



To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
An Bord Pleanála
Directors of Regional Assemblies
Office of the Planning Regulator

Circular Letter: EUIPR 01/2021

10 September 2021

**Amendments to section 42 of the Planning and Development Act 2000, as amended
and associated Planning and Development Regulations 2001**

I am writing to inform you that –

1. The Planning and Development (Amendment) Act 2021 (Commencement) (No. 2) Order 2021 (No. 458 of 2021);
2. The Planning and Development (Amendment) (No. 3) Regulations 2021 (No. 459 of 2021);
3. The Planning and Development (Housing) and Residential Tenancies Act 2016 (Section 28(1)) (Commencement) Order 2021 (No. 455 of 2021);
4. The European Union (Planning) (Habitats, Birds and Environmental Impact) Regulations 2021 (No. 456 of 2021); and
5. The European Union (Planning) (Habitats, Birds and Environmental Impact) (No.2) Regulations 2021 (No. 457 of 2021),

were signed on 8 September 2021 by Mr Darragh O’Brien, T.D., Minister for Housing, Local Government and Heritage, and came into effect yesterday, 9 September 2021. Copies of the Commencement Orders and Regulations are enclosed at Appendices 1 to 5.

The two Commencement Orders and three sets of Regulations, as outlined above, comprise a package of measures that amend section 42 of the Planning and Development Act 2000, and related articles in the Planning and Development Regulations 2001. The purpose of this package of measures is essentially twofold.



Firstly, the **Planning and Development (Amendment) Act 2021 (Commencement) (No. 2) Order 2021** commences section 7 of the Planning and Development (Amendment) Act 2021. This provision seeks to ensure the timely delivery of housing and the completion of construction projects, in the context of delays and disruption caused by the Covid-19 pandemic.

Section 7 of the Planning and Development (Amendment) Act 2021 inserts a new section 42B into the Planning and Development Act 2000, which in turn temporarily modifies section 42 of that Act by prescribing that during the period from the commencement date of section 7 of the Planning and Development (Amendment) Act 2021 until 31 December 2023, section 42 of the Act shall be read as incorporating a new subsection (1B).

Section 42(1B) of the Planning and Development Act 2000 provides for the further extension of the appropriate period of a planning permission by an additional period of up to 2 years or until 31 December 2023 whichever first occurs, subject to the planning authority being satisfied of a number of matters set out in section 42(1B). These matters include that the relevant planning authority shall be satisfied that:

- the development has commenced;
- substantial works have been carried out; and
- Environmental Impact Assessment (EIA) and appropriate assessment (AA) are not required for the proposed extension.

The provision applies to extant permissions due to expire as well as to permissions which expired between 8 January 2021 and 8 September 2021. For the avoidance of doubt, this provision is for the benefit of developments that have already availed of an extension of duration under section 42, and any further extension under section 42(1A).

In line with this, **the Planning and Development (Amendment) (No. 3) Regulations 2021** amends Chapter 3 of the Planning and Development Regulations 2001 to set out details of the application procedures for further extensions under section 42(1B). These procedures include the requirement that such applications for extension of duration of permission, which have not expired, shall be made within a year before expiry and the need to include the following additional detail in an application for further extension:



- the additional period being requested;
- when the development will be completed;
- the expiry date of the permission;
- particulars of substantial works carried out or to be carried out before expiry; and
- a statement setting out reasons why the development cannot be reasonably completed within the duration.

Secondly, the **Planning and Development (Housing) and Residential Tenancies Act 2016 (Section 28(1)) (Commencement) Order 2021**, commences section 28(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended by section 57(1) of the Planning and Development (Amendment) Act 2018. Section 28(1), as amended, deletes section 42(1)(a)(ii) of the Planning and Development Act 2000 thereby removing the possibility of an extension of duration for un-commenced development or development where substantial works have not been carried out. This provision is to encourage the commencement of development such as housing development.

Section 28(1) also introduces a requirement at section 42(1)(a)(i)(II) of the Planning and Development Act 2000 that a planning authority must be satisfied that an EIA or AA was or were not required before the original planning permission was granted, prior to extending an appropriate period of a permission. However, of note, this commenced provision has been further amended by the European Union Regulations referenced below.

Lastly, section 28(1) amends section 42(4) of the Planning and Development Act 2000 to provide that up to two extensions of the appropriate period of a planning permission can be made, provided the combined duration of both extensions does not exceed 5 years. This will facilitate planning authorities to interrogate applications for extension of duration, to establish the likely 'build out time' for completion of the developments in order to consider providing initial extension of duration periods of less than 5 years.

The **European Union (Planning) (Habitats, Birds and Environmental Impact) Regulations 2021** further amends section 42 of the Planning and Development Act 2000 by deleting section 42(1)(a)(i)(II) (as inserted by section 28(1) of the 2016 Act outlined above) and replaces this requirement with the insertion of a new subsection



(8) into section 42 of the Planning and Development Act 2000. Section 42(8) states that a planning authority shall not extend the appropriate period under this section in relation to a permission if EIA or AA would be required in relation to the proposed extension. These Regulations have been introduced to better align section 42 of the 2000 Act with the EIA and Habitats Directives.

The **European Union (Planning) (Habitats, Birds and Environmental Impact) (No.2) Regulations 2021** amends Chapter 3 and 3A of the Planning and Development Regulations 2001 to introduce EIA and AA screening procedures in respect of all extension of duration applications, including further extension applications, and to set out additional publication requirements of screening determinations made to facilitate transparency in this process. In particular, AA screening and EIA screening (for extension applications that do not equal/exceed the EIA thresholds) shall now be required for all applications for extension of duration, including applications for further extensions under section 42(1B) as referenced above. In the case of EIA screening this will require applicants for extension of duration to provide environmental information, as set out in Schedule 7A of the Planning and Development Regulations 2001, to the planning authority. These Regulations have been introduced to better align the Planning and Development Regulations with the EIA and Habitats Directives.

Please be advised that the above synopsis of the new legislative provisions has been prepared by the Department for ease of reference only and does not purport to be a legal interpretation of the legislation, which is a matter for planning authorities, in the first instance, and ultimately a matter for the Courts.

The Commencement Orders and Regulations referenced above will be available to view or download on the electronic Irish Statute Book (<http://www.irishstatutebook.ie>) shortly. The Law Reform Commission also maintains an administrative consolidation of certain Acts, including the Planning and Development Act 2000, as amended, which are available online (<https://revisedacts.lawreform.ie/revacts/intro>), and which will also incorporate these amendments made to section 42 of that Act in due course.

The Department maintains an up-to-date administrative consolidation of the Planning and Development Regulations 2001, as amended. An up-to-date version, incorporating amendments made by the above Regulations, will be made available on the Department's website (<https://www.gov.ie/housing/>) as soon as possible.



Any queries in relation to this Circular letter should be emailed to euplanningregulation@housing.gov.ie.

A handwritten signature in black ink that reads "Eamonn Kelly".

Eamonn Kelly
Principal Officer
EU & International Planning Regulation