Seirbhís Leabharlainne 7 Taighde
Library & Research Service

Bill Digest

Planning and Development Bill 2020

No. 56 of 2020

Hari Gupta, Senior Researcher (Law)

20 November 2020

Abstract

The Planning and Development Bill 2020 (the Bill) is a short Bill drafted as a response to the Covid-19 pandemic. The Bill allows certain prescribed emergency periods to be disregarded when calculating relevant periods of time under the building control and the planning and development legislation, including the relevant statutory instruments. The Bill also replaces the mandatory requirement to hold public meetings about a proposed development plan, with an obligation for planning authorities to consult with and to invite written submissions from members of the public on a proposed development plan. Some of the changes proposed will extend beyond the proposed emergency period.

Tithe an Oireachtais
Houses of the Oireachtas

Contents

Contents 1
Introduction 2
Table of Provisions 3
Background 5
Section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* 5
Principal Provisions 7
Emergency periods 8

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2020, *L&RS Bill Digest: Planning and Development Bill 2020*

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as Bill Digests are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

© Houses of the Oireachtas 2020

Introduction

The Planning and Development Bill 2020 (the Bill) was presented to the Seanad by Senator Regina Doherty on behalf of the Minister for Housing, Local Government and Heritage on 13 November 2020. The Bill was published on 18 November 2020 and second stage debate in the Seanad is scheduled for **Wednesday, 25 November 2020**.

As noted in the Explanatory and Financial Memorandum attached to the Bill, the Bill's purpose is to make exceptional provision for emergency measures in response to the Covid-19 pandemic, ensuring necessary protections are put in place to safeguard the operation of the planning and building control systems during the Covid-19 crisis but also beyond in certain cases.

The Explanatory and Financial Memorandum also notes that there are no financial implications for the Exchequer arising from the Bill.

The Bill has not been subject to any pre-Legislative Scrutiny process and no General Scheme was published to outline the heads of the Bill.

Table of Provisions

Section	Title	Effect
1.	Definition	A standard provision that sets out that the term 'Principal Act' means the *Planning and Development Act 2000* (as amended) (the '2000 Act').
2.	Amendment of section 11 of Principal Act	This section substitutes section 11(3)(b) of the 2000 Act to require a planning authority to consult with members of the public in such manner as it considers appropriate and to invite written submissions from the public in relation to a proposed development plan. The new paragraph also provides the authority with a discretion to invite oral submissions from the public on a proposed development plan.
3.	Emergency Periods	Under this section, by order, the Government may specify a period as an 'emergency period' (at the request of the Minister for Housing, Local Government and Heritage, and after consulting with the Minister for Health and receiving the consent of the Minister for Public Expenditure and Reform). The order may identify one or more periods of time, relate to one or more administrative area, and it may be made in relation to one or more relevant enactment (sections 4(4), 6 and 17(6) of the *Building Control Act 1990* (as amended), the *Derelict Sites Act 1990* (as amended), the 2000 Act, Part 2 of the *Urban Regeneration and Housing Act 2015* (as amended) and Chapter 1 of Part 2 of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (as amended), or in a statutory instrument made under any of those enactments). An emergency period is to be disregarded when calculating an appropriate period, a specified period or any other period of time specified in a relevant enactment. Prior to making an order specifying an emergency period, the Government must be

		satisfied that the order is in the public interest having regard to: • the nature and potential effect of Covid-19 on individuals, society and the State, • the need to eliminate or reduce the threat to public health of Covid-19, • the policies and objectives of the Government relating to the protection of the public from Covid-19, • the need to mitigate adverse economic effects resulting from Covid-19, • the need to eliminate or reduce the impact of Covid-19 on the effective performance of functions under the relevant enactments, • the effective operation of the relevant enactment, • the need to ensure proper planning and sustainable development, and • regarding the building control legislation, the need to protect the health, safety and welfare of persons within the curtilage or immediate vicinity of buildings. The term 'Covid-19' is stated to have the meaning assigned to it by the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020*. This section prohibits the stipulation of an emergency period that expires after the day on which Part 3 of the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020* ceases to have effect (currently 9 June 2021, but this may be extended by a motion passed by both Houses of the Oireachtas).
4.	Short title and collective citations	A standard provision that sets out the titles by which the Act and related legislation are to be cited.

Source: L&RS Analysis of the Bill

Background

This section provides background information in relation to section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020*.

Section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020*

As noted by the Arthur Cox Environment and Planning team, the Suspension Period affected various deadlines imposed under Planning and Building Control legislation including deadlines and the calculation of time periods relating to:

- the processing of applications and appeals;
- the making of submissions and observations in respect of planning applications;
- the publication of observations and documents on a planning authority's website; responding to requests for further information;
- the making of appeals to An Bord Pleanála (the "Board");
- the provision of documents to the Board;
- the notification of decisions of the Board;
- time limits for enforcement procedures;
- the bringing of judicial review proceedings;
- the time period within which the building control authority must respond to an application for dispensation or relaxation of the Building Control Regulations;
- the time period within which the building control authority must respond to applications for/notifications of: fire safety certificates, 7 day notices, revised fire safety certificates, regularisation certificates, disability access certificates, revised disability access certificates or certificates of approval; and
- the entry of a site onto the Vacant or Derelict Sites Registers.

Section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* came into effect on 29 March 2020 upon the signing of the *Emergency Measures in the Public Interest (Covid-19) Act 2020 (Part 3) (Commencement) Order 2020* (S.I. No 100 of 2020). The section amended the *Planning and Development Act 2000* (as amended) (the 2000 Act) to give the Government power to disregard certain time periods specified in: the 2000 Act; sections 4(4), 6 and 17(6) of the *Building Control Act 1990* (as amended); the *Derelict Sites Act 1990* (as amended); Part 2 of the *Urban Regeneration and Housing Act 2015* (as amended); and the *Planning and Development (Housing) and Residential Tenancies Act 2016* (as amended) (these are referred to in this Digest as 'the relevant planning and development laws').

The Explanatory Memorandum to that Bill noted that the purpose of the section was to ensure that statutory deadlines in the relevant planning and development laws were not breached. The provision was modelled on the provisions in section 251 of the 2000 Act, covering the Christmas period.

Section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* (Calculation of time limits during emergency) inserted a new section 251A into the 2000 Act. The new section

provided that when calculating an appropriate period, specified period or other time limit under the relevant planning and development laws, the 'prescribed period' is to be disregarded.

The prescribed period ran from 29 March 2020 (the date that the section came into effect) until 23 May 2020 (as per the *Planning and Development Act 2000 (Subsection (4) of Section 251A) (No 2) Order 2020* (S.I. No 165 of 2020)).

Section 251A included a 'sunset clause', providing that the prescribed period could not be extended past 9 November 2020. This made section 251A of the 2000 Act redundant after that date. However, the Bill brings elements of this section back into force.

Principal Provisions

This section of the Digest examines the main provisions of the Bill.

The Bill comprises four sections. A short synopsis of each provision is given in the Table of Provisions (above).

Section 1 of the Bill defines the term 'Principal Act' to mean the *Planning and Development Act 2000* (as amended) (the 2000 Act). Section 4 of the Bill relates to the short title and collective citations of the Bill. As these are not substantive provisions, they are not discussed below.

It is noteworthy that the Bill does **not** include a commencement provision and therefore, if the Bill were passed in its current form, it would come into effect (in its entirety) on the date it is signed into law by the President.

Amendment of section 11 of Principal Act

Section 2 of the Bill would substitute a new section 11(3)(b) for the existing provision of the 2000 Act.

The current provision states that the planning authority must hold public meetings and seek written submissions on a proposed development plan and may also invite oral submissions from the public. The new provision would provide a planning authority with more discretion. Under the new paragraph the planning authority would be required to consult with the public,

> " … in such manner (which may include a public meeting) as it considers appropriate and invite written submissions from the public in relation to a proposed development plan."

The new paragraph would retain the discretion to invite oral submissions from the public.

Making and variation of a development plan (under sections 9, 12 and 13 of the 2000 Act) are reserved functions that fall to elected officials as provided for by sections 131 and 131A and schedule 14A part 3 item 69 of the *Local Government Act 2001* (as amended). However, the preparation of a draft development plan (under section 11 of the 2000 Act) is a function of the executive. Therefore, it would be the executive that would determine the consultation method, appropriate in the circumstances.

The Explanatory and Financial Memorandum attached to the Bill notes:

> "The urgent requirement for this proposal is to avoid barriers to progressing development plans during the pandemic, in the event of any current or future temporary prohibition on holding public meetings, by allowing the planning authority to take whatever steps it deems necessary (such as public/ newspaper notices, online communication, and which may include the holding of a public meeting) to ensure the public are consulted in compliance with the principles of the Aarhus Convention, which includes public participation in decision-making in environmental matters."

It is noteworthy that the new paragraph would still require the planning authority to consult with the public, in compliance with the principles of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and

Access to Justice in Environmental Matters (adopted on 25 June 1998 and ratified by Ireland on 20 June 2012).

Although the proposed amendment is aimed at limiting the effects of the Covid-19 pandemic on the planning process, the provision is not time or event limited – it would involve a **permanent change** in the way in which planning authorities consult members of the public on proposed development plans. The Explanatory and Financial Memorandum to the Bill states that this would:

> " … establish greater flexibility in the planning system in the long term, in line with the modernisation agenda, which will improve accessibility and inclusiveness of this statutory process, including through online communication approaches."

On this point, UNECE, in its *Maastrict Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters: prepared under the Aarhus Convention* (2015), states (at p. 38):

> "With the widespread availability of modern communication technologies, online consultation techniques can help to increase the public's understanding and the quality of their participation. Online consultations can complement face-to-face public meetings and hearings but should not fully replace them. …
>
> As a good practice, clear criteria should be established regarding when a public hearing or inquiry should be held. Where this is to be determined on a case-by-case basis, a screening process should be carried out with the reasons given for the determination made available to the public. The criteria for determining the need for a public hearing or inquiry may include:
>
> a. The scale of the activity and/or its potential impact;
> b. The size of the affected population;
> c. The controversial or high profile nature of the activity, recognizing, however, that this often may not be known until the public has had an opportunity to present its views;
> d. A need to investigate witnesses or to provide an opportunity for the public to be heard;
> e. A need to provide for cross-examination or the airing of conflicting views;
> f. Requests from the public concerned for a hearing or inquiry to be held."

Emergency periods

Section 3 of the Bill empowers the Government to make an order specifying a period as an 'emergency period'. An emergency period has the effect of extending certain statutory time periods applying under the relevant planning and development laws, including any instruments made under those laws.

In practice, as with section 251A of the 2000 Act, this would include the period in which:

- the authority may process applications and appeals;
- submissions and observations may be made in respect of planning applications;
- the authority may publish observations and documents on its website;
- the applicant may respond to requests for further information;

- a party may make appeals to An Bord Pleanála (the 'Board');
- a party may provide documents to the Board;
- Board may notify the public of its decisions;
- enforcement procedures may be taken;
- judicial review proceedings may be taken;
- the authority must respond to an application for dispensation or relaxation of the Building Control Regulations;
- the authority must respond to applications for/notifications of fire safety certificates, 7 day notices, revised fire safety certificates, regularisation certificates, disability access certificates, revised disability access certificates and certificates of approval; and
- an authority may enter the details of a site onto the Vacant or Derelict Sites Registers.

The Explanatory and Financial Memorandum to the Bill states:

> "This proposal is urgently required so that the integrity of the planning regime, especially its public participation elements, and certain decision making and enforcement systems of the building control regime, are not compromised, in the event that further waves of Covid-19 infections may necessitate a further period of more restrictive travel constraints, or indeed may critically impact on the operation of individual planning or building control authorities."

The Memorandum goes on to explain that section 3 of the Bill broadly mirrors the measures introduced by Section 9 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* (Calculation of time limits during emergency), which inserted a new section 251A into the 2000 Act (as noted above, section 251A of the 2000 Act was expended after 9 November 2020). However, section 3 of the Bill aims to provide more flexibility, allowing for more than one emergency period, which can be applied nationally or to specified areas and which may relate to specific legislative provisions. This flexibility would allow certain matters to continue unaffected, for example, determinations affecting strategic housing developments which may be progressed on the papers. On the other hand, applying different deferral periods could add a level of complexity to administrative processes, as authorities would need to put in place systems to establish whether individual planning and development processes fall within the relevant emergency periods. It appears that the greater the number of 'emergency period' orders issued and the specificity of those orders would have a direct impact on the level of administrative complexity.

As with any discretionary power, it would be important for the Government to consider the potential effects of the exercise of that power. Although the proposed section requires the Government to consider whether issuing an order would be in the public interest having regard to the need to ensure proper planning and sustainable development, there is no requirement for the Government to consider the potential effects on competition within an affected industry, there does not appear to be a requirement to ensure a level playing field.

Rather than substituting or amending the redundant section 251A of the 2000 Act, the Bill creates a new piece of legislation outside of the 2000 Act. Section 251A is not repealed; it remains part of the 2000 Act. This means that there will be three separate provisions under which the Government would have the potential to disregard time periods – sections 251 and 251A of the 2000 Act (if the sunset clause in section 251A is amended or removed), and section 3 of the Bill.

Unlike section 251A, the term ‘Covid-19’ is not specifically defined in section 3 of the Bill, rather subsection 3(4) provides that the term has the meaning assigned to it by the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020*. Unfortunately, that Act is an amending Act and the term Covid-19 is not defined in its substantive provisions. That said, the term ‘Covid-19’ is defined in section 2 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020*.

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie
Tel: +353 (0)1 6183000 or 076 1001700
Twitter: @OireachtasNews

Library & Research Service
Tel: +353 (0)1 6184701
Email: library.and.research@oireachtas.ie