

# Planning and Development (Amendment) No. 3 Bill 2021

No. 85 of 2021

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## Abstract

The Planning and Development (Amendment) No. 3 Bill primarily provides for temporary extensions to be given to planning authorities in reviewing and drawing up development plans. These extensions aim to mitigate against Covid-19 related disruptions.



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## Introduction and summary

The [Planning and Development \(Amendment\) No. 3 Bill](#) (the Bill) was published late on Wednesday 16<sup>th</sup> June. There was no General Scheme of the Bill and PLS was not carried out.

The primary aim of the Bill is to allow time-limited extensions to certain obligations and permissions under the [Planning and Development Act 2000](#) which may be necessary as a result of Covid-19 related disruptions. These include an extension to the time that planning authorities have to review and publish a development plan, and an extension to the duration of an existing development plan (subject to the requirement to carry out certain environmental assessments). The Bill allows extensions to certain planning permissions where work has commenced.

The Bill also amends [section 181](#) of the *Planning and Development Act 2000* which deals with developments by State authorities.

Finally, the Bill adds a new condition which can be attached to planning permission which will not attract compensation.

Given the lack of time between publication of the Bill and second stage debate (scheduled in the Seanad for 9:30 a.m. on 18 June 2021) any analysis of the provisions of the Bill is primarily in Table 2. The Digest also provides background information on planning and development policy and legislation.

## Glossary & Abbreviations

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
AA	Appropriate Assessment
CDP	City/County Development Plan
Committee	Oireachtas Committee on Housing, Local Government and Heritage
Department	Department of Housing, Local Government and Heritage
EIA	Environmental Impact Assessment
EIAR	EIA Report (formerly Environmental Impact Statement [EIS])
European site	A European site of ecological conservation importance, defined as Special Areas of Conservation (SACs) for habitats and species, designated under the <i>Habitats Directive 92/43/EC</i> and/or Special Protection Areas (SPAs) for birds designated under <i>Directive 2009/147/EC on the conservation of wild birds</i> (the codified version of Council Directive 79/409/EEC as amended)
LA	Local Authority
LAP	Local Area Plan
Minister	Minister for Housing, Local Government and Heritage
NDP	National Development Plan
NPF	National Planning Framework
OPR	Office of the Planning Regulator
RPGs	Regional Planning Guidelines
RSEs	Regional Spatial and Economic Strategies
SEA	Strategic Environmental Assessment
The Board	An Bord Pleanála
The 2000 Act	<i>Planning and Development Act 2000</i> (as amended)
The 2001 Regulations	Planning and Development Regulations 2001 (as amended)

### L&RS resources

For further information on the planning system in Ireland, the L&RS would like to remind Members of the joint paper by the L&RS and Northern Ireland Assembly Research & Information Service (2018), [A comparison of the planning systems in Ireland and Northern Ireland, a joint paper by the Oireachtas Library & Research Service and the Northern Ireland Assembly Research & Information Service](#).

## Table of provisions

A summary of the Bill's provisions is included in Table 2 below. The text of the Bill currently makes references to the Planning and Development (Amendment) Bill 2021 rather than the title of the Bill which is the Planning and Development (Amendment) No. 3 Bill 2021.

**Table 2 Table of provisions of the Planning and Development Amendment Bill 2021**

Section	Title	Effect
1	Definitions	The “Act of 2000” means the <i>Planning and Development Act 2000</i> , and “Minister” means the Minister for Housing, Local Government and Heritage in the Bill.
2	Modification to operation of section 9 of Act of 2000 having regard to Covid-19  (Obligation on every planning authority to make a development plan every six years)	<p>Section 2 provides for the insertion of a new section 9A after <a href="#">section 9</a> of the <i>Planning and Development Act 2000</i> which deals with the obligation on every planning authority to make a development plan every six years. Section 9A will apply until 1 January 2024. It gives planning authorities an additional period of up to 1 year for the completion of the review, the preparation and the making by a planning authority of a development plan (subject to any necessary environmental assessments).</p> <p>Where the planning authority considers that additional time may be necessary, they must first decide that their existing development plan or plans can be extended, as set out in section 3 of the Bill and in particular the requirements in respect of strategic environmental assessment and appropriate assessment, before they can decide to take the additional time to prepare the new development plan.</p> <p>The planning authority must inform the Office of the Planning Regulator of its decision or decisions to use an extension of time and must provide an indicative programme for the making of a new development plan within that further period or periods.</p>
3	Modification to operation of sections <a href="#">11</a> and <a href="#">11B</a> of Act of 2000 having regard to Covid-19  (Preparation of draft development plan and development plans for	Section 3 of the Bill inserts a new section 11D into the 2000 Act and will be in force until 1 January 2024. It deals with the extension of duration of an existing development plan, pending the preparation and making of new development plans. It includes the requirement that a planning authority must be satisfied that: the extension of duration of the existing development plan for up to an extra year would not likely result in significant environmental effects or have a significant effect on a

Section	Title	Effect
	new administrative areas to be provided for)	European site; or that the planning authority has undertaken a strategic environmental assessment or appropriate assessment, or both such assessments, as required, in respect of the extended period.
4	Modification to operation of <a href="#">section 12</a> of Act of 2000 having regard to Covid-19  (Making of development plan).	Section 4 of the Bill amends section 12(14) of the 2000 Act which allows the chief executive of a planning authority to make a development plan when the planning authority fails to make one within 2 years and 4 weeks. Where section 9A of the Act applies (as inserted by section 2 of this Bill) the planning authority must make a development plan within the extended time rather than within 2 years and 4 weeks.
5	Modification of role of regional assembly having regard to Covid-19  (Relating to <a href="#">Regional Spatial and Economic Strategy</a> )	Section 5 of the Bill requires a planning authority to notify the relevant regional assembly of the proposed extension of duration of an existing development plan. It inserts a new temporary section 27D into the 2000 Act which applies until 1 January 2024. This is a consequential amendment following the insertion of a new section 11D of the 2000 Act (to be inserted by section 3 of this Bill).
6	Modification to operation of section 31AM of Act of 2000 having regard to Covid-19  (Ministerial directions regarding regional planning strategy)	Section 6 of the Bill is a result of the insertion of a new section 11D into the 2000 Act by section 3 of the Bill. It will be in effect until 31 December 2023. Section 6 makes consequential amendments to <a href="#">section 31AM</a> of the 2000 Act which requires a planning authority to notify the Office of the Planning Regulator of the proposed extension of duration of an existing development plan. This includes a requirement for the relevant regional assembly to send a copy of any submissions or observations it may make to a planning authority to the Office of the Planning Regulator.
7	Modification to operation of section 42 of the 2000 Act having regard to Covid-19  (Power of planning authority to extend appropriate period)	Section 7 of the Bill provides for the insertion of new section 42B into the 2000 Act. <a href="#">Section 42</a> of the Act deals with the power of a planning authority to extend an appropriate period. The result of the new section is that where an application is made to a planning authority setting out the reasons why a development cannot be reasonably completed within the appropriate period in respect of a particular permission, the planning authority can extend the appropriate period by an additional period of up to 2 years or until 31 December 2023, whichever

Section	Title	Effect
		<p>first occurs. An extension will only be granted when the planning authority considers it necessary to enable completion of the development and is satisfied that:</p> <ul style="list-style-type: none"> <li>• an environmental impact assessment or appropriate assessment is not required in relation to the extension,</li> <li>• the application is in accordance with the permission regulations and any requirements of or under those regulations are complied with, and</li> <li>• the development was commenced, and substantial works carried out.</li> </ul> <p>An application for an extension must be made within 6 months of the commencement of section 7 when the permission expired between 8 January 2021 and the day section 7 comes into operation. Otherwise the application must be made within the period set out in <a href="#">section 43(2)</a> of the 2000 Act.</p> <p>Section 7 of the Bill also provides for technical amendments applying between the commencement date of section 7 of the Bill until 31 December 2023.</p>
8	<p>Modification to operation of Part XAB of Act of 2000 having regard to Covid-19</p> <p>(Appropriate assessment)</p>	<p>Section 8 of the Bill provides that references in <a href="#">Part XAB</a> of the 2000 Act to 'Land use plan' or 'draft Land use plan' will also mean 'a proposed extension of the duration of an existing development plan'. This relates to the screening for and the carrying out of an appropriate assessment in relation to the likely effects on the integrity of a European site of an extension to the duration of the existing development plan.</p> <p>The competent authority is the relevant planning authority.</p>
9	<p>Amendment of section 181 of Act of 2000</p> <p>(Development by State authorities)</p>	<p>Section 9 of the Bill amends <a href="#">section 181</a> of the 2000 Act which relates to development by State authorities. Section 181(2)(a) allows a Government Minister to order that the 2000 Act does not apply to specific developments to be carried out by or on behalf of a Minister or the Commissioners for Public Works where such development is required by reason of an accident or emergency.</p>



Section	Title	Effect
		<p>Section 9 of the Bill amends section 181(2)(a) by inserting a reference to “a statutory undertaker”<sup>1</sup> to ensure that such Ministerial orders can be made in respect of developments to be carried out by or on behalf of a statutory undertaker and secondly to provide that Ministerial orders cannot dis-apply the provisions of sections <a href="#">50</a>, <a href="#">50A</a>, <a href="#">50B</a> concerning the judicial review of planning functions and costs in environmental matters or section 181 itself to development.</p> <p>Section 9 of the Bill amends section 181(2A)(a) of the 2000 Act to expand the application of the definitions at that paragraph and designates the “Minister concerned” in respect of statutory undertaker development to be the Minister responsible for the enactment by or under which the statutory undertaker is authorised (a definition for “enactment” is also provided at new paragraph (aa)). The definition of “proposed development” is likewise amended to add development to be carried out by or on behalf of a statutory undertaker. This section also amends section 181(2A)(b) and (e) of the Act, dealing with the consideration of environmental impact assessment and appropriate assessment requirements for development proposed to be subject to a Ministerial order, the requirement for approval of An Bord Pleanála and the preclusion on the making of an order in respect of development requiring environmental assessment without prior approval where applicable, to include reference to development proposed to be carried out by or on behalf of a statutory undertaker. Section 9 also amends section 181(2L)(b) of the 2000 Act to extend the obligation to carry out or have carried out development to which an approval by An Bord Pleanála relates in accordance with any conditions attached to that approval to statutory undertakers.</p>

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<sup>1</sup> [Section 2](#) of the 2000 Act provides that a “statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—( a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,( b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or( c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

Section	Title	Effect
10	Amendment of Fifth Schedule to Act of 2000 (Planning permission conditions which do not result in compensation)	<p>Section 10 of the Bill amends the <a href="#">Fifth Schedule</a> to the 2000 Act which deals with conditions which may be imposed, to grants of permission to develop land, without compensation.</p> <p>Section 10 adds an extra condition to be added to planning permission: the persons of a particular class or description to whom the use as a dwelling may be restricted. This condition will not result in compensation.</p>
11	Short title and commencement.	This is a standard provision. Different parts of the Bill can be commenced at different times by Ministerial order.

Source: L&RS assessment of Bill

## Legislative and policy background

### Legislative framework

The two principal pieces of legislation which govern planning and development in Ireland are the [Planning and Development Act 2000](#) (as amended) and the [Planning and Development Regulations 2001](#) (as amended).

The 2000 Act sets out the planning framework. It consolidates all previous planning acts and is the basis for the Irish planning code, setting out the detail of regional planning guidelines, development plans and local area plans as well as the basic framework of the development management and consent system. Among other things, it provides the statutory basis for protecting our natural and architectural heritage, the making of development plans, and the provision of social and affordable housing.

The 2001 Regulations implement the 2000 Act by prescribing the details of the planning code. They consolidate all previous Regulations made under the 2000 Act and replace the Local Government (Planning and Development) Regulations 1994-2000.

Both the Planning and Development Act and Regulations have been amended many times.<sup>2</sup> For example, the 2000 Act has been amended or otherwise affected by over 160 Acts and Statutory Instruments since it was enacted.<sup>3</sup> The latest Revised Planning and Development Act<sup>4</sup> is available on the Law Reform Commission website and is updated to 30 April 2021.<sup>5</sup> An unofficial consolidation of the Planning and Development Regulations to 21 May 2021 is available from the Department of Housing, Local Government and Heritage (the Department).<sup>6</sup>

### Competent authorities

The Minister for Housing, Local Government and Heritage is responsible for developing planning policy and legislation while the physical planning system is operated by the 31 local authorities (City and County Councils). An Bord Pleanála (the Board) is the national planning appeals body and has responsibility for determining applications for strategic infrastructure projects of national importance. The Office of the Planning Regulator (the OPR) is responsible for overseeing the effective delivery of planning services and its functions include the independent assessment of county and city development plans, local area plans and regional spatial and economic strategies.

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<sup>2</sup> Department of Housing, Local Government and Heritage, 2021 *Planning legislation* [online]. Available at: <https://www.gov.ie/en/publication/c0ac2-planning-legislation-primary-legislation/> [accessed on 16.06.2021]

<sup>3</sup> Law Reform Commission, n.d. *Revised acts* [online]. Available at: <http://revisedacts.lawreform.ie/revacts/intro> [accessed on 16.06.2021]

<sup>4</sup> A Revised Act is an administrative consolidation of that Act. It brings together in a single text all amendments and changes to an Act, making the law more accessible for all users. In Ireland, as in most other states, once an Act on a specific legal topic is enacted it is often amended subsequently, sometimes in significant respects.

<sup>5</sup> Law Reform Commission. *Planning and Development Act 2000 Revised* [online]. Available at: <https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html> [accessed 16.06.2021]

<sup>6</sup> Department of Housing, Local Government and Heritage, 2021. *Planning and Development Regulation 2001-2021 (Unofficial consolidation)*. Available at: <https://www.gov.ie/en/publication/c0ac2-planning-legislation-primary-legislation/> [accessed on 16.06.2021]

## Policy background

### National planning policy

On 16 February 2018 the Government published *Project Ireland 2040* which comprises two reports – the [National Planning Framework](#) (NPF) and the [National Development Plan 2018-2027](#) (NDP). The Department on behalf of the Government is responsible for the NDP and NPF. *Project Ireland 2040* is the successor to the [National Spatial Strategy 2002-2020](#) (NSS) (Ireland's first national land-use planning framework).

The NPF (which is given statutory recognition in the [Planning and Development \(Amendment\) Act 2018](#)) anticipates that Ireland will grow significantly in the next twenty years with an extra one million people expected to be living here by 2040 and a need for an extra 550,000 homes close to services and amenities. It has been developed in parallel with the three Regional Spatial Economic Strategies and sets out a high-level framework for planning and development in Ireland to 2040.

The NDP is a 10-year, €116 billion programme underpinning the NPF. The capital will be used to upgrade Ireland's infrastructure in anticipation of the population increase.<sup>7</sup>

### Regional planning/strategies

Eight regional authorities were established in Ireland by the [Local Government Act 1991](#) and came into existence in 1994. The Regional Authorities monitored the delivery of EU Structural Fund assistance in the regions and developed Regional Planning Guidelines (RPGs). The aim of the RPGs was to co-ordinate development at a regional level including key infrastructural considerations and to help shape County/City and Local Area Development Plans for local authority members.

For EU structural funding purposes Ireland was divided into two Regional Assemblies (Border, Midland & Western and Eastern & Southern) in 1999.

As part of local government reform plans set out in 2012 in [Putting people first – action programme for effective local government](#), the [Local Government Reform Act 2014](#) provided for the dissolution of the eight regional authorities and two regional assemblies and for their replacement with three new regional assemblies. The three new regional assemblies were established in 2015 representing the [Northern and Western](#), [Eastern and Midland](#) and [Southern](#) Regions. Members of the Regional Assemblies consist of the local authorities within that region.

The aim of the new assemblies is to utilize EU and Exchequer funding to co-ordinate, promote or support strategic planning and sustainable development and promote effectiveness in local government and public services. Their main function is to draw up Regional Spatial and Economic Strategies (RSEs), replacing existing RPGs.<sup>8</sup> The RSEs is “a strategic plan which identifies

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<sup>7</sup> Government Press Office, 2018. *Reimagining our country: Government launches €116 billion Project Ireland 2040, 16 February* [online]. Available at: <http://npf.ie/project-ireland-2040-launched/> [accessed on 16.06.2021]

<sup>8</sup> Citizens Information. *Regional Assemblies* [online]. Available at: [http://www.citizensinformation.ie/en/government\\_in\\_ireland/local\\_and\\_regional\\_government/regional\\_assemblies.html](http://www.citizensinformation.ie/en/government_in_ireland/local_and_regional_government/regional_assemblies.html) [accessed on 16.06.2021]

regional assets, opportunities and pressures and provides appropriate policy responses”<sup>9</sup> which supports the implementation of the NPF and set the framework for local economic development and spatial planning in its region. Each regional assembly has developed its own RSES.<sup>10</sup>

## Development Plans

Development plans are part of a systematic hierarchy which is informed by national and/or regional planning policy and by the plans and strategies of central government and other public agencies in general.

While the national/regional policy focuses on strategic issues, as one moves down the planning hierarchy there should be an increasing focus on detailed issues at the more local level. In Ireland, under national and regional policy, local planning authorities produce County/City Development Plans for the whole of their area. Under these plans, local authorities may produce Local Area Plans for a particular area within the whole council area.

## County/City Development Plans

Each local authority (City or County Council) acts as the planning authority with responsibility for making planning decisions within its functional area. Under [section 9](#) of the 2000 Act, each planning authority is obliged to make a Development Plan for the whole of its functional area. The Development Plan (City/County Development Plan [CDP]) is a statutory land-use plan generally consisting of a written statement and associated maps. It sets the overall strategy for proper planning and sustainable development of the functional area taking due cognisance of regional and national plans, policies and strategies. It provides one of the key policy contexts for individual planning decisions in the development plan area.

As such, the CDP is the main statement of planning policies for the local area, setting out the land use, and amenity and development objectives of the planning authority. The plan includes zoning of land for particular types of development (residential, amenity, commercial, industrial etc.) and may also list various sites, features and natural amenities such as trees for protection.

## Making and reviewing CDPs

It is a function of the Councillors (elected members of each planning authority) to make, review, vary (if required) and adopt the plan with technical assistance from the planning authority and following extensive public consultation. If the elected members fail to make a plan within six years, then the County/City manager of the planning authority must make one. The planning authority must commence a review of the plan within four years and make a new plan every six years.<sup>11</sup>

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<sup>9</sup> NWRA, 2017. *RSES Issues Paper* [online]. Available at: <http://www.nwra.ie/wp-content/uploads/NWRA-RSES-Issues-Paper.pdf> [accessed on 16.06.2021]

<sup>10</sup> NWRA, 2020. *Regional Spatial and Economic Strategy* [online]. Available at: <https://www.nwra.ie/rses/> [accessed on 16.06.2021]

<sup>11</sup> Department of Environment, Heritage and Local Government, 2007. *Development Plans – Guidelines for Planning Authorities* [online]. Available at: <https://www.opr.ie/wp-content/uploads/2019/08/2013-Local-Area-Plans-1.pdf> [accessed on 16.06.2021]

Section 2 of the Bill gives planning authorities an additional period of up to 1 year for the completion of the review, the preparation and the making by a planning authority of a development plan (subject to any necessary environmental assessments).

## Planning permission

[Section 32](#) of the 2000 Act provides for a general obligation for planning permission. Planning permission is required for:

- Any development which is not exempted development<sup>12</sup>;
- In the case of unauthorised development, for the retention of that unauthorised development.

Where permission is required (above), development shall not be carried out except in accordance with the planning permission granted.<sup>13</sup>

In this way, under section 32 of the 2000 Act, all planning applications for development are submitted to the planning authority with the exception of applications for Strategic Infrastructure Development (SID) and Strategic Housing Development (SHD), both of which are applied for directly to the Board. In addition, where a development is proposed for a Strategic Development Zone, the applicant may choose whether to apply directly to the Board or the planning authority. Applications for SID, SHD and for developments within an SDZ submitted directly to the Board cannot be appealed.

Section 7 of the Bill deals with an extension to an existing planning permission time period. Where an application is made to a planning authority setting out the reasons why a development cannot be reasonably completed within the appropriate period in respect of a particular permission, the planning authority can extend the appropriate period by an additional period of up to 2 years or until 31 December 2023, whichever first occurs. An extension will only be granted when the planning authority considers it necessary to enable completion of the development and is satisfied that-

- an environmental impact assessment or appropriate assessment is not required in relation to the extension,
- the application is in accordance with the permission regulations and any requirements of or under those regulations are complied with, and
- the development was commenced, and substantial works carried out.

## Planning conditions

Planning authorities have the power to impose planning conditions on planning permission.

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<sup>12</sup> Exempted developments are those developments for which planning permission is not required and are legislated for under [Section 4](#) of the *Planning and Development Act 2000* (as amended). The classes of exempted development are set out in column 1 (description of development) of the 2<sup>nd</sup> Schedule to the [Planning and Development Regulations 2001](#) (as amended) provided that such development complies with the corresponding conditions and limitations set out in column 2 of the 2<sup>nd</sup> Schedule.

<sup>13</sup> [Part III \(Sections 32-50B of the 2000 Act\)](#) provide for the control of development. This includes provisions for the obligation to apply for planning permission, planning conditions, appeals, substitute consent, acquisition of land, development contributions, judicial review, and costs in environmental matters.

[Section 34](#)(1) of the 2000 Act provides that planning permission may be granted subject to or without conditions or refused. Section 34(4) sets out the type of conditions which may be imposed. These include conditions for requiring the carrying out of works (including provisions of facilities), measures to reduce noise and vibration, requiring of planting of trees, maintenance and waste storage and disposal among other things.

The [Fifth Schedule](#) of the 2000 Act provides for a list of conditions which may be imposed on the granting of permission to develop land without compensation.<sup>14</sup> These include conditions such as to pay a development contribution, to protect the environment or cultural heritage of the area, to protect against flooding or to regulate and control the design, colour, layout, materials used in the development etc.

Section 10 amends the Fifth Schedule and adds an extra condition to be added to planning permission: the persons of a particular class or description to whom the use as a dwelling may be restricted. This condition will not result in compensation.

## Environmental Assessments

Planning is informed and influenced greatly by environmental requirements, which are driven by EU legislation. For example, the [Strategic Environmental Assessment](#) (SEA) and the [Environmental Impact Assessment](#) (EIA) directives set out environmental assessment requirements for plans and projects respectively. Both directives have been ratified by Member States through regulations and have become an integral part of the planning decision process. SEA is used to assess the environmental impact of a plan or programme at public policy and planning levels while an EIA is used to identify the environmental impacts of certain types of proposed projects and planning applications for these projects are judged on their outcome.

### Strategic Environmental Assessment

Strategic Environmental Assessment (SEA) is the process by which environmental considerations are required to be fully integrated into the preparation of Plans and Programmes prior to their final adoption. The objectives of SEA are to provide for a high level of protection of the environment and to promote sustainable development.<sup>15</sup>

Under the [Planning and Development \(Strategic Environmental Assessment\) Regulations 2004 \(SI No. 436 of 2004\)](#) (as amended), planning authorities must conduct an SEA during the making of a development plan.

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<sup>14</sup> The Fifth Schedule is subject to Section 191 (restriction of compensation). Section 191(3) states that “compensation shall not be payable under *section 190* [right to compensation] in respect of the imposition, on the granting of permission to develop land, of any condition of a class or description set out in the *Fifth Schedule*.”

<sup>15</sup> EPA, n.d. *Strategic Environmental Assessment* [online]. Available at: <https://www.epa.ie/our-services/monitoring--assessment/assessment/strategic-environmental-assessment/> [accessed on 16.06.2021]

## Environmental Impact Assessment

Environmental Impact Assessment (EIA) is the process of examining the anticipated environmental effects of a proposed project - from consideration of environmental aspects at design stage, through consultation and preparation of an Environmental Impact Assessment Report (EIAR), evaluation of the EIAR by a competent authority, the subsequent decision as to whether the project should be permitted to proceed, encompassing public response to that decision.<sup>16</sup>

The EIA Directives (from 1985 to 2014)<sup>17</sup> set out the requirement for an EIA in EU law and have been transposed into Irish legislation by way of several EIA Regulations from 1989 to 2018. The [European Union \(Planning and Development\) \(Environmental Impact Assessment\) Regulations 2018](#) transposed the 2014 EIA Directive and gave further effect to the 2011 EIA Directive by way of extensive amendments to existing planning law.

EIA provisions in relation to planning consents are currently contained in [Part X](#) and [Part XA](#) of the 2000 Act and in Part 10 of the 2001 Regulations.<sup>18</sup> Developments for the purpose of Part 10 (i.e. those developments requiring an EIA) are set out in Schedule 5 (Parts 1 and 2) of the 2001 Regulations.

## Appropriate Assessment

### Habitats & species

European sites of ecological conservation importance (European sites) are defined as Special Areas of Conservation (SACs) for habitats and species, designated under the *Habitats Directive 92/43/EC* and Special Protection Areas (SPAs) for birds designated under *Directive 2009/147/EC on the conservation of wild birds* (the codified version of Council Directive 79/409/EEC as amended) ('the Birds Directive'). These are also known, collectively, as Natura 2000 sites.

The Natura 2000 sites form a pan-European ecological network of SACs and SPAs for threatened habitats, species and birds. The Habitats and Birds Directives are transposed by Member States through the *EC (Birds and Natural Habitats) Regulations 2011-2015* in Ireland. Under the Regulations, any plan/project/activity on a European site must be assessed in relation to its potential impact on the integrity of the site. On this basis, planning authorities may require certain assessments and site surveys to accompany a planning application. The ecological features of a site and the details of the project will determine the types of surveys required.<sup>19</sup>

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<sup>16</sup> EPA, n.d. *Environmental Impact Assessment* [online]. Available at: <https://www.epa.ie/our-services/monitoring--assessment/assessment/environmental-impact-assessment/> [accessed on 16.06.2021]

<sup>17</sup> The 1985 EIA Directive (as amended by three Directives in 1997, 2003 and 2009) has been repealed and all of these EIA Directives have been codified by [Council Directive 2011/92/EU](#). Most recently, Directive 2011/92/EU has been amended in 2014 by [EIA Council Directive 2014/52/EU](#) (new EIA Directive).

<sup>18</sup> Department of Housing, Planning and Local Government, 2018. *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment* [online]. Available at: <https://www.gov.ie/en/publication/53aee9-guidelines-for-planning-authorities-and-an-bord-pleanala-on-carrying/> [accessed on 16.06.2021]

<sup>19</sup> NPWS, n.d. *Legislation* [online]. Available at: <https://www.npws.ie/legislation> [accessed on 16.06.2021]



In Ireland a Natural Impact Statement (NIS) is carried out by ecological specialists on behalf of the proponent of the plan/project and assessed by the planning authority.<sup>20</sup>

### Appropriate Assessment

Article 6 (3) of the Habitats Directive requires any plan or programme, not directly connected with or necessary to the management of a European site, but likely to have significant impacts on it, to undergo an Appropriate Assessment (AA). This is a scientific assessment carried out by the competent authority (the developer usually prepares all AA documentation, but the responsibility lies with the consent authority). The first step in the AA process is called screening – this is carried out on a case-by-case basis to determine whether the plan/project is likely to have a significant impact on a European site. The AA is specific to the conservation objectives of the site, so it will only assess those aspects of a site for which it is designated.<sup>21</sup>

In exceptional circumstances a plan or project may still be allowed to go ahead, despite a negative assessment if that plan or project must be carried out for ‘imperative reasons of overriding public interest’ (IROPI). In such cases, a Member State must take compensatory measures to ensure the overall coherence of Natura 2000 is protected.<sup>22</sup> The implementing legislation for AA in Ireland is found in [Part XAB](#) (Appropriate Assessment) of the 2000 Act and *EC (Birds and Natural Habitats) Regulations 2011* (Parts 4 and 5).

Section 7 of the Bill allows for planning permission to be extended in certain circumstances. A condition of any extension is that an environmental impact assessment or appropriate assessment is not required.

Section 8 of the Bill provides that references in Part XAB of the 2000 Act to ‘Land use plan’ or ‘draft Land use plan’ will also mean ‘a proposed extension of duration of an existing development plan’. This relates to the screening for and the carrying out of an appropriate assessment re. the likely effects on the integrity of a European site of an extension to the duration of the existing development plan. The competent authority is the relevant planning authority.

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<sup>20</sup> NPWS, n.d. *Guidance on Appropriate Assessment for Planning Authorities* [online]. Available at: <https://www.npws.ie/protected-sites/guidance-appropriate-assessment-planning-authorities> [accessed on 16.06.2021]

<sup>21</sup> For further information see Part 5 of the [EC \(Birds and Natural Habitats\) Regulations 2011](#).

<sup>22</sup> European Commission, n.d. *Management of Natura 2000 sites* [online]. Available at: [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm) [accessed on 16.06.2021]

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