



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

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

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ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5, c. 57
Air Navigation and Transport (Amendment) Act 1998	1998, No. 24
Civil Service Regulation Act 1956	1956, No. 46
Data Protection Acts 1988 to 2003	
Electricity Regulation Act 1999	1999, No. 23
Foreshore Act 1933	1993, No. 12
Foreshore Acts 1933 to 2005	
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 substantially 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 or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

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

25 (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

(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)(a) or (b), as the case may be, on the appropriate planning authority.

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

45 (8) 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 subsection (1).

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. 5

(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. 10

(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. 15

(4) The Board may consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under section 37B in relation to a proposed development. 20

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. 25 30

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

(a) consult with the requester and such bodies as may be specified by the Minister for the purpose, and 35

(b) comply with the request 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. 40

(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. 45 50

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.

5 (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—

15 (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—

25 (I) the person proposes to make an application to the Board for permission for the proposed development,

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

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

35 (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),

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

50 (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, and

(iv) specifying the types of decision the Board may make, under section 37G, in relation to the application, 5

(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, 10

(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— 15 20

(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, 25

if carried out, and

(d) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board. 30 35 40

(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 making of the application to the Board under this section (or such longer period as may be specified by the Board), prepare and submit to the Board a report setting out the views of the authority on the effects of the proposed development on the environment and the proper planning and sustainable development of the area of the authority, having regard in particular to the matters specified in section 34(2). 45 50

5 (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.

10 (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 (together with the meetings administrator's record) shall be attached to the report submitted to the Board under subsection (4).

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

20 (8) 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.

Section 37E:
supplemental
provisions.

30 37F.—(1) Before determining any application for permission under section 37E the Board may, at its absolute discretion and at any time—

- 35 (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 (d) without prejudice to subsections (2) and (3), make any information relating to the application available for inspection, notify any person or the public
- 55

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 5

(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 10

(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 15
applicant and any other party,
including resolving any issue or
disagreement in advance of an
oral hearing.

(2) Where an applicant submits a revised 20
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 25
significant additional information on the effect of
the proposed development on the environment to
that already submitted, the Board shall—

(a) make the information, particulars, plans
or drawings, as appropriate, available 30
for inspection,

(b) give notice that the information, part-
iculars, plans or drawings are so avail-
able, and

(c) invite further submissions or obser- 35
vations to be made to it within such
period as it may specify.

(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 40
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 subsec-
tion (1)(e). 45

(5) Before making a decision under section
37G in respect of proposed development compris-
ing 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 50
Environmental Protection Agency to make obser-
vations 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.

20 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.

(2) Without prejudice to the generality of subsection (1), the Board shall consider—

25 (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 and record, 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—

40 (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, and

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

50 (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 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, 5
- (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, 10
- (g) the matters referred to in section 143,
- (h) any relevant provisions of this Act and of any regulations made under this Act. 15

(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 20
 - (iii) to grant permission in respect of part of the proposed development (with or without specified modifications of it of the foregoing kind), 25
- or 30
- (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— 35 40

- (a) controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, 45
- or

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

5 (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.

10 (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.

15 (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—

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

25 (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),

30 (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

35 (d) a condition requiring—

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

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

50 in the area in which the proposed development would be situated, being a facility or service that, in the opinion

of the Board, would constitute a substantial gain to the community.

(8) A condition attached pursuant to subsection (7)(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. 5

(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 15

(10) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situated and the person carrying out the development; if that authority or those authorities and that person cannot agree on the matter the matter may be referred to the Board for determination. 20 25

(11) 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. 30 35

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. 40

(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, 45

(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 50

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).

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

(4) A grant of permission under section 37G shall be made as soon as may be after the making of the relevant decision but 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.

(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.

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

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—

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

(b) 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. 5

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—

(a) consultations held on foot of a request under section 37B are completed, and 10

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

as expeditiously as is consistent with proper planning and sustainable development and, for that purpose, to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the holding of those consultations or the making of that decision. 15 20

(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— 25

(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 30

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

(3) Where it appears to the Board that it would not be possible or appropriate, because of the particular circumstances of the matter with which the Board is concerned, to determine the matter within the period referred to in paragraph (a) or (b) of subsection (2) as the case may be, the Board shall, by notice in writing served on the applicant 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. 35 40 45 50

(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 (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.

10 (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.

20 (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.

30 Nuclear installations: no development in respect of them authorised.

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

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

Provision of electricity transmission and gas infrastructure.

35 “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, (hereafter referred to in this section and section 182B as ‘proposed development’), the undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

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

50 (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 under subsection (1) for approval, 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— 5
- (i) stating that—
- (I) it proposes to seek the approval of the Board for the proposed development, 10
- (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, and 15
- (III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention, 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), 25 30
- (iii) inviting the making, during such period, of submissions and observations to the Board relating to— 35
- (I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and 40
- (II) the likely effects on the environment of the proposed development, 45
- if carried out, and
- (vi) specifying the types of decision the Board may make, under section 182B, in relation to the application, 50
- (b) send a copy of the application and any environmental impact statement to the local authority or each local authority

5 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—

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

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

if carried out, and

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

(5) The Board may—

35 (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—

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

40 (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

45 (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. 5

(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. 10 15

(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— 20

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

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

or 30

(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). 35

(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— 40

(i) further information in relation to the proposed development has been furnished to the Board, or 45

(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) 50

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) or (c)—

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

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

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

(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—

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

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

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

(a) the environmental impact statement sub- 5
mitted pursuant to section 182A(1) or
(5), any submissions or observations
made in accordance with section
182A(4) or (8) and any other infor- 10
mation furnished in accordance with
section 182A(5) relating to—

(i) the likely consequences for proper
planning and sustainable develop-
ment in the area in which it is pro- 15
posed to situate the proposed
development of such development,
and

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

and 20

(b) the report and any recommendations of a
person conducting any oral hearing relat-
ing to the proposed development.

(2) The Board may, where it is satisfied that 25
exceptional circumstances so warrant, grant an
exemption in respect of a proposed development
from a requirement under section 182A(2) to pre-
pare an environmental impact statement except that
no exemption may be granted in respect of proposed 30
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 envir-
onment in that Member State or state of the pro- 35
posed 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 40

(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 45
it considers necessary or appropriate.

(4) Notice of any exemption granted under sub-
section (2), of the reasons for granting the exemp-
tion, and of any requirements applied under subsec-
tion (3) shall, as soon as may be— 50

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

5 (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.

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

(a) approve the proposed development,

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

20 (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.

25 (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—

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

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

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

40 (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.

45 (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.

(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. 5

(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— 10

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

(b) the provisions of any special amenity area order relating to the area, 15

(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, 20

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

(f) the provisions of this Act and regulations under this Act where relevant. 25

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

(b) Part VIII shall apply to any case where development referred to in section 182A(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section. 30 35

(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. 40 45

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 50

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, and
 - (III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,
 - (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), 5
- (iii) inviting the making, during such period, of submissions and observations to the Board relating to— 10
- (I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and 15
- (II) the likely effects on the environment of the proposed development, 20
- if carried out, and 20
- (iv) specifying the types of decision the Board may make, under section 182D, in relation to the application, 25
- and
- (b) send a copy of the application and the environmental impact statement to— 25
- (i) the local authority or each local authority in whose functional area the proposed development would be situate, 30
- (ii) any prescribed bodies, 35
- (iii) where the proposed development comprises or is for the purposes of a strategic downstream gas pipeline, the Commission, and 35
- (iv) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, the prescribed body of the relevant state or states, 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 50

and sustainable development in the area concerned, and

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

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—

(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,

as the Board may specify, or

(b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the 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.

(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.

(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—

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

- (ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development, 5

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), 10

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— 15

- (i) further information in relation to the proposed development has been furnished to the Board, or 20

- (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, 25 30

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 35 40 45

- (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 50

statement referred to in paragraph
(a)(ii), and

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

5 and to indicate to the authority that sub-
missions or observations in relation to
that further information, information or
10 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.

15 (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.

20 (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.

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

30 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—

35 (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—

40 (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

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

50 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—

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

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

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 substantial 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—

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

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

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

- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) the matters referred to in section 143, and 5
- (f) the provisions of this Act and regulations under this Act where relevant.

(11) (a) No permission under section 34 or 37G shall be required for any development which is approved under this section. 10

(b) Part VIII shall apply to any case where development referred to in section 182C(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section. 15
20

(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. 25

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 the proposed development. 30

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding— 35

(a) the procedures involved in making such an application, and 40

(b) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application. 45

(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 required to be contained in an environmental impact statement in relation to the proposed development; on receipt of such a request the Board, after consulting the prospective applicant and such bodies as 50

may be specified by the Minister for the purpose, shall comply with it as soon as is practicable.

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

- (a) consultations under subsection (1), and
- (b) the Board's complying with a request under subsection (3),

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

(5) Neither—

- (a) the holding of consultations under subsection (1), nor
- (b) the provision of an opinion under subsection (3),

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

(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.

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

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

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

Energy Infrastructure

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

- An installation for the onshore extraction of petroleum or natural gas.
- 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. 5
- An industrial installation for the production of electricity, steam or hot water with a heat output of 300 megawatts or more.
- 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). 10 15
- 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. 20
- An installation for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.
- An installation for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes. 25
- An installation for the surface storage of oil or coal, where the storage capacity would exceed 100,000 tonnes.
- 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. 30 35
- 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. 40
- 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.
- 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. 45 50

Transport Infrastructure

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

5 —An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area.

10 —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*).

15 —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).

20 —A harbour or port installation—

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

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

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

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

Environmental Infrastructure

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

—A waste disposal installation for—

(a) the incineration, or

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

(c) the landfill,

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

¹O.J. No. L194/39 25.7.1975

²O.J. No. L377/20 31.12.1991

- A waste disposal installation for—
- (a) the incineration, or
 - (b) the chemical treatment (within the meaning of Annex IIA to Council Directive 75/442/EEC¹ under heading D9), 5
- of non-hazardous waste with a capacity for an annual intake greater than 100,000 tonnes.
- An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes. 10
- 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. 15
- 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. 20 25
- 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 30
 - (b) more than 20 hectares of wetland would be affected, or 35
 - (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. 40

³O.J. No. L135/40 30.5.1991

—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.”.

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.

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

“ ‘National Spatial Strategy’ means the ‘National Spatial Strategy: 2002 – 2020’ published by the Government on 28 November 2002, or any document published by the Government 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;”,

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

“ ‘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;

‘strategic gas infrastructure development’ means any proposed development comprising or for the purposes of a strategic downstream gas pipeline or a strategic upstream gas pipeline, and associated terminals, buildings and installations, whether above or below ground, including any associated discharge pipe;

‘strategic infrastructure development’ means—

(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 181A(1),

- (d) any proposed development referred to in section 182A(1),
- (e) any proposed strategic gas infrastructure development referred to in section 182C(1),
- (f) any scheme or proposed road development referred to in section 215, 5
- (g) any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the *Planning and Development (Strategic Infrastructure) Act 2006*), 10
or
- (h) any compulsory acquisition of land referred to in section 214, 215A or 215B, being an acquisition related to development specified in any of the preceding paragraphs of this definition; 15

‘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—

- (a) as part of a gas production project, or 20
- (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,

as will be situate in the functional area or areas of a planning authority or planning authorities;” 25

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. 30

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):

- “(t) particulars of any development referred to in section 179(4)(b);” 35

Amendment of section 34 of Principal Act.

8.—(1) 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— 40
- (i) to be expedient for the purposes of or in connection with the development authorised by the permission, or 45

(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);”.

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

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

Amendment of section 35 of Principal Act.

“(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 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—

(a) specify the failures to comply that the authority intends to take into consideration with regard to the proposed exercise of that power, and

(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)).

(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.

(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.

(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:

- (a) in paragraph (a) of section 34(8), after “paragraphs (b), (c), (d) and (e)”, there shall be inserted “and section 35(6A)”;
- (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”;
- (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)”;
- (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):

- “(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.
- (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)—
 - (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
 - (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), being requirements of a general nature and for the purposes of promoting transparency and accountability in the operation of such organisations, including requirements—

- (i) in relation to its membership,
 - (ii) that the pursuit of its aims or objectives be otherwise than for profit,
 - (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.
- (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)."

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

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 matter with which the Board is concerned, 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
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(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. 15

(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. 20
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(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). 30
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(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— 40

(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. 45

(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. 50

50A.—(1) In this section—

5 ‘Court’, where used without qualification, means the High Court (but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made);

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

10 ‘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.

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

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

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

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

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

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

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

- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and
- (b) (i) the applicant has a substantial interest in the matter which is the subject of the application, or
- (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—
- (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,
- (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives, and
- (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).

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

(5) 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 (3)(a).

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

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(7) 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.

(8) Subsection (7) 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.

(9) 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) 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.

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

- (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
- (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 50 leave and applications for judicial review on foot of such leave.”.

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

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

- (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:

- (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 15
- (c) 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 the interests of local government, 20
 - (ii) bodies representing farming, and
 - (iii) trade unions,as may be prescribed;
- (d) 2 members shall be appointed from among persons nominated for such appointment by such— 25
 - (i) organisations that, in the Minister’s opinion, are representative of persons concerned with the protection and preservation of the environment and of amenities, 30
 - (ii) voluntary bodies and bodies having charitable objects,
 - (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, 35
 - (iv) bodies that are representative of people with disabilities, and 40
 - (v) bodies that are representative of young people,as may be prescribed;
- (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. 45

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

(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)”.

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 108 of Principal Act.

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

“(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

(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.

(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.”.

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

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

19.—The following section is inserted after section 112 of the Principal Act: Strategic Infrastructure Division.

“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*.

(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 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 10 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.

(5) The Strategic Infrastructure Division shall 15 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.

(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. 20

(7) The quorum for a meeting of the Strategic Infrastructure Division shall be 3. 25

(8) Either—

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

(b) a person acting as chairperson of a meeting of the Division, 30

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. 35

(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 40 of the Board.”. 45

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

Amendment of section 125 of Principal Act.

“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 and any other matter with which the Board may be concerned,

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

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

Amendment of section 128 of Principal Act.

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

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

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

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

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

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

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

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

(2) The Board, in determining an appeal or referral, may take into account any fact, submission or observation mentioned, made or comprised in any

Oral hearings.

22.—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) 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.

23.—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,
- (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,

5 (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

(iii) it is considered necessary so as to avoid undue repetition of the same point or argument,

15 (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.

20 (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.

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

Amendment of section 138 of Principal Act.

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

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

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

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

Amendment of section 140 of Principal Act.

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

“(1) (a) A person who has made—

- (i) an appeal,
- (ii) a planning application to which an appeal relates,
- (iii) a referral,
- (iv) an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development,

may withdraw, in writing, the appeal, application or referral at any time before that appeal, application, or referral is determined by the Board. 10

- (b) As soon as maybe after receipt of a withdrawal, the Board shall notify each other party or person who has made submissions or observations on the appeal, application or referral of the withdrawal.”, 15

and

- (b) in subsection (2)(a), by inserting “an application for permission or approval (as may be appropriate) in respect of a strategic infrastructure development,” after “a planning application to which an appeal relates,”. 20

Amendment of section 143 of Principal Act.

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

“Board to have regard to certain policies and objectives.

143.—(1) The Board shall, in performing its functions, have regard to—

- (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, 25
- (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 30
- (c) the National Spatial Strategy and any regional planning guidelines for the time being in force. 40

(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.”. 45

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

Amendment of section 144 of Principal Act.

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

(b) by substituting “appeals, referrals and applications” for “appeals and referrals”.

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

Amendment of section 145 of Principal Act.

“(b) in case—

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

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

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

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

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

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

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

Amendment of section 146 of Principal Act.

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

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

- (b) considers it appropriate, in the exercise of its discretion, to supply to any person such documents, maps, particulars or information ('relevant material or information'),

subsection (4) applies as regards compliance with that requirement 5
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), 10
namely:

- (a) make the relevant material or information available for inspection—

- (i) at the offices of the Board or any other place, or

- (ii) by electronic means; 15

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 any matter falling to be decided by it in performance of a function 20
under or transferred by this Act or under any other enactment, the documents relating to the matter—

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

- (b) may be made available by the Board for such 25
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 30
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 35
available by the means referred to in paragraph (a) 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 matter concerned.”.

30.—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.

5

Amendments of permissions, etc. of clerical or technical nature.

- 146A.—(1) Subject to subsection (2)—
- (a) a planning authority or the Board, as may be appropriate, may amend a planning permission granted by it, or
 - (b) the Board may amend any decision made by it in performance of a function under or transferred by this Act or under any other enactment,

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for the purposes of—

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

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

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

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

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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.

(2) (a) 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. 5

(b) Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation. 10 15

(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 consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration, 20 25

(b) would constitute the making of such a material alteration, it shall determine whether to— 30

(i) make the alteration,

(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 35 40

(iii) refuse to make the alteration.

(4) Before making a determination under subsection (3)(b), the Board shall determine whether the extent and character of— 45

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

(b) any alternative alteration it is considering under subsection (3)(b)(ii), 50

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).

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

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

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

15 (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, and the planning authority or each planning authority for the area or areas concerned, of the alteration.

20 (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.

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

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

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

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

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

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

(c) The Board shall notify any person who made a submission or observation to it in accordance with that invitation of its determination under subsection (3)(b) or (4). 5

(9) In this section ‘term’ has the same meaning as it has in section 146A. 10

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. 15

(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— 20

(a) the alteration referred to in subsection (3)(b)(i), and 25

(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). 30

(3) An environmental impact statement under this section shall contain— 35

(a) any information that any regulations made under section 177 require to be contained in environmental impact statements generally under this Act, and 40

(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 45

(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

(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,

(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— 5
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(i) the statement has been submitted to the Board in relation to the proposed alteration of the terms of the development concerned, 15

(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, 20

(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 effects on the environment in that state, together with a notice (in the prescribed form, if any) stating that— 25
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(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, 40

(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 in that state of the proposed alteration of those terms, 45
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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 55

(6) and (7), proceed to make a determination under section 146B(3)(b) in relation to the matter.

5 (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:

- 10 (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;
- 15 (b) where such alteration is likely to have significant 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;
- 20 (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’);
- 25 (d) the provisions of any special amenity area order relating to the area;
- 30 (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;
- 35 (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;
- 40 (g) the matters referred to in section 143;
- 45 (h) any social or economic benefit that would accrue to the State, a region of the State or the area were the development concerned to be carried out in the terms as they are proposed to be altered;
- 50 (i) commitments entered into and the stage at which the development concerned has progressed under the permission, approval or other consent in the terms as originally granted; and
- (j) any relevant provisions of this Act and of any regulations made under this Act.

(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). 5

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

(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 10 15

(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. 20

(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. 25 30

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 (whether made before or after the amendment of that Act by the *Planning and Development (Strategic Infrastructure) Act 2006*) as they apply to a permission, decision or approval referred to in them with the following modifications: 35

(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; 40

(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 45

(c) a reference in section 146A to submissions or observations made to the Board in relation to the permission or other matter concerned shall be construed as a reference to submissions made to the Minister for Transport or the Board, as 50 55

the case may be, under the Transport (Railway Infrastructure) Act 2001 in relation to the railway order.”.

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

Amendment of section 156 of Principal Act.

5 (a) in subsection (1), by inserting “135(7),” after “63,” and

(b) by adding the following subsection after subsection (8):

10 “(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

15 (b) any body with whose consent, connivance or approval the court is satisfied the offence was committed,

20 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.”.

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

Amendment of section 173 of Principal Act.

25 “(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

30 (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.

35 (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.

40 (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).”.

45

33.—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,”,
- (b) in subsection (2), by substituting “sections 34(3), 37G(2), 146C(6), 173(1), 181B(1), 182B(1) and 182D(1)” for “sections 173(1) and 34(3)”, and 5
- (c) in subsection (3), by substituting “grant of permission or approval” for “grant of permission”.

34.—Section 175 of the Principal Act is amended— 10

- (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— 15

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

- (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, 20

as the Board may specify, or 25

- (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 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 necessary, a revised environmental impact statement in respect of it. 30 35 40

- (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. 45

- (c) The Board shall—

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

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

(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,

or

(ii) where the local authority has made the alterations to the terms of the proposed development specified in a notification given to it under paragraph (a)(ii),

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—

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

indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the environmental impact statement referred to in 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

(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 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 not be less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the local authority.”, 10 15

(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 20

(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— 25

(i) approve the proposed development,

(ii) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified, 30

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

(iv) refuse to approve the proposed development, 35

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

(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— 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 proposed development would be situated, being a facility or service that,

in the opinion of the Board, would constitute a substantial gain to the community.

5 (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.

10 (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—

(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

20 (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.

30 (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.”.

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

Amendment of section 181 of Principal Act.

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

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

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

Environmental impact assessment of certain State developments.

40 “Approval of certain State development requiring environmental impact assessment.

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

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

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

(hereafter referred to in this section and sections 181B and 181C as 'proposed development'), the authority shall prepare, or cause to be prepared, an application for approval of the development under section 181B and an environmental impact statement in respect of the development and shall apply to the Board for such approval accordingly. 5

(2) Subject to section 181B(4), the proposed development shall not be carried out unless the Board has approved it with or without modifications. 10

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

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and— 15

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development, 20

(II) an environmental impact statement has been prepared in respect of the proposed development, 25

(III) where relevant, the proposed development is likely to have significant effects on the environment in another Member State of the European Communities or other party to the Transboundary Convention, 30

(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), 35 40

(iii) inviting the making, during such period, of submissions and observations to the Board relating to— 45

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and 50

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

if carried out, and

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

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

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

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

if carried out, and

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

30 (4) The Board may—

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

40 (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made

to the terms of it, notify the State authority that it is of that view and invite the State authority to make to the terms of the proposed development alterations specified in the notification and, if the State authority makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

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

(6) The Board shall—

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

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

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

or

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

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

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

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

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

(ii) the State authority has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be

indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a revised environmental impact statement in respect of the development has been furnished to the Board,

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

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

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

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

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

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

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

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

(i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, 5
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. 10

(2) The Board may, where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under section 181A(1) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development. 15 20

(3) The Board shall, in granting an exemption under subsection (2), consider whether— 25

(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, 30

and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate. 35

(4) The Minister for Defence may, in the case of proposed development in connection with, or for the purposes of, national defence, grant an exemption in respect of the development from a requirement under section 181A(1) to apply for approval and prepare an environmental impact statement if he or she is satisfied that the application of section 181A or 181C would have adverse effects on those purposes. 40

(5) Notice of any exemption granted under subsection (2) or (4), of the reasons for granting the exemption and, where appropriate, of any requirements applied under subsection (3) shall, as soon as may be— 45

(a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and 50

(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

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

(a) approve the proposed development,

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

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(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,

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

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

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

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

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

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

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

45

(10) Without prejudice to the generality of subsection (9), regulations under that subsection may

make provision for requiring the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(11) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, or on the environment, the Board shall have regard to— 5

- (a) the provisions of the development plan for the area, 10
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact, 15
- (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, 20
- (e) where relevant, the matters referred to in section 143, and
- (f) the provisions of this Act and regulations under this Act where relevant.

(12) Regulations made under section 181(1)(b) shall not apply to any development which is approved under this section. 25

(13) Nothing in this section or section 181A or 181C shall require the disclosure by a State authority or the Board of details of the internal arrangements of a development which might prejudice the internal or external security of the development or facilitate any unauthorised entrance to, or exit from, the development of any person when it is completed. 30

(14) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly. 40

Procedures in advance of seeking approval under section 181B.

181C.—(1) A State authority (a ‘prospective applicant’) which proposes to apply for approval under section 181B shall, before making the application, enter into consultations with the Board in relation to the proposed development. 45

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding— 50

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

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

(3) A prospective applicant may request the Board—

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

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

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

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

(a) consultations under subsection (1), and

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

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

(6) Neither—

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

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

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

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

Transfer of certain Ministerial functions to Board.

37.—The following sections are 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. 10 15

(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). 20 25 30

(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). 35

Transfer of certain Ministerial functions under Air Navigation Act 1998.

215B.—(1) The functions of the Minister for Transport under section 17 of, and the Second Schedule to, the Air Navigation and Transport (Amendment) Act 1998, as amended, in relation to the compulsory acquisition of land for the purposes set out in section 18 of that Act, are transferred to, and vested in, the Board, and relevant references in that Act to the Minister for Transport shall be construed as references to the Board and any connected references shall be construed accordingly. 40 45

(2) The transfer of the functions of the Minister for Transport in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to substrata of land, easements, rights over land (including wayleaves and public rights of way), 50

rights over land or water or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).”.

5 **38.**—The following sections are inserted after section 217 of the Principal Act:

Transferred
functions:
supplemental
provisions.

“Transferred
functions under
this Part:
supplemental
provisions.

10 217A.—(1) The Board may, in respect of any of the functions transferred under this Part concerning the confirming or otherwise of any compulsory acquisition, at its absolute discretion and at any time before making a decision in respect of the matter—

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

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

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

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

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

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

45 Section 215:
supplemental
provisions.

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

50 (a) request further submissions or observations from any person who made submissions or observations in relation to the scheme or proposed road development, or any other person who may, in

the opinion of the Board, have information which is relevant to its decision on the scheme or proposed road development, or

(b) hold meetings with the road authority or any other person where it appears to the Board to be necessary or expedient for the purpose of— 5

(i) making a decision on the scheme or proposed road development, or 10

(ii) resolving any issue with the road authority or any disagreement between the authority and any other person, including resolving any issue or disagreement in advance of an oral hearing. 15

(2) Where the Board holds a meeting in accordance with subsection (1)(b), it shall keep a written record of the meeting and make that record available for inspection. 20

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

(4) The Board may—

(a) if it considers it necessary to do so, require a road authority that has submitted a scheme under section 49 of the Roads Act 1993 or made an application for approval under section 51 of that Act to furnish to the Board such further information in relation to— 25 30

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

(ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said scheme or road development of such scheme or road development, 35 40

as the Board may specify, or

(b) if it is provisionally of the view that it would be appropriate to approve the scheme or proposed road development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the road authority that it is of that view and invite the authority to make to the terms of the scheme or proposed road development alterations specified in the notification and, if the authority makes those 45 50

alterations, to furnish to it such information (if any) as it may specify in relation to the scheme or road development, in the terms as so altered, or, where necessary, a revised environmental impact statement in respect of it.

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

(6) The Board shall—

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

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

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

or

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

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

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

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

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

(ii) the road authority has, pursuant to an invitation of the Board, made alterations to the terms of the

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

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

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

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

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

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

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

Board's powers to make decisions on transferred functions.

217C.—(1) Notwithstanding any provision of any of the enactments referred to in section 214, 215A or 215B concerning the confirming or otherwise of any compulsory acquisition, the Board shall, in relation

to any of the functions transferred under this Part respecting those matters, have the power to confirm a compulsory acquisition or any part thereof, with or without conditions or modifications, or to annul an acquisition or any part thereof.

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

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(3) Without prejudice to the generality of the 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—

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

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

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

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(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.”

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

Amendment of section 218 of Principal Act.

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

“(1) Where, as a result of the transfer of functions under section 214, 215, 215A or 215B, 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.”,

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and

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

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

“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, 215A or 215B, 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 or 215B, 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,

(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,

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,

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.

(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.”.

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

Amendment of
section 221 of
Principal Act.

(a) in subsections (1) and (7), by substituting “section 214, 215, 215A or 215B” for “sections 214 and 215”, and

(b) in subsections (2) and (5), by substituting “section 214, 215, 215A or 215B” for “section 214 or 215”.

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

Amendment of
section 223 of
Principal Act.

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

(b) in subsection (2), by substituting “section 214, 215, 215A or 215B” for “section 214 or 215”.

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

Amendment of
section 226 of
Principal Act.

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

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

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

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

“(6) (a) In the following case:

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

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

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

(b) That case is one of development that is identified for the purposes of section 176 (other than development falling within a class of development identified for the purposes of that section)

and which is proposed to be carried out wholly or partly on the foreshore—

- (i) by a local authority that is a planning authority, whether in its capacity as a planning authority or otherwise, or 5
 - (ii) by some other person on behalf of, or jointly or in partnership with a local authority that is a planning authority, pursuant to an agreement entered into by that authority, whether in its capacity as a planning authority or otherwise. 10
 - (c) Where required by the Board, the local authority or the Minister for Communications, Marine and Natural Resources shall provide to the Board such information as may be specified by the Board in respect of the effects on the environment of the proposed development, the subject of the question referred to it under this subsection. 15
- (7) (a) The Board shall consider and determine the question referred to it under subsection (6) and, where it determines that the development concerned would be likely to have significant effects on the environment, it shall— 20
- (i) notify the local authority concerned (and, where the question has been referred by the Minister for Communications, Marine and Natural Resources, that Minister of the Government) that it has determined that the development would be likely to have those effects, and 25 30
 - (ii) specify, in that notification, that any application by the local authority concerned for approval under subsection (1) in respect of the development shall be accompanied by an environmental impact statement prepared or caused to be prepared by the authority in respect of the development, 35
- and, where that notification so specifies, any such application shall be accompanied by such a statement accordingly. 40
- (b) In making that determination, the Board shall have regard to the criteria for the purposes of determining which classes of development are likely to have significant effects on the environment set out in any regulations made under section 176. 45
 - (c) Notwithstanding any other enactment, the determination of the Board of a question referred to it under subsection (6) shall be final. 50
- (8) The Minister may make regulations to provide for such matters of procedure and administration as appear to the

Minister, after consultation with the Minister for Communications, Marine and Natural Resources, to be necessary or expedient in respect of referring a question under subsection (6) or of making a determination under subsection (7).

- 5 (9) This section shall apply to proposed development—
- (a) that, if carried out wholly within the functional area of a local authority that is a planning authority, would be subject to the provisions of section 175,
- 10 (b) that a local authority has been notified under paragraph (a)(i) of subsection (7) is one which the Board has determined under that subsection would be likely to have significant effects on the environment, or
- 15 (c) that is prescribed for the purposes of this section.”.

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

Amendment of section 227 of Principal Act.

- (a) in subsection (5), by substituting “Minister for Communications, Marine and Natural Resources and the Minister for Transport” for “Minister for the Marine and Natural Resources”,
- 20 (b) by substituting the following subsection for subsection (8):
- “(8) (a) Subject to paragraph (b), the Foreshore Acts 1933 to 2005 shall not apply in relation to any application to the Board under section 226, or matters to which subsection (5)(b) applies or a scheme submitted under section 49 of the Roads Act 1993.
- 25 (b) In any case where a local authority that is a planning authority applies for an approval for proposed development under section 226 or has been granted such an approval by the Board, but has not sought the compulsory acquisition of any foreshore on which the proposed development would be carried out under an enactment specified in section 214, the authority may apply for a lease or licence under section 2 or 3 of the Foreshore Act 1933 in respect of that proposed development; in such cases, it shall not, notwithstanding the provisions of any other enactment, be necessary for—
- 30 (i) the local authority to submit an environmental impact statement in connection with its application for such lease or licence, or
- 35 (ii) the Minister for Communications, Marine and Natural Resources to consider the likely effects on the environment of the proposed development.”,
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- 45

and

- (c) by deleting subsection (9).

Amendment of section 228 of Principal Act.

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

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

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Amendment of section 265 of Principal Act.

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

Amendment of Part XIX of Principal Act.

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

“Exempted developments not affected.

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

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PART 4

15

MISCELLANEOUS

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

48.—(1) 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):

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“(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.”.

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

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Amendment of Transport (Railway Infrastructure) Act 2001.

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

(a) in section 2—

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

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

“ ‘prescribed’, in Part 3, means prescribed by regulations made by the Minister for the Environment, Heritage and Local Government;”,

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and

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

and

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

“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.

(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.

(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,

(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,

(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

(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.

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; 5
10
- (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. 15

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; 20
- (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; 25
- (c) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment; 30
- (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 35
- (e) a summary in non-technical language of the above information.

(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: 40

- (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, 45
- (ii) an estimate, by type and quantity, of the expected residues and emissions (including water, air and soil pollution, noise, vibration, 50

light, heat and radiation) resulting from the operation of the proposed railway works;

- 5
- (b) a description of the aspects of the environment likely to be significantly affected by the proposed railway works, including in particular—
- 10
- (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—
- 25
- (i) the existence of the proposed railway works,
- 30
- (ii) the use of natural resources,
- (iii) the emission of pollutants, the creation of nuisances and the elimination of waste,
- 35
- and a description of the forecasting methods used to assess the effects on the environment;
- (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,
- 45
- 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
- 50

required to compile such information having regard, amongst other things, to current 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.

(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.

(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.

Publication of notice in relation to application for railway order.

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

(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),

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

(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,

5 (iii) stating that the Board will
consider any submissions in
relation to the proposed
order or in relation to the
likely effects on the environ-
10 ment of the proposed rail-
way works which are sub-
mitted in writing to it by any
person within the period
referred to in subparagraph
(ii),

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

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

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

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

45 (e) in a case where—

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

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

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

(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.

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

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—

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

10 (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

35 (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.

55 (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). 5

(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. 10

Oral hearings. 42.—(1) The Board may, at its absolute discretion, hold an oral hearing into an application for a railway order. 15

(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. 20

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: 25

(a) the application; 30

(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; 35

(d) any submission duly made to it under section 40(3) or 41(4) and not withdrawn; 40

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

(f) any additional information furnished to it under section 41; 45

(g) the likely consequences for proper planning and sustainable development in the area in which it is proposed to carry out the railway works and for the environment of such works; and 50

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

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

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

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

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

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

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

(4) A railway order shall come into operation— 5

(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 10

(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 15

(c) in case such an application has been made and is withdrawn, upon the date of the withdrawal. 20

(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. 25

(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. 30

(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. 35

(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— 40

(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 45

(ii) notify the railway undertaking in writing of its decision and of the reasons for it. 50

5 (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.

10
15 (9) Notwithstanding section 47(1), the railway undertaking may appeal to the High Court against a decision of the Board under subsection (6) 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 decision of the Board or direct the Board to withdraw its decision and prohibit the making of the proposed order concerned.

25 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—

30 (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,

35 (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,

45 (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,

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

- (e) contain provisions as to the manner in which the railway works are to be operated and maintained,
- (f) without prejudice to paragraph 5 (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, 10
- (g) contain provisions requiring—
 - (i) the construction or the financing, in whole or in part, of the construction of a facility, or 15
 - (ii) the provision or the financing, in whole or in part, of the provision of a service,
 - in the area in which the railway works are to be constructed, 20
 - being a facility or service that, in the opinion of the Board, would constitute a gain to the community, 25
- (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. 30

(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. 40

(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.

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 50

(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—

- (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 Board,
- (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,

and with any other necessary modifications.

(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 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—

- (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.

(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.

5 Section 47:
supplemental
provisions.

47A.—(1) In this section—

10 ‘Court’, where used without qualification, means the High Court (but this definition shall not be construed as meaning that subsections (2) to (6) and (9) do not extend to and govern the exercise by the Supreme Court of jurisdiction on any appeal that may be made);

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

15 ‘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.

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

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—

40 (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,

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

50 (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 37(4)(d)(iii) of that Act (and, for this purpose, any requirement 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 the decision, the subject of the appeal, falls were a reference to the class of matter into which the order or act, the subject of the application for section 47 leave, falls).

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

(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 Court, the Court suspends the operation of the railway order until the application is 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 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.

(7) The determination of the Court of an application 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 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 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 (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, 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.

10 (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.

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

20 (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

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

30 (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.”.

35 **50.**—The Transport (Railway Infrastructure) Act 2001 is further amended by inserting the following sections after section 47A (inserted by section 49):

Further amendment of Transport (Railway Infrastructure) Act 2001.

40 “Discussions with Board before making an application.

45 47B.—(1) The Agency, CIÉ or any other person who proposes to apply for a railway order in accordance with section 37(1) shall, before making the application, enter into consultations with the Board in relation to the proposed railway works.

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

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

- (a) the procedures involved in making an application under this Part and in considering such an application, and
- (b) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

Section 47B:
supplemental
provisions.

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

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

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

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

Supplemental
powers for the
Board.

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

- (a) request further submissions or observations from the applicant, any person who made submissions or observations in relation to the application or any other person who may, in the opinion of the Board, have information which is relevant to the determination of the application,
- (b) without prejudice to section 41, make any information relating to the application available for inspection, notify any person or the public that the information is so available and, if it considers appropriate, invite further submissions or observations to be made to it within such period as it may specify, or
- (c) hold meetings with the applicant or any other person where it appears to the

Board to be necessary or expedient for the purpose of—

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

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

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

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

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

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

- (a) to publish in one or more newspapers circulating in the area or areas in which the proposed railway works would be situated a notice stating that the applicant has, pursuant to an invitation of the Board, made alterations to the terms of the application or order (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the application or order as so altered or a revised environmental impact statement in

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

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

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

(ii) a copy of that information or statement,

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

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

Objective of the Board in relation to railway orders.

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

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

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

as expeditiously as is consistent with proper planning and sustainable development and, for that purpose,

to take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the holding of those consultations or the making of that decision.

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

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

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

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

30 (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.

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

40 (6) Where the Minister for the Environment, Heritage and Local Government, having consulted with the Minister, considers it to be necessary or expedient that a certain class or classes of application for a railway order that are of special strategic, economic or social importance to the State be determined as expeditiously as is consistent with proper planning and sustainable development, he or

she may give a direction to the Board that priority be given to the determination of applications of the class or classes concerned, and the Board shall comply with such a direction.

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

Construction of certain references and transitional provision.

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

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

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

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

(b) an application that has been made under subsection (7) of section 43 (being that section in the terms as it stood before the commencement of those amendments), and

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

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

51.—(1) In this section “Act of 1993” means the Roads Act 1993. Amendment of
Roads Act 1993.

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

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

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

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

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

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

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

(b) in paragraph (a)(iv), by deleting “and”,

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

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

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

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

and

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