i) organisations that, in the Minister's opinion, are representative of persons concerned with the protection and preservation of the environment and of amenities,

25 (ii) voluntary bodies and bodies having charitable objects,

30 (iii) bodies that, in the Minister's opinion, have a special interest or expertise in matters relating to rural and local community development, the promotion of the Irish language or the promotion of heritage, the arts and culture,

(iv) bodies that are representative of people with disabilities, and

35 (v) bodies that are representative of young people,

as may be prescribed;

40 (e) one member shall be appointed from among the officers of the Minister who are established civil servants for the purposes of the Civil Service Regulation Act 1956.

(2) The Minister shall prescribe at least 2 organisations for the purposes of each of paragraphs (a) to (d) of subsection (1).”,

45 (b) in subsection (4), by substituting “paragraph (a), (b), (c) or (d)” for “paragraph (a), (b), (c), (d), (e) or (f)”, and

(c) in subsection (5), by substituting “subsection (1)(e)” for “subsection (1)(g)”.

Amendment of section 108 of Principal Act.

16.—Section 108(4) of the Principal Act is amended, in paragraph (a), by substituting, “section 106(1)(e)” for “section 106(1)(g)”.

Amendment of section 110 of Principal Act.

17.—Section 110 of the Principal Act is amended by substituting the following subsections for subsection (1): 5

“(1) The chairperson and, subject to the overall direction of the chairperson or where subsection (1A) applies, the deputy chairperson shall each have the function of—

(a) ensuring the efficient discharge of the business of the Board, and 10

(b) arranging the distribution of the business of the Board among its members.

(1A) The functions referred to in subsection (1) shall also fall to be performed by the deputy chairperson where the chairperson is not available or where the office of chairperson is vacant. 15

(1B) The chairperson may assign to any ordinary member any function necessary to ensure the best or most efficient discharge of the business of the Board.

(1C) The chairperson, or the deputy chairperson where the chairperson is not available or where the office of chairperson is vacant, shall take all practical steps to ensure that the organisation and disposition of the staff and resources of the Board are such as to enable the Strategic Infrastructure Division to discharge its business expeditiously.”. 20 25

Amendment of section 112 of Principal Act.

18.—Section 112 of the Principal Act is amended by adding the following subsection after subsection (3):

“(4) This section is without prejudice to section 112A.”.

Strategic Infrastructure Division.

19.—The following section is inserted after section 112 of the Principal Act: 30

“Strategic Infrastructure Division.

112A.—(1) A division of the Board which shall be known as the Strategic Infrastructure Division is established on the commencement of *section 19* of the *Planning and Development (Strategic Infrastructure) Act 2006*. 35

(2) That division is in addition to any division for the time being constituted under section 112.

(3) The Strategic Infrastructure Division—

(a) shall, subject to subsections (8) and (9), determine any matter falling to be determined by the Board under this Act in relation to strategic infrastructure development, and 40

5

(b) shall determine any other matter falling to be determined by the Board under this or any other enactment, including any class of appeals or referrals, that the chairperson or the deputy chairperson may from time to time assign to it.

(4) For the purpose of business of either of the foregoing kinds, the Strategic Infrastructure Division shall have all the functions of the Board.

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(5) The Strategic Infrastructure Division shall consist of the chairperson and the deputy chairperson and 3 other ordinary members nominated by the chairperson to be, for the time being, members of the Division.

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(6) The chairperson may authorise any other ordinary member to act in place of any member of the Strategic Infrastructure Division referred to in subsection (5) where the latter member is absent.

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(7) The quorum for a meeting of the Strategic Infrastructure Division shall be 3.

(8) Either—

(a) the chairperson or, in his or her absence, the deputy chairperson, or

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(b) a person acting as chairperson of a meeting of the Division,

may, at any stage before a decision is made by the Division, transfer the consideration of any matter from the Strategic Infrastructure Division to a meeting of all available members of the Board where he or she considers the matter to be of particular complexity or significance.

30

(9) The chairperson may, if he or she considers that the issues arising in respect of any particular case of strategic infrastructure development, or any particular class or classes of such case, are not of sufficient complexity or significance as to warrant that case, or that class or those classes of case, being dealt with by the Strategic Infrastructure Division, transfer the consideration of that case, or that class or those classes of case, to another division or part of the Board.”.

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20.—The following section is substituted for section 125 of the Principal Act:

Amendment of section 125 of Principal Act.

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“Appeals, referrals and applications with which the Board is concerned.

125.—This Chapter shall apply—

(a) to appeals and referrals to the Board, and

(b) to the extent provided, to applications made to the Board under section 37E,

but shall not apply to appeals under section 182(4)(b).”.

Oral hearings.

21.—The following sections are substituted for section 134 (as amended by the Local Government Act 2001) of the Principal Act:

“Oral hearings of appeals, referrals and applications.

134.—(1) The Board may in its absolute discretion, hold an oral hearing of an appeal, a referral under section 5 or an application under section 37E. 5

(2) (a) A party to an appeal or a referral under section 5 or an applicant under section 37E or any person who makes a submission or observation under section 37E may request an oral hearing of the appeal, referral or application, as appropriate. 10

(b) (i) A request for an oral hearing of an appeal, referral or application shall be made in writing to the Board and shall be accompanied by such fee (if any) as may be payable in respect of the request in accordance with section 144. 15 20

(ii) A request for an oral hearing of an appeal, referral or application which is not accompanied by such fee (if any) as may be payable in respect of the request shall not be considered by the Board. 25

(c) (i) A request by an appellant for an oral hearing of an appeal under section 37 shall be made within the appropriate period referred to in that section and any request received by the Board after the expiration of that period shall not be considered by the Board. 30 35

(ii) Where a provision of this Act, other than sections 37 and 254(6), authorising an appeal to the Board enables the appeal only to be made within, or before the expiration of, a specified period or before a specified day, a request by an appellant for an oral hearing of an appeal may only be made within, or before the expiration of, the specified period or before the specified day and any request for an oral hearing not so received by the Board shall not be considered by the Board. 40 45

(iii) A request by a person making a referral, by an applicant under section 37E or by an appellant under section 254(6) for an oral hearing of the referral, application 50

or appeal, as the case may be, shall accompany the referral, application or appeal, and any request for an oral hearing received by the Board, other than a request which accompanies the referral, application or appeal, shall not be considered by the Board.

(d) A request by a party to an appeal or referral other than the appellant, or by a person who makes a submission or observation in relation to an application under section 37E, for an oral hearing shall be made—

(i) in respect of an appeal or referral, within the period referred to in section 129(2)(a) within which the party may make submissions or observations to the Board in relation to the appeal or referral,

(ii) in respect of an application under section 37E, within the period specified in a notice under that section within which the person may make submissions or observations to the Board in relation to the application,

and any such request received by the Board after the expiration of that period shall not be considered by the Board.

(3) Where the Board is requested to hold an oral hearing of an appeal, referral or application and decides to determine the appeal, referral or application without an oral hearing, the Board shall serve notice of its decision on—

(a) the person who requested the hearing and on each other party to the appeal or referral or, as appropriate, (unless he or she was the requester) the applicant under section 37E, and

(b) each person who has made submissions or observations to the Board in relation to the appeal, referral or application (not being the person who was the requester).

(4) (a) A request for an oral hearing may be withdrawn at any time.

(b) Where, following a withdrawal of a request for an oral hearing under paragraph (a), the appeal, referral or application falls to be determined without an oral hearing, the Board shall give notice that it falls to be so determined—

(i) to each other party to the appeal or referral or, as appropriate, (unless

he or she was the person who withdrew the request) the applicant under section 37E, and

- (ii) to each person who has made submissions or observations to the Board in relation to the appeal, referral or application (not being the person who withdrew the request).

Further power to hold oral hearings.

134A.—(1) Subject to section 218, where the Board considers it necessary or expedient for the purposes of making a determination in respect of any of its functions under this Act or any other enactment, it may, in its absolute discretion, hold an oral hearing and shall, in addition to any other requirements under this Act or other enactment, as appropriate, consider the report and any recommendations of the person holding the oral hearing before making such determination.

(2) Section 135 shall apply to any oral hearing held in accordance with subsection (1) and that section shall be construed accordingly.

(3) This section is in addition to section 134.”.

Amendment of section 135 of Principal Act.

22.—Section 135 of the Principal Act is amended—

- (a) by substituting the following subsections for subsections (1) to (3):

“(1) The Board or an employee of the Board duly authorised by the Board may assign a person to conduct an oral hearing of an appeal, referral or application on behalf of the Board.

(2) The person conducting an oral hearing of an appeal, referral or application shall have discretion as to the conduct of the hearing and shall conduct the hearing expeditiously and without undue formality (but subject to any direction given by the Board under subsection (2A)).

(2A) The Board may give a direction to the person conducting an oral hearing that he or she shall require persons intending to appear at the hearing to submit to him or her, in writing and in advance of the hearing, the points or a summary of the arguments they propose to make at the hearing; where such a direction is given that person shall comply with it (and, accordingly, is enabled to make such a requirement).

(2B) Subject to the foregoing provisions, the person conducting the oral hearing—

- (a) shall decide the order of appearance of persons at the hearing,

- (b) shall permit any person to appear in person or to be represented by another person,

- 5 (c) may limit the time within which each person may make points or arguments (including arguments in refutation of arguments made by others at the hearing), or question the evidence of others, at the hearing,
- (d) may refuse to allow the making of a point or an argument if—
 - 10 (i) the point or a summary of the argument has not been submitted in advance to the person in accordance with a requirement made pursuant to a direction given under subsection (2A),
 - (ii) the point or argument is not relevant to the subject matter of the hearing, or
 - 15 (iii) it is considered necessary so as to avoid undue repetition of the same point or argument,
- 20 (e) may hear a person other than a person who has made submissions or observations to the Board in relation to the subject matter of the hearing if it is considered appropriate in the interests of justice to allow the person to be heard.

25 (3) A person conducting an oral hearing of any appeal, application or referral may require any officer of a planning authority or a local authority to give to him or her any information in relation to the appeal, application or referral which he or she reasonably requires for the purposes of the appeal, application or referral, and it shall be the duty of the officer to comply with the requirement.”,

and

30 (b) by substituting in subsections (4), (5) and (8), “appeal, referral or application” for “appeal or referral” in each place where those words occur.

23.—The following section is substituted for section 143 of the Principal Act:

Amendment of section 143 of Principal Act.

- 35 “Board to have regard to certain policies and objectives.
- 143.—(1) The Board shall, in performing its functions, have regard to—
- 40 (a) the policies and objectives for the time being of the Government, a State authority, the Minister, planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns or other areas, whether urban or rural,
 - 45 (b) the national interest and any effect the performance of the Board’s functions may have on issues of strategic economic or social importance to the State, and

(c) the National Spatial Strategy and any regional planning guidelines for the time being in force.

(2) In this section ‘public authority’ means any body established by or under statute which is for the time being declared, by regulations made by the Minister, to be a public authority for the purposes of this section.”. 5

Amendment of section 146 of Principal Act.

24.—Section 146 of the Principal Act is amended by substituting the following subsections for subsections (3) and (4): 10

“(3) Where, during the consideration by it of any—

- (a) appeal,
- (b) referral,
- (c) application under section 37E or 175, or
- (d) matter falling to be decided in performance of a function transferred under Part XIV, 15

the Board either—

- (i) is required by or under this Act to supply to any person documents, maps, particulars or other information in relation to the appeal, referral, application or other matter, or 20
- (ii) considers it appropriate, in the exercise of its discretion, to supply to any person such documents, maps, particulars or information (‘relevant material or information’), 25

subsection (4) applies as regards compliance with that requirement or such supply in the exercise of that discretion.

(4) It shall be sufficient compliance with the requirement referred to in subsection (3) for the Board to do both of the following (or, as appropriate, the Board, in the exercise of the discretion referred to in that subsection, may do both of the following), namely: 30

- (a) make the relevant material or information available for inspection—
 - (i) at the offices of the Board or any other place, or 35
 - (ii) by electronic means;
- and
- (b) notify the person concerned that the relevant material or information is so available for inspection.

(5) Within 3 days following the making of a decision on— 40

- (a) an appeal,
- (b) a referral,

- (c) an application under section 37E or 175, or
- (d) a matter falling to be decided in performance of a function transferred under Part XIV,

the documents relating to the appeal, referral, application or other matter—

- (i) shall be made available by the Board for inspection at the offices of the Board by members of the public, and
- (ii) may be made available for such inspection—
 - (I) at any other place, or
 - (II) by electronic means,
 as the Board considers appropriate.

(6) Copies of the documents referred to in subsection (5) and of extracts from such documents shall be made available for purchase at the offices of the Board, or such other places as the Board may determine, for a fee not exceeding the reasonable cost of making the copy.

(7) The documents referred to in subsection (5) shall be made available by the means referred to in paragraph (i) of that subsection for a period of at least 5 years beginning on the third day following the making by the Board of the decision on the appeal, referral, application or other matter concerned.”

25.—The following Chapter is inserted after Chapter III of Part VI of the Principal Act: Amendment of permissions, approvals, etc.

“CHAPTER IV

Additional powers of Board in relation to permissions, decisions, approvals, etc.

Amendments of permissions, etc. of clerical or technical nature. 146A.—(1) Subject to subsection (2), the Board may amend—

- (a) a planning permission granted by it,
- (b) a decision made by it on a referral,
- (c) an approval under section 175 or 182B, or
- (d) a decision made by it in performance of a function transferred under Part XIV,

for the purposes of—

- (i) correcting any clerical error therein,
- (ii) facilitating the doing of any thing pursuant to the permission, decision or approval where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission, decision or approval or the terms of the permission, decision or

approval taken as a whole but which was not expressly provided for in the permission, decision or approval, or

(iii) otherwise facilitating the operation of the permission, decision or approval. 5

(2) 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, decision or approval concerned. 10

(3) 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 Board in relation to, 15 as appropriate—

- (a) the appeal under section 37,
- (b) the application under section 37E concerning the permission concerned,
- (c) the referral of the matter concerned to the Board, 20
- (d) the application under section 175 or 182A concerning the approval concerned, or
- (e) the making of the decision concerned by the Board in the performance of functions transferred under Part XIV, 25

and shall have regard to any submissions made to it on foot of that invitation.

(4) In this section ‘term’ includes a condition.

Alteration by Board of strategic infrastructure development on request made of it.

146B.—(1) Subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act. 30 35

(2) As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned. 40

(3) If the Board decides that the making of the alteration—

- (a) would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other 45

consent accordingly and notify the person who made the request under this section of the alteration,

5 (b) would constitute the making of such a material alteration, it shall determine whether to—

(i) make the alteration,

10 (ii) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or

(iii) refuse to make the alteration.

20 (4) Before making a determination under subsection (3)(b), the Board shall determine whether the extent and character of—

(a) the alteration requested under subsection (1), and

25 (b) any alternative alteration it is considering under subsection (3)(b)(ii),

are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).

30 (5) If the Board determines that the making of either kind of alteration referred to in subsection (3)(b)—

35 (a) is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b), or

40 (b) is likely to have such effects, the provisions of section 146C shall apply.

45 (6) If, in a case to which subsection (5)(a) applies, the Board makes a determination to make an alteration of either kind referred to in subsection (3)(b), it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section of the alteration.

50 (7) In making a determination under subsection (4), 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.

(8) For the purposes of making a decision under subsection (2) or a determination under subsection (4) the Board may invite submissions in relation to the matter to be made to it by any person who made submissions or observations to the Board in relation to, as appropriate— 5

(a) the application under section 37E regarding the permission concerned, 10

(b) the application under section 175, 182A or 226 regarding the approval concerned, or

(c) the making of the decision concerned by the Board in the performance of functions transferred under Part XIV, 15

and shall have regard to any submissions made to it on foot of that invitation.

(9) In this section ‘term’ has the same meaning as it has in section 146A.

Preparation of environmental impact statement for purposes of section 146B.

146C.—(1) This section applies to a case where the determination of the Board under section 146B(4) is that the making of either kind of alteration referred to in section 146B(3)(b) is likely to have significant effects on the environment. 20

(2) In a case to which this section applies, the Board shall require the person who made the request under section 146B (‘the requester’) to prepare an environmental impact statement in relation to the proposed alteration of the terms of the development concerned and, in this subsection and the following subsections of this section, ‘proposed alteration of the terms of the development concerned’ means— 25 30

(a) the alteration referred to in subsection (3)(b)(i), and

(b) any alternative alteration under subsection (3)(b)(ii) the making of which the Board is considering (and particulars of any such alternative alteration the making of which is being so considered shall be furnished, for the purposes of this subsection, by the Board to the requester). 35 40

(3) An environmental impact statement under this section shall contain—

(a) any information that any regulations made under section 177 require to be contained in environmental impact statements generally under this Act, and 45

(b) any other information prescribed in any regulations made under section 177 to the extent that—

(i) such information is relevant to—

(I) the given stage of the consent procedure and to the specific characteristics of the development or type of development concerned, and

(II) the environmental features likely to be affected,

and

(ii) the person or persons preparing the statement may reasonably be required to compile it having regard to current knowledge and methods of assessment,

and

(c) a summary, in non-technical language, of the information referred to in paragraphs (a) and (b).

(4) When an environmental impact statement under this section is prepared, the requester shall as soon as may be—

(a) submit a copy of the statement to the Board, together with either—

(i) a copy of the published notice referred to in paragraph (c), or

(ii) a copy of the notice proposed to be published in accordance with paragraph (c) together with details of its proposed publication and date,

(b) publish a notice, in the prescribed form, in one or more newspapers circulating in the area in which the development concerned is proposed to be, or is being, carried out—

(i) stating that an environmental impact statement has been submitted to the Board in relation to the proposed alteration of the terms of the development concerned,

(ii) indicating the times at which, the period (which shall not be less than 4 weeks) during which and the place or places where a copy of the environmental impact statement may be inspected,

- (iii) stating that a copy of the environmental impact statement may be purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy), and 5
- (iv) stating that submissions or observations may be made in writing to the Board before a specified date (which date shall not be less than 4 weeks after the notice was first published) in relation to the likely effects on the environment of the proposed alteration of the foregoing terms, 10
15
- (c) send a copy of the environmental impact statement together with a notice in the prescribed form to the local authority or each local authority in whose functional area the proposed development would be situate and to any prescribed body or person stating that— 20
 - (i) the statement has been submitted to the Board in relation to the proposed alteration of the terms of the development concerned, 25
 - (ii) before a specified date (which date shall be the same as provided or proposed to be provided for by the notice under paragraph (b)) submissions or observations may be made in writing to the Board in relation to the likely effects on the environment of the proposed alteration of the foregoing terms, 30
35
- (d) send a copy of the environmental impact statement, together with a notice in the prescribed form, to a Member State of the European Communities or a state which is a party to the Transboundary Convention where, in the Board's opinion, the proposed alteration of the terms of the development concerned is likely to have significant effect on the environment in that state, together with a notice (in the prescribed form, if any) stating that— 40
45
 - (i) the statement has been submitted to the Board in relation to the likely effects on the environment of the proposed alteration of the foregoing terms, 50
 - (ii) before a specified date (which date shall be the same as provided or proposed to be provided for by the 55

notice under paragraph (b)) submissions or observations may be made in writing to the Board in relation to the likely effects on the environment in that state of the proposed alteration of those terms,

and the Board may, at its discretion and from time to time, extend any time limits provided for by this subsection.

(5) On the preceding subsections having been complied with, the Board shall, subject to subsections (6) and (7), proceed to make a determination under section 146B(3)(b) in relation to the matter.

(6) In making that determination, the Board shall, to the extent that they appear to the Board to be relevant, have regard to the following:

(a) the environmental impact statement submitted pursuant to subsection (4)(a), any submissions or observations made in response to the invitation referred to in subsection (4)(b) or (c) before the date specified in the notice concerned for that purpose and any other relevant information before it relating to the likely effects on the environment of the proposed alteration of the terms of the development concerned;

(b) where such alteration is likely to have significant adverse effects on the environment in another Member State of the European Communities, or a state which is a party to the Transboundary Convention, the views of such Member State or party;

(c) the development plan or plans for the area in which the development concerned is proposed to be, or is being, carried out (referred to subsequently in this subsection as 'the area');

(d) the provisions of any special amenity area order relating to the area;

(e) 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;

(f) if the development concerned (were it to be carried out in the terms as they are proposed to be altered) would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact;

(g) the national interest;

- (h) the National Spatial Strategy and any regional planning guidelines in force for the area;
- (i) 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; 5
- (j) any matter of policy of the Government, of the Minister, or of any other Minister of the Government; 10
- (k) 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 15
- (l) any relevant provisions of this Act and of any regulations made under this Act.

(7) The Board shall not make a determination under section 146B(3)(b) in a case to which this section applies at any time prior to the date specified, pursuant to subparagraph (iv) of subsection (4)(b), in the notice under subsection (4)(b). 20

(8) Where the Board makes a determination under section 146B(3)(b) in a case to which this section applies— 25

- (a) it shall give public notice of the determination (including notice in the area in which the development concerned is proposed to be, or is being, carried out) and inform any state to which an environmental impact statement has been sent under subsection (4)(d) of the determination, including, if the determination is of the kind referred to in paragraph (b), particulars of the determination, and 30 35
- (b) if the determination is a determination to make an alteration of either kind referred to in section 146B(3)(b), it shall alter the planning permission, approval or other consent accordingly and notify the requester of the alteration. 40

(9) 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. 50

Application of sections 146A to 146C to railway orders.

146D.—Sections 146A to 146C shall apply to a railway order under the Transport (Railway Infrastructure) Act 2001 as they apply to a permission, decision or approval referred to in them with the following modifications:

- (a) a reference in those sections to the terms of the development shall be construed as a reference to the terms of the railway works, the subject of the railway order;
- (b) a reference in those sections to altering the terms of the development shall be construed as a reference to amending, by order, the railway order with respect to the terms of the railway works, the subject of the railway order; and
- (c) a reference in those sections to submissions or observations made to the Board in relation to the appeal, application, referral or decision concerned shall be construed as a reference to submissions made to the Board under the Transport (Railway Infrastructure) Act 2001 in relation to the railway order.”.

26.—Section 156 of the Principal Act is amended—

Amendment of section 156 of Principal Act.

- (a) in subsection (1), by inserting “135(7),” after “63,” and
- (b) by adding the following subsection after subsection (8):

“(9) Where a person is convicted, on indictment, of an offence under section 135(7), the court may, where it finds that the act or omission constituting the offence delayed the conduct of the oral hearing concerned referred to in section 135(7), order—

- (a) the person convicted, or
- (b) any body with whose consent, connivance or approval the court is satisfied the offence was committed,

to pay to the Board or to any party or person who appeared at the oral hearing such an amount as is equal to the amount of any additional costs that it is shown to the court to have been incurred by the Board, party or person in appearing or being represented at the oral hearing by reason of the commission of the offence.”.

27.—Section 173 of the Principal Act is amended by substituting the following subsection for subsection (2):

Amendment of section 173 of Principal Act.

- “(2) (a) If an applicant or a person intending to apply for permission so requests, the planning authority concerned shall give a written opinion on the information to be contained in an environmental impact statement, subject to—

(i) consultation with the Board, and

(ii) any prescribed consultations,

to be carried out by the planning authority in relation to such an opinion, and the written opinion shall be given before the submission by that person of an application for the grant of planning permission. 5

(b) The giving of a written opinion in accordance with paragraph (a) shall not prejudice the exercise by the planning authority concerned or the Board of its powers under this Act, or any regulations made thereunder, to require the person who made the request to submit further information regarding the application concerned or, as the case may be, any appeal. 10

(c) The Minister may, by regulations, provide for additional, incidental, consequential or supplementary matters as regards procedures in respect of the provision of a written opinion under paragraph (a).” 15

Amendment of section 174 of Principal Act.

28.—Section 174 of the Principal Act is amended—

(a) in subsection (1)(a), by substituting “, or the Board in dealing with any application or appeal,” for “, or the Board on appeal,” 20

(b) in subsection (2), by substituting “sections 34(3), 37G(2), 173(1) and 182B(1)” for “sections 173(1) and 34(3)”, and

(c) in subsection (3), by substituting “grant of permission or approval” for “grant of permission”. 25

Amendment of section 175 of Principal Act.

29.—Section 175 of the Principal Act is amended—

(a) by substituting the following subsection for subsection (5):

“(5) (a) The Board may—

(i) if it considers it necessary to do so, require a local authority that has applied for approval for a proposed development to furnish to the Board such further information in relation to— 30

(I) the effects on the environment of the proposed development, or 35

(II) the consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, 40

as the Board may specify, or

(ii) 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 45

5 this subparagraph) to be made to the terms
of it, notify the local authority that it is of
that view and invite the authority to make
to the terms of the proposed 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 development,
in the terms as so altered, or, where neces-
sary, a revised environmental impact state-
ment in respect of it.

10

15 (b) If a local authority makes the alterations to the
terms of the proposed development specified in
a notification given to it under paragraph (a), the
terms of the development as so altered shall be
deemed to be the proposed development for the
purposes of this section.

20 (c) The Board shall—

(i) where it considers that any further infor-
mation received pursuant to a requirement
made under paragraph (a)(i) contains signifi-
cant additional data relating to—

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

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

30 or

(ii) where the local authority has made the alter-
ations to the terms of the proposed develop-
ment specified in a notification given to it
under paragraph (a)(ii),

35 require the local authority to do the things
referred to in paragraph (d).

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

40 (i) to publish in one or more newspapers circula-
ting in the area in which the proposed
development would be situate a notice stat-
ing that, as appropriate—

(I) further information in relation to the
proposed development has been fur-
nished to the Board, or

45 (II) the local authority has, pursuant to an
invitation of the Board, made alter-
ations to the terms of the proposed
development (and the nature of those
alterations shall be indicated) and, if it
50 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, 5

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 clause (I) or (II) may be inspected free of charge or purchased 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 10 15

(ii) to send to each prescribed authority to which notice was given pursuant to subsection (4)(b)—

(I) a notice of the furnishing to the Board of, as appropriate, the further information referred to in subparagraph (i)(I) or the information or statement referred to in subparagraph (i)(II), and 20

(II) a copy of that further information, information or statement, 25

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 not be less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the local authority.”, 30

(b) in subsection (6)(a), by substituting “the environmental impact statement submitted pursuant to subsection (1) or (5)(a)(ii), any submission or observations made in accordance with subsection (4) or (5)” for “the environmental impact statement submitted pursuant to subsection (1), any submissions or observations made in accordance with subsection (4)”, and 35 40

(c) by substituting the following subsections for subsection (9):

“(9) (a) The Board may, in respect of an application for approval under this section of proposed development—

(i) approve the proposed development, 45

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

(iii) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or 50

(iv) refuse to approve the proposed development,

and may attach to an approval under subparagraph (i), (ii) or (iii) such conditions as it considers appropriate.

5 (b) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under paragraph (a)(i), (ii) or (iii) a condition requiring—

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

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

15 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 gain to the community.

20 (c) A condition attached pursuant to paragraph (b) 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 operates of the benefits likely to accrue from the grant of the approval.

25 (9A) (a) The Board shall direct the payment of such sum as it considers reasonable by the local authority concerned to the Board towards the costs and expenses incurred by the Board in determining an application under this section for approval of a proposed development, including—

30 (i) the costs of holding any oral hearing in relation to the application,

(ii) the fees of any consultants or advisers engaged in the matter, and

35 (iii) an amount equal to such portion of the remuneration and any allowances for expenses paid to the members and employees of the Board as the Board determines to be attributable to the performance of duties by the members and employees in relation to the application,

and the local authority shall pay the sum.

45 (b) If a local authority fails to pay a sum directed to be paid under paragraph (a), the Board may recover the sum from the authority as a simple contract debt in any court of competent jurisdiction.”.

Transfer of certain Ministerial functions to Board.

30.—The following section is inserted after section 215 of the Principal Act:

“Transfer of certain Ministerial functions under Gas Act 1976 to Board.

215A.—(1) The functions of—

(a) the Minister for Communications, Marine and Natural Resources,

5

(b) any other Minister of the Government, or

(c) the Commission for Energy Regulation,

under sections 31 and 32 of, and the Second Schedule to, the Gas Act 1976, as amended, in relation to the compulsory acquisition of land in respect of a strategic gas infrastructure development are transferred to, and vested in, the Board, and relevant references in that Act to the Minister for Communications, Marine and Natural Resources, any other Minister of the Government or the Commission for Energy Regulation 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 Communications, Marine and Natural Resources, any other Minister of the Government or the Commission for Energy Regulation to the Board 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 deviation limits, substrata of land, easements, rights over land (including wayleaves and public rights of way), rights of access to land, the revocation or modification of planning permissions 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).

(3) Article 5 of the Second Schedule to the Gas Act 1976 shall not apply in respect of the function of compulsory acquisition transferred to the Board under subsection (1).”.

Board’s powers to make decisions on transferred functions.

31.—The following section is inserted after section 217 of the Principal Act:

“Board’s powers to make decisions on transferred functions.

217A.—(1) Notwithstanding any provision of any of the enactments referred to in section 214 or 215A 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 refuse to confirm an acquisition or any part thereof.

(2) Notwithstanding any provision of the Roads Act 1993 concerning the approval of any scheme or proposed road development, the Board shall, in

5 relation to any of the functions transferred under this Part respecting those matters, have the power to approve the scheme or development or any part thereof, with or without conditions or modifications, or to refuse to approve the scheme or development or any part thereof.

10 (3) Without prejudice to the generality of foregoing power to attach conditions, the Board may attach to any approval of a scheme or proposed road development under the Roads Act 1993 a condition requiring—

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

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

20 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 gain to the community.

25 (4) A condition attached pursuant to subsection (3) 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 operates of the benefits likely to accrue from the grant of the approval.”

32.—Section 218 of the Principal Act is amended—

Amendment of section 218 of Principal Act.

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

30 “(1) Where, as a result of the transfer of functions under section 214, 215 or 215A, the Board would otherwise be required to hold a local inquiry, public local inquiry or oral hearing, that requirement shall not apply to the Board but the Board may, at its absolute discretion, hold an oral hearing in relation to the matter, the subject of the function transferred.”,

and

(b) in subsection (4), by substituting “sections 214, 215 and 215A” for “sections 214 and 215.”

40 **33.—**The following section is substituted for section 219 of the Principal Act:

Amendment of section 219 of Principal Act.

45 “Power to direct payment of certain costs.

219.—(1) Where the Board has made a decision in the performance of any functions transferred under section 214, 215 or 215A, it may at its absolute discretion direct the payment of such sum as it considers reasonable by the local authority concerned or, in the case of section 215A, the person who applied for the acquisition order (hereafter in this section referred to as the ‘applicant’)—

- (a) to the Board towards the costs and expenses incurred by the Board in determining the matter, including—
 - (i) the costs of holding any oral hearing in relation to the matter, 5
 - (ii) the fees of any consultants or advisers engaged in the matter, and
 - (iii) an amount equal to such portion of the remuneration and any allowances for expenses paid to the members and employees of the Board as the Board determines to be attributable to the performance of duties by the members and employees in relation to the matter, 15

and

- (b) to any person appearing at an oral hearing held in relation to the matter as a contribution towards the costs, other than the costs referred to in section 135, incurred by that person of appearing at that hearing, 20

and the local authority or applicant, as appropriate, shall pay the sum.

(2) The reference in subsection (1)(b) to costs shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs. 25

(3) If a local authority or applicant, as appropriate, fails to pay a sum directed to be paid under subsection (1), the Board or any other person concerned, as the case may be, may recover the sum from the authority or applicant, as appropriate, as a simple contract debt in any court of competent jurisdiction.”. 30 35

Amendment of section 221 of Principal Act.

34.—Section 221 of the Principal Act is amended—

- (a) in subsections (1) and (7), by substituting “section 214, 215 or 215A” for “sections 214 and 215”, and
- (b) in subsections (2) and (5), by substituting “section 214, 215 or 215A” for “section 214 or 215”. 40

Amendment of section 223 of Principal Act.

35.—Section 223 of the Principal Act is amended—

- (a) in subsection (1), by substituting “section 214, 215 or 215A to the Minister, any other Minister of the Government or the Commission for Energy Regulation” for “section 214 or 215 to the Minister”, and 45
- (b) in subsection (2), by substituting “section 214, 215 or 215A” for “section 214 or 215”.

36.—Section 265(3) of the Principal Act is amended by substituting “under Part XII” for “under this Act”.

Amendment of section 265 of Principal Act.

PART 4

MISCELLANEOUS

5 **37.**—Section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919, as it stands amended in cases where any compensation assessed will be payable by a planning authority or any other local authority, is amended by inserting the following Rule after Rule (16):

Amendment of Acquisition of Land (Assessment of Compensation) Act 1919.

10 “(17) The value of any land lying 10 metres or more below the surface of that land shall be taken to be nil, unless it is shown to be of a greater value by the claimant.”.

15 **38.**—The Transport (Railway Infrastructure) Act 2001 is amended by substituting the following sections for sections 37 to 47 (as amended by the Railway Safety Act 2005):

Amendment of Transport (Railway Infrastructure) Act 2001.

“Application for a railway order.

37.—(1) The Agency, CIÉ, or any other person with the consent of the Agency, may apply to An Bord Pleanála (referred to subsequently in this Act as the ‘Board’) for a railway order.

20 (2) An application under subsection (1) shall specify if it is as a light rail, a metro or otherwise that the applicant desires the railway concerned be designated by the order.

25 (3) An application under subsection (1) shall be made in writing in such form as the Minister may specify and shall be accompanied by—

(a) a draft of the proposed order,

(b) a plan of the proposed railway works,

30 (c) in the case of an application by the Agency or a person with the consent of the Agency, a plan of any proposed commercial development of land adjacent to the proposed railway works,

35 (d) a book of reference to a plan required under this subsection (indicating the identity of the owners and of the occupiers of the lands described in the plan), and

40 (e) a statement of the likely effects on the environment (referred to subsequently in this Part as an ‘environmental impact statement’) of the proposed railway works,

and a draft plan and book of reference shall be in such form as the Minister may specify or in a form to the like effect.

(4) The construction of railway works, the subject of an application for a railway order under this Part, shall not be undertaken unless the Board has granted an order under section 43. 5

Exempted development.

38.—Each of the following shall be exempted development for the purposes of the Act of 2000:

- (a) development consisting of the carrying out of railway works, including the use of the railway works or any part thereof for the purposes of the operation of a railway, authorised by the Board and specified in a railway order or of any incidental or temporary works connected with such development; 10 15
- (b) development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order. 20

Environmental impact statement.

39.—(1) An environmental impact statement shall contain the following information:

- (a) a description of the proposed railway works comprising information on the site, design and size of the proposed railway works; 25
- (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; 30
- (c) the date required to identify and assess the main effects which the proposed railway works are likely to have on the environment; 35
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for its choice, taking into account the environmental effects; and
- (e) a summary in non-technical language of the above information. 40

(2) An environmental impact statement shall, in addition to and by way of explanation or amplification of the specified information referred to in subsection (1), contain further information on the following matters: 45

- (a) (i) a description of the physical characteristics of the whole proposed railway works and the land-use requirements during the construction and operational phases, 50

- 5
- (ii) an estimate, by type and quantity, of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed railway works;
- 10
- (b) a description of the aspects of the environment likely to be significantly affected by the proposed railway works, including in particular—
 - (i) human beings, fauna and flora,
 - (ii) soil, water, air, climatic factors and the landscape,
 - 15 (iii) material assets, including the architectural and archaeological heritage, and the cultural heritage,
 - (iv) the inter-relationship between the matters referred to in this paragraph;
- 20
- (c) a description of the likely significant effects (including direct, indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative) of the proposed railway works on the environment resulting from—
 - (i) the existence of the proposed railway works,
 - 25 (ii) the use of natural resources,
 - (iii) the emission of pollutants, the creation of nuisances and the elimination of waste,
- 30
- and a description of the forecasting methods used to assess the effects on the environment;
- 35
- (d) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information; and
- 40
- (e) a summary in non-technical language of the above information,

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to the extent that such information is relevant to a given stage of the consent procedure and to the specific characteristics of the railway works or type of railway works concerned, and of the environmental features likely to be affected, and the applicant may reasonably be required to compile such information having regard, amongst other things, to current

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knowledge and methods of assessment.

(3) (a) If a person, before applying to the Board for a railway order, so requests, the Board shall, after consulting the person and such bodies as may be specified by the Minister for the Environment, Heritage and Local Government for that purpose, give a written opinion on the information to be contained in an environmental impact statement. 5

(b) The giving of a written opinion in accordance with this subsection shall not prejudice the exercise by the Board of its powers pursuant to this Act to require an applicant to furnish further information in relation to the effects on the environment of the proposed railway works. 10 15

(4) The European Communities (Environmental Impact Assessment) Regulations 1989 to 2005 and the Act of 2000 and any regulation made thereunder in relation to environmental impact assessment shall not apply to anything done under an order made under this Act. 20

Publication of notice in relation to application for railway order.

40.—(1) Before an application is made for a railway order, the applicant shall— 25

(a) deposit and keep deposited at such place or places, being a place or places which is or are easily accessible to the public, as may be appointed by the Board, a copy of the draft order and all documents which will accompany the application, for not less than 6 weeks following the publication of the notice referred to in paragraph (b), 30

(b) publish a notice in one or more newspapers circulating in the area to which the order relates— 35

(i) indicating that an application will be made for an order,

(ii) indicating the time and the place or places at which, and the period (which shall be 6 weeks) during which, a copy of the draft order and accompanying documents deposited under this section may be inspected, 40 45

(iii) stating that the Board will consider any submissions in relation to the proposed order or in relation to the likely effects on the environment of the proposed railway works which are submitted in writing to it by any person within the period referred to in subparagraph (ii), and 50

(iv) stating that a copy of or extract from the draft order and accompanying documents may be purchased on payment of a fee not exceeding the reasonable cost of making such copy or extract,

(c) serve on the planning authority in whose functional area (or any part thereof) the proposed railway works are proposed to be carried out, on the Minister and on such other persons (if any) as the Board may direct a copy of the draft order and accompanying documents and the notice referred to in paragraph (b), and

(d) serve a copy of the notice referred to in paragraph (b) together with relevant extracts from the documents referred to in paragraph (a) on every (if any) occupier and every (if any) owner of a land referred to in the draft order.

(2) Members of the public may inspect a copy of a draft railway order and accompanying documents deposited under this section free of charge at the times and during the period specified in the notice referred to in subsection (1)(b) and may purchase copies of or extracts from any of the documents aforesaid on payment of a fee to the applicant not exceeding the reasonable cost of making such copies or extracts as may be fixed by the applicant.

(3) A person may, during the period specified in the notice referred to in subsection (1)(b), make submissions in writing to the Board in relation to the proposed railway order or the likely effects on the environment of the proposed railway works.

Further information to Board.

41.—(1) Where the Board is of the opinion that an environmental impact statement furnished under section 37 does not comply with the provisions of section 39 or where it otherwise considers it necessary so to do, it shall require the applicant to furnish to it a document containing such further information in relation to the proposed railway works as it may specify and the applicant shall comply with any such requirement within such period as the Board specifies.

(2) (a) If the document furnished under subsection (1) contains significant data in relation to the likely effects on the environment of the proposed railway works, the Board shall require the applicant—

(i) to deposit and keep deposited at the place or each of the places appointed by the Board, a copy of the aforesaid document,

(ii) to publish in one or more newspapers circulating in the area to

which the proposed railway order relates a notice stating that further information in relation to the likely effects on the environment of the proposed railway works has been furnished to the Board, that copies of the document containing the information will be available for inspection free of charge and for purchase by members of the public, at the place or each of the places appointed by the Board, at specified times during the period of not less than 3 weeks beginning on the day of publication of the notice and that submissions in relation to the further information may be made to the Board before the expiration of the said period, and

(iii) to serve notice of the furnishing of the further information to the Board, together with relevant extracts from the document aforesaid, on any person on whom notice was served pursuant to section 40(1) and to indicate to the person concerned that submissions in relation to the further information may be made to the Board during the period of not less than 3 weeks beginning on the day on which the notice is sent to the person concerned by the applicant.

(b) Copies of further information in respect of which notice is published pursuant to a requirement under subsection (2)(a)(ii) shall be made available for purchase by members of the public during the period specified in the notice referred to in that provision for such fee as the applicant may fix not exceeding the reasonable cost of making such copies.

(3) Members of the public may inspect the further information deposited under this section free of charge at the times and during the period specified in the notice referred to in subsection (2)(a)(ii).

(4) A person may, during the period specified in the notice referred to in paragraph (a)(ii) or (iii), as appropriate, of subsection (2), make submissions in writing to the Board in relation to the further information deposited under this section.

Oral hearings. 42.—(1) The Board may, at its absolute discretion, hold an oral hearing into an application for a railway order.

(2) Sections 135, 143 and 146 of the Act of 2000 (as amended by the *Planning and Development*

(*Strategic Infrastructure*) Act 2006) shall apply and have effect in relation to an oral hearing referred to in subsection (1) and those sections shall be construed accordingly.

5 Railway order. 43.—(1) Whenever an application is made under section 37, the Board shall, before deciding whether to grant the order to which the application relates, consider the following:

- (a) the application;
- 10 (b) the draft order and documents that accompanied the application;
- (c) the report of any oral hearing held under section 42 and the recommendations (if any) contained therein;
- 15 (d) any submission duly made to it under section 40(3) or 41(4) and not withdrawn;
- (e) any submission duly made to it by a planning authority referred to in section 40(1)(c);
- 20 (f) any additional information furnished to it under section 41; and
- (g) the matters referred to in section 143 (inserted by the *Planning and Development (Strategic Infrastructure) Act 2006*) of the Act of 2000.

 (2) If, after such consideration, the Board is of opinion that the application should be granted, it shall make an order authorising the applicant to construct, maintain, improve and, subject to section 11(7) in the case of the Agency, operate the railway or the railway works specified in the order or any part thereof, in such manner and subject to such conditions, modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies in the order and the Board shall furnish the applicant with a copy of the order.

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

- (4) A railway order shall come into operation—
 - (a) in case an application for leave to apply for judicial review of the order has not been made, upon the expiration of 8 weeks, and

(b) in case such an application has been made and has not been withdrawn, in so far as it has not been declared invalid or quashed pursuant to that review, upon the final determination of the proceedings concerned or such other date as may be determined in those proceedings, and 5

(c) in case such an application has been made and is withdrawn, upon the date of the withdrawal. 10

(5) A person who has been granted a railway order may, with the consent of the Minister, make arrangements with another person to construct, maintain, improve or operate the railway or the railway works to which the order relates. 15

(6) The Board may, if there is a failure or refusal to comply with a condition, restriction or requirement specified in a railway order, revoke the order.

(7) (a) Where the Board proposes to revoke an order under this section, it shall notify the railway undertaking in writing of its proposal and of the reasons for it. 20

(b) The railway undertaking may, not later than 3 weeks from the date of the sending of the notification, make submissions in writing to the Board and the Board shall— 25

(i) before deciding the matter, take into consideration any submissions duly made to it under this paragraph in relation to the proposal and not withdrawn, and 30

(ii) notify the railway undertaking in writing of its decision and of the reasons for it. 35

(8) A notification of a proposal of the Board under subsection (7) shall include a statement that the railway undertaking may make submissions to the Board not later than 3 weeks from the date of the sending of the notification and a notification of a decision of the Board under subsection (7) shall include a statement that the railway undertaking may appeal to the High Court under subsection (9) against the decision not later than 3 weeks from the date of the sending of the notification. 40 45

(9) The railway undertaking may appeal to the High Court against a decision of the Board under this section not later than 3 weeks from the date of the sending of the notification of the decision under subsection (7) and that Court may, as it thinks proper, on the hearing of the appeal, confirm the 50

decision of the Board or direct the Board to withdraw its decision and prohibit the making of the proposed order concerned.

5 Provisions in relation to railway order.

44.—(1) A railway order shall contain such provisions as the Board considers necessary or expedient for the purpose of the order.

(2) Without prejudice to the generality of subsection (1), a railway order may—

10 (a) specify any land or any substratum of land, the acquisition of which is, in the opinion of the Board, necessary for giving effect to the order,

15 (b) specify any rights in, under or over land or water or, subject to the consent of the Minister in the case of a national road or the Minister for the Environment, Heritage and Local Government in the case of any other public road, in, under or over any public road, the acquisition of which is, in the opinion of the Board, necessary for giving effect to the order,

20 (c) specify the manner in which the railway or the railway works or any part thereof to which the order relates are to be constructed,

25 (d) fix the period within which the construction of the railway works is to be completed,

30 (e) contain provisions as to the manner in which the railway works are to be operated and maintained,

35 (f) without prejudice to paragraph (g), contain such provisions as the Board thinks proper for the protection of the public generally, of local communities and of any persons affected by the order,

(g) contain provisions requiring—

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

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

45 in the area in which the railway works are to be constructed, being a facility or service that, in the opinion of the Board, would constitute a gain to the community,

(h) provide for the determination by arbitration of any specified questions arising thereunder,

(i) contain such provisions ancillary or incidental to any of the matters aforesaid as the Board considers necessary and proper. 5

(3) A provision of a railway order referred to in subsection (2)(g) shall not require such an amount of financial resources to be committed for the purposes of the provision being complied with as would substantially deprive the person in whose favour the order operates of the benefits likely to accrue from the making of the order. 10

(4) The Board may, with the consent of the Minister, in a railway order designate the railway to which the order relates as a light railway or as a metro. 15

Compulsory acquisition of land.

45.—(1) Upon the commencement of a railway order, the Agency or CIÉ shall thereupon be authorised to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the order and, for that purpose, the railway order shall have effect as if it were a compulsory purchase order referred to in section 10(1) of the Local Government (No. 2) Act 1960 (inserted by section 86 of the Housing Act 1966), which has been duly made and confirmed and, accordingly, that section shall apply and have effect in relation to the order with the modifications that— 20 25 30

(a) references to the local authority shall be construed as including references to the Agency or CIÉ as the case may be,

(b) references to the Minister for the Environment, Heritage and Local Government shall be construed as references to the Minister for the Environment, Heritage and Local Government, and including references to the Board, 35

(c) the reference in subsection (4)(a) to section 78 of the Housing Act 1966 shall be construed as including a reference to subsections (1), (4) and (5) of that section, 40

and with any other necessary modifications. 45

(2) Where the Agency or CIÉ proposes to acquire land pursuant to subsection (1) and, in the opinion of the Agency or CIÉ, as the case may be, it is more efficient and economical to acquire additional adjoining land, the Agency or CIÉ, as the case may be, may do so with the consent of the Minister and of any person having an interest in or right in, under or over the adjoining land notwithstanding 50

the fact that the adjoining land is not specified in the railway order.

(3) The Agency or CIÉ shall comply with any directions of the Minister in relation to land acquired by it pursuant to subsection (1).

Notification of grant of railway order. 46.—As soon as may be after the making of a railway order, the railway undertaking shall—

(a) deposit and keep deposited at the head office of the railway undertaking and at such other place as may be specified by the Board, during the period of 5 years following the opening for traffic of the railway, a copy of the order and the plan referred to therein and the aforesaid order and plan shall, while so deposited, be open to inspection by members of the public free of charge, at all reasonable times, and copies of or extracts from any of the documents aforesaid may be purchased on payment of a fee to the railway undertaking not exceeding the reasonable cost of making such copies or extracts, and

(b) serve a copy of relevant extracts from the railway order and the plan referred to therein on every planning authority for the area (or any part thereof) to which the order relates and to every (if any) occupier and every (if any) owner of land referred to in the railway order.

Judicial review of railway order and related acts. 47.—(1) A person shall not question the validity of a railway order made or any act done by the Board in the performance or the purported performance of its functions under sections 37 to 46 otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the ‘Order’).

(2) The Board may, at any time after the bringing of an application for leave to apply for judicial review of any act to which subsection (1) applies and which relates to a matter for the time being before the Board, apply to the High Court to stay the proceedings pending the making of a decision by the Board in relation to the matter concerned.

(3) On the making of such an application the High Court may, where it considers that the matter before the Board is within the jurisdiction of the Board, make an order staying the proceedings concerned on such terms as it thinks fit.

(4) Subject to subsection (5), an application for leave to apply for judicial review under the Order in respect of an order or act to which subsection (1) applies shall be made within the period of 8 weeks beginning on the date on which the order was made

or, as the case may be, the date of the doing of the act by the Board.

(5) The High Court may extend the period provided for in subsection (4) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that— 5

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension. 10

(6) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court. 15

Section 47:
supplemental
provisions.

47A.—(1) In this section—

‘Court’, where used without qualification, means the High Court; 20

‘Order’ shall be construed in accordance with section 47;

‘section 47 leave’ means leave to apply for judicial review under the Order in respect of an order or act to which section 47(1) applies. 25

(2) The provisions of the Order with respect to an application for leave to apply for judicial review being made by motion *ex parte* and the manner in which such an application is to be grounded shall apply to an application for section 47 leave but the Court shall not grant section 47 leave unless it is satisfied that— 30

(a) there are substantial grounds for contending that the order or act concerned is invalid or ought to be quashed, and 35

(b) (i) the applicant has a substantial interest in the matter which is the subject of the application, or

(ii) the applicant—

(I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, 40
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(II) has, during the period of 12 months preceding the date of

the application, pursued those aims or objectives, and

5 (III) satisfies such requirements (if
any) as a body or organisation,
if it were to make an appeal
under section 37(4)(c) of the
Act of 2000, would have to
satisfy by virtue of section
10 37(4)(d)(iii) of that Act (and,
for this purpose, any require-
ment prescribed under section
37(4)(e)(iv) of that Act shall
apply as if the reference in it to
the class of matter into which
15 the decision, the subject of the
appeal, falls were a reference
to the class of matter into
which the order or act, the sub-
ject of the application for
20 section 47 leave, falls).

(3) A substantial interest for the purposes of sub-
section (2)(b)(i) is not limited to an interest in land
or other financial interest.

25 (4) Notwithstanding the making of an application
for section 47 leave in respect of a railway order, the
application shall not affect the validity of the railway
order and its operation unless, upon an application
to the High Court, that Court suspends the oper-
ation of the railway order until the application is
30 determined or withdrawn.

(5) If the court grants section 47 leave, no
grounds shall be relied upon in the application for
judicial review under the Order other than those
determined by the Court to be substantial under
35 subsection (2)(a).

(6) The Court may, as a condition for granting
section 47 leave, require the applicant for such leave
to give an undertaking as to damages.

40 (7) The determination of the Court of an appli-
cation for section 47 leave or of an application for
judicial review on foot of such leave shall be final
and no appeal shall lie from the decision of the
Court to the Supreme Court in either case save with
leave of the Court which leave shall only be granted
where the Court certifies that its decision involves a
point of law of exceptional public importance and
45 that it is desirable in the public interest that an
appeal should be taken to the Supreme Court.

(8) Subsection (7) shall not apply to a determi-
nation of the Court in so far as it involves a question
as to the validity of any law having regard to the
provisions of the Constitution.

50 (9) If an application is made for judicial review
under the Order in respect of part only of an order
or act to which section 47(1) applies, the Court may,
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if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the order or act or part of the order or act, and if the Court does so, it may make any consequential amendments to the remainder of the order or act or the part thereof that it considers appropriate. 5

(10) The Court shall, in determining an application for section 47 leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice. 10

(11) On an appeal from a determination of the Court in respect of an application referred to in subsection (10), the Supreme Court shall— 15

(a) have jurisdiction to determine only the point of law certified by the Court under subsection (7) (and to make only such order in the proceedings as follows from such determination), and 20

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(12) Rules of court may make provision for the expeditious hearing of applications for section 47 leave and applications for judicial review on foot of such leave.”. 25