

Key Updates in Environmental & Planning Law

CMG

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Course Overview

Module 1: Overview of the Planning and Development Act 2024

Module 2: Developments in Environmental Assessment

Module 3: Strategic Housing and Development Plans

Module 4: Critical Infrastructure and Renewable Energy updates

Module 5: Developments in climate change law



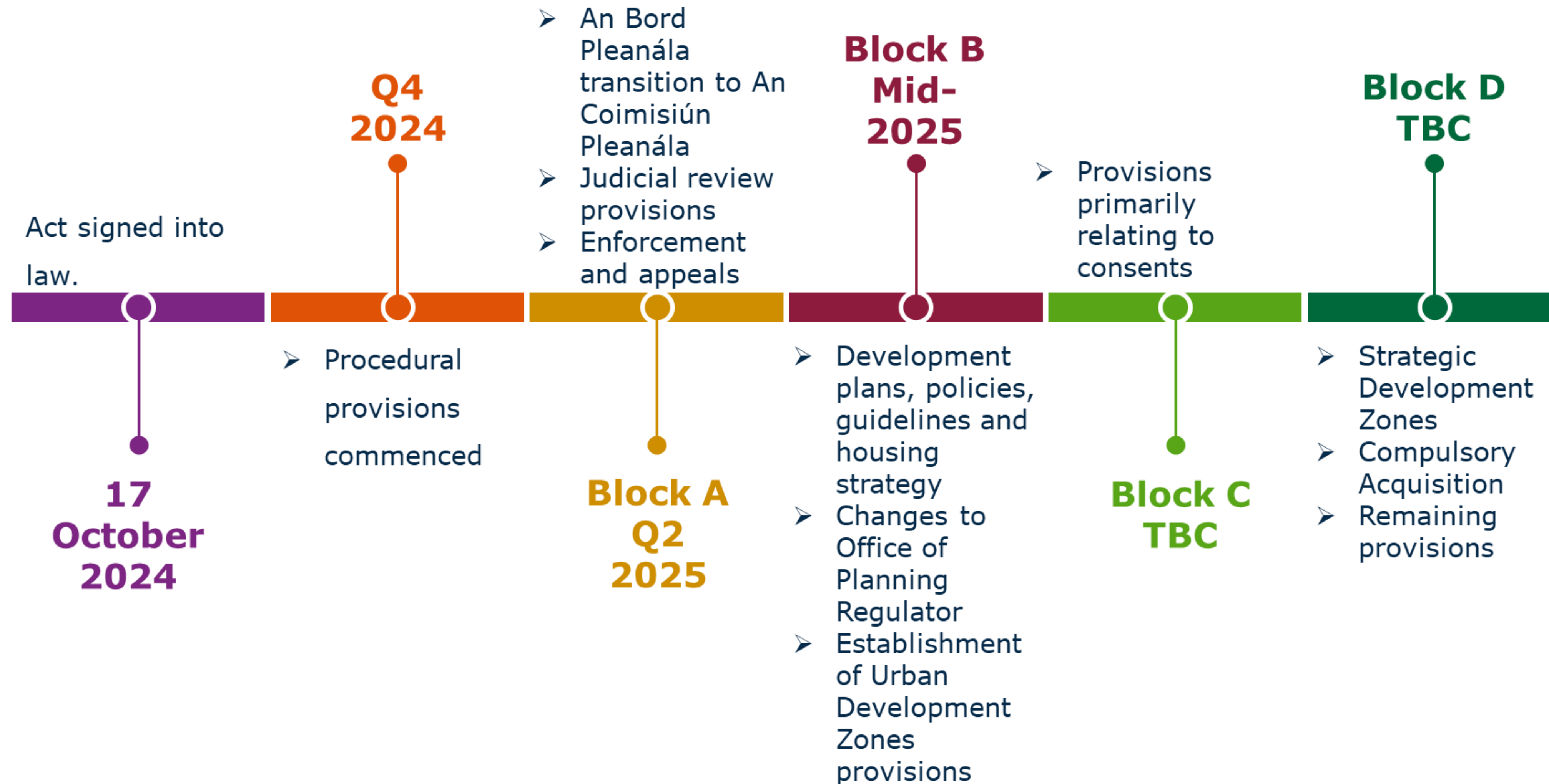
Module 1: Overview of Planning and Development Act 2024

Policy Reform	National Planning Framework, National Planning Statements, National Marine Planning Framework, Designated Maritime Area Plans, Accelerating Infrastructure Action Plan, Critical Infrastructure Bill
Court Reform	Planning and Environment Division of the High Court
Institutional Reform	An Coimisiún Pleanála, establishment of MARA
Enabling the System	Resourcing the Board and Local Authorities
Legislative Reform	Planning and Development Act 2024, Planning and Development (Amendment) Act 2025, European Union (Planning and Development) (Renewable Energy) Regulations 2025, Critical Infrastructure Act 2026

Implementation Plan



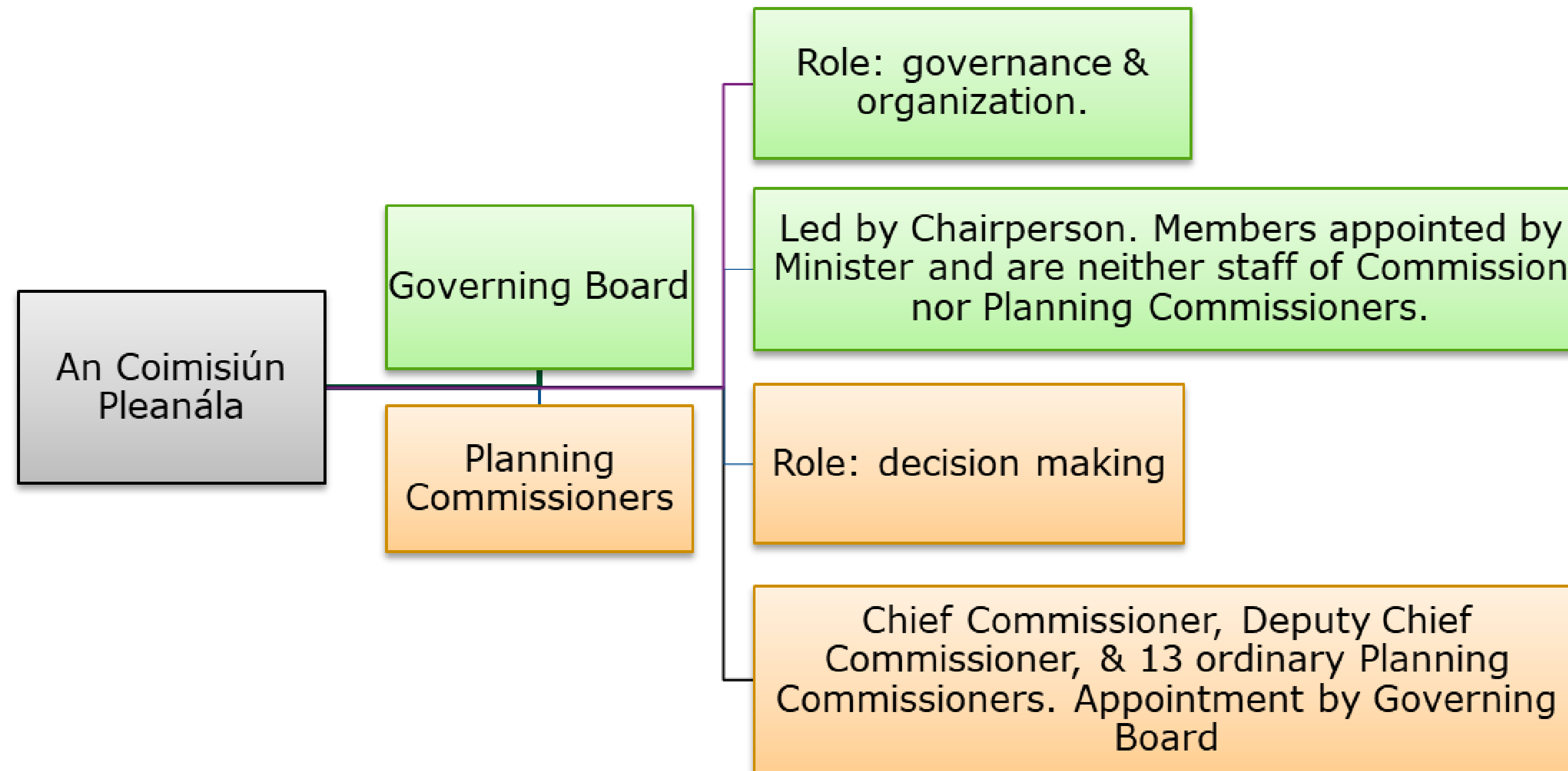
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An Bord Pleanála to An Coimisiún Pleanála



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An Bord Pleanála to An Coimisiún Pleanála

- Name change: An Bord Pleanála to An Coimisiún Pleanála.
- Will have a three-pillar structure (1) planning decision-making (2) governance (3) corporate.
- Principal objective: ensure decisions made with independence, impartiality and integrity.
- Staff numbers to be increased.
- Intended to improve decision-making process – faster and more transparent.

Plans, Policies and Related Matters

- Part 3: set out over 6 chapters, over 60 sections
- Chapter 1: preliminary matters, new definitions: associated planning and principal authority, long-term strategic development site, built up area etc.
- Chapter 2: preparation and review of National Planning Framework. Setting out Government's national plan re strategic planning and sustainable development of the State.
 - Will contain policies to ensure furtherance of objectives such as securing coordination of regional spatial and economic strategies, and supporting circular economy.
 - Will make provision for matters such as: climate, conservation of environment and its amenities, incl. landscape, ecology, biodiversity etc.

Plans, Policies and Related Matters ..contd.

- Chapter 3: new planning hierarchy will be introduced. Will allow Minister to issue a National Planning Statement re policy and related guidance for planning matters to support proper planning and sustainable development.
 - Will be mandatory for all plans to align to these Government approved national planning policies and measures, once issued.
 - Associated guidance outlining how NPS should be implemented will be discretionary, allowing for flexibility.
 - NPS will replace s28 guidelines.

Plans, Policies and Related Matters ..contd.



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- Chapter 4: preparation of regional and spatial economic strategies. Made by regional assemblies every 10 – 20 years for development of its region and to support implementation of NPF and economic policies and objectives of Government.
- Chapter 5: making of a development plan.
 - 10-year lifespan. Can be extended for further 2 years in “exceptional circumstances”.
 - Interim stage: after 4 years from adoption of development plan, Chief Executive must prepare “interim implementation report” to include details of any relevant changes since making of development plan, statements on progress, and recommendations for consideration by members of proposed variations to development plan.
- Chapter 6: urban area plans, priority area plans, coordinated area plans

Planning Consents – Part 4



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- Standard development (Chapter 3)
- Applications directly to the Commission (Chapter 4)
- Applications for alterations, extensions and revocations of permission (Chapter 5)
- Local Authority and State Authority development which does not require planning permission (Chapter 6)
- Maritime Area Planning Act 2021 incorporated under these procedures

Planning Consents: Standard development (Part 4, Chapter 3)



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- Single standard planning application process with a right of appeal to the Commission (includes maritime development). Replaces Section 34 and consolidates procedures
- Retains LRD process with right of appeal to the Commission. Pre-application required for developments of 10 houses or more, student accommodation of 200 bed spaces or more, and non-residential development of 1000 square meters gross floor space or more.

Planning Consents: Standard development (Part 4, Chapter 3)



- Retains the obligation placed on planning authorities to provide LRD applicants with an LRD opinion to confirm whether development is considered LRD. LRD is defined (a) not less than 100 housing units, (b) student accommodation not less than 200 bed spaces, (c) not less than 100 housing units, and student accommodation, or (d) student accommodation that contains not less than 200 bed spaces, and housing units as well as certain other conditions regarding floor space and outside certain development zones.

Planning Consents: Standard development (Part 4, Chapter 3)



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- Section 93/94 – Opinion on flexibility, change of terminology from “detail” to “aspect” and must justify why the aspects cannot be confirmed.
- At least 2 approaches or statement of ranges required.
- Can request meeting with planning authority and decision on opinion must issue within 4 weeks of the meeting.

Planning Consents: Applications directly to the Commission (Part 4, Chapter 4)



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- Strategic infrastructure development
- Electricity transmission infrastructure development
- Strategic gas infrastructure development
- Chapter 4 maritime development
- Chapter 4 local authority development
- Chapter 4 State authority development
- Development for which retrospective consent is required

Planning Consents: Applications directly to the Commission (Part 4, Chapter 4)



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- Section 115(2)

"(2) Where this Chapter applies to part only of a development, an application for permission for the entire development shall be made to the Commission under this Chapter".

Planning Consents: Applications directly to the Commission (Part 4, Chapter 4)



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- Mandatory pre-application consultation save for Chapter 4 State authority emergency development
- Chapter 4 pre-application consultation (**PAC**) notification must issue (similar to SID notification)
- Section 118/119– Opinion of flexibility

Planning Consents: Applications directly to the Commission (Part 4, Chapter 4)



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- Section 124 – material contravention permitted but must be of strategic and national importance and consistent with national policy.
- The following circumstance has not been carried forward into the Act:
"permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan."
- More emphasis on consistency with national policy.

Planning Consents: Applications directly to the Commission (Part 4, Chapter 4)



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- An application for retrospective consent may also include an application for future development.
- Exceptional circumstances criteria applies
- Commission may serve on the applicant a direction requiring the applicant to cease all or part of the applicant's activity or operations pending the determination of the application.

Planning Consents: Applications for alterations, extensions and revocations of permission (Part 4, Chapter 5)



- Request for the alteration/extension and the deciding authority will consider whether it is material or not.
- Modification material where subject to EIA/AA or both or where the deciding authority is of the opinion that that amendment is a material alteration.
- Where the modification is non-material, the deciding authority is obliged to grant the alteration or extension.
- A material modification may be subject to public consultation in certain circumstances.

Planning Consents: Applications for alterations, extensions and revocations of permission (Part 4, Chapter 5)



- There also does not appear to be a requirement to have “substantial works” carried out to avail of an extension which is currently required under the PDA. Development must be commenced (Section 140).
- Planning permission may be extended where an EIA/AA is required, which is not currently permitted under the PDA.
- Permission cannot be extended more than once and the period of the extension shall be less than or equal to the duration of the permission being extended (Section 141).

Caselaw:

- *Grassridge Limited v Dún Laoghaire Rathdown County Council* [2024] IEHC 669
- Challenge to refusal by local authority to extend appropriate period for planning permission to demolish a nursing home and develop residential units in its place
- Substantial works had not been completed such as to permit the granting of an extension
- Case highlights risks associated with commencing works pursuant to a planning permission nearing expiry where an extension has not yet been granted



Planning Consents: Local Authority Development and State Authority Development (Part 4, Chapter 6)

- Consolidates and modifies the provisions contained in the Act of 2000 that relate to development by a local authority or a State authority (similar to Section 179A).
- Provides for a streamlined public notification procedure for local and State authority development that does not require planning permission.
- Mirrors the 2000 Act in providing that certain housing developments being constructed by local authorities on designated State lands shall be temporarily exempted from the normal Part 8 local authority own-development approval process.
- Exemption is being extended to 31 December 2025.

Planning Consents: Transitional Rules



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- Where application or appeal made but not decided/finalised before repeal of the 2000 Act, the 2000 Act will continue to apply.
- Under Section 116(10), if a person is served with an SID determination notice and does not make the application prior to the repeal of the relevant sections of the 2000 Act, this will be deemed to be a Chapter 4 PAC notification which will permit an application to be made to the Commission. Similar provision for an LRD opinion provided under section 32D.
- Section 92(7) - Notwithstanding the repeal of section 32A, 32B, 32C, 32D, 32E, 32F and 32G of the Act of 2000 by section 6, each such section of the Act of 2000 shall continue to apply and have effect on and after its repeal in relation to a request under subsection (1) of the said section 32B (request for LRD meeting)

Planning Consents: Transitional Rules



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- For LRD proposals that seek to amend previously permitted LRDS or SHDs, the planning authority can make a determination under Section 247(7) of the 2000 Act, if further consultations are required regarding the proposed development.
- Section 90(10):
- *"(10) A written confirmation provided under subsection (7) of section 247 of the Act of 2000 shall, on and after the repeal of that subsection by section 6, be deemed to be a certificate provided under subsection (9)".*

Exempted Development



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- All exempted development to be provided for in regulations, rather than in Act itself.
- Principal changes:
 - only the owner or occupier of land or a person with their consent/notify the owner/occupier may apply for such a declaration
 - Must notify owner/occupier of making of the declaration (Section 10(6))
 - the declaration given is not binding on persons who were not involved in the application (Section 11(1))

Exempted Development



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- The draft Exempted Development Regulations are awaited - subject to screening for Environmental Assessment.
- New Regulations under the Planning and Development Act 2024 (the Act of 2024) will be signed into law in tandem with the commencement of Part 4 of the Act of 2024 and the updated exempted development provisions will form part of the new Regulations.

Planning and Development (Exempted Development (Act of 2000)) Regulations 2026



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- Came into effect on 27 July 2026.
- New exemptions applicable to residential homes arising from public consultation undertaken in 2025.
- New exemptions include:
 - The existing exemption for extension of the principal dwelling will be increased from 40 to 45m²
 - Addition of dormer roof boxes and roof lights.
 - Addition of a detached auxiliary dwelling to the rear of the principal house, linked to the services of the principal house, which may be between 32 – 45m².
 - A new exemption will allow for the provision of insulation on external walls.
 - The exemption for a heat pump will be expanded so that it is not restricted to the rear of the property.

Flexibility



Opinion on Flexibility

- Does the development propose any design flexibility? If so, what are the exact elements of the design that require flexibility?
- Is the flexibility approved through a formal opinion from the relevant planning authority or ABP? If so, what are the exact elements of flexibility approved by the opinion?
- Does the flexibility referred to in the updates assessment align with the flexibility approved in the opinion?
- If there is design flexibility, is the methodology for assessing the flexibility explained for each topic?
- Are all design permutations adequately assessed, rather than just the maximum?

Mandatory Planning Timelines



- Planning Authority Applications: 8 weeks or 12 weeks for applications requiring EIA/AA. Applies to material alteration requests (8 weeks or 12 weeks where EIA/AA).
- Applications not decided within prescribed period, and where no consent is given by applicant to an extension of that period, will be deemed refused, and applicant may appeal deemed refusal to the Commission
- Appeal to Commission: 18 or 26 weeks for appeals involving an EIA/AA.

NB. Different timelines apply to certain renewal energy development (see Module 4)

Mandatory Planning Timelines



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- Chapter 4 local authority or state authority development: 26 weeks
- Material Alteration Request to Commission: 18 weeks
- SID Applications: 48 weeks

Planning Timelines



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- Extension of time period can be agreed.
- Further periods will be allowed for further information and oral hearings.
- Penalties for Commission's failure to make decision within specified period include:
 - Publishing reasons on website.
 - Paying to the applicant a fixed percentage of their fees paid.
 - Determining the application within 6 weeks. Decision not invalidated.

Planning Timelines



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- Penalties cont.:
 - Further penalties arise if Commission continues to fail to determine the application, incl. notification to Minister and OPR who may conduct performance review of Commission.

Judicial Review Changes



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- Changes at a glance

Removal of “application for leave”
stage

Concerned body can correct error
of fact or law in planning decision.
Can apply for stay on
determination of JR proceedings
whilst making such
corrections/pending decision

No appeal to Court of Appeal. Only
constitutional right of appeal to
Supreme Court

Judicial Review Changes



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- Removes application for leave to apply for judicial review proceedings stage.
- Proceedings commenced when a notice of the motion has issued from the High Court. Notification requirement on same day: applicant must notify relevant body, respondent, notice parties.
- JR must be commenced within 8 weeks from date of decision. Where 8-week period expires on Saturday, Sunday or public holiday, period will be deemed to expire on next working day.
- The Court will only be permitted to grant permission to extend time or amend grounds in limited circumstances: good and sufficient reason for doing so, and if delay/failure to include was outside control of applicant and legal practitioners.

Judicial Review Changes



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- Removes any right of appeal to Court of Appeal. Constitutional right of appeal to Supreme Court.
- Court may, instead of quashing decision, direct that relevant body amends decision or document, carries out an act, where appropriate, and stays proceedings until this has been carried out.

Judicial Review Changes



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- Standing and sufficient interest requirements:
 - Environmental organisations have privileged status: must be in existence for 1 year prior to proceedings, at least 10 members, constitution for promoting environmental protection, board of directors pass resolution in accordance with constitution to bring proceedings.
 - Unincorporated body of persons (e.g. residents' association): must be either partnership or limited partnership, be able to sue in own name, or have a constitution and hold vote among members with 2/3 majority for JR proceedings.

Planning and Development (Amendment) Act 2025



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Judicial review – “stopping the clock”

- New provision in s180 of the PDA 2024 which allows the duration of a planning permission to be “paused” during judicial review proceedings. Original version of the 2024 Act stated that it only applies to judicial review proceedings brought on or after the date of the commencement of the section (1 August 2025).
- Amendments introduced by section 16 of the 2025 Act have now extended the application of section 180(10) of the 2024 Act. As a result, this provision also applies retrospectively to judicial review proceedings that are brought “*before, on or after the date of the coming into operation of this section*”.

Environmental Costs



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- Part 9, Chapter 2
- Introduction of a new environmental legal cost financial assistance mechanism (“**ELCFAM**”) under Section 293.
- A means-tested legal aid scheme for applicants in judicial review and other Aarhus Convention (environmental) where parties will be required to bear their own costs.
- Fixed scale for legal costs subject to means testing.
- If an applicant is successful: will be able to recover costs in line with scale.
- If an applicant is unsuccessful: may receive a contribution to its costs from the ELCFAM proportionate to applicant’s means assessment.

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Planning and Development (Costs of Part 9 Judicial Review Proceedings) Regulations 2026



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- The Planning and Development (Costs of Part 9 Judicial Review Proceedings) Regulations 2026 (S.I. No. 200 of 2026) came into operation on 18 May 2026.
- Introduce a fixed statutory schedule of cost caps for successful applicants in planning and environmental judicial reviews.
- Currently the subject of judicial review.

Case 2026/984 JR

*An Taisce & Anor v
Minister for Climate
Energy and the
Environment & Ors*

Transitional Rules



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- Existing Ministerial guidelines issued under section 28 will be continued in force until revoked or replaced by a National Planning Statement.
- Development plans will continue in force for the remainder of the period of the development plan or until a new development plan
- Where application or appeal made but not decided/finalised before repeal of the 2000 Act, the 2000 Act will continue to apply.

Transitional Rules



- Under Section 116(10), if a person is served with an SID determination notice and does not make the application prior to the repeal of the relevant sections of the 2000 Act, this will be deemed to be a Chapter 4 PAC notification which will permit an application to be made to the Commission. Similar provision for an LRD opinion provided under section 32D.
- Section 92(7) - Notwithstanding the repeal of section 32A, 32B, 32C, 32D, 32E, 32F and 32G of the Act of 2000 by section 6, each such section of the Act of 2000 shall continue to apply and have effect on and after its repeal in relation to a request under subsection (1) of the said section 32B (request for LRD meeting)

Transitional Rules



- For LRD proposals that seek to amend previously permitted LRDS or SHDs, the planning authority can make a determination under Section 247(7) of the 2000 Act, if further consultations are required regarding the proposed development.
- Section 90(10):

"(10) A written confirmation provided under subsection (7) of section 247 of the Act of 2000 shall, on and after the repeal of that subsection by section 6, be deemed to be a certificate provided under subsection (9)".

Transitional Rules



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- Any warning letter/enforcement letter issued under 2000 Act shall continue to apply and have effect (Section 628).
- A permission/declaration granted under the Act of 2000 shall, on and after the repeal of that section be deemed to be a permission granted under the new Act.
- This new Act shall not affect the validity of anything done under the 2000 Act (Section 625).

Discussion



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1. In your experience, what is the most challenging aspect of interacting with the planning system in Ireland?
2. Do you think that any of the changes in the 2024 Act will help?
3. Which changes (if any) do you think are likely to be the most useful for you in practice?

Coffee Break





Module 2: Developments in Environmental Assessment



Contents

1. Habitats Directive and Natura 2000 sites
2. Screening for AA and Stage II AA - *Power, Massey*
3. Mitigation measures – *Heather Hill Management Company, Sweetman v An Bord Pleanála & IGP Solar, Highlands Residents, Eco Advocacy*
4. Project splitting and assessments – *Holohan, Mount Juliet*
5. Derogation licences – *Hellfire Massy*
6. Harmless Error
7. Changes under RED III



Changes under Planning and Development Act 2024

- Overall, Part 6 of 2024 Act largely reinstates provisions of PDA.
- More user friendly and consolidated format.
- Fully reflects wording and intent of relevant EU Environmental Directives and may assist with challenges in relation to transposition.
- Positive changes designed to improve decision making and facilitate consistency and quality in decision-making.



Obligations under the Habitats Directive and Irish transposition



Habitats Directive

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)



Part XAB of Planning and Development Act 2000, as amended

Planning and Development Regulations 2001, as amended

S.I. No. 477 of 2011 European Communities (Birds and Natural Habitats) Regulations 2011, as amended

Part 6 of Planning and Development Act 2024

Aims:

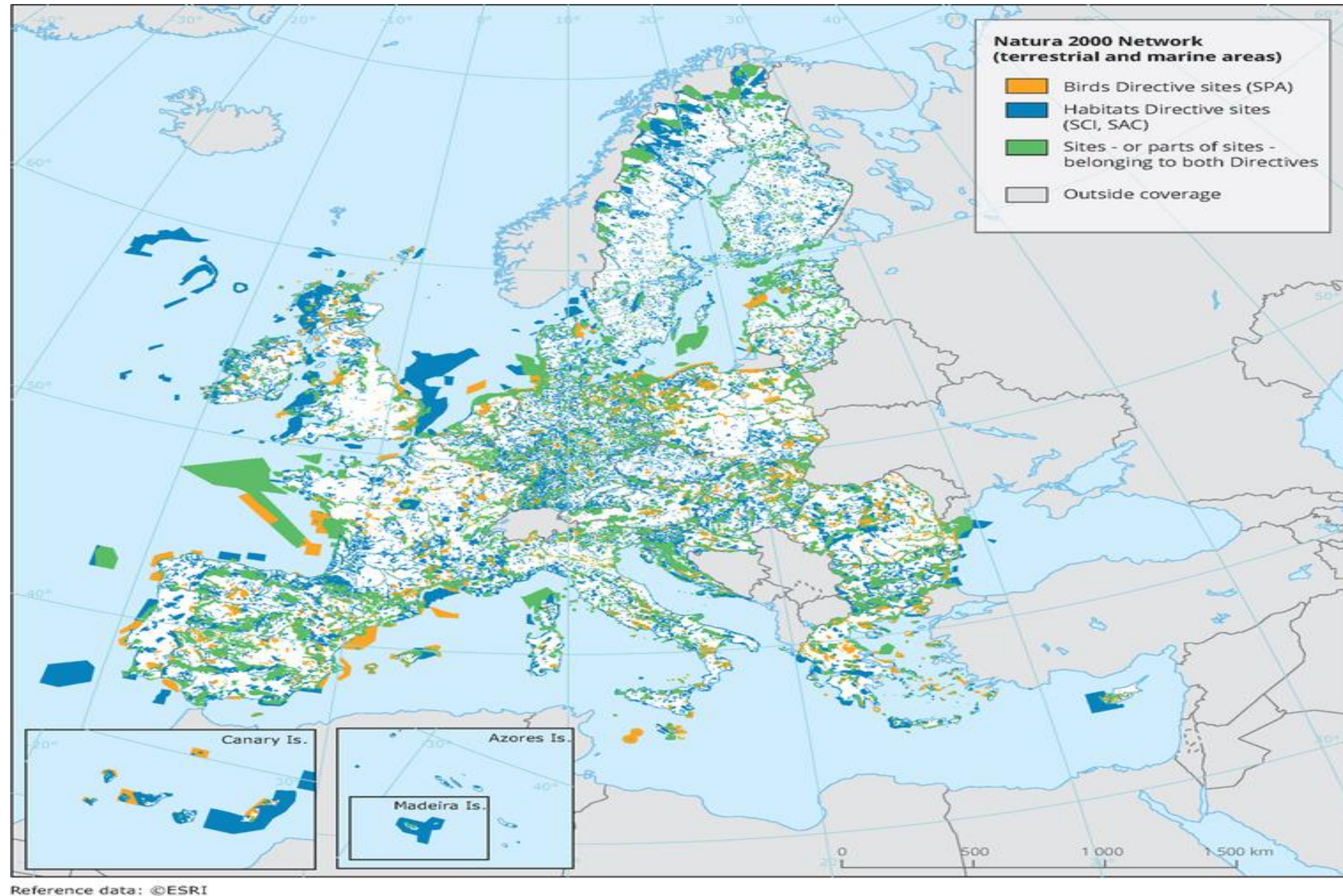
- Established legal framework for nature conservation and protection of flora and fauna and their habitats at EU level
- Promotes maintenance of biodiversity through conservation of natural habitats and wild fauna and flora in Member States
- Contains measures to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora
- (see Article 2 of Habitats Directive)



Natura 2000 sites

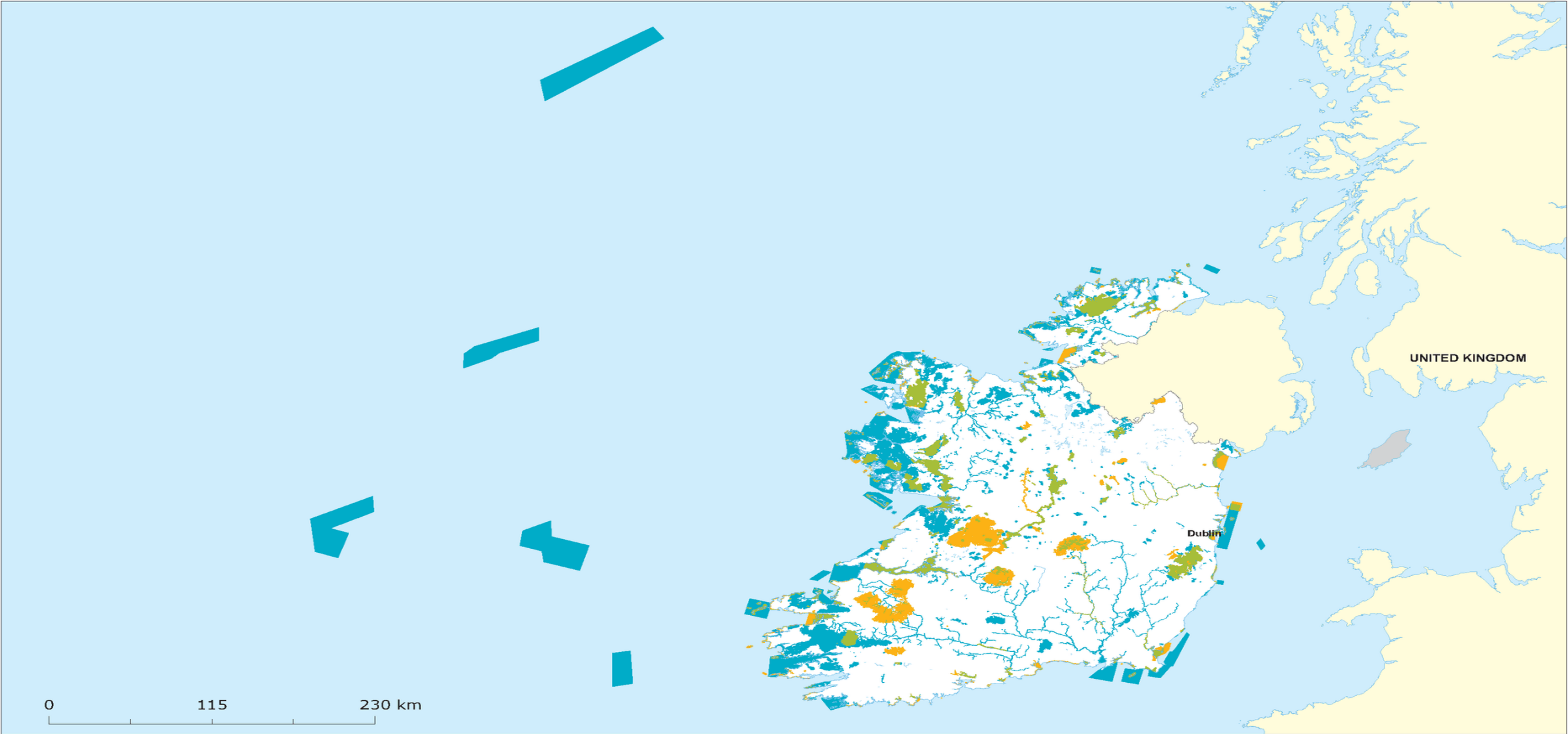
- Note also: Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive)
- The Birds and Habitats Directives form cornerstones of EU biodiversity policy.
- Article 4 of Birds Directive: Member States to designate Special Protection Areas (**SPAs**) to safeguard vulnerable, rare, migratory bird species, those that are at risk of extinction and require attention.
- Article 4 of Habitats Directive: Member States to identify candidate sites of Community importance (SCIs) (i.e. those which host one or more priority natural habitat types or priority species) and notify European Commission who designates these sites as Special Areas of Conservation (**SACs**).
- SPAs + SACs = Natura 2000 network.
- *Butler v Minister for Housing* [2026] IEHC 558 dated 14 August 2026: confirms that Irish courts will afford a significant degree of deference to ministerial decisions concerning wildlife conservation.

Natura 2000 Network



*Source: European Environment Agency

Natura 2000 Network - Ireland



**Natura 2000 – Birds and Habitats Directives
Ireland**

Site type

Birds Directive sites (SPA)

Habitats Directive sites (pSCI, SCI, SAC)

Sites – or parts of sites – proposed or designated under both Directives

European Environment Agency







Source :
- NATURA 2000 - DG ENVI, compiled from databases from the Member States.
- © EuroGlobalMap - eurogeographics.
- Settlements - DG ESTAT.

Validity of NATURA 2000 data for: Ireland. National dataset situation End 2018.
Projection: Lambert Azimuthal Equal Area.

*Source: European Environment Agency



SPAs and SACs - Ireland

Regulations then adopted by a Minister [of government] designating:

- SPA - identifies special conservation interests (SCIs), activities requiring consent of Minister etc.
e.g. [S.I. No. 191/2012 - European Communities \(Conservation of Wild Birds \(Blackwater Callows Special Protection Area 004094\)\) Regulations 2012](#)
- SAC – includes habitat types and animal and plant species lists, activities requiring consent of Minister etc.
e.g. [S.I. No. 143/2024 - European Union Habitats \(Kenmare River Special Area of Conservation 002158\) Regulations 2024](#)

*Many SPAs overlap with SACs

SPAs - Ireland



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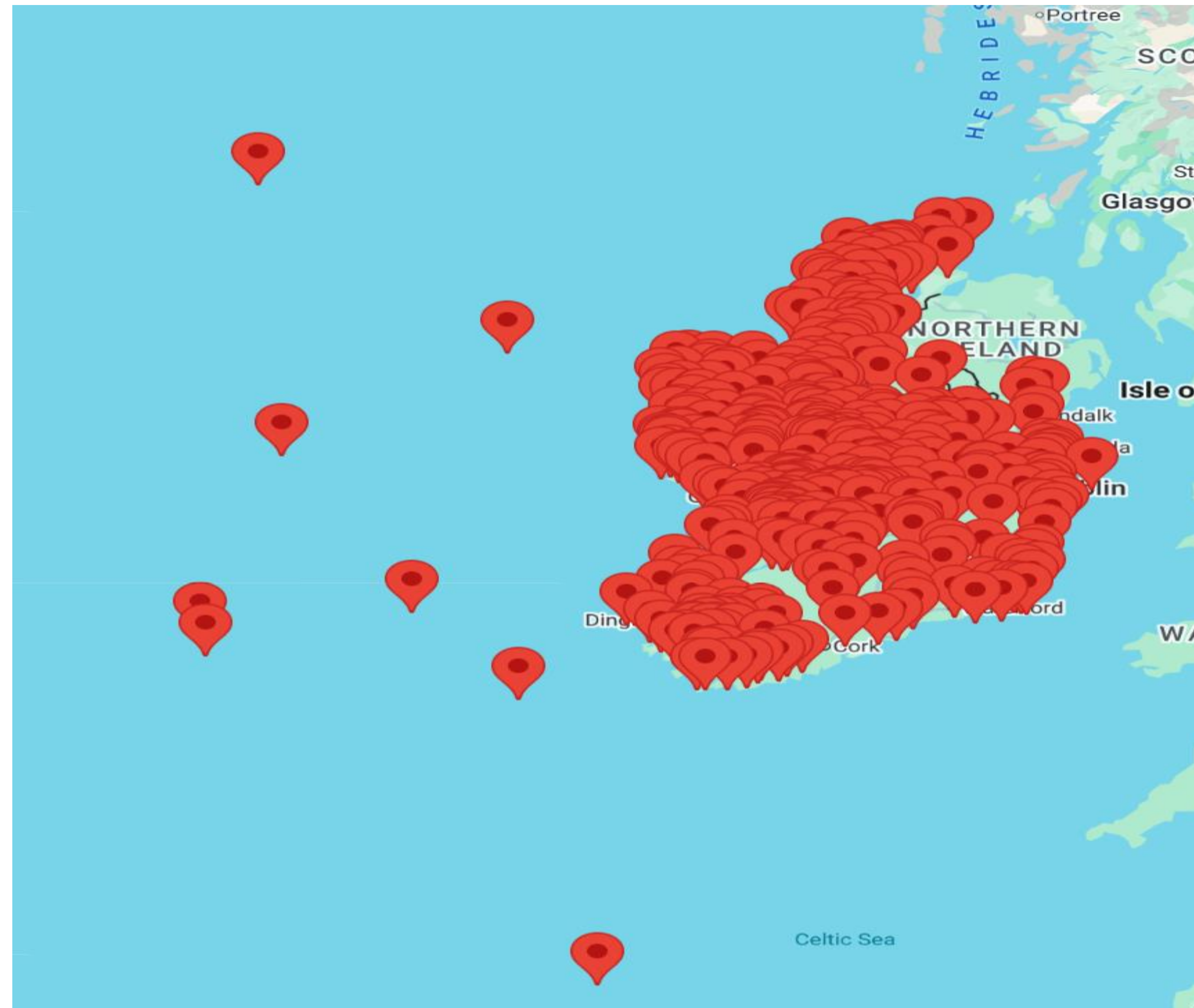


*Source: National Parks and Wildlife Service

SACs - Ireland



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*Source: National Parks and Wildlife Service



C-444/21 *Commission v Ireland*

- Infringement proceedings brought against Ireland by European Commission
- Commission argued Ireland failed to fulfil its obligations under Habitats Directive because it did not establish site-specific conservation objectives (SSCOs) for 140 of 423 designated sites and failed to implement necessary conservation measures for any of 423 sites.
- CJEU held Ireland failed to fulfil its obligations under Article 4(4) of Habitats Directive regarding the SSCO.



Protection of Natura 2000 Sites

- Legal framework for protection of Natura 2000 sites set out in Article 6 of Habitats Directive:

Article 6(1): positive conservation measures. These involve management plans, and statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the site

Article 6(2): preventative measures. Requires EU countries to avoid deterioration of natural habitats and habitats of species as well as significant disturbance of species for which areas have been designated

*Article 6(3): appropriate assessment regime. Sets out series of procedural and substantive safeguards governing plans and projects (alone or cumulatively) likely to have significant effect on a Natura 2000 site. Dictates whether project can go ahead.

Article 6(4): derogation to allow damaging plans/projects in certain limited circumstances i.e. exception to article 6(3)

- Now in Irish law under Part 6 of Planning and Development Act 2024



Article 6(3) of the Habitats Directive

"3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."



Screening for AA (Stage I)

To note:

- Bar for AA screening very low
- Precautionary approach adopted by Irish Courts
- NB. if any question of effect on European site, AA screening needs to be carried out
- Competent authority to give notice of its determination in respect of AA screening, giving reasons for determination (only where full AA required)

Caselaw:

- (C-127/02) *Waddenzee* and later case (C-258/11) *Sweetman*: if there is even a probability or risk that project will have significant effects on site concerned then this will be enough to require AA screening.
- *Alen-Buckley v An Bord Pleanála (No. 2) [2017] IEHC 541*: legal test for AA screening determination is whether proposed development likely to have significant effect on European site(s).
- Decision endorsed by Barniville J. in *Kelly (Eoin) v An Bord Pleanála [2019] IEHC 84*: judge noted threshold to be applied at screening stage in determining whether AA is required is whether proposed development, individually or in combination with another plan or project, is "likely to have significant effects" on European site.
- Barniville J. emphasised that if mere probability that such effect exists, important to screen this risk out. Such risk exists if cannot be excluded on basis of objective information that particular development "will have significant effects" on protected site.



Screening for AA and Stage II AA

Two-stage process of screening and full AA:

Stage I screening (Q: is AA required?):

- Article 6(3) of Habitats Directive, as implemented by s.177U of the PDA 2000. Screening exercise must be carried out by competent authority to:

“assess, in view of the best scientific knowledge, if ... proposed development, individually or in combination with another plan or project, is likely to have a significant effect on a European site.”

- Purpose of screening exercise is to determine whether necessary to carry out full AA/stage 2 AA of implications of proposed development on the site.

Stage II AA/full AA (Q: can project go ahead?):

- Article 6(3) of Habitats Directive, as implemented by s.177V of the PDA 2000:

“An AA to be carried out ... shall include a determination by the competent authority ... as to whether or not a ... proposed development would adversely affect the integrity of a European site and an AA shall be carried out by the competent authority ... where it has made a determination under section 177U(4) that an AA is required”

Power & Ors v An Bord Pleanála & Ors [2024]



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IECA 295

- **Background:** Board granted Knocknamona Windfarm Limited permission to amend previously permitted but unbuilt windfarm near Dungarvan, County Waterford.
- Board carried out an AA of implications of proposed development for five identified European sites, including Blackwater Callows SPA, located in Cork and Waterford.
- Board decided that proposed development would not adversely affect integrity of Blackwater Callows SPA.
- Applicants challenged validity of development consent granted by Board. Applicants argued that absent conservation objectives for Blackwater Callows SPA, Board had no jurisdiction to perform AA of proposed development.

High Court (Holland J.): upheld decision of Board. Found that in most circumstances conservation objectives will be necessary to carry out valid AA but on facts of case, possible to have valid AA without such objectives (scientific evidence showed that QI of Blackwater Callows SPA, the Whooper Swan, would not be affected by proposed development irrespective of what conservation objectives had been set).

Reference to CJEU: Court of Appeal asked for clarification on whether valid conservation objectives for SPA area are pre-requisite to Board's jurisdiction to carry out valid AA under Article 6(3) of Habitats Directive when considering application for a grant of development consent.



Massey v An Bord Pleanála & Ors (No. 3) [2025] IEHC 218

- **Background:** regarding grant of planning permission for windfarm and associated infrastructure on Cork/Waterford border.
- Proceedings turned on validity of AA screening carried out by Board. Applicants argued that this contravened Article 6(3) of Habitats Directive as Board failed to consider any site-specific objectives and conservation measures of Blackwater Callows SPA when determining that full AA not required.
- High Court dismissed case, refusing to grant order quashing development consent. Expert evidence showed lack of any reasonable possibility of potential impact on European site. QI (whooper swan) recorded flying over Blackwater Callows SPA only once.
- Harmless error, declaratory relief, no need to quash: decision would have been same even if conservation objectives had been adopted for SPA - did not matter what objectives for SPA were, wouldn't have made difference.

Reference to CJEU: High Court sought clarification on whether valid conservation objectives for SPA are pre-requisite to Board's jurisdiction to carry out valid AA screening under Article 6(3) of Habitats Directive when considering application for grant of development consent.

*differs from reference in *Power* which relates to stage II of AA.



Joined Cases C-27/25 and C-356/25, Power/Massey

- Advocate General's Opinion: SSCOs not a strict prerequisite for carrying out an AA or AA screening.
- BUT CJEU did not follow AG's Opinion, finding instead:
- where SSCOs have not been adopted beforehand, a national authority cannot carry out a valid appropriate assessment of the implications of a plan or project for the integrity of that area, in the context of the examination of an application for consent for that plan or project;
- for the screening phases, while it may be possible to delimit the geographical area likely to be affected by a plan or project without it being necessary to take into account the SSCOs, the assessment of the probability or risk of such a plan or project having a significant effect on a protected site within that geographical area cannot be carried out without taking account of the SSCOs;
- it is not appropriate to limit the temporal effects of the judgment (ruling applies **retrospectively and immediately** to both pending and past planning decisions, rather than just future applications).



Other Court challenges around adequacy and integrity of environmental assessments



Mitigation Measures – Screening for AA

- No reference to mitigation measures in Article 6 of Habitats Directive or Part 6 of the 2024 Act.
- *C-323/17 People Over Wind and Sweetman v Coillte*: not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site
- *Heather Hill Management Co CLG v An Bord Pleanála (No.2) [2019] IEHC 450*: key determinant of whether measure is avoidance/reduction measure is intended purpose. What is predicted impact of proposed development on European site. Is the measure intended to avoid or reduce potential impact?
- Purpose of second stage AA = identifying suitable mitigation measures and allowing public to participate in process



(C-323/17) *People Over Wind and Sweetman v Coillte Teoranta*

- **Background:** proposed works to lay cable connecting wind farm to electricity grid.
- Screening report concluded that, in the absence of 'protective measures', there was potential during construction for release of suspended solids into waterbodies which were hydrologically connected to a European site of importance to the Nore Freshwater Pearl Mussel.
- Stage II appropriate assessment not carried out.
- Applicants challenged decision.

Reference to CJEU: High Court (Barrett J.) referred question to CJEU: whether, or in what circumstances, mitigation measures can be considered when carrying out screening for AA under Article 6(3) of Habitats Directive.

CJEU Decision: precautionary principle: inconsistent with requirements of Article 6 (3) of Habitats Directive to take into account, at screening stage, measures intended to avoid or reduce harmful effects of project on European site.

Heather Hill Management Co CLG v An Bord Pleanála (No.2) [2019] IEHC 450



CMG Training
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- **Background:** challenge of decision of Board to grant permission for strategic housing development of 197 new dwellings (houses and apartments) in Bearna, County Galway.
- Board “accepted and adopted” screening determination carried out in inspector’s report which read as follows: *“The only potential pathways for effects on the SPA and SAC are through hydrological connections, i.e. the Trusky Stream discharging to Galway Bay at Bearna. There will be no run-off from the site directly to any SAC or SPA. **Best practice measures will be undertaken to minimise emissions to the Trusky Stream during the construction and operation of the development. These measures will ensure the protection of water quality and fisheries resources in the Trusky Stream...**”*
- **High Court (Simons J.)** found: Board failed to carry out proper AA screening. Board not entitled to rely on “best practice measures” for purposes of stage 1 screening determination. As Board thought it necessary to rely on “best practice measures” should have proceeded to stage 2 AA.
- Key determinant of whether measure is avoidance/reduction measure is intended purpose. What is predicted impact of proposed development on European site. Is the measure intended to avoid or reduce potential impact?
- Simons J.: *“intention of the measures was expressly stated to be protective. In the circumstances, the ... legal test under People Over Wind could readily be applied to the facts of the case ... **not legitimate to work backwards from the existence of measures.**”*



Sweetman v An Bord Pleanála & IGP Solar

[2020] IEHC 39

- **Background:** judicial review of Board's decision to grant permission for 67.8 hectare solar farm in Co. Cork.
 - Applicants argued that Board had acted in breach of its obligations under Habitats Directive in failing to carry out full AA or proper AA screening because mitigation measures had been taken into account at screening stage.
-
- **High Court (McDonald J.):** Board **not entitled to take into account measures described in CEMP in carrying out screening exercise for AA.** Error went to jurisdiction of Board. Court quashed decision of Board granting planning permission for solar farm development.
 - In so finding, McDonald J. provided summary of relevant principles at para. 89.

Highlands Residents Association & Ors v An Bord Pleanála & Ors [2020] IEHC 622



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- **Background:** challenge of Board's decision to grant planning permission for construction of strategic housing development on outskirts of Drogheda, County Louth, consisting of 509 houses, 152 apartments with crèche, shop and café.
- Applicants challenged validity of Board's decision on number of grounds, including that Board took mitigation measures into account for purposes of AA screening and that this was contrary to well-established case law.
- Inspector's report concluded that full AA not necessary (just **standard techniques/established approach** to surface water drainage, regardless of proximity to Natura sites) and that **any adverse impact on Natura sites would only arise if proposed development works were carried out in incompetent manner or "with reckless disregard to environmental obligations that arise in any rural area whether or not it is connected to a Natura 2000 site."**
- **High Court (McDonald J.):** quashed decision. Board, in adopting inspector's report, failed to comply with obligations under Section 177U of the PDA and Article 6 (3) of the Habitats Directive.
- *"appropriate time to consider measures capable of avoiding or reducing any significant effects on the site concerned is at the **stage 2 appropriate assessment when a comprehensive analysis of those measures can be carried out in order to determine whether they will be effective**. To take account of such measures at the screening stage is liable to undermine the protections afforded by the Habitats Directive and runs the risk of circumventing the stage 2 assessment which constitutes an essential safeguard under the Directive. **For that reason, it is impermissible, at the screening stage to take account of measures intended to avoid or reduce the harmful effects of a proposed development**".*
- Question of intention underlying measures must be assessed **objectively**. Language used by developer or by Board in the course of the screening exercise is **not determinative**.
- **Fact that measures are standard construction techniques irrelevant** when purpose of measure is to avoid potential impacts on protected European site.

(Case C-721/21) *Eco Advocacy CLG v An Bord Pleanála*



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- **Background:** challenge of permission for construction of 320 dwellings near Trim, County Meath, in the vicinity of the River Boyne and River Blackwater SAC and SPA.
- Board decided Stage II AA was not required. Proposed development incorporated surface water run-off from development to be collected below ground in storage tanks. This run-off would be treated before being piped to a stream (tributary of the River Boyne) around 100 metres south of development, reducing potential for effects on protected sites.
- Q: whether this was mitigation measure which could not be taken into account in Stage 1 AA and could only be considered in Stage 2 AA.

Reference to CJEU: High Court (Humphreys J.) referred question to CJEU: whether standard design measures which have mitigating effects (surface water drainage system here) can be considered at AA screening stage.

CJEU Decision: *"....in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account **may** be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where **those features have been incorporated into that plan or project** as standard features, **inherent** in such a plan or project, irrespective of any effect on the site".*



Mitigation Measures – EIA Screening

- **Can** be considered at preliminary examination stage of EIA where the “*level and reliability of knowledge of the effectiveness of such mitigation*” supports conclusion that EIA Screening unnecessary (***Shadowmill v An Bord Pleanála*** [2023] IEHC 157).
- **Cannot** be considered at AA screening (Recent reminder in ***CCA v MHLG&H*** [2024] IEHC 524).
- Mitigation measures might themselves cause negative environmental effects which need to be assessed/screened (***Salmon Watch Ireland CLG -v- The Aquaculture Licences Appeals Board & Ors*** [2024] IEHC 421).

Practical takeaways:

- Ensure mitigation is **very certain** if relied upon at EIA preliminary/screening stages
- Make it easy for authority to apply correct legal tests
- Don't forget to assess impact of mitigation measures themselves



Differences between AA and EIA

EIA Directive makes clear that Member States must ensure that these are coordinated/joint procedures

AA:

- Decision-maker does NOT have jurisdiction to grant permission where development would adversely affect integrity of European site.
- Conclusion on AA therefore determines jurisdiction of Board.
- Conclusion on AA not a planning decision.

EIA:

- Application may still be granted even where there is likely to be significant environmental effects.
- Outcome of EIA "*informs, rather than determines, planning decision*" (*Kelly v An Bord Pleanála* [2014] IEHC 400)
 - Not a green procedure.



Overview - Environmental Assessments

Appropriate Assessment (AA)	Environmental Impact Assessment (EIA)
Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)	Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive)
Aim: nature conservation, protection of flora and fauna and their habitats	Aim: ensure high level of protection of environment and human health
Assessment: AA (screening) report/NIS prepared by developer assessing potential impacts of plan or project on European nature conservation sites. AA screening carried out by competent authority to assess if proposed development (individually or in combination with other plans or projects) likely to have significant effect on European site. If required, full AA to be carried out by competent authority as to whether proposed development would adversely affect the integrity of European site.	Assessment: EIAR prepared by developer identifying main effects of proposed development (Annex I and II of EIA Directive) on environment (both adverse and beneficial) and submitted as part of planning application. EIA process carried out by decision making authority assessing environmental effects of proposed development, and public consulted, prior to grant of development consent.

Derogation Licences - AA

- Article 6(4) of Habitats Directive: provides for derogation from strict application of AA test in Article 6(3).
- Sites which host priority habitat type/species v other sites
- If determined that plan or project may adversely affect integrity of site following negative assessment of implications for site, may still be authorised if:
 1. no alternative solutions
 2. plan or project must be carried out for imperative reasons of overriding public interest (IROPI).
Includes social or economic nature.
 3. all compensatory measures necessary must be taken to ensure overall coherence of Natura 2000 is protected (offset adverse effects, (as opposed to limit or eliminate with mitigation measures).
- Sites which host priority habitat type/species: only relevant considerations relate to human health or public safety or beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, other reasons of interest.
- *(C-43/10) Nomarchiaki*: held by CJEU that for priority habitats/species supply of drinking water could qualify under public health criterion, although irrigation could not (but could in principle constitute “overriding public interest” for all other sites).
- Article 6(4) can apply only after implications of plan or project have been analysed in accordance with Article 6(3).
- Also to note: imperative reasons of overriding public interest “IROPI” provisions under 2024 Act



Article 6(4) of the Habitats Directive

"4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest."



Case C-57/89 *Leybucht*

- Area in north-western Germany had been designated as SPA. German authorities proposed water-dyke to prevent flooding. Area at risk of serious flooding that could endanger human life. Dyke resulted in reduction of size of SPA.
- Advocate General Gervén: reduction in extent of area which is designated as an SPA permitted only on mandatory grounds arising from general interest which is more important than the environmental interest at which Directive is aimed.
- In direct response to CJEU's decision in *Leybucht*, Member States agreed derogation provision for Habitats Directive to allow damaging plans/projects to go ahead in or near Natura 2000 sites under Habitats Directive and Birds Directive.
- Habitats Directive amended Birds Directive.

C-166/22 *Hellfire Massy Residents Association v An Bord Pleanála & Ors.*



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- **Background:** development consent granted by Board to South Dublin County Council for visitor centre, tree canopy walk/pedestrian bridge over R115, conversion of conifer forest to deciduous woodland and conservation works to existing structures.
- Challenge to validity of Irish legislation (Communities (Birds and Natural Habitats) Regulations 2011) adopted to give effect to Habitats Directive and Birds Directive regarding strictly protected species and derogation licence process.
- Derogation licences are licences to disturb or interfere with protected plant or animal species.
- Core of challenge:
 - I. procedure for granting development consent not integrated within system of strict protection of species for purpose of Article 12 of Habitats Directive (i.e. derogation licence may be issued post development consent).
 - II. system of strict protection as implemented in Ireland does not provide for proper public participation (i.e. incompatible with Aarhus Convention and EU law).

Reference to CJEU: High Court (Humphreys J.) referred four questions to CJEU, including: I. whether derogation licence system in domestic law should be integrated within planning process and whether derogation licence should be applied for following grant of development consent, and II. whether public participation should be provided for in derogation licence process.

CJEU Decision: CJEU held that 2011 Regulations compatible with EU law as they reproduce, word for word, the main content of Articles of Habitats Directive. CJEU also stated that derogation procedure not required to be integrated into procedures for granting development consent.

CJEU agreed with judgment of Humphreys J. that at time of granting planning permission, need to obtain derogation licence had not been identified. Therefore, did not need to be ascertained whether members of public concerned have right to participate in administrative procedure regarding such derogation.



Project Splitting

- Breaking down single, integrated project into (multiple) sub-projects, to circumvent need for comprehensive environmental assessment that would be required for entire project.

EIA:

- *O’Grianna v An Bord Pleanála* (No. 1) [2014] IEHC 632: Peart J. remitted application to Board to enable cumulative impact of grid connection to be assessed.
- Cumulative effects must be assessed. Not necessary for it to form part of same planning application.
- *Concerned Residents of Treascon and Clondoolusk v an Bord Pleanala* [2024] IESC 28: not permissible to split EIA project into smaller parts to remove application of EIA Directive. Cumulative effect of other projects must be assessed (including non-EIA projects such as solar farm).
- *Leamlara Preservation Group v An Coimisiún Pleanála* [2026] IEHC dated 18 September 2026: permitted solar farm located 2.7km from site of a previously proposed solar farm by the same developer. The application for that other solar farm was deemed invalid by the local authority. The developer confirmed that another planning application may be submitted. Nevertheless, ACP didn’t consider it in its cumulative assessment. Applicants alleged this amounted to project splitting and the EIA screening was flawed. High Court held that solar farms aren’t a class of EIA project and that, in any event, ACP wasn’t required to consider the invalidated application because it wasn’t an “existing or proposed” development.

AA:

- Unlike with EIA Directive, little case law on project splitting in context of AA. **Not** permissible to avoid need to carry out AA.
- *Sweetman v An Bord Pleanála* [2016] IEHC 310: Hedigan J. held that decision on project splitting involves evaluation of entire project and assessment as to whether reasons for splitting it into stages stand up to scrutiny. Decision primarily concerned with project splitting from EIA perspective, but judge also applied same analysis to argument that requirements of Habitats Directive had been circumvented.

Holohan v An Bord Pleanála[2017] IEHC 268; (C-461/17) *Holohan v An Bord Pleanála*



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- **Background:** Order sought quashing decision of Board approving proposed road development known as Kilkenny Northern Ring Road extension.
- Among grounds of challenge was that AA carried out by Board was deficient for two reasons: omissions in information provided, and a lack of reasons.
- Applicants argued that there were unlawful omissions in information made available in AA, including location of construction compound (which was not identified other than obliquely by reference to undertaking that it would not be placed on Natura lands or lands of applicants) and other information relevant to construction process such as haul, routes and construction access, and details relating to importation of soil;
- Applicants also said that reasons provided by the Board in the AA were inadequate or lacking.

Reference to CJEU: High Court (Humphreys J.) sought opinion on whether details of construction phase (such as compound location and haul routes) can be left to post-consent decision, and, if so, whether it is open to competent authority to permit such matters to be determined by unilateral decision by developer, within context of any development consent granted, to be notified to competent authority rather than approved by it. Among the other questions referred, the High Court asked whether a competent authority, when conducting an AA, must provide detailed and express reasons for each element of decision.

CJEU Decision:

- Competent authority **is** permitted to grant consent for plan or project which leaves developer free to determine subsequently certain parameters relating to construction phase, such as location of construction compound and haul routes, **only if** that authority certain that development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect integrity of site.
- Where competent authority rejects findings in scientific expert opinion recommending that additional information be obtained, AA must include explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning effects of work envisaged on site concerned.

Mount Juliet Estates Residents Group v Kilkenny County Council (Ireland)[2020] IEHC 128



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- **Background:** principal complaint was that Kilkenny County Council acted without jurisdiction in granting retention planning permission for particular development. Development sought to be retained had been carried out in breach of requirements of EIA Directive and Habitats Directive, and, consequently, could not benefit from retention planning permission. Applicants contended that planning status of development could only be regulated by way of application for substitute consent.
- **High Court (Simons J.):** judgment concerned interlocutory applications only: Kilkenny County Council and beneficiary of planning permission sought to have judicial review proceedings stayed pending determination of appeal before An Bord Pleanála.
- Comments re Board's jurisdiction:
 - Power to correct planning authority's failures to carry out proper environmental assessments. **Board required to determine planning application *de novo*, i.e. as if application had been made to it in first instance** (Section 37(1)(b) of PDA). As part of this exercise, **Board must make its own screening determination.** Board has power to conduct EIA or AA even where planning authority decided that same were not required. Board can therefore remedy such failure on part of planning authority.
 - **BUT Board does NOT have power to entertain application/appeal for retention planning permission where underlying development carried out in breach of requirements of EIA Directive and/or Habitats Directive.** Statutory prohibition (Section 34(12) of PDA) on planning authority. Prohibition applies equally to first-instance decision-maker as to appellate body.
 - In general: if matter within Board's jurisdiction, seek to resolve matter administratively rather than going straight to Court. **Exhaust all avenues before judicial review.**



Harmless Error

- Growing body of case law on 'harmless error'
- Courts will not quash or invalidate public body or planning decision due to minor, technical, or procedural mistake if it did not cause material prejudice or change the actual outcome
- Substantial compliance: Courts ask if the core purpose of a statutory rule was met in spirit, even if the strict letter of the process was imperfect.
- No material prejudice: An applicant must show that someone was genuinely misled, harmed, or disadvantaged by the mistake.
- Discretionary remedy: Judicial review is not automatic; judges balance proportionality and public interest before cancelling a decision via *certiorari* (an order quashing a decision).
- *Doyle & Ors v An Bord Pleanála & Ors* [2025] IEHC 158: immaterial oversight in an environmental report did not invalidate planning permission because the overall biodiversity impact was properly addressed.
- *Carrownagowan Concern Group v. An Bord Pleanála* [2025] IESCDT 9: procedural breach of the Habitats Directive, such as conducting an AA without valid conservation objectives, does not automatically invalidate a planning permission if uncontroverted evidence proves the error had no actual effect on protected European sites (NOTE pre CJEU judgment).



Changes under RED III

- RED III Planning Regulations (S.I. 274 of 2025, S.I. 426 of 2025, S.I. 435 of 2025) transpose into Irish law recast Renewable Energy Directive (RED III) – Directive (EU) 2023/2413.
- From 1 November 2026, any application for renewable energy development, and repowering development (as defined under RED III planning regulations) lodged with planning authority or An Coimisiún Pleanála (ACP) will require mandatory pre-application EIA Scoping Opinion.
- Formal opinion on scope and level of detail of information to be included in EIAR.
- EIA Screening determination may be required as first step in determining whether EIA Scoping Opinion is required for below-threshold class of project.
- Once EIA Scoping Opinion provided, idea is that planning authority /ACP will not extend scope or level of detail required to be included in EIAR.
- Planning authority / ACP retain power to request further information from applicants.
- Pre-application stage must be complete before scoping opinion can be requested.
- Guide to EIA Scoping published by ACP in June 2026: [https://www.pleanala.ie/en-ie/latest-news/new-renewable-energy-directive-\(red\)-iii-eia-scopi](https://www.pleanala.ie/en-ie/latest-news/new-renewable-energy-directive-(red)-iii-eia-scopi) .



Module 3: Strategic Housing and development plans



Contents

1. Introduction
2. Legal effects and interpretation of development plan
3. Material contravention of development plan
4. Zoning
5. Remittal and intervention by Notice Parties – Ballyboden and Crofton
6. Large-Scale Residential Developments



Bigger picture – development plans in context of planning system

- Part 3 of Planning and Development Act 2024 deals with plans, policies and related matters. Set out over 6 Chapters.
- Aim: plan led system of planning and development based on integrated hierarchy of plan-making.
- Consisting of:
 - **National Planning Framework:** national planning policy, measures and guidance;
 - **National Planning Statements:** Minister issues, with approval of Government, for purpose of setting out policy and providing related guidance in relation to planning matters to support proper planning and sustainable development. Replace section 28 guidelines and section 29 Ministerial policy directives under PDA;
 - **Regional Spatial and Economic Strategies:** supports implementation of NPF and economic policies and objectives of Government;
 - **Development Plans:** consist of written statements, strategies (incl. housing strategy and climate change strategy), settlement specific objectives; record of protected structures
 - **Area Plans:** replace Local Area Plans under PDA. Three types of focused Area Plans (Urban Area Plans, Priority Area Plans, Coordinated Area Plans). More focused approach.



Planning and Development Act 2024

PART 3 Plans, Policies and Related Matters		
Chapter	Commencement Order	Commencement Date
Chapter 1: Preliminary Matters	S.I. No. 452 of 2025	2 October 2025
Chapter 2: National Planning Framework	S.I. No. 452 of 2025	2 October 2025
Chapter 3: National Planning Statements	S.I. No. 452 of 2025 (other than s25(8) and (9))	2 October 2025
Chapter 4: Regional Spatial and Economic Strategies	S.I. No. 452 of 2025	2 October 2025
Chapter 5: Development Plans	S.I. No. 633 of 2025	31 December 2025
Chapter 6: Urban Area Plans, Priority Area Plans and Coordinated Area Plans	S.I. No. 633 of 2025	31 December 2025



Development Plans – what are they?

- A development plan sets out "*an **integrated overall strategy** for the **proper planning and sustainable development of the functional area** to which the development plan relates*" (Section 43(1) of 2024 Act).
- Planning framework for whole functional area of local authority (Section 42(4) of 2024 Act).
- Regulates use and future development of property.
- Planning applications considered against same.
- Adopted for period of 10 years under s42(1) of 2024 Act (previously 6 years).
- Participatory nature: community and stakeholders get involved (submissions).
- NB. Development plans under PDA continue in force until expiry.



Legal Effects of Development Plan

- Represents blueprint for determination of planning applications.
- General duty to secure objectives: Section 56(1) of 2024 Act: planning authority under duty *"to take such steps as may be necessary for securing the objectives of the development plan and to monitor the implementation of those objectives"*.
- Chief Executive report: Section 56(2) of 2024 Act: Chief executive of planning authority gives report to members of authority on progress achieved towards securing implementation of development plan not later than 4 years and 9 months after making of development plan (*"interim implementation report"*).
- Question mark re enforceability: development objectives expressed in broad terms, no date, dependent on private sector investment and government funding etc.
- Provisions of development plan not binding, *"have regard to"* requirement:
- Section 86(1)(a)(i) of 2024 Act: planning authority, and Commission, required to *"have regard to"* provisions of development plan in determining application for planning permission.
- But decision-maker required to state reasons for departure.
- Presumption in favour of adhering to development plan: special procedure to be observed before planning permission may be granted for development which would represent material contravention of development plan.

Attorney General (McGarry) v Sligo County Council [1991] 1 I.R. 99 at 113, [1989] I.L.R.M. 768 at 772: development plan forms "environmental contract" between planning authority and public.

Navan Co-Ownership v An Bord Pleanála [2016] IEHC 181; Kelly v An Bord Pleanála [2019] IEHC 84: broad statements of policy.



Interpretation of Development Plan

- Interpretation for Courts.
 - Application of policies and provisions (as interpreted by Courts) then for planning authority/ Commission in exercise of their respective planning expertise/judgement.
 - Interpretation of material contravention first matter for planning authority but ultimate decision-making power vested in Courts which are entitled to determine as a matter of law (and in accordance with well-established legal principles) whether particular development would materially contravene development plan.
 - Otherwise: decision-maker would be determining own competence.
 - Development plan (current, finalised, public version) must be considered as a whole to ensure correct meaning given to any given section.
- *Finn v Bray UDC [1969] I.R. 169*: purpose of development plan is in part to **inform members of public**.
 - *Tennyson v Dun Laoghaire Corporation [1991] 2 I.R. 527*: development plan to be construed in its **ordinary meaning** as it would be understood by members of public without legal training, as well as by developers and their agents.... In interpreting development plan, Court should ask itself **what a reasonably intelligent person who has no particular expertise in law or town planning would make of relevant provisions**.
 - *Amphitheatre Ireland Ltd v HSS Developments & HSS (t/a Mansfield Group) [2009] IEHC 464*: not to be treated as piece of primary or secondary legislation emanating from skilled draftsmen.
 - *Kelly v An Bord Pleanála [2019] IEHC 84*: interpretation of development plan matter for Court.
 - *Redmond v An Bord Pleanála [2020] IEHC 151* (re strategic housing development): "question exclusively for the court". If not, Board would be allowed to determine its own jurisdiction. "A decision-maker cannot be said to have properly had regard to objectives or policies which it has misunderstood."
 - *Wicklow County Council v Forest Fencing Ltd t/a Abwood Homes [2007] IEHC 242*: development plan should be "considered in the round" and "**no section should be considered in isolation from the entire document**".



Material Contravention of Development Plan

- What is meant by concept of 'material contravention'? Not defined in legislation.
- Question of degree and therefore difficult to extract any general principles from case law.
- Manner in which proposed development is in contravention of development plan must be material.
- Must involve actual breach of planning objective or planning policy. More than that required to ground refusal of planning permission.
- Failure to engage in public consultation may constitute material contravention.
- Can arise from omissions: series of cases re development of Travellers' halting sites, and one case relating to development of waste disposal facility, held that failure by planning authority to disclose in advance in its development plan its intention to carry out said development gave rise to material contravention.
- Specific objectives v general objectives (greater degree of judgement needed).

Can be clear-cut: e.g. where proposed development conflicted with zoning objectives of development plan.

- development of travellers' halting site in area zoned for high amenity: *O'Leary v Dublin County Council [1988] I.R. 150*
- development consisting of erection of **industrial buildings** and other structures **on lands zoned for agricultural use**: *Grange Developments Ltd v Dublin County Council [1986] I.R. 246*

Less obvious: objectives in development plan of more general or universal application. E.g.

- restriction on developments within certain distance of road in interests of visual amenity and tourism: *Murray v Wicklow County Council [1996] 2 I.R. 552, [1996] 2 I.L.R.M. 411*
- objective to establish a linear park: *Maye v Sligo Borough Council [2007] IEHC 146, [2007] 4 I.R. 678*
- *Byrne v Fingal County Council [2001] 4 I.R. 565, [2002] 2 I.L.R.M. 321*: lack of consultation could not amount to material contravention.
BUT
- *Jeffers v Louth County Council [2003] IEHC 114*: "clear that a failure to fulfil public consultation requirements can constitute a material contravention" where commitment made to follow consultative procedure (e.g. in case of providing Traveller accommodation).



Material contravention under PDA

- Special procedures to be observed under PDA before planning permission can be granted for development which would represent material contravention of development plan.
- Section 34(6) of PDA allows planning authority to grant permission even if development proposal materially contravenes development plan (publication requirements, submissions, report prepared by chief executive, considered by members, resolution passed).
- Section 37(2)(a) of the PDA provides that Board may, in determining an appeal, decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.
- Section 37(2)(b) of PDA provides that, where planning authority decided to refuse permission on grounds that proposed development materially contravenes development plan, Board can grant permission where it considers that one of following scenarios arises:
 1. Proposed development is of strategic or national importance;
 2. Relevant objectives are in conflict and/or unclear;
 3. Permission should be granted having regard to regional spatial and economic strategy for area or Section 28 Ministerial guidelines or policy directives; or
 4. Permission should be granted having regard to pattern of development, and permissions granted in area since making of development plan.

- *Ballyboden Tidy Towns Group v An Bord Pleanála* [2022] IEHC 7: useful summary and analysis of law on material contravention from paras 103 - 190 of judgment.
- *Coolglass v An Bord Pleanála & Ors* [2025] IEHC 1: Section 37G(6) more permissive. Discretion of Board.



Strategic Infrastructure Development

- Developments specified in Seventh Schedule of PDA (Schedule 1 under 2024 Act. Not yet in force).
- Section 37G(6) of PDA: **No** restrictions on circumstances in which Board may decide to grant permission for strategic infrastructure development, or any part thereof, which materially contravenes a development plan.
- Now see Section 124(2)(a) of 2024 Act (not yet in force).



Changes re material contravention under 2024 Act

- Part 4 of 2024 Act.
- N.B. not yet in force.
- Narrows ability of planning authority and Commission to grant planning permission for development that materially contravenes development plan or other plans.
- Discretion and rationale for granting permission in material contravention of development plan available under PDA not brought forward in 2024 Act.
- Now: greater focus on whether proposed development compliant with national and regional policies which would justify granting planning permission.
- Deciding authorities under 2024 Act more bound by development plan.
- Planning authorities to refuse permission for developments significantly diverging from the development plan unless specific justifications are met, with provisions for maritime development also addressing National Marine Planning Framework (NMPF) conflicts, allowing exceptions only for strategic importance or conflicting development plan objectives, requiring detailed reports and high voting thresholds for approval by elected members.



Changes re material contravention under 2024 Act

Section 99 of 2024 Act (Application for permission for development in material contravention of development plan or National Marine Planning Framework under Chapter 3 (Standard Development) of Part 4 (Development Consents)):

*"Where application for permission for land-based development/maritime development ... that materially contravenes ... development plan for the functional area of the planning authority, the **planning authority shall ... refuse permission***

...

*Planning authority may, **by resolution** ("material contravention resolution") ... passed by not less than **three-quarters of the total number of the members** of the planning authority following a **proposal of the chief executive of the planning authority**, decide to grant permission ... if—*

(a) it considers that the grant of such permission is necessary or justified having regard—

(i)...to proper planning and sustainable development, or

(ii) ... to the objectives of maritime spatial planning,

and

*(b)the development ... **is consistent with such provisions of the National Planning Framework, National Planning Policies and Measures or regional spatial and economic strategy as deal with the matters dealt with by provisions of the development plan to which the material contravention concerned applies...**"*



Changes re material contravention under 2024 Act

Section 124 of 2024 Act (Decision on application for permission for development in material contravention of certain plans) under Chapter 4 (Planning Applications Directly to Commission) of Part 4 (Development Consents):

"1(a) Where application for permission is made ... for development that –

(i) is situated ...wholly or partly on land, and

(ii) materially contravenes ... the development plan for the functional area of any planning authority,

*the **Commission shall refuse to grant permission.***

(b) Where an application for permission is made ... for development ... that—

(i) is situated ... wholly or partly in the maritime area, and

(ii) that materially contravenes ... the National Marine Planning Framework or maritime spatial plan,

the Commission shall... refuse to grant permission.

(2) The Commission may grant permission for development ... if it is satisfied that—

*(a) the development or proposed development is of strategic or national importance **having regard to the policy of the Government,***

(b) the development plan contains objectives that conflict with one another or that are ambiguous with regard to their application to the development or proposed development, or

*(c) the development or proposed development is **consistent with such provisions of the National Planning Framework, National Planning Statement or the relevant regional spatial and economic strategy as deal with the matter dealt with by provisions of the development plan to which the material contravention concerned applies.**"*

* See also Section 148 of 2024 Act (Material contravention of development plan or National Marine Planning Framework) under Chapter 5 (Alteration, Extension and Revocation of Permission) of Part 4 (Development Consents).



Zoning

- Will be more strategic in nature under 2024 Act.
- Zoning of land will be undertaken only through development plan process.
- Development plan must include objectives for zoning of land and map which illustrates zoning objectives applicable to all land in functional area of planning authority.
- See sections 43 and 52 of 2024 Act (currently in force).
- Aim is to ensure:
 - (i) greater coherence of integrated overall strategy for development of city or county concerned, and
 - (ii) timely delivery of infrastructural development, including housing.
- Change from section 10 of PDA which afforded planning authority discretion to zone only areas that in its opinion required uses to be so indicated.
- *Pat O'Donnell & Co v Dublin City Council* [2026] IESC 36: Supreme Court endorsed harmless error principles. Challenge to decision by Dublin City Council to re-zone land. In it's report, DCC identified applicant's planning consultant, rather than the applicant itself, as having made a submission as part of public consultation process. Error was too insubstantial and trivial to justify quashing the decision.

Part 21 – Strategic Development Zones



- Restates certain provisions of Part IX of PDA.
- Provides streamlined planning procedures for strategic development zones (SDZs) designated at date of commencement of Act.
- Procedures for designating new SDZ sites and making new Planning Schemes not restated as no new SDZ sites to be designated.
- Review of existing SDZ orders to be carried out by Minister and recommendations made to Government to revoke or amend certain orders to phase out sites or parts of sites on which planning schemes have not been made.

Part 22 – Urban Development Zones



- Introduction of Urban Development Zones (UDZs).
- Section 2 defines “urban development zone” as “a site to which an order under section 621 applies”. Section 621(1) states *“Where, in the opinion of the Government, the development of a candidate UDZ would be of significant economic, social or environmental benefit to the State and in the common good, the Government may by order, where so proposed by the Minister and having regard to the scale, nature and location of development included in the planning framework, designate all or part of the candidate UDZ as an urban development zone.”*
- Plan-led process; provides certainty for development sector.

Part 22 – Urban Development Zones



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- UDZs will provide local authorities with the ability to identify strategic lands for which development would be of significant economic, social and environmental benefit to the State.
- May include housing if that meets the strategic objectives for the land, in a manner consistent with national, regional and local spatial planning policy.
- Local authorities to designate areas with “significant potential for development”, including housing, as Candidate UDZs.
- Safeguarding of ‘critical land’ required to provide the necessary communal infrastructure to support the development.
- Government to then designate such areas as UDZs.



Intervention by Notice Parties

- Access to justice applies to developers as much as to environmental applicants.
- Developers usually notice parties to judicial review.
- Situation where Commission concedes?
- Appropriately interested party such as applicant for permission (i.e. developer) has entitlement to be heard on application to quash that permission, even where decision-maker is proposing to concede relief.
- *Protect East Meath Limited v. An Bord Pleanála & Ors* (I) [2020] IEHC 294, [2021] 2 I.R. 796, [2020] 6 JIC 1901. McDonald J. noted there had been no previous precedent on this issue and that "[e]ach case would have to be considered in its own context".



Ballyboden Tidy Towns Group v An Bord Pleanála & Ors (No.3) [2024] IESC 4

Background: challenge to strategic housing development for 241 apartments on Stocking Avenue, Woodstown, Dublin 16. Board conceded challenge (re failure to assess whether there was adequate public transport capacity prior to granting planning permission in material contravention of development plan), but **developer asked for liberty to defend** it. Appellant of view that Board correct in finding material contravention of development plan by proposed development. Notice party **did not accept that there was material contravention** and contested that such material contravention was accepted.

High Court (Humphreys J.): granted liberty to developer to defend challenge. *"Procedural level playing-field." "Judicial review is not a problem to be solved, but an indispensable pillar of the rule of law in a free and democratic society, baked into our system as a necessary consequence of rights protected by administrative law, the Constitution, the ECHR and EU law."*

Set test for notice party/developer seeking to defend decision that decision-maker does not wish to stand over: must show substantial grounds allowing it to make case/defend Board's decision.

Any litigation decision by public body (e.g. concession) not judicially reviewable.

Supreme Court (Donnelly J): Appellant obtained leapfrog leave to appeal to Supreme Court.

Supreme Court dismissed appeal: notice party has entitlement to defend judicial review proceedings even where decision-maker concedes them.

Re test: Where High Court determines that notice party is "person affected" by Board's decision for purpose of O. 84, r. 22(2) Rules of Superior Courts, then notice party has entitlement to defend the proceedings **as of right** and accordingly **no threshold is required** to be met.

Approach of the High Court will depend on a case-by-case analysis. *"In judicial review proceedings, the High Court is exercising its inherent powers to supervise the legality, rationality and procedural fairness of lower courts and public decision-making bodies."*



Remittal

- Rules of the Superior Courts, 27(4):Order 84 Rule
"Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court."
- Section 50A(9A) of PDA [see s289 under 2024 Act – not yet in force]
- Typically: formal order quashing decision follows order of remittal (i.e. original decision is nullified and sent back to decision-maker to reconsider and make new decision).
- But stay can be granted.
- Not permitted to introduce entirely new grounds on remittal.
- Focus is addressing specific issues identified by court and reviewing evidence related to those issues. Introducing new grounds would contradict purpose of remittal i.e. correcting errors or omissions related to original grounds.

Balz and Another v An Bord Pleanála and Others [2020] IESC 22: jurisdiction to grant stay to give decision temporary validity in exceptional circumstances (e.g. where party may suffer disproportionate consequences if immediate order made quashing decision).

Supreme Court granted stay on execution of order of certiorari quashing decision of Board to grant permission pending determination by Board of substitute consent.

Considerations of justice required court to exercise discretion as to timing of enforceability of order of certiorari.

Uí Mhuirín v Minister for Housing, Planning and Local Government, unreported, High Court, Quinn J., 13 March 2020: where court considering application for remittal, successful objector opposing remittal not entitled to rely on grounds that not in original proceedings.

Balscadden Road SAA Residents Association Ltd and Morris v An Bord Pleanála and Others [2020] IEHC 586: certiorari does not mean that decision is to be disregarded for all purposes (e.g. facts). However, not lawful to rely on substantive content of quashed decision when making fresh decision.



Crofton Buildings Management CLG and Stephanie Bourke v An Bord Pleanála and Fitzwilliam BL Limited [2024] IESC 12

Background: concerned grant of planning permission for strategic housing development comprising demolition of 2-storey dwelling and construction of 102 build-to-rent apartments in 2 buildings, ancillary residential amenities and a publicly accessible café on 0.42 hectare site in Dun Laoghaire, County Dublin.

High Court (Holland J.): in granting remittal, judge gave directions to Board to follow when reconsidering application. Included, amongst other things, that Board hold oral hearing.

Supreme Court: Applicant obtained leapfrog leave to appeal to Supreme Court. Interpreted Section 50A(9A) of PDA [see s289 under 2024 Act] as imposing mandatory requirement on High Court, if requested by applicant for permission, to remit quashed planning decision to relevant planning authority unless unlawful to do so (high threshold).

Scope for High Court to issue directions to Board on how to determine application on remittal very limited. Board presumed to be able to operate own procedures fairly and in accordance with law.

Where order quashing decision relates to particular stage of process, matter for reconsideration must commence at that stage.

Supreme Court dismissed appeal and varied Court order.



Millbourne Residents Association v An Bord Pleanála [2025] IESC 50

- Challenge to apartment development near Ashbourne, County Meath.
- Issue in case relates to question of remittal and change in development plan.
- Should remitted application go back to Board or planning authority?

"... Net question presented here is whether it would not be lawful for a remittal to the Board for the purposes of s. 50A(9A) of the 2000 Act because of the new change of circumstances, namely, the new development plan. This itself gives rise to an underlying question of some novelty which does not previously appear to have been fully judicially addressed, namely, whether the decision of the Board can be made by reference to a different development plan than that considered at first instance by the relevant planning authority. This has the potential to affect many other planning decisions."

Supreme Court agreed with High Court that matter should be remitted to the Commission for reconsideration. Appeal dismissed.



Large-Scale Residential Development

- Large-scale Residential Development (LRD) process introduced in December 2021.
 - Replaces Strategic Housing Development (SHD) process.
 - Mandatory for all planning applications on residential zoned land comprising 100 or more housing units or 200 or more student accommodation bed spaces.
 - Cannot be located in Strategic Development Zones.
 - Restores two-stage planning process – decision making returning to local planning authority, right of appeal to An Coimisiún Pleanála.
 - Section 124(2) of 2024 Act: An Coimisiún Pleanála can grant permission for development in material contravention of development plan if development of strategic or national importance having regard to Government policy.
 - Detailed pre-planning stages (LRD meeting and opinion) streamlines process and minimises requests for further information and refusals.
- General consensus: application process appears to be working efficiently and effectively for applications in most cases.
 - Improves on previous SHD process.
 - Report carried out by John Spain Associates (Planning & Development Consultants) analyses success of the LRD process to the 31st of May 2024: <https://jsaplanning.ie/insight/large-scale-residential-developments-lrds/>
 - Key findings (based on data reviewed):
 - 1. Timelines:** All LRD applications determined by local planning authorities within statutory period (4 weeks or 8 weeks with EIAR/NIS). 1 in 3 applications subject to further information requests. All appeals determined by Board within statutory period (16 weeks)
 - 2. Grants of permission:** LRDs have final grant rate of 86.8% compared to 74.6% of SHDs.
 - 3. Judicial reviews:** number reduced as compared to SHD process.
 - 4. Housing delivery: LRD process has secured permission for c. 16,900 residential units (78.1% apartments, 21.9% houses) and 989 no. student bed spaces.
 - Updated National Development Plan published 22 July 2025: updated spending ceilings for Government departments. Department of Housing to be given €35.9 billion to spend between 2026 and 2030 (source: <https://www.gov.ie/en/department-of-the-taoiseach/press-releases/government-publishes-updated-national-development-plan/>)

Transitional Rules



- For LRD proposals that seek to amend previously permitted LRDS or SHDs, the planning authority can make a determination under Section 247(7) of the PDA, if further consultations are required regarding the proposed development.
- Section 90(10) of 2024 Act:

"(10) A written confirmation provided under subsection (7) of section 247 of the Act of 2000 shall, on and after the repeal of that subsection by section 6, be deemed to be a certificate provided under subsection (9)".

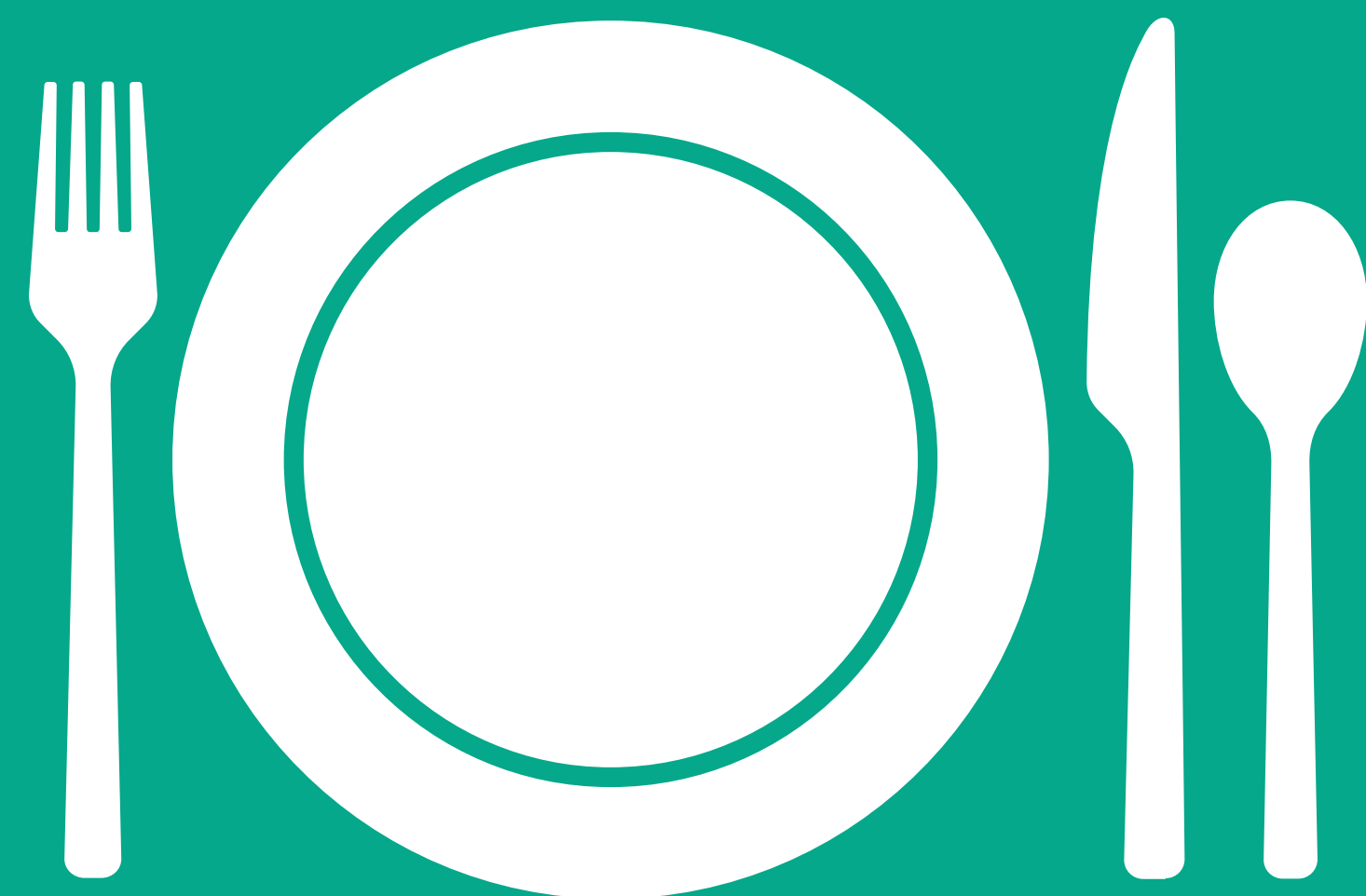
Transitional Rules



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- The 2024 Act will not affect the validity of anything done under the PDA (Section 625 of 2024 Act).
- Existing Ministerial guidelines issued under section 28 will be continued in force until revoked or replaced by a National Planning Statement.
- Development plans will continue in force for the remainder of the period of the development plan or until a new development plan.

Lunch





Module 4: Critical Infrastructure and Renewable Energy updates



Contents

1. Critical Infrastructure Act 2026
2. Renewable Energy Directive III and European Union (Planning and Development) (Renewable Energy) Regulations 2025
3. Windfarms and nuisance

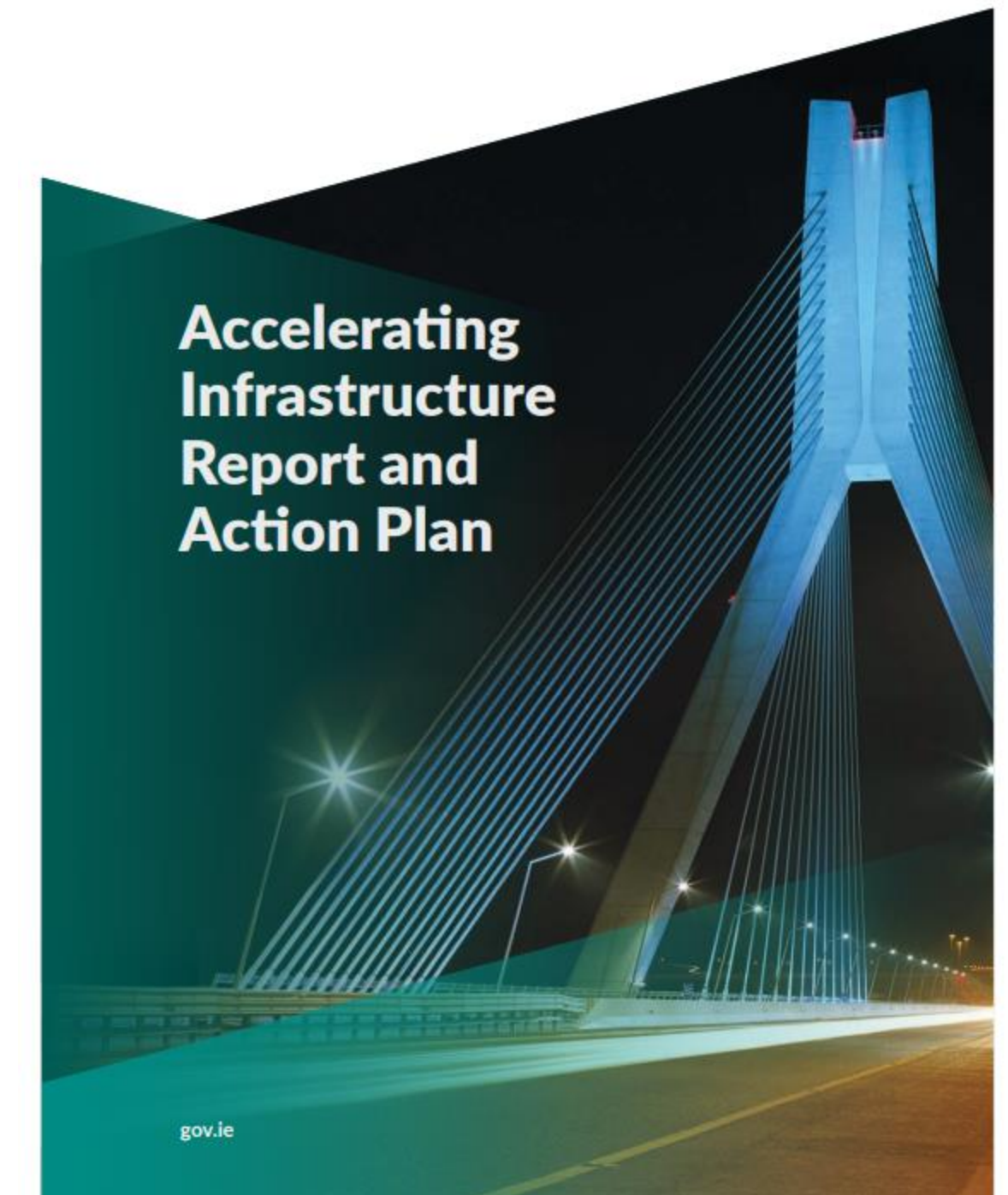
Critical Infrastructure Act 2026



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- The Critical Infrastructure Act 2026 was signed into law on 25 June 2026.
- The Act introduces new Government powers aimed at fast-tracking the development of essential public infrastructure.
- Government can now designate certain publicly funded projects and programmes as "critical infrastructure".
- The Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation can direct public bodies to prioritise critical infrastructure.
- The Act disapplies section 15 of the Climate Act to public bodies when performing their functions related to critical infrastructure.

 An Roinn Caiteachais Phoibli Bonneagair
Athchoirúcháin Seirbhíse Poiblí agus Digitúcháin
Department of Public Expenditure Infrastructure
Public Service Reform and Digitalisation



Critical Infrastructure Act 2026



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- Aims to unblock systemic bottlenecks to deliver critical infrastructure in sectors including:
 - Energy
 - Water
 - Wastewater
 - Waste management, and
 - Transport
- Once designated, critical infrastructure, relevant public bodies will be required to:
 - Act expeditiously and avoid undue delays in the delivery of the critical infrastructure project or programme
 - Ensure steps are taken to reduce the time required for its processes relating to an authorisation to be completed, e.g., licence, permit, decision, award, approval
 - Act concurrently with other relevant public authorities to reduce the time required for an authorisation to be completed
 - Co-operate with any other relevant public body to act concurrently, identify risks and prioritise sequencing of their respective functions, and
 - Allocate resources to facilitate this cooperation.

Critical Infrastructure Act 2026



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9 projects designated as “critical infrastructure”:

Transport

- MetroLink
- Cork Area Commuter Rail Programme
- Galway City Ring Road

Water

- Water Supply Project for the Eastern and Midlands Region
- Greater Dublin Drainage Project
- Limerick (Bunlicky) Wastewater Treatment Plant Upgrade and Bioresource Centre

Energy

- North South 400 kV Interconnector
- Moneypoint 400 kV Series Capacitor Project
- Letterkenny 110 kV Redevelopment Project

European Union (Planning and Development) (Renewable Energy) Regulations 2025



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Transposes provisions of the third revised Renewable Energy Directive (RED III) - EU Directive 2023/2413

The measures include:

- Mandatory timelines for planning authorities to issue decisions on renewable energy development;
- The carrying out of completeness checks on applications for renewable energy development;
- The provision of opinions on the scope and level of detail required in environmental impact assessment reports;
- Reduced environmental impact assessment obligations for certain solar energy development.

Renewable Energy Regulations – Key Points

What do the RED III Regulations introduce?

- New decision-making timelines
- Mandatory EIA Scoping Opinion
- Completeness check – 45 days
- Updated Site Notice Template

Renewable Energy Regulations – Key Points



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What do the RED III Regulations introduce?

- Amends PDA 2000 to include presumption of Imperative Reasons of Overriding Public Interest (IROPI) for renewable energy projects – temporary Council Regulation EU/2022/2577 has expired

Renewable Energy Regulations – Issues



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Initial issues upon enactment

- No transitional period
- Late publication with no consultation
-
- Lack of clarity on what is entailed in 'completeness check'
- EIA Scoping provisions – uncertainty as to application and original introduction date unreasonable
- Notices – errors and uncertainty, no transitional arrangements

Renewable Energy Regulations – Completeness Check



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45 days to complete

- “Schedule of Information to inform Completeness Check” to be provided with SID determination for PAC will facilitate the Completeness Check when Application is Lodged.
- PAC Inspector undertakes completeness check
- Day 1 of Application is date of Completeness Letter

Renewable Energy Regulations – New Decision Making Timelines



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Prescribed timelines – commence on 'completeness'

- "renewable energy development" capacity $>150\text{kW}$ - **52 weeks**
- "renewable energy developments" with a capacity $<150\text{kW}$ or "repowering developments" - **30 weeks**
- "relevant solar energy" development - **8 weeks**
- "small-scale solar energy equipment" $<11\text{kW}$ - **4 weeks**
- Maritime renewable energy development capacity $>150\text{kW}$ - **65 weeks**
- Maritime renewable energy development capacity $<150\text{kW}$ - **52 weeks**
- renewable energy developments where the planning authority considers there to be IROPI - **2-3 years**
- Timelines cannot be extended for RFI.

Renewable Energy Regulations – EIA Scoping

Mandatory for Applications lodged from 1 November 2026

- Opportunity to focus EIARs on key issues / LSE
- Potential Challenges:
 - i. provisions of Section 37D which currently prevent paralleling of PAC and scoping stages
 - ii. If significant changes required to the determined scheme to address scoping opinion
 - iii. Cannot extend the scope of the EIAR once opinion provided
- Guide currently being prepared by the Commission



Wind Energy: Recent Case Law and Lessons for Infrastructure Delivery



THE IRISH TIMES

Our house is now effectively worthless: Living Next Door To ... Ireland's largest onshore wind farm

Oweninny Wind Farm in Co Mayo meets the power
needs of some 140,000 homes a year





Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300

Background:

- Case brought by homeowners living beside two-turbine windfarm operated by Meenacloghspar (Wind) Limited near Enniscorthy, Co Wexford
- In a previous judgment delivered in 2024 , the High Court found that the wind turbine noise amounted to nuisance and deprived the plaintiffs of the enjoyment of their property - landmark decision and the first successful nuisance case taken against a windfarm in Ireland.
- Recent module concerned the plaintiffs' application for an injunction to prevent further nuisance.
- High Court directed the windfarm operator and plaintiffs attempt to agree mitigation measures to abate the nuisance.

Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300



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- High Court found that the attempts to abate the noise by reducing the power mode of the turbine during certain hours and at certain levels of windspeed were inadequate to alleviate the nuisance.
- Ms Justice Egan was particularly critical of the windfarm operator for failing to engage with the mitigation trials constructively, noting it had instead focused its energy on adducing new evidence to disprove the Court's previous finding of nuisance - in doing so, the defendant had "*squandered*" its opportunity to trial any other form of abatement measures such as edge serrations, blade feathering and other mechanical or electrical interventions.
- Defendant argued that shutting down the turbine would result in serious financial and environmental implications and was therefore a disproportionate remedy.

Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300



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- Having determined that mitigation measures alone would not resolve the nuisance, the Court then turned its attention to devising an appropriate remedy for the plaintiffs.
- Ms Justice Egan considered the circumstances of the case in the context of the principles in *Shelfer v City of London Electrical Lighting Co.* [1895] 1 Ch 287



Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300

Shelfer principles:

Under the *Shelfer* principles, where an infringement of rights has been established, a plaintiff will be entitled to an injunction unless:

- The injury was small;
- The injury was capable of being estimated in money;
- The injury can be compensated by a small money payment; and
- It would be oppressive to the developer to grant an injunction.

Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300



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Injunction:

- Ms Justice Egan found that the nuisance could not be compensated by damages alone and that the plaintiffs were entitled to an injunctive remedy.
- Having examined the evidence of wind turbine noise generated at various windspeeds, the Court ordered that the turbine be operated at a lower power mode during quiet waking hours at certain windspeeds and wind directions. The Court further ordered that the turbine be shut down at night for windspeeds of 5m/s to 11 m/s inclusive in certain wind directions.



Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300

A note on the role of guidelines and planning conditions

Reliance on Wind Energy Development Guidelines 2006 misplaced:

- *"compliance with the WEDG 2006 limits did not delineate the parameters of WTN nuisance in this particular case. Irrespective therefore of whether or not Ballyduff was a low noise environment, compliance with WEDG 2006 was not determinative."* [para. 109]
- *"I accept that s. 28 of the Planning and Development Act 2000 continues to require planning authorities and An Bord Pleanála to have regard to ministerial guidelines such as WEDG 2006. However, that does not imbue WEDG 2006 with talismanic significance for the purposes of a nuisance assessment."* [para. 88]



Webster & Anor v Meenacloghspar (Wind) Limited; Shorten & Anor v Meenacloghspar (Wind) Limited (No. 2) [2025] IEHC 300

A note on the role of guidelines and planning conditions

Reliance on Wind Energy Development Guidelines 2006 misplaced:

- *"the defendant relies on Nagle v. An Bord Pleanála [2024] IEHC 603 ("Nagle") as endorsing WEDG 2006 for all purposes, including nuisance assessment. I cannot see how Nagle greatly assists the defendant. It is true that Humphreys J. held that WEDG 2006 remains the relevant ministerial guideline for the purposes of s. 28. However, he also stated in the course of his judgment at paras. 99-101, that a planning permission granted in accordance with WEDG 2006 would not be immune to a nuisance action by virtue of that fact." [para. 96]*

Byrne & Anor v Abo Energy Ireland Limited & Ors [2018 3928 P]



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Background:

- Case brought by homeowners living beside three turbines operated by ABO Energy Ireland at a windfarm at Gibbet Hill, Co Wexford
- Plaintiffs' family home was built in 1999 and is located approximately 1km from the nearest turbine in the windfarm.
- The windfarm became operational in 2013
- Plaintiffs complained that the noise generated by the turbines was highly intrusive, pervasive and affected their sleep, work, rest and enjoyment of their home – enforcement notice issued by Wexford County Council in 2017 for non-compliance with the noise limits permitted under the planning permission.

Byrne & Anor v Abo Energy Ireland Limited & Ors [2018 3928 P]



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Features of Nuisance:

Mr Justice Quinn identified the following features of wind turbine noise that are relevant in assessing the degree of nuisance caused:

- loudness;
- pitch or frequency;
- amplitude modulation (the fluctuation in loudness);
- different noises simultaneously emitting from the same sound source;
- changeability;
- erratic or unpredictable changes;
- tonal noise;
- duration of the noise;
- the timing of the noise; and
- any other considerations in the wider context that are relevant to the noise (such as whether the environment is typically rural and peaceful or urban).

Byrne & Anor v Abo Energy Ireland Limited & Ors [2018 3928 P]



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When will an injunction be an appropriate remedy:

The Court determined that the following considerations will apply when deciding whether damages should be awarded in lieu of an injunction:

- (i) whether there is a public interest capable of overriding a plaintiff's right to an injunction;
- (ii) whether any remedial measures are sufficient to avoid an injunction;
- (iii) the scope of the injunction; and
- (iv) questions of quantification of damages.

Byrne & Anor v Abo Energy Ireland Limited & Ors [2018 3928 P]



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Reliefs awarded:

- High Court awarded €300,000 in general damages and €60,000 in aggravated damages
- While the Court accepted that the public interest involved in the case was an important one, this was not considered sufficient to disentitle the plaintiffs to their right to an injunction to restrain the wrong.
- *"It is not an impressive approach to fail to engage with responsibilities to neighbours and to then hope to pay money to continue a serious interference with a neighbour's enjoyment and ordinary use of their home by relying on the broad public interest in renewable energy, particularly when other options were, on the evidence, available."*

Noise assessments (Lessons from *Gibbet Hill* and *Ballyduff*)



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- Noise assessments should be carried out by taking a multi-faceted approach. Experts should take a comprehensive set of sound characteristics and contextual factors into account. They should avoid relying on compliance with planning permission conditions, which may not adequately address all features of WTN.



Module 5: Developments in climate change law



Contents

1. Climate change and legislative intervention - Climate Action and Low Carbon Development (Amendment) Act 2021
2. Climate Action Plans
3. Climate Cases



International Law

- **International Covenant on Civil and Political Rights:** entered into force 1976, binding, now interpreted to include environmental rights, right to life (Article 6) threatened by climate change.
- **United Nations Framework Convention on Climate Change (UNFCCC):** entered into force 1994, binding, principal global treaty for coordinating international responses to climate change.
 - Conference of the Parties (COP): established by UNFCCC as main decision-making body. COP1 held in Berlin, March 1995
 - Kyoto Protocol: adopted 1997 but entered into force 2005, aims to reduce greenhouse gas emissions.
 - Paris Agreement : entered into force 2016, aim to limit increase in global average temperature to well below 2°C and pursue efforts to limit it to 1.5°C above pre-industrial levels.
- **2030 Agenda for Sustainable Development:** launched by UN Summit in New York in 2015. Aimed at ending poverty in all its forms.
- **UNGA Resolution on the Human Right to a Clean, Healthy and Sustainable Environment (2022):** resolution recognising for first time right to clean, healthy, and sustainable environment as a human right at international level.



European Law

- **European Convention on Human Rights (ECHR):** entered into force 1953, binding, does not explicitly guarantee right to healthy environment but European Court of Human Rights has established case law recognizing that adverse environmental conditions can violate Convention rights such as right to life (Article 2), right to respect for private and family life (Article 8), and right to health.
- **European Charter of Fundamental Rights:** entered into force 2009, binding, mandates that environmental protection and improvement be integrated into EU policies under Article 37
- **European Green Deal:** entered into force 2021, binding, aim of making EU climate neutral by 2050.
- **European Climate Law Regulation (EU) 2021/1119:** entered into force 2021, binding, establishes legally binding framework for EU to achieve climate neutrality by 2050.
- **Corporate Sustainability Reporting Directive 2022/2464/EU:** entered into force 2023, implemented in Ireland by S.I. No. 336/2024 (European Union (Corporate Sustainability Reporting) Regulations 2024), requires companies to disclose information on social and environment issues.
- **Nature Restoration Law Regulation (EU) 2024/1991:** entered into force 2024, binding, sets binding targets for Member States to restore degraded ecosystems across EU, specific goals for 2030 and 2050.



Irish legislation

Climate Action and Low Carbon Development Act 2015.

Made provision for:

- National Carbon Transition and Mitigation Plan to be adopted by Government every 5 years.
- National Climate Change Adaptation Framework (incl. sectoral adaptation plans) to be reviewed (and potentially replaced) by Government every 5 years.
- Purpose was to pursue and achieve 'national transition objective' i.e. transition to a "*low carbon, climate resilient and environmentally sustainable economy*" by end of 2050.
- Establishment of independent Climate Change Advisory Council.



Irish legislation

2015 Act didn't go far enough:

- Lack of concrete targets and carbon budgets.
- Weak 'have regard to' obligations when adopting National Carbon Transition and Mitigation Plan and National Climate Change Adaptation Framework.
- Lack of proper penalties/offences.



Irish legislation

- Climate Action and Low Carbon Development Amendment Act 2021.
- Entered into force in September 2021, amending 2015 Act.
- Includes legally binding climate targets: reduction of greenhouse gas emissions by 51% by 2030 and achieve net-zero emissions by 2050.
- Transitioned from "*have regard to*" obligation on relevant bodies to stronger "*comply with*" obligation as regard climate goals.
- Carbon budgeting system and sectoral emissions ceilings.
- Requirement to produce Climate Action Plan (to be updated annually) and long-term climate action strategy (updated every 5 years) setting out how national climate objectives will be achieved.
- Public sector bodies to perform functions in manner consistent with Climate Action Plan.
- Stronger role of CCAC: roles include conducting regular reviews of progress toward national climate goals, proposing national carbon budgets, and advising on climate policy and national adaptation frame.



Climate Action Plans

- Government's plan to reduce greenhouse gas emissions and achieve climate neutrality by 2050.
- Aim of annual climate action plan is to set out measures that will help Ireland reach its overall commitment.
- Climate Action Plan 2025 (CAP25) published on 15 April 2025.
- CAP25 builds on the actions taken over previous years.
- Renewable energy targets from Climate Action Plans 2023 and 2024 have been retained and carried over to CAP25.
- Renewable energy generation recognised as key step in ensuring continued reduction in greenhouse gas emissions.
- Work on CAP26 ongoing.

Climate Action Plan 2025



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Rialtas na hÉireann
Government of Ireland



Climate Action Plan 2025

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Ireland's progress?



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[Irish Times](#), 7 January 2026:

- Ireland will miss emissions-cut target by half, says Minister for Climate Darragh O'Brien.
- State will be liable for fines as high as €28 billion.
- State will only get halfway to 2030 target.

EPA Projections show Ireland remains off track for 2030 Climate

Date released: May 26, 2026

- Ireland's greenhouse gas emissions could achieve a reduction of up to 25% by 2030, compared to a national target of 51%, with full implementation of a wide range of policies and plans across all sectors.
- Ireland will be close to meeting the first carbon budget, but nearly all sectors are on track to exceed their sectoral emissions ceilings for the second carbon budget by 2030.
- Ireland is projected to exceed its EU Effort Sharing Regulation target of 42% reduction by 2030. EPA projects a maximum reduction of 23%.
- With less than four years left to 2030, there must be a strong focus on implementation of policies and measures to meet climate targets which will deliver wide-ranging benefits from environmental protection, supporting public health and wellbeing and reducing Ireland's dependence on fossil fuels.



10,000 fish or more killed in River Blackwater

IFI said current indications suggest a wild fish kill – mainly brown trout, of between 8,000 and 10,000, across a 18km stretch of the Blackwater.



Some of the fish killed in the River Blackwater. \ Conor Arnold on Facebook



Climate Assessment: planning applications

The assessment of climate change impacts – the impact of proposed development on climate change **and** impact of climate change risks on proposed development. Climate change mitigation and adaptation must both be covered.

The EC's guidance (Environmental Assessment of Projects, Guidance on the Preparation of the Environmental Impact Assessment Report, dated 2017) poses the following questions:

- Have the methods used to predict the impact of the Project on climate changes been described? (if relevant)
- Have the methods used to predict climate change's impact on the Project been described?
- Is the uncertainty attached to the climate change evolution predictions discussed? (if relevant)
- Did you consider life cycle assessment of the Project to describe the Project's impact on climate change?(if relevant)
- Have any important gaps in the data on the existing environment/ evolution prediction identified (e.g. climate change), and the means used to deal with these gaps during the assessment, been explained?



Coolglass Windfarm Limited v An Bord Pleanála [2025] IEHC 1

- Humphreys J.: *"The inspector doesn't refer to s. 15. The board doesn't refer to s. 15. The inspector doesn't refer to the 2015 Act at all. The board doesn't refer to the 2015 Act either. The 2021 Act only gets a passing mention by the inspector on an issue that isn't relevant in this respect. The board doesn't mention it at all. Of course even a mention doesn't constitute meaningful engagement, let alone compliance, but the board hasn't even managed a bargain-basement version of having regard to the legislation..."*.
- Visual impacts cannot take priority over compliance with national and EU legally binding targets to address climate emergency.
- *"15. (1) A relevant body shall, in so far as practicable, perform its functions in a manner consistent with— (a) the most recent approved climate action plan..."*.
- *"Practicable means capable of being put into practice, not merely doing what is reasonable. This is a very high standard only just falling short of unconditional compliance requirements"*
- Art. 8 of the ECHR imposes a positive obligation on the State to put in place a legislative and administrative framework with respect to climate change designed to provide effective protection of human health and life, and a further positive obligation to apply that framework effectively in practice, and in a timely manner.



Coolglass Windfarm Limited v An Bord Pleanála [2025] IEHC 1 ... continued

Board should act in such a way as to support outcomes favouring climate goals:

- If material contravention arises, the Board should exercise power to permit such contravention in whatever way that furthers climate goals if practicable to do so. Board cannot merely defer to limitation in an individual development plan if to do so would contribute to an inconsistency with climate plans and objectives contrary to Section 15;
- If non-mitigable impacts on European sites arise, Board must apply public interest override in manner that furthers climate goals, if practicable to do so; and
- If there is some impracticability in a grant of permission, but it can (or could potentially) be resolved by a procedural decision that is not impracticable, then Board is required to make the procedural decision that is most consistent with climate goals to enable the problem to be fixed e.g. to require further information or any additional assessments.



Coolglass Wind Farm Limited v An Bord Pleanála [2026] IESC 5

- Supreme Court upheld High Court's decision to quash refusal of planning permission for Coolglass Wind Farm, but on narrower legal grounds.
- Supreme Court confirmed that section 15(1) is more than a purely procedural requirement. Relevant bodies must meaningfully engage with climate considerations when exercising their statutory functions. They must also ensure that their decisions fall within the spectrum of outcomes that can be viewed as consistent, insofar as practicable, with national climate objectives.
- However, Supreme Court made clear that section 15(1) does not mandate climate-led decision-making to the exclusion of all other considerations. Climate objectives must be considered and addressed, but they do not automatically override development plans or other statutory requirements.
- ..



Other jurisdictions

- ***Netherlands v Urgenda Foundation (2019)***: Supreme Court held that reduction in emissions necessary for Dutch government to protect human rights.
- ***Neubauer et al v Germany (2021)***: German Constitutional Court declared Federal Climate Protection Act partly unconstitutional because it did not sufficiently protect young people against future infringements and limitations of their existing fundamental rights because of climate change.
- ***Verein KlimaSeniorinnen Schweiz v Switzerland (2024)***: European Court of Human Rights ruled that Switzerland violated European Convention on Human Rights by failing to adequately address climate change.

A large, faint, circular watermark logo is centered in the background. It features the letters 'CMG' in a bold, sans-serif font, surrounded by concentric circles and a stylized, maze-like pattern.

Thank you

Questions??