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**An Bille um Pleanáil agus Forbairt agus um Imeall Trá  
(Leasú), 2022**  
**Planning and Development and Foreshore (Amendment)  
Bill 2022**

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*Meabhrán Míniúcháin agus Airgeadais*  
*Explanatory and Financial Memorandum*

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**AN BILLE UM PLEANÁIL AGUS FORBAIRT AGUS UM IMEALL  
TRÁ (LEASÚ), 2022  
PLANNING AND DEVELOPMENT AND FORESHORE  
(AMENDMENT) BILL 2022**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

The purpose of the Bill is to amend the Planning and Development Act 2000 (“Act of 2000”) in relation to the appointment of, and the efficient discharge of business of, An Bord Pleanála and to amend the Foreshore Act 1933 to ensure the body of water above the seabed is included in the definition of foreshore.

An Bord Pleanála

The Bill provides that the Board of An Bord Pleanála shall consist of a chairperson and such number of ordinary members, up to a maximum of 14, as the Minister may appoint having regard to the number and nature of applications, appeals, referrals or other matters with which the Board is concerned.

It also provides that the Minister may, by order, increase the number of ordinary members of the Board above 14, where he or she is of the opinion that the number of applications, appeals, referrals or other matters with which the Board is concerned is at such a level so as to necessitate the appointment of one or more additional ordinary members to enable the Board fulfil its duty and objectives under section 37J, 126, 126A, 177C, 177E or 221 of the Act of 2000 or section 47E of the Transport (Railway Infrastructure) Act of 2001.

Provisions relating to the appointment of temporary ordinary members are being amended to allow the Minister to appoint, from persons who are, or were formerly, established civil servants for the purposes of the Civil Service Regulation Acts 1956 to 2005, established public servants in state agencies or employees of the Board, one, or more than one person, who is, in the opinion of the Minister, a suitably qualified person on a temporary basis.

The Bill removes the requirement in the Act of 2000 that the number of ordinary members appointed under subsection 104(4) of that Act shall not exceed one third of the total number of ordinary members at any one time.

The Bill replaces the existing statutory system of nominating bodies submitting nominees to the Minister for consideration for appointment to the Board of An Bord Pleanála, instead providing for a suitable, independent, objective and transparent procedure by which recommendations may be made to the Minister in relation to ordinary members of the Board.

The investigative powers of the chairperson of the Board are being amended to provide clear instructions on the actions to be taken on receipt of a complaint or where the chairperson considers there may be issues to be investigated. Provision is also being made for such an investigation to be instigated by the Minister.

The mechanism for deciding particular cases is being amended to provide for a minimum quorum of 3.

The Bill provides for the appointment of a chairperson on an interim basis, for a period of up to a year, where the position of chairperson becomes vacant. It also provides that where the position of chairperson is vacant, the deputy chairperson may perform any functions of the chairperson.

#### Foreshore Act 1933

Part 3 amends the Foreshore Act 1933. The Bill provides that leases, licences and consents granted by the Minister under the Foreshore Act 1933 which include an area that would not have fallen into the definition of foreshore prior to this Bill shall be understood to be foreshore in accordance with the amended definition. Provision is also being made that where applications for leases, licences or consents have been made to the Minister under the 1933 Act which include an area that would not have fallen into the definition of foreshore prior to this amendment taking effect, and which have not been determined by the Minister, then in determining the applications the Minister may take account of the revised definition of foreshore.

The Bill comprises 17 sections, arranged in 3 parts.

### **Provisions of the Bill**

#### **PART 1**

##### **PRELIMINARY AND GENERAL**

*Section 1 Short title, collective citation and commencement* contains the standard provisions about short title, collective citation and commencement.

#### **PART 2**

##### **AMENDMENT OF PLANNING AND DEVELOPMENT ACT 2000**

*Section 2 Definition (Part 2)* is a standard provision to set out definitions of terms used in Part 2 of the Bill.

*Section 3 Amendment of section 104 of Act of 2000* provides that the Board shall consist of a chairperson and such number of ordinary members, up to a maximum of 14, as the Minister may appoint having regard to the number and nature of applications, appeals, referrals or other matters with which the Board is concerned.

Section 3 also provides that the Minister may by order increase the number of ordinary members above 14, where he or she is of the opinion that the number of applications, appeals, referrals or other matters with which the Board is concerned is at such a level so as to necessitate the appointment of one or more additional Board members to enable the Board fulfil its duty and objectives under section 37J, 126, 126A, 177C, 177E or 221 of the Act of 2000 or section 47E of the Act of 2001.

The requirement to obtain Oireachtas approval for an order to increase the number of ordinary members is being removed.

*Section 3* provides that where the Minister is of the opinion that one, or more than one, additional ordinary member should be appointed as a

matter of urgency due to the number of applications, appeals, referrals or other matters with which the Board is concerned, the Minister may appoint, from persons who are, or were formerly, established civil servants for the purposes of the Civil Service Regulation Acts 1956 to 2005, established public servants in state agencies or employees of the Board, one, or more than one person, who is, in the opinion of the Minister, a suitably qualified person on a temporary basis.

*Section 3* also removes the requirement in the Act of 2000 that the number of ordinary members appointed under subsection 104(4) of that Act shall not exceed one third of the total number of ordinary members at any one time.

*Section 4 Amendment of section 105 of Act of 2000* provides that the Committee selection procedure as currently provided under section 105(8) of the Act of 2000, or the term of office for the chairperson currently provided for under section 105(12) of the Act of 2000, shall not apply to a chairperson appointed on an interim basis under section 105A.

*Section 5 Appointment of chairperson on interim basis* provides that where no chairperson stands appointed under section 105 of the Act of 2000 the Government may appoint from persons who are, or were formerly, established civil servants for the purposes of the Civil Service Regulation Acts 1956 to 2005, established public servants in state agencies or employees of the Board, a person who is, in the opinion of the Government, a suitably qualified person, to be the chairperson on an interim basis for a period of not more than 12 months.

*Section 6 Amendment of section 106 of Act of 2000* provides that the ordinary members of the Board are persons who, in the opinion of the Minister, have satisfactory experience of, or a satisfactory mix of experience and knowledge of, infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community affairs, social affairs, planning, the environment, the marine, climate change, law and corporate governance, and that there is an equitable balance among the ordinary members between men and women.

*Section 6* also provides that the Minister shall establish a suitable, independent, objective and transparent procedure (which may include the establishment of a Committee) by which recommendations may be made to the Minister in relation to the appointment of ordinary members of the Board.

*Section 7 Saver of power of Minister to appoint under section 106(1)(e) of Act of 2000* provides that the Minister may continue to make appointments under section 106(1)(e) of the Act of 2000 until such time as the Minister makes an appointment in accordance with the new provisions relating to the Board appointment process.

*Section 8 General power of deputy chairperson to carry out functions of chairperson where office is vacant* provides that the deputy chairperson may perform any functions of the chairperson, where that office is vacant.

*Section 9 Amendment of section 108 of Act of 2000* amends the mechanism for deciding particular cases to provide for a minimum quorum of 3.

*Section 9* also provides that where, owing to the illness of the chairperson or of an ordinary member, or for any other reason, a sufficient number of members of the Board is not available to enable the Board effectively to perform its functions, the Minister may, as an interim measure, appoint, from persons who are, or were formerly, established civil servants for the purposes of the Civil Service Regulation Acts 1956 to 2005, established public servants in state agencies or employees of the Board, one or more

than one person who is, in the opinion of the Minister, a suitably qualified person, to be an ordinary member.

*Section 10 Amendment of section 110 of Act of 2000* amends the investigative powers of the chairperson under section 110, by providing clear instructions on the actions to be taken on receipt of a complaint or where the chairperson considers there may be issues to be investigated. Provision is also being made for such an investigation to be instigated by the Minister.

### **PART 3**

#### **AMENDMENT OF FORESHORE ACT 1933**

*Section 11 Definition (Part 3)* is a standard provision to set out definitions of terms used in Part 3 of the Bill.

*Section 12 Amendment of section 1 of Act of 1933* inserts into the Act of 1933 a new definition of Act of 2022 that is the Planning and Development and Foreshore (Amendment) Act 2022.

*Section 13 Subsoil below, and water column above, foreshore* revises the definition of foreshore such that the definition will include the subsoil below and the water column above the bed and shore. This provision also deems that this revised definition should be understood to have always been the definition of foreshore.

*Section 14 Provisions relating to certain other leases, licences, etc* provides that leases, licences and consents granted and made by the Minister under the 1933 Act which include an area that would not have fallen into the definition of foreshore prior to this amendment shall be understood to be foreshore in accordance with the amended definition. This section also provides that where this would conflict with the constitutional rights of any person then it shall apply with such limitations as are necessary to avoid such conflict but shall otherwise have full force and effect.

*Section 15 Provisions relating to certain other applications for lease, licence or consent* provides that where applications for leases, licences or consents have been made to the Minister under the 1933 Act which include an area that would not have fallen into the definition of foreshore prior to this amendment taking effect, and which have not been determined by the Minister, then in determining the applications the Minister may take account of the revised definition of foreshore. This section also provides that where this would conflict with the constitutional rights of any person then it shall apply with such limitations as are necessary to avoid such conflict but shall otherwise have full force and effect.

*Section 16 Provisions relating to certain other aquaculture licences* provides that where a foreshore licence was deemed by the Fisheries (Amendment) Act 1997 or the Fisheries and Foreshore (Amendment) Act 1998 to be an aquaculture licence before the passing of this Act which include an area that would not have fallen into the definition of foreshore prior to this amendment taking effect, then the licence shall be understood to be foreshore in accordance with the amended definition. It also provides that where a foreshore licence was granted before the passing of this Act that relates in whole or in part to aquacultural purposes which include an area that would not have fallen into the definition of foreshore prior to this amendment taking effect, then the licence shall be understood to be foreshore in accordance with the amended definition.

*Section 17 Provisions with respect to certain other court proceedings* is a technical amendment that provides for circumstances where prior to this amendment taking effect the Court has made a finding in relation to whether

an area is foreshore then that finding shall not be affected by this amended definition of foreshore. It also provides that where a Court is considering a case that was instituted before 9 November 2022, by reference to the area in respect of which it was granted, then the amended definition of foreshore shall not apply to the lease, licence or consent subject to the proceedings.

#### **Financial Implications**

An Bord Pleanála received an increased exchequer allocation of €3.9 million to bring its 2023 current funding allocation to €26.1 million.

*An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta*  
*Nollaig, 2022.*