



LAND USE

New Planning Act

The Planning and Development (Amendment) Act 2010 was signed into law on 26 July 2010. While some of its provisions have commenced, most are due to commence at the end of September or later. The Act introduces a number of key changes to the Planning Code including (among others):-

- 1. Climate Change:** development plans must now contain mandatory objectives to address adaptation to climate change. *Expected to commence: 28.09.2010*
- 2. Retention planning** for unauthorised development is abolished for EIA type development and development requiring an appropriate assessment under the Habitats Directive. *Expected to commence: 28.09.2010*
- 3. Substitute Consents:** enables the regularisation of otherwise defective planning. It largely refers to development which should have, but was not made subject to an environmental impact assessment or even made subject to screening to determine whether a development should have been subject to an EIA. This could include motorways, airports, disposal facilities, waste water treatment plants >150,000 population equivalent; urban development projects (e.g. shopping centres, car parks), quarries, peat extraction, reclamation of land from sea and flood relief work. Substitute consent must also be obtained for development

which should have but was not made subject to an appropriate assessment under the Habitat Directive. This basically refers to development which could have a significant adverse effect on the integrity of a European site (such as a Special area of Conservation, a Special Protected Area or a Site of Community Importance) and therefore could include development on or near such sites. Application for substitute consent must be made to An Bord Pleanála (either voluntarily or on foot of a planning authority notice). If substitute consent is refused then the development is unauthorised and the planning authority is obliged to take enforcement action. *Expected to commence: late 2010*

4. Quarries: the planning authority must (within 9 months of the provision coming in) identify and inspect all quarries within its area to see if: -

- the quarry has been subject to an environmental impact assessment ('EIA') or even a screening for an EIA (from 1.02.90) or an assessment under the Habitats Directive (from 26.02.97).
- the quarry is authorised i.e. (a) whether it commenced operating before 1964 or planning was granted in respect of the quarry and (b) whether it complies with the current s.261 registration requirements.

Note that: if the quarry is authorised (but was not made subject to an EIA) then it can be regularised by applying for substitute consent under Part XA. (i.e. substitute consent is like a grant of planning). However, it appears that if the quarry commenced after 3 July 2008 and an

EIA or appropriate assessment under the Habitats Directive was required but not carried out, then an application for substitute consent cannot be made. *Expected to commence: late 2010*

5. **Windfarms** with more than 25 turbines or having a total output greater than 50 megawatt is now classified as strategic infrastructure and planning must be obtained from an Bord Pleanála. *Expected to commence: 28.09.2010*

6. **Health Care Facilities** providing in patient services, (but excluding a development which is predominantly for the purposes of providing nursing home care) is now classified as strategic infrastructure and planning permission must be obtained from an Bord Pleanála. *Expected to commence: 28.09.2010*

7. **Only one opportunity to extend the life a planning permission** for up to 5 years. Previously it could be extended more than once. The Government circular indicates that where a person is currently on an extension of permission, who may have an expectation that they could avail of a second extension, they can apply for such an extension. The extension can still be applied for in relation to development where substantial works have been carried out and can now also be applied for where there are economic, commercial or technical considerations beyond the control of the applicant which substantially militates against either commencing the development or from carrying out substantial works. *Commenced on 19.08.2010*

8. **Refuse planning:** the planning authority is empowered to refuse planning where the applicant has previously carried out substantial unauthorised development. *Expected to commence: 28.09.2010*

9. **Strengthening of enforcement provisions:** the planning authority is required to take enforcement action for unauthorised development, which is not trivial or minor. *Expected to commence: 28.09.2010* Also the fines for summary non-compliance has increased to €5,000. *Commenced on 19.08.2010*

10. **Default decision to grant planning** (i.e. where the planning authority fails to decide a planning application on time) cannot happen in relation to applications for EIA type development or development requiring an appropriate assessment under the Habitats Directive. *Expected to commence: 28.09.2010*

11. **Judicial Review** changes include as a general rule that each party to a judicial review must bear its own costs, unless otherwise directed by the Court; leave to apply for judicial review does not need to be on notice, unless otherwise directed by the court and the court can treat the application for leave as if it was a hearing of the judicial review application. *Expected to commence: 28.09.2010*

12. **Part V- Social and affordable housing** local authorities can now enter a leasing agreement for houses instead of having to buy them out. *Expected to commence: late 2010.*

For more details see:

Planning and Development (Amendment) Bill 2010 (Final Act is not available yet on-line): <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf>

Circular:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,23889,en.pdf>

WASTE

New European Waste Framework Directive

The new Waste Framework Directive must be transposed into Irish law by 12 December 2010. It aims to clarify and simplify waste regulation and reflect a new life-cycle resources focused approach to waste policy. Some key features include:

1. the explicit exclusion from the remit of the waste regime the regulation of unexcavated contaminated land and uncontaminated soil

excavated in the course of construction activities, where it is used for construction purposes on the site from which it was excavated.

2. New criteria for determining when waste ceases to be waste and when material is a by-product and not waste.

For more details see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0003:EN:PDF>

Industrial Emissions Directive

On 7 July the European Parliament approved the draft Directive on Industrial Emissions which merges seven existing Directives on industrial emissions (including the IPPC Directive and the Directive on Large Combustion Plants) into one single Directive. It aims to streamline permitting, reporting and monitoring requirements of industrial installations. Key features include:

- Making Best Available Techniques Reference documents (BREFs) the principle reference point in setting permit conditions for IPPC type installations.
- Greater focus on soil and groundwater protection in relation to IPPC activities. For example, there will be a new requirement to furnish baseline reports on the state of soil and groundwater contamination before starting operations; a requirement to monitor soil conditions at least every 10 years during the operation of the facility and to return the site to original baseline conditions when ceasing operations (subject to technical feasibility).
- Stricter emission limits from industrial installations from 2016.

For more details see:
http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ff_TITRE=industrial+emissions&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_REUNION

Energy Performance of Buildings

European Directive 2010/3/EU on energy performance of buildings recasts the 2002 Directive and must be transposed into Irish law by 9 July 2012.

Key features include:

- a requirement for all existing buildings undergoing major renovation to meet energy performance requirements.
- New energy performance requirements for technical building systems such as heating, hot water and air conditioning systems
- New ‘nearly’ zero energy building requirements for public authority buildings by 31.12.2018 and for other new buildings by 31.12.2020.

For more details see:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:153:SO:EN:HTML>

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