

Planning and Development and Foreshore (Amendment) Bill 2022

Bill No. 115 of 2022

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Abstract

The Planning and Development and Foreshore (Amendment) Bill 2022 proposes to amend the *Planning and Development Act 2000* in relation to the appointment of, and the efficient discharge of business of, An Bord Pleanála. It also proposes to amend the *Foreshore Act 1933* to clarify the definition of foreshore under that Act.



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Introduction and Background

The [Planning and Development and Foreshore \(Amendment\) Bill 2022](#) (the Bill) was published on 1 December 2022. An [Explanatory Memorandum](#) was also published. The Bill itself is scheduled for Second Stage debate before Seanad Éireann on Tuesday, 6 December 2022 and proposes to amend two enactments:

- The [Planning and Development Act 2000](#) (2000 Act) in relation to the appointment of, and the efficient discharge of business of, An Bord Pleanála (the Board), and
- The [Foreshore Act 1933](#) (1933 Act) to clarify the definition of foreshore and make several technical amendments related to this change.

Given the time between publication of the Bill and Second Stage debate, this Digest provides a brief overview of the legislative and policy context for the Bill and its principal provisions, focused on [Phase 1 of the Office of the Planning Regulator \(OPR\) Review](#) published in October 2022 and the relevant actions of the [Action Plan for An Bord Pleanála](#), also published in October 2022.¹

Therefore, this Digest is not a complete or exhaustive consideration of the relevant issues and is intended only as a brief description of the background to the Bill and its main provisions.

Policy and legislative context

An Bord Pleanála was established in 1977 under the [Local Government \(Planning and Development\) Act 1976](#). Under the 2000 Act, as amended, it is responsible for the determination of appeals and certain other matters under the Act and associated legislation, as well as the determination of applications for strategic infrastructure development. It is also responsible for proposals for the compulsory purchase of land by local authorities and others, and may also determine appeals under the Local Government (Water Pollution) Acts and Building Control Acts.²

The Bill follows the publication of two documents:

- [Report](#) on Phase 1 of a Review by the Office of the Planning Regulator of certain Systems and Procedures used by An Bord Pleanála pursuant to section 31AS of the Planning and Development Act 2000 (Report of Phase 1 of OPR Review, or the Report), 3 October 2022³, and
- [Action Plan for An Bord Pleanála](#) (Action Plan), 4 October 2022.⁴

Responding to a question on the Action Plan on 12 October 2022, the Minister for Public Expenditure and Reform, Michael McGrath TD, stated the following:

¹ Office of the Planning Regulator, '[Office of the Planning Regulator Publishes Report on Phase One of Review of An Bord Pleanála](#)', 4 October 2022.

² See An Bord Pleanála, [Functions of the Board](#) (webpage).

³ Office of the Planning Regulator, Report on Phase 1 of a Review by the Office of the Planning Regulator of certain Systems and Procedures used by An Bord Pleanála pursuant to section 31AS of the Planning and Development Act 2000, as amended ([Report on Phase 1 of the OPR Review](#)), 3 October 2022.

⁴ Department of Housing, Local Government and Heritage, [Action Plan for An Bord Pleanála](#) (PDF download), 4 October 2022.

The Minister for Housing, Local Government and Heritage has obtained Government approval for an action plan arising from phase 1 of the recommendations of the Office of the Planning Regulator, OPR, as part of the review that was carried out by the OPR of An Bord Pleanála. The action plan includes measures to address conflicts of interest, changes to the board appointment system, strengthening the senior management team and the provision of further resources to An Bord Pleanála. A whole series of very significant and impactful changes have been agreed to and will be implemented. We provided significant resources to the Minister of Housing, Local Government and Heritage in the budget for beefing up the capacity of An Bord Pleanála and to address a number of the issues that have been raised.⁵

The Minister for Public Expenditure and Reform also referenced the ongoing review of planning legislation.⁶

In Seanad Éireann, the Minister of State at the Department of Housing, Local Government and Heritage, referred to the legislative context of this Bill in relation to the upcoming review of planning legislation:

“...A number of the proposed actions contained in the action plan require legislative underpinning. Some of these will be pursued as part of the review of the planning legislation currently being led by the Attorney General but other measures including a new regime of recruitment for appointments to An Bord Pleanála require more immediate legislative underpinning and will be addressed in the planning, development and foreshore (amendment) Bill 2022”⁷

The Minister of State also referenced Government plans to abolish the nomination-based process currently used for appointments to the Board and replace it with an open competition process.⁸

OPR Report

The Report of Phase 1 of OPR Review made 11 recommendations, some of which it stated should be implemented immediately or in the short-term, whilst others require further consideration in the second phase of the review. The Report highlighted some of the more immediate concerns, which included the appointment of board members and discontinuing the appointment of two-person quorums for the Board.⁹ Both of these matters relate to provisions included in the Bill.

Recommendations 1 to 4 appear to be of direct relevance to the Bill, dealing with the appointment of board members and the configurations of the Board itself, with the Bill providing the legislative underpinning for some of these changes.

⁵ Michael McGrath TD, Minister for Public Expenditure and Reform, [Leader's Questions](#), *Dáil Éireann Debate*, 12 October 2022.

⁶ Ibid.

⁷ Malcolm Noonan TD, Minister of State at the Department of Housing, Local Government and Heritage, [Commencement Matters](#), *Seanad Éireann Debate*, 12 October 2022.

⁸ Ibid.

⁹ Office of the Planning Regulator, [Report on Phase 1 of the OPR Review](#), 3 October 2022, at p.5.

Appointments Process

Recommendation 1, stated as an immediate recommendation, proposes that the Minister utilises current powers under sections [104](#) and [108](#) of the 2000 Act to appoint a number of ordinary members on a temporary basis for up to 12 months each, allowing for sufficient temporary appointments to facilitate the operation of the Board on the basis of having more than 10 members available at all times over the next year.¹⁰

Recommendation 2, stated as a short-term recommendation and noting the need for underpinning legislation, proposes a “a proactive system of forward-filling of vacancies should be put in place as a matter of urgency to ensure that, as board members vacate their positions, replacements are ready to take up duty immediately”.¹¹ This is envisaged as effectively comprising a process of putting persons on a panel, which the Report states would be prudent as it would allow for the Minister to make full-term appointments at short notice. The Report also suggests that confirmation of impending vacancies and the appointment of replacements should be incorporated into the annual performance delivery agreements of the Board and the Department.¹²

At the time of the review, the OPR noted that there were five positions occupied out of the nine available on the Board, with this number since decreasing to four following the retirement of the Board’s chairperson. The OPR also noted that the Minister has stated an intention to change the nomination process for appointing members, and it has been clarified that the new process will fill positions based on an open competition. This, it observed, would require a period for aspects such as advertising, the interview process and time for work notice periods of selected candidates.¹³

The Report also highlights the need to stagger appointment under the new system, as appointing a significant number of board members at the same time creates “an obvious risk for business continuity” and that vacancies in the future would arise together as board members’ terms expire.¹⁴ The staggering of timings for appointments, so that corporate knowledge is not lost when ordinary members completed their terms, was also raised in the PLS hearing.¹⁵

The appointment process was raised during PLS hearings, where the Department outlined the rationale for the new appointment process:

“... The intention is to make the process far more open. Under the current process, through the panel system, we receive nominations of people but we have no sight of what happens behind the nomination process, whereas the idea here is that the committee sets the terms of what is required but there is complete openness on who may apply.”¹⁶

¹⁰ Ibid, at p.24.

¹¹ Ibid, at p.24.

¹² Ibid, at p.20.

¹³ Office of the Planning Regulator, [Report on Phase 1 of the OPR Review](#), 3 October 2022, at pp.17-18.

¹⁴ Ibid, at pp.20-21.

¹⁵ Mr Gavin Lawlor, Vice President, Irish Planning Institute, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

¹⁶ Ms Maria Graham, Assistant Secretary, Department of Housing, Local Government and Heritage, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

In the PLS hearing, stakeholders also raised some issues in relation to the appointment of ordinary members of the Board. The issue of transparency in the appointments process and the importance of public trust in the Board.¹⁷ The Irish Environment Network noted that the process “needs to be demonstrably capable of ensuring the establishment of an independent Board ... with the requisite skills, experience, knowledge and diversity in representation”.¹⁸ In relation to expertise, the Irish Planning Institute (IPI) proposed additional areas of expertise to be added to the Bill in addition to those contained in the General Scheme, such as law, ecology, built heritage, the marine environment, climate change and the Irish language, while also suggesting that natural and build heritage are differentiated.¹⁹

There was also some discussion at the PLS hearing on what form the new system should take, such as whether it should be an improved panel system (current process) or an open competition process, while stakeholders also highlighted the need for balance in the expertise of the Board.²⁰

Two-Person Configurations of the Board

Recommendations 3 and 4 of the OPR Report relate to the composition of the Board. They respectively recommend the ending of two-person quorums, and the use of minimum quorums of five board members for certain types of cases. It appears only Recommendation 3 is acted upon in the Bill, the Action Plan makes reference to Recommendation 4 in Action 14.

The Report noted that over the period of 2018-2021, 26% of Board meetings were composed of a two-person board, while 70% operated with three persons, while the remaining 4% of meetings consisted of a board of four persons or more.²¹ The Report also made reference to the practice of board meetings running concurrently where two quorums of three persons were available, citing the meeting of the Committee on Public Accounts (PAC) in July 2022.²² At that meeting, the Committee of Public Accounts was also told that if there is a full available board of nine to 10 people, then it is possible to have three quorums at the same time.²³

The OPR noted that while the workload of the Board requires that its member separate into smaller compositions and hold concurrent meetings, it observed that relying on minimum quorums as a

¹⁷ Ms Attracta Uí Bhroin, Irish Environmental Network, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022; Mr Gavin Lawlor, Vice President, Irish Planning Institute, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

¹⁸ Ms Attracta Uí Bhroin, Irish Environmental Network, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

¹⁹ Mr Gavin Lawlor, Vice President, Irish Planning Institute, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

²⁰ [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

²¹ Office of the Planning Regulator, [Report on Phase 1 of the OPR Review](#), 3 October 2022, at p.21.

²² *Ibid*, at p.21.

²³ Mr Dave Walsh, Chairperson, An Bord Pleanála, [An Bord Pleanála – Financial Statements 2020](#), Committee on Public Accounts, *Committee Debate*, 14 July 2022.

practice was not satisfactory.²⁴ It suggested that a full-complement board should operate in two meeting groups, each with an expected composition of five members, but with limited scope for convening smaller quorums for making decisions on lower threshold casefiles.²⁵

The OPR also observed that it is evident that two-person configurations of the Board have been a “much relied upon mechanism” for clearing workload in recent years, noting that 30% of cases were determined in this way. The Review also noted that in the period 2018-2021, 82 cases considered by two-person configurations were escalated to boards with a higher number of members, representing 3% of cases considered by two-person boards in the first instance.²⁶

The number of cases by year, along with the numbers of those cases escalated to higher configurations, is set out in the table below.

Table: Cases determined by two-person configurations of the Board and escalated cases

Year	Number of Cases	Escalated – 3 person board	Escalated – 4 person board
2018	631	8	10
2019	561	12	22
2020	663	14	3
2021	773	9	4

Source: Table based on approximate figures contained in the Report on Phase 1 of the OPR Review

While the OPR noted that it understood that the Board would be ceasing the practice of using two-person configurations imminently, it has recommended that the Minister permanently remove the legislative provisions that allowed for resolutions underpinning two-person configurations, i.e. [sections 108\(1A\) to 108\(1D\) of the 2000 Act](#).²⁷

As noted above, the OPR also recommended that a minimum quorum of five persons be set for cases involving *inter alia* the following:

- (remaining) Strategic Housing Development,
- Strategic Infrastructure Development (in line with the existing provisions of section 112A of the 2000 Act),
- the Large Scale Residential Development process, and
- any appeals concerning the making of or amendments to Strategic Development Zones²⁸

There does not appear to include any reference to Recommendation 4 in the OPR Phase 1 Review in the Bill, which relates to the establishment of five-person quorums recommended by the OPR for certain types of decision (see above). However, the Action Plan states that the Government will:

²⁴ Office of the Planning Regulator, [Report on Phase 1 of the OPR Review](#), 3 October 2022, at p.21.

²⁵ Ibid, at p.21.

²⁶ Ibid, at pp.21-22.

²⁷ Ibid, at p.24.

²⁸ Ibid, at p.24.

“... also provide as part of the Planning Legislative Review for the further limits on quorums for specific decision types in line with recommendation 4 of the OPR Report taking into the account the proposed increase in numbers in Action 13.”²⁹

Action Plan for An Bord Pleanála

On 4 October 2022, the Government published the Action Plan for An Bord Pleanála. The introduction to the Action Plan notes the importance of the Board:

“An Bord Pleanála is a critical organisation in the planning hierarchy within Ireland, standing at the apex of our planning system, it plays a crucial role as a final arbiter of many planning applications. It is quite unique in an international context, providing both independent appellate functions, and decision-making on projects of scale and strategic importance, with the opportunities for wide engagement in this process. It is vital that there is confidence in the integrity and impartiality of this process”³⁰

The Action Plan also set out a range of actions across seven areas:

- OPR Review
- Dealing with conflicts of interest
- Changes to the Board’s decision-making process
- Refresh the Board
- Strengthen the Senior Management Structure
- Organisational Resourcing, and
- Customer Service and Stakeholder engagement.

While many of the actions are not legislative in nature, the Bill addresses some of the actions contained in the plan. This Digest discusses actions identified by the L&RS as relevant to the Bill, which are as follows:

- Action 10 of the Action Plan proposes a new regime for the recruitment of members of the Board. An approach of establishing a panel of experts by the Minister, which can be supported by the Public Appointments Service, is suggested by the action. The Action Plan states that this panel arrangement addresses recommendation 2 of the OPR Phase 1 Review.
- Action 13 of the Action Plan proposes to increase the size of the Board to 15 members.
- Action 14 proposes that the minimum quorum of the Board will be set at three members.³¹

Actions 11 and 12 are also relevant, in that they set out further actions the Government plans to take in relation to the Board’s capacity.

- Action 11 sets out interim measures for the recruitment of a Board member with environmental expertise, particularly in relation to marine matters, as well as making a number of temporary appointments.

²⁹ Department of Housing, Local Government and Heritage, [Action Plan for An Bord Pleanála](#) (PDF download), 4 October 2022, at p.9.

³⁰ Ibid, at p.5.

³¹ Ibid, at p.9.

- Action 12 sets out an intention to bring greater clarity to the Board in terms of (a) governance of the organisation, and (b) planning decisions. It envisages that Board members would become Planning Commissioners and that Board would be led by an executive board consisting of a Chairperson, Deputy Chairperson, three Planning Commissioners, a Chief Officer and three/four external representatives. This proposed structure is set out in Appendix 2 of the Action Plan.³²

Amendments to the Foreshore Act 1933

In addition to the amendments to the 2000 Act relating to An Bord Pleanála, the Bill also proposes to amend the definition of foreshore in the 1933 Act. The rationale for this is set out in the General Scheme (which refers to the amendment proposed by section 13 of the Bill as Head 9):

It has come to light that the definition of foreshore does not include the subsoil below and the water column and airspace above the bed of the foreshore. The Head amends the definition of the foreshore to ensure that the body of water above the seabed is included and therefore, provides the Minister with the appropriate vires to require marine users to apply for a lease under section 2 of the Act, or licence under section 3 of the Act in circumstance where they wish to occupy or use the foreshore in that way.³³

During pre-legislative scrutiny, the Department highlighted the rationale for this amendment, which is to put beyond doubt the authority and powers under the Foreshore Act that the Minister and development sector had understood existed. This arose from a query raised in a recent application regarding the interpretation of the definition, and the intention of the legislation is to put the definition beyond doubt. The Department also clarified that the Foreshore Act has been operating on the basis that the water column, subsoil and airspace above have always been interpreted within the meaning of the word “foreshore” in the 1933 Act.³⁴

A key difference between the General Scheme of the Bill and the Bill itself is that the amendment in the Bill does not include airspace. The inclusion of this term was raised as an issue in the PLS hearing, where some stakeholders highlighted that this term was not understood as being included in the definition, i.e. the foreshore consists of the seabed and water column.³⁵ Others also noted that there was uncertainty concerning this term.³⁶

³² Ibid, at p.9.

³³ Department of Housing, Local Government and Heritage, [General Scheme of the Planning and Development and Foreshore Bill](#) (PDF download), 9 November 2022, at p.18.

³⁴ Ms Nina Murray, Principal Officer, Department of Housing, Local Government and Heritage, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

³⁵ Ms Karin Dubsky, Coastwatch, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

³⁶ Mr Gavin Lawlor, Vice President, Irish Planning Institute, [General Scheme of the Planning and Development and Foreshore \(Amendment Bill\) 2022: Discussion](#), Joint Committee on Housing, Local Government and Heritage, *Committee Debate*, 10 November 2022.

Pre-Legislative Scrutiny of the Bill

On 9 November 2022, the [General Scheme of the Bill](#) was published. On 10 November 2022, the Joint Committee on Housing, Local Government and Heritage held a [pre-legislative scrutiny](#) (PLS) hearing on the General Scheme, where it heard from the following stakeholders:

- Department of Housing, Local Government and Heritage,
- Irish Environmental Network,
- Irish Planning Institute, and
- Coastwatch.

The Committee also received submissions, which it has published on [its webpage](#), from the following stakeholders:

- [Coastwatch](#)
- [Royal Institute of the Architects of Ireland \(RIAI\)](#)
- [Irish Environmental Network \(IEN\)](#)
- [Irish Planning Institute \(IPI\)](#)
- [Marine Renewables Industry Association \(MRIA\)](#)
- [Office of the Planning Regulator \(OPR\)](#)
- [An Taisce](#)
- [Wind Energy Ireland \(including legal review by Arthur Cox LLP\)](#)

At the time of writing, the report of the Committee was not published. However, this Digest has referenced some of the issues raised during the PLS hearing in the Policy and legislative context section above.

Principal provisions of the Bill

Given the time available between publication of the Bill and Second Stage debate, a table of provisions was not completed for this Bill Digest. Instead, this section summarises the main, or principal provisions of the Bill and is not a complete or exhaustive consideration of the Bill.

The Bill itself consists of 17 sections arranged into three parts. Part 1 consists of a standard provision relating to short title, collective citation and commencement. Part 2 sets out the amendments to be made by the Bill to the [Planning and Development Act 2000](#), while Part 3 sets out the amendments to be made to the [Foreshore Act 1933](#).

Part 2: Amendments to the Planning and Development Act 2000

Part 2 of the Bill sets out a number of amendments to the 2000 Act in relation to An Bord Pleanála (the Board) relating to the size of the Board, how appointments are made, removing the current mechanism for reducing the Board's quorum to two and setting out clear instructions on the actions to be taken in relation to complaints or where the chairperson believes there are issues to be investigated.

Size of the Board

Section 3 of the Bill proposes to amend [section 104 of the 2000 Act](#) to increase the number of ordinary members of the Board (which does not include the chairperson) from 9 to 14 members. The section also provides that the Minister may appoint:

- Further ordinary members above the maximum of 14 members to fulfil certain duties and objectives, and
- Temporary ordinary members if this is a matter of urgency due to the number of applications, appeals, referrals or other matters with which the Board is concerned.

In particular, section 104(4)(a) of the 2000 Act, which provides for the persons who may be appointed as temporary ordinary members, is amended to extend the persons who may be appointed to include 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.

Section 104(4)(c) of the 2000 Act is also amended to remove part of the limitation on the number of temporary ordinary members that the Minister may appoint under section 104(4)(a). Following the amendment, Minister shall appoint not more than three persons under section 104(4), as the further restriction to one third of ordinary members of the Board is proposed to be deleted on the commencement of section 3 of the Bill.

Interim Chairperson

Sections 4 of the Bill makes the necessary amendments to [section 105 of the 2000 Act](#), which provides for the appointment of the chairperson of the Board, to account for the amendments made by section 5 of the Bill.

Section 5 inserts a new section 105A into the 2000 Act, which provides that where the position of chairperson of the Board is vacant, the Government may appoint a temporary chairperson. The requirements for temporary appointment are as follows:

- The appointment is made 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, and
- The person appointed is, in the opinion of the Government, a suitably qualified person.

Temporary appointments under the proposed section 105A are to be made for no more than 12 months. Section 5 further provides that the interim chairperson ceases to hold the office on the appointment of a chairperson of the Board. Further, the following provisions of section 105 of the 2000 Act which apply to a chairperson also apply to an interim chairperson:

- Section 105(11), which requires the chairperson to be appointed in a whole-time capacity,
- Section 105(13), which sets out circumstances where the chairperson must resign or vacate the office,
- Section 105(14), which provides that subject to the other provisions of section 105, the chairperson holds office on terms and conditions determined by the Minister, and
- Section 105(15), which provides for circumstances where the Government may remove a chairperson from their post, including ill-health, stated misbehaviour or where necessitated for the effective performance of the Board's functions.

Appointments Process

Section 6 of the Bill amends [section 106 of the 2000 Act](#) to remove the current nomination-based process for the appointment of ordinary members of the Board. The new procedure implements Action 10 of the Action Plan and addresses Recommendation 2 of the OPR Phase 1 Review, which proposed a “proactive system of forward-filling of vacancies should be put in place as a matter of urgency to ensure that, as board members vacate their positions, replacements are ready to take up duty immediately”.³⁷

Current nomination system

Currently, this nomination process allows for the Minister to appoint eight members of the Board from nominees made by organisations and bodies prescribed by the Minister under section 106(1) across four categories (two members for each category), with the ninth member appointed by the Minister having fulfilled requirements relating to the environment and sustainability. The categories of nominating bodies are set out in the table below.

Under the current system, the Minister is also required to prescribe at least two bodies for each of paragraphs 106(1)(a) to (d), with such bodies required to nominate at least two candidates for appointment when requested to do so by the Minister.

Appointments made under paragraph 106(1)(e), a reappointment under subsection 106(12) or interim appointments under subsection 108(4) are exempt from the nomination requirements. Procedures are also set out where organisations refuse or fail to nominate any candidate, or the Minister decides not to appoint any of the candidates nominated by organisations pursuant to a particular request.

³⁷ Office of the Planning Regulator, [Report on Phase 1 of the OPR Review](#), 3 October 2022, at p.24.

Table: Current categories of nominating bodies under section 106(1) of the 2000 Act

Paragraph	Requirements
Section 106(1)(a) (2 members)	Nominated by prescribed bodies that are: Organisations that, in the Minister's opinion, are representative of persons whose professions or occupations relate to physical planning, engineering and architecture.
Section 106(1)(b) (2 members)	Nominated by prescribed bodies that are: Organisations 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.
Section 106(1)(c) (2 members)	Nominated by prescribed bodies that are: i. Organisations that are representative of the interests of local government, ii. Bodies representing farming, and iii. Trade unions
Section 106(1)(d) (2 members)	Nominated by prescribed bodies that are: i. Organisations that, in the Minister's opinion, are representative of persons concerned with the protection and preservation of the environment and of amenities, 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, iv. Bodies that are representative of people with disabilities, and v. Bodies that are representative of young people.
Section 106(1)(e) (1 member)	A person who, in the Minister's opinion, has satisfactory experience, competence or qualifications as respects issues relating to the environment and sustainability.

Source: Derived from section 106(1) of the *Planning and Development Act 2000*, as amended.

New appointment system proposed by the Bill

Under the new appointments system, the proposed section 106(1) provides that the Minister shall ensure, in so far as is practicable, that:

- The ordinary members of the Board have satisfactory experience of, or a satisfactory mix of experience and knowledge of, fields specified in the Bill. These are infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community affairs, social affairs, planning, the environment, the marine, climate change, law and corporate governance,
- There is an equitable gender balance among the Board's ordinary members.

The list proposed in the Bill appears to expand upon the list contained in the General Scheme, with both compared in the table below.³⁸ It is noteworthy that as well as the additional fields of expertise, community and social affairs is separated into two fields; community affairs and social affairs. However, Irish language does not appear to have been included, nor does there appear to be a differentiation between natural and built heritage.

³⁸ Department of Housing, Local Government and Heritage, [General Scheme of the Planning and Development and Foreshore Bill](#) (PDF download), 9 November 2022, at p.9.

Table: Required fields of satisfactory knowledge and expertise for appointment as an ordinary member of the Board proposed by the General Scheme and by the Bill

General Scheme	Bill
infrastructure delivery	infrastructure delivery
housing	housing
physical planning	physical planning
sustainable development	sustainable development
architecture	architecture
heritage	heritage
community and social affairs	community affairs, social affairs
corporate governance	corporate governance
	planning
	the environment
	the marine
	climate change
	law

Source: The Bill and the General Scheme of the Bill. Some fields in the Bill have been reordered for comparative purposes.

The proposed section 106(2) provided for by the Bill requires the establishment of “a suitable, independent, objective, and transparent procedure” for the making of recommendations to the Minister for appointment to the Board. This procedure may also include the establishment of a committee. The proposed section 106(3) empowers the Minister to make regulations for such matters as they may consider necessary for the purpose of establishing the procedure, including the membership of a committee established as part of the procedure.

The proposed section 106(4) provides for the required elements for the new procedure, including:

- The invitation of applications from suitable candidates,
- The preparation of a panel of candidates,
- The information to be provided to the Minister – the names of candidates and why they are suitable for appointment, and
- A recommendation made to the Minister on which candidate should be appointed.

The procedure for selecting ordinary members where no nomination is made, or where the Minister may decide not to appoint any of the candidates (the present subsections 106(6) to (8)) is deleted from the section, while consequential amendments are made to subsections (5) and (9) to account for the new provisions of the section.

Action 11 of the Action Plan states that a number of temporary appointments will be made under the current provisions of the 2000 Act until the new board members are recruited under the new arrangements.³⁹

Saver Provision

A final point to note regarding the new appointment process is that the Bill also contains a saver provision which allows the Minister to continue to use the previous appointments process for

³⁹ Department of Housing, Local Government and Heritage, [Action Plan for An Bord Pleanála](#) (PDF download), 4 October 2022, at p.9.

section 106(1)(e) (persons with expertise in the environment and sustainability) to make appointments under that paragraph until such time the new appointments process is used. It is noteworthy however, that the Action Plan states at Action 11, that the Minister will advance the recruitment of an ordinary member of An Bord Pleanála under section 106(1)(e).⁴⁰

Vacancy of Chairperson position

Section 8 of the Bill inserts a new section 107A, which provides that where the position of chairperson of the Board is vacant, the deputy chairperson of the Board may perform any of their functions.

Removal of two-person quorums

Section 9 of the Bill deletes [sections 108\(1A\) to \(1D\) of the 2000 Act](#), which repeals the current procedure which allows for the Board to, by resolution, reduce its quorum from 3 to 2 members where the chairperson (or deputy chairperson in certain circumstances) is of the opinion that this is necessary for the efficient discharge of the business of the Board. This implements Recommendation 3 of the OPR Phase 1 Report and Action 14 of the ABP Action Plan.

The section also replaces section 108(4)(a), which currently provides for the interim appointment of Board members by the Minister from officers of their Department or employees of the Board. The new section 108(4)(a) extends this to allow appointments of persons who are, or were formerly, established civil servants under the Civil Service Regulation Acts 1956 to 2005 (with no reference to the Minister's Department), as well as established public servants in state agencies and employees of the Board.

Amendments to Investigative Procedures under section 110 of the 2000 Act

Section 10 of the Bill amends [section 110 of the 2000 Act](#) to provide for clear instructions on the actions to be taken where a complaint is received or where the chairperson considers that there may be issues to be investigated. A procedure for the Minister to instigate an investigation is also proposed by the Bill.

Section 110(1) of the 2000 Act provides that the chairperson, or subject to the overall direction of the chairperson or where the chairperson is not available or their position is vacant, the deputy chairperson shall each have the function of:

- Ensuring the efficient discharge of the business of the Board, and
- Arranging the distribution of the business of the Board among its members.

Section 110(2) currently provides that where the chairperson is of the opinion that the conduct of an ordinary board member has been such that it brings the Board into disrepute or is prejudicial to the Board's effective performance, they may, in their absolute discretion, interview the member privately or, if they consider it appropriate to do so, otherwise investigate the matter.

Section 10 of the Bill proposes to change section 110(2) to remove the requirement for the chairperson to form an opinion before an investigation. Instead, it provides that the chairperson may in their absolute discretion interview the ordinary member privately or, if they consider it

⁴⁰ Ibid.

appropriate, otherwise investigate the matter. This applies if the chairperson considers, on the foot of a complaint or otherwise, that:

- an ordinary member may have failed to comply with a code of conduct adopted by the Board under section 150 of the 2000 Act, or
- their conduct may have been such that it brings the Board into disrepute or is prejudicial to the Board's effective performance.

Further to the removal of the requirement for the chairperson to form an opinion under the current section 110, the new provision also adds failures to comply with codes of conduct to the matters that may be investigated. Like the current process, the chairperson may report the result of the interview or investigation to the Minister if they consider it appropriate to do so.

A new section 110(3) also proposes a further change to allow the Minister, if they consider that the conduct of an ordinary member of the Board may have been such to bring the Board into disrepute or be prejudicial to the effective performance of the Board's functions, to request the chairperson to interview an ordinary member of the Board or otherwise investigate the matter. Unlike the amended section 110(2), the proposed section 110(3) does not appear to reference failures to comply with codes of conduct under section 150 of the 2000 Act.

Part 3: Amendments to the Foreshore Act 1933

Part 3 provides for a series of technical amendments relating to the definition of the foreshore contained in [section 1 of the Foreshore Act 1933](#), as well as further provisions relating to leases, licences and consents under the 1933 Act and to aquaculture licensing. Further provision relating to court proceedings decided before the passing of Part 3 of the Bill, or court proceedings instituted before 9 November 2022, is also made.

Definition of Foreshore

Section 13 of the Bill proposes to insert a new section 1AA, which clarifies the definition of foreshore contained in section 1 of the 1933 Act such that it is deemed to include the subsoil below and the water column above the bed and shore referred to in that definition. Unlike the General Scheme⁴¹, there is no reference to airspace in the proposed amendment.

Leases, Licences and Consents

Section 14 of the Bill inserts a new section 3AA into the 1933 Act. The new provision relates to leases, licences and consents **granted by the Minister** prior to the passing of Part 3 of the Bill. It provides that:

- **Subsection (1):** Where such a lease, licence or consent relates to or includes an area that, but for the revised definition resulting from the proposed section 1AA, would not be foreshore, the lease, licence or consent shall have effect by reference to the revised definition.

⁴¹ Department of Housing, Local Government and Heritage, [General Scheme of the Planning and Development and Foreshore Bill](#) (PDF download), 9 November 2022, at p.18.

- **Subsection (2):** Where any measures were taken by the appropriate Minister before the passing of Part 3 of the Bill and those measures relate in whole or in part to an area that, but for section 1AA, would not be foreshore, then those measures shall have effect and be deemed always to have had effect in reference to the revised definition.

Section 14(3) further provides that where any provision under either of the above would conflict with the constitutional rights of any person, then the provision is subject to such limitations as are necessary so there is no conflict but shall otherwise be of full force and effect.

Section 15 of the Bill inserts a new section 3BA into the 1933 Act. The new provision relates to **applications** for leases, licences and consents not determined by the Minister on the passing of the Bill.

Subsection (1) provides that account may be taken of the revised definition of foreshore in section 1 of the 1933 Act, where before the passing of Part 3 of the 2022 Act:

- An application is made to the appropriate Minister for a lease, licence or consent,
- The application relates to or includes an area that but for section 1AA would not be foreshore, and
- The application has not been fully determined before such passing.

Like section 14, provision is also made that where a provision in subsection (1) would conflict with the constitutional rights of any person, then the provision is subject to such limitations as are necessary for it not to conflict, but shall otherwise be of full force and effect.

Section 16 of the Bill inserts a new Section 3CA into the 1933 Act. This makes similar provision for the amended definition to apply to:

- **Subsection (1):** Foreshore licences that are deemed to be an aquaculture licence under [section 75 of the Fisheries \(Amendment\) Act 1997](#) or [section 3 of the Fisheries and Foreshore \(Amendment\) Act 1998](#) and relate to or include an area that but for section 1AA of the 1933 Act would not be foreshore.
- **Subsection (2):** Foreshore licences granted that relate in whole or in part to aquacultural purposes, and an aquaculture licence was granted in respect of those purposes, which relate to or include an area which, in whole or in part, would not be foreshore but for the proposed section 1AA of the 1933 Act.

Like sections 14 and 15, provision is also made that where a provision in subsection (1) would conflict with the constitutional rights of any person, then the provision is subject to such limitations as are necessary for it not to conflict but shall otherwise be of full force and effect.

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