

*section 317* requiring the taking of any additional steps as the planning authority considers appropriate.

- (5) Land or a maritime site upon which unauthorised development referred to in *subsection (2)* or in respect of which *subsection (4)* applies has been carried out shall not be the subject of further applications for permission under this Act, until any remedial action required by a direction served under *section 130* is complete. 5
- (6) In *subsections (4)* and *(5)*, references to a direction served under *section 130* are to a draft direction confirmed by notice served, or a varied direction given, under *subsection (5)* of *section 130*.

**Exceptional circumstances** 10

**132.** In considering whether exceptional circumstances exist under *subsection (1)* of *section 125*, the Commission shall have regard to the following:

- (a) whether or not regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive; 15
- (b) whether or not the applicant had, or could reasonably have had, a belief that the development was not unauthorised;
- (c) whether or not the ability to carry out an assessment of the environmental effects of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired; 20
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated; 25
- (f) whether or not the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Commission considers relevant.

CHAPTER 5 30

*Alteration, Extension and Revocation of Permission*

**Interpretation and application**

**133. (1)** In this Chapter—

“deciding authority” means—

- (a) in relation to a permission granted by a planning authority under *Chapter 3* or under Part III of the Act of 2000, that planning authority, 35
- (b) in relation to a permission granted by the Commission under *Chapter 4*, the Commission,

- (c) in relation to a permission granted by the Commission under *section 106* on appeal from a decision of a planning authority under *Chapter 3*, that planning authority,
  - (d) in relation to a permission granted by An Bord Pleanála under Part III of the Act of 2000 otherwise than on appeal from a decision of a planning authority, the Commission, 5
  - (e) in relation to a permission granted by An Bord Pleanála under Part III of the Act of 2000 on appeal from a decision of a planning authority, that planning authority, and
  - (f) in relation to a permission granted by An Bord Pleanála under section 9 of the Planning and Development (Housing) and Residential Tenancies Act 2016, the planning authority in whose functional area the development to which the permission relates is situated or proposed to be situated; 10
- “material alteration” means an alteration or extension of the duration of a permission requested under *section 135*— 15
- (a) that requires an appropriate assessment,
  - (b) that requires an environmental impact assessment,
  - (c) the request for which is accompanied by an environmental impact assessment report or a Natura impact statement, or both, in respect of the alteration or extension, or 20
  - (d) subject to *subsection (2)*, that the deciding authority determines under *subsection (4)* of *section 135* constitutes an alteration of the terms or extension of the duration of the permission that is otherwise material;
- “material alteration request” has the meaning it has in *subsection (1)* of *section 137*;
- “permission” includes a permission granted under the Act of 2000 or under section 9 of the Planning and Development (Housing) and Residential Tenancies Act 2016 but does not include outline permission within the meaning of *section 93*; 25
- “term” includes, in relation to a permission, a condition attaching to that permission.
- (2) Without prejudice to the generality of *paragraph (d)* of the definition of material alteration in *subsection (1)*, the following matters shall not, for the purposes of that paragraph, be determined to constitute an alteration of the terms or extension of the duration of a permission that is otherwise material— 30
    - (a) a correction of a clerical error in the permission,
    - (b) an alteration of the terms of the permission for the purpose of facilitating the doing of a thing pursuant to the permission, where the doing of that thing may reasonably be regarded as having been contemplated by a particular term of the permission, or its terms as a whole, but was not expressly provided for in the permission, 35
    - (c) a clarification of the terms of the permission, or
    - (d) an alteration of the terms of the permission to facilitate its implementation or operation. 40

- (3) *Part 6* shall apply in addition to this Chapter and, accordingly, the deciding authority shall, for that purpose, be the competent authority under that Part.

**Consultation before request under section 135**

134. (1) A person may apply for a consultation with the deciding authority prior to making a request under *section 135*. 5
- (2) An application under *subsection (1)* shall be accompanied by—
- (a) sufficient information to allow the deciding authority to carry out its functions under this section,
  - (b) where the deciding authority—
    - (i) is a planning authority, such fee as may be prescribed, or 10
    - (ii) is the Commission, such fee as may be determined under *section 348*,and
  - (c) such documents or information as may be prescribed.
- (3) The deciding authority shall enter into the consultation as expeditiously as practicable after the making of an application under *subsection (1)*, unless it is of the opinion that the consultation is unnecessary having regard to the nature and scope of the alteration or extension proposed to be requested under *section 135*. 15
- (4) In a consultation the deciding authority may, in addition to consulting with the person who made the application under *subsection (1)*, consult with any person who may in its opinion have information that is relevant for the purposes of the consultation. 20
- (5) In a consultation the deciding authority may do one or more than one of the following:
- (a) advise the person who made the application under *subsection (1)* as to the procedures and requirements under this Act relevant to the making and considering of a request under *section 135*;
  - (b) in so far as possible, indicate the objectives of the following that may, in the opinion of the deciding authority, have a bearing on its decision: 25
    - (i) the development plan, and any applicable urban area plan, priority area plan or coordinated area plan that applies to the land where it is proposed to carry out the proposed development;
    - (ii) where the request relates to proposed development in the maritime area, the National Marine Planning Framework; 30
  - (c) advise the person who made the application under *subsection (1)* regarding the considerations, related to the following matters, that may, in the opinion of the deciding authority, have a bearing on its decision:
    - (i) the impact of the proposed development on the environment; 35
    - (ii) proper planning and sustainable development;
    - (iii) where the consultation relates to proposed development in the maritime area or maritime development, maritime spatial planning;

- (d) on the request of the person who made the application under *subsection (1)*, provide an opinion to him or her as to the adequacy of the documents intended to be submitted with the request under *section 135*.

**Request for alteration or extension of permission**

- 135. (1) Subject to *subsection (2)*, a person may request the deciding authority to— 5
  - (a) alter the terms of a permission, provided that any part of the development to which the permission relates that has been carried out is in compliance with the permission, or
  - (b) extend the duration of a permission.
- (2) *Section 82* shall apply to a request under *subsection (1)* subject to— 10
  - (a) the modification that the references in *subsections (1)* and *(3)* of *section 82* to an application for permission for land-based development under *Chapter 3* or *4* shall be construed as references to a request under *subsection (1)* to alter or extend the duration of a permission for land-based development,
  - (b) the modification that the references in *subsections (2)* and *(4)* of *section 82* to an application for permission for maritime development under *Chapter 3* or *4* shall be construed as references to a request under *subsection (1)* to alter or extend the duration of a permission for maritime development, and 15
  - (c) all other necessary modifications.
- (3) A request under *subsection (1)* shall specify— 20
  - (a) the particulars of the alteration requested,
  - (b) the period of the extension requested, or
  - (c) both those particulars and that period,

and shall be accompanied by—

  - (i) sufficient information to allow the deciding authority to assess the request, and 25
  - (ii) where the deciding authority—
    - (I) is a planning authority, such fee as may be prescribed, or
    - (II) is the Commission, such fee as may be determined under *section 348*,

and
  - (iii) such documents or information as may be prescribed. 30
- (4) Where an alteration or extension requested under *subsection (1)* is not a material alteration within the meaning of *paragraph (a)*, *(b)* or *(c)* of the definition of material alteration in *section 133*, the deciding authority shall, as soon as practicable after the making of the request, determine whether the alteration or extension is a material alteration within the meaning of *paragraph (d)* of that definition. 35
- (5) Before making a determination under *subsection (4)*, the deciding authority may invite submissions on the alteration or extension to be made to it in writing by such person or class of person, including the public, as the deciding authority considers

appropriate, and the deciding authority shall have regard to such submissions in making the determination.

- (6) A deciding authority shall give notice, in such form and manner as may be prescribed, that a request under *subsection (1)* is a material alteration request to—
- (a) the person who made the request, and 5
  - (b) any person who made submissions under *subsection (5)*.
- (7) Following receipt of a notice under *subsection (6)*, the person who made the request shall comply with such requirements to give notice of the request to the public as may be prescribed.
- (8) Where the Commission is the deciding authority, it shall notify the planning authority in whose functional area the development the subject of the permission is situated or proposed to be situated of the receipt of a request under *subsection (1)*. 10
- (9) Particulars of a request under *subsection (1)* shall be entered in the register.

#### **Non-material alteration of permission**

136. (1) Subject to this Part and *Part 5*, where an alteration or extension requested under *subsection (1)* of *section 135* is not a material alteration, the deciding authority shall alter the permission, or extend the duration of the permission, as requested. 15
- (2) The deciding authority shall, as soon as practicable after making the alteration or granting the extension under *subsection (1)*, notify the person who made the request under *subsection (1)* of *section 135* of the alteration or extension. 20
- (3) Where the deciding authority is the Commission, it shall notify the planning authority in whose functional area the development the subject of the permission altered or extended is situated or proposed to be situated of the alteration or extension.

#### **Material alteration of permission**

137. (1) Subject to this Part, *Part 5*, and *Part 6*, the deciding authority may, in relation to a request under *section 135* to make an alteration or grant an extension that is a material alteration (in this Chapter referred to as a “material alteration request”), decide to— 25
- (a) make the alteration, or grant the extension, subject to such conditions (if any) as may be imposed under *section 84*,
  - (b) make the alteration or grant the extension, subject to such modifications to the terms of the alteration or to the duration of the extension, as the case may be, as the deciding authority considers appropriate, and such conditions (if any) as may be imposed under *section 84*, or 30
  - (c) refuse to make the alteration or grant the extension.
- (2) The deciding authority shall, where a material alteration request relates to development or proposed development situated wholly in an urban development zone— 35
- (a) subject to *Part 6*, decide to make the alteration or grant the extension under *subsection (1)* if it is satisfied that the development or proposed development, if

- carried out in accordance with the permission so altered or extended, would be consistent (including by virtue of the attachment of conditions in accordance with *section 84*) with any development scheme, for the time being in force, applicable to the land on which the development or proposed development is proposed to be carried out, or 5
- (b) decide to refuse to make the alteration or grant the extension under *subsection (1)* if it is not satisfied that the development or proposed development, if carried out in accordance with the permission so altered or extended, would be consistent with any development scheme, for the time being in force, applicable to the land on which the development or proposed development is proposed to be carried out. 10
- (3) For the purpose of making a decision under *subsection (1)* the deciding authority shall have regard to any submissions made in accordance with *section 138* or *139*, as the case may be.
- (4) In making a decision under *subsection (1)* in relation to a material alteration request to alter or extend a permission for maritime development, the deciding authority shall, in addition to the matters set out in *section 83*, have regard to— 15
- (a) any social or economic benefit that would likely accrue to the State or a part of the State by virtue of the making of the alteration or granting of the extension requested, 20
- (b) contractual commitments entered into by the person who made the material alteration request in relation to the development concerned, and
- (c) the extent to which the development concerned has already been advanced in accordance with the permission.
- (5) A deciding authority shall give notice of a decision under *subsection (1)* in such form and manner, and to such persons, as may be prescribed. 25
- (6) A notice under *subsection (5)* shall—
- (a) state the main reasons and considerations for the decision,
- (b) state the main reasons for the imposition of any conditions under *section 84*,
- (c) where the deciding authority decides to make an alteration or grant an extension in accordance with *section 142*, state the main reasons and considerations for the decision in material contravention of the development plan or National Marine Planning Framework, as the case may be, 30
- (d) where a decision is made to alter or extend a permission and an environmental impact assessment is required— 35
- (i) state that the deciding authority is satisfied that the reasoned conclusion (within the meaning of *Part 6*) was up to date on the day that the decision was made, and
- (ii) include a summary of—
- (I) the outcome of any consultations that took place for the purposes of the environmental impact assessment, 40

- (II) the information collected for the purposes of the environmental impact assessment,
  - (III) submissions (if any) received from a Transboundary Convention state, and
  - (IV) the manner in which the outcome, the information and such submissions were taken account of in the making of the decision, 5
- and
- (e) where the decision does not follow a recommendation in a report prepared by a person assigned to report on the material alteration request on behalf of the deciding authority, specify the main reasons for not following the recommendation. 10
- (7) Where the deciding authority is—
- (a) a planning authority, *subsection (4) of section 97* shall apply as if the notice of a decision referred to in that subsection were a notice of a decision referred to in *subsection (5)*, or 15
  - (b) the Commission, *subsection (7) of section 123* shall apply as if the notice of a decision referred to in that subsection were a notice of a decision referred to in *subsection (5)*.
- (8) An appeal may be made under *Chapter 3* against a decision of a planning authority under *subsection (1)* as if the decision was a decision under *section 95*, and *Chapter 3* shall apply accordingly for the purposes of such an appeal, subject to the following modifications— 20
- (a) any such appeal shall be confined to an appeal regarding the alteration or extension requested, and references to the development or proposed development shall be construed as references to the alteration or extension requested, 25
  - (b) a reference to a decision of the planning authority under *section 95*, shall be construed as a reference to the decision of the planning authority under *subsection (1)*,
  - (c) a reference to a decision granting permission or a decision to grant permission shall be construed as a reference to a decision to make an alteration or grant an extension of the duration of the permission under *subsection (1)*, as the case may be, 30
  - (d) a reference to a decision refusing permission or a decision to refuse to grant permission shall be construed as a reference to a decision to refuse to make an alteration or grant an extension of the duration of the permission under *subsection (1)*, 35
  - (e) a reference to an applicant for permission shall be construed as a reference to the person who made the request referred to in *subsection (1)*,
  - (f) a reference to a planning application or application for permission shall be construed as a reference to the request referred to in *subsection (1)*, other than in *subsection (3) of section 106* where the reference to the “application for 40

permission concerned” shall be construed as a reference to the application for permission the subject of the request referred to in *subsection (1)*,

(g) *paragraph (b) of subsection (4) of section 100, and subsections (5) and (6) of section 100* shall not apply,

(h) in *section 106*, a reference to modifications to the proposed development shall be construed as modifications to the alteration or modifications to the extension the subject of the request referred to in *subsection (1)*, 5

(i) in *section 107*, a reference to *section 96* shall be construed as a reference to *section 142*, and the reference to *subsection (3) of section 96*, shall be construed as a reference to *subsection (4) of section 142*, and 10

(j) all other necessary modifications.

(9) (a) Where—

(i) a planning authority decides to make an alteration or grant an extension under *subsection (1)*,

(ii) the decision concerned is not appealed under *subsection (8)*, and 15

(iii) no application for leave to appeal the decision under this Part is made,

the planning authority shall make the alteration or grant the extension as soon as may be after the expiration of the period for the bringing of an appeal from the decision.

(b) Where— 20

(i) a planning authority decides to make an alteration or grant an extension under *subsection (1)*,

(ii) the decision is appealed under *subsection (8)* or an application for leave to appeal the decision under this Part is made, and

(iii) the appeal or application for leave to appeal is withdrawn, or dismissed or refused by the Commission, 25

the planning authority shall make the alteration or grant the extension as soon as may be after the withdrawal, dismissal or refusal, and where more than one appeal from the decision is brought or more than one such application is made, the planning authority shall not make the alteration or grant the extension unless and until all such appeals or applications are so withdrawn, dismissed or refused. 30

(c) Where—

(i) a planning authority decides to make an alteration or grant an extension under *subsection (1)*, and

(ii) on appeal under *subsection (8)* from the decision, the Commission gives a direction under *section 109*, 35

the planning authority shall make the alteration or grant the extension as soon as may be after the date of the direction.

- (d) Where a planning authority decides to make an alteration or grant an extension under *subsection (1)* relating to development or proposed development in an urban development zone, the alteration shall be deemed to have been made or the extension granted, as the case may be, on the date of the decision.
- (10) Where the deciding authority is the Commission and it decides to make an alteration or grant an extension under *subsection (1)*, it shall make the alteration or grant the extension as soon as practicable after the making of the decision. 5
- (11) Where the deciding authority is the Commission, it shall notify the planning authority in whose functional area the development the subject of the permission altered or extended is situated or proposed to be situated of the alteration or extension. 10
- (12) Particulars of the making of an alteration or granting of an extension under *section 136* or this section, or by the Commission on an appeal under *subsection (8)*, and, where applicable, of compliance with the requirements of *section 142*, shall be entered in the register.
- Procedural powers of planning authority in relation to material alteration request** 15
138. (1) Where the deciding authority is a planning authority, any person may, upon payment of the prescribed fee, make a submission in writing to a planning authority in relation to a material alteration request, in such manner and within such period as may be prescribed.
- (2) Without prejudice to *paragraph (a)* of *subsection (2)* of *section 197* and *subsection (4)* or *(5)* of *section 212* and before making a decision on a material alteration request, a planning authority may ask the person who made the material alteration request to submit, in such manner and within such period as may be prescribed— 20
- (a) further information to the planning authority where, in the opinion of the planning authority, that information is necessary to enable it to make the decision, 25  
or
- (b) revised particulars, plans or drawings in relation to the development or proposed development, where the planning authority is considering making the alteration or granting the extension subject to the person submitting such revised particulars, plans or drawings. 30
- (3) Without prejudice to *subsection (1)* of *section 212*, where the planning authority receives submissions, further information, or revised particulars, plans or drawings under *subsection (1)* or *(2)*, or any other provision of this Act or regulations under this Act that it considers contain or contains additional material information (including information in relation to the effect of the proposed development on a European site or otherwise on the environment), it shall— 35
- (a) make the additional material information available to the public for inspection (to the extent that such information is not already available to the public) in such manner and within such period as may be prescribed, and
- (b) notify the person who made the material alteration request that he or she is 40  
required to give notice (in such manner and within such period as may be prescribed) to the public—

- (i) that the additional material information is available for inspection,
  - (ii) of the place where the additional material information may be inspected, and
  - (iii) that the public are entitled to make submissions in relation to the additional material information within such period as may be prescribed.
- (4) Where the person who made the material alteration request fails to submit the further information in accordance with *paragraph (a) of subsection (2)* or fails to comply with a requirement under *paragraph (b) of subsection (3)* within such period as may be prescribed, the material alteration request shall be deemed to have been withdrawn. 5
- (5) Where the person who made the material alteration request fails to submit the revised particulars, plans or drawings referred to in *paragraph (b) of subsection (2)* within such period as may be prescribed, the planning authority may— 10
- (a) extend that period, where it considers it appropriate to do so, or
  - (b) without further notice to the person, consider, and perform its functions in relation to, the material alteration request as if the person had not been asked to submit the revised particulars, plans or drawings under *paragraph (b) of subsection (2)*. 15

**Procedural powers of Commission in relation to material alteration request**

139. (1) Where the deciding authority is the Commission, any person may, upon payment of such fee as is payable in accordance with *section 348*, make a submission in writing to the Commission in relation to a material alteration request, in such manner and within such period as may be prescribed. 20
- (2) Without prejudice to *paragraph (a) of subsection (2) of section 197*, before making a decision on a material alteration request, the Commission may, in such manner and within such period as may be prescribed—
- (a) ask the person who made the material alteration request to submit further information to the Commission, where in the opinion of the Commission that information is necessary to enable it to make the decision, 25
  - (b) ask the person who made the material alteration request to submit revised particulars, plans or drawings in relation to the development, where the Commission is considering making the alteration or granting the extension under *section 137* subject to the person submitting such revised particulars, plans or drawings, 30
  - (c) ask that further submissions be made to it, within such period as it may specify, by the person who made the material alteration request, any person who made submissions, or any other person who may, in the opinion of the Commission, have information which is relevant to the decision, 35
  - (d) where a material alteration request relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, ask the Environmental Protection Agency to make submissions in relation to the proposed development, 40

- (e) without prejudice to *subsection (5)*, make any information relating to the material alteration request available for inspection, notify any person or the public that the information is so available and, if it considers appropriate, invite further submissions to be made to it within such period as it may specify,
- (f) hold meetings with the person who made the material alteration request or any other person where it appears to the Commission to be necessary or expedient to do so for the purpose of—
- (i) making the decision, or
  - (ii) resolving any issue with the material alteration request or any disagreement between the person who made the material alteration request and any other person, including resolving any issue or disagreement in advance of an oral hearing,
- or
- (g) hold an oral hearing in accordance with *sections 336 and 337*.
- (3) Where the Commission holds a meeting in accordance with *paragraph (f)* of *subsection (2)*, it shall keep a written record of the meeting.
- (4) The Commission, or an employee of the Commission duly authorised by the Commission, may appoint a person to hold a meeting referred to in *paragraph (f)* of *subsection (2)*.
- (5) Where the Commission receives submissions, further information, or documents under *subsection (1)* or *(2)*, or any other provision of this Act or regulations under this Act, that it considers contain or contains additional material information, including information in relation to the impact of the proposed development on the environment, it shall—
- (a) make that additional material information available to the public for inspection (to the extent that such information is not already available for inspection by the public) in such manner and within such period as may be prescribed, and
  - (b) notify the person who made the material alteration request that he or she is required, in such manner and within such period as may be prescribed, to give notice to the public—
    - (i) that the additional material information is available for inspection and of the place where it may be inspected, and
    - (ii) that the public are entitled to make submissions on the additional material information, within such period as may be prescribed.
- (6) Where a person who made the material alteration request fails to submit the further information referred to in *paragraph (a)* of *subsection (2)* within such period as may be prescribed, the Commission may treat the request as having been withdrawn.
- (7) Where a person who made the material alteration request fails to submit the revised particulars, plans or drawings referred to in *paragraph (b)* of *subsection (2)* or make the further submissions referred to in *paragraph (c)* of *subsection (2)* within such period as may be prescribed, the Commission may—

- (a) extend that period, where it considers it appropriate to do so, or
  - (b) decide the material alteration request without further notice to the person who made the material alteration request.
- (8) Where a person who made the material alteration request fails to comply with a requirement referred to in *paragraph (b)* of *subsection (5)* within such period as may be prescribed, the Commission may—
- (a) extend that period, where it considers it appropriate to do so, or
  - (b) treat the material alteration request as having been withdrawn.

**Time limits for deciding material alteration request where deciding authority is planning authority** 10

140. (1) Where the deciding authority is a planning authority, it shall make a decision under *subsection (1)* of *section 137* in relation to a material alteration request, before the expiration of—
- (a) the relevant period, or
  - (b) such longer period as the person who made the material alteration request may consent to under *subsection (2)*. 15
- (2) A person who made a material alteration request may, before the expiration of the relevant period, consent in writing to the extension of the period for making a decision in relation to the material alteration request under *subsection (1)* of *section 137*. 20
- (3) Where the planning authority fails to make a decision in relation to a material alteration request under *subsection (1)* of *section 137* within the relevant period or such longer period as the person who made the material alteration request may consent to under *subsection (2)*, it shall notify the person who made the material alteration request of that fact as soon as may be— 25
- (a) stating why it has not been possible to make a decision within that period,
  - (b) specifying the additional period required by the planning authority to make a decision in relation to the material alteration request (which shall not exceed 4 weeks from the expiration of the relevant period), and
  - (c) seeking the consent of the person to an extension of the time within which the planning authority shall make its decision. 30
- (4) If the person who made the material alteration request notifies the planning authority that he or she consents to an extension of time sought in a notice under *subsection (3)*, the planning authority shall make a decision in relation to the material alteration request as soon as may be and before the expiration of the period specified in that notice. 35
- (5) If, within such period as may be prescribed, the person who made the material alteration request notifies the planning authority that he or she does not consent to an extension of time sought in a notice under *subsection (3)*, the material alteration request shall be deemed to be refused, and the person who made that material alteration request may appeal that deemed refusal to the Commission under *section* 40

100 as if it were a deemed refusal referred to in *subsection (5) of section 98*, and *Chapter 3* shall apply for the purposes of that appeal accordingly, subject to the modifications referred to in *subsection (8) of section 137*.

- (6) If the person who made the material alteration request fails to notify the planning authority, within the period referred to in *subsection (5)*, as to whether or not he or she consents to the extension of time sought in the notice under *subsection (3)*, the person who made the material alteration request shall be deemed to have consented to that extension of time. 5
- (7) Where a material alteration request is deemed to have been refused under *subsection (5)*, the planning authority shall— 10
- (a) where the person who made the material alteration request does not appeal the deemed refusal to the Commission, repay to the person all fees paid to the planning authority by the person in respect of the material alteration request, and
- (b) where the person appeals the deemed refusal to the Commission, repay to the person all fees paid to the planning authority by the person in respect of the material alteration request and repay to the person any fees paid to the Commission by the person in respect of the appeal. 15
- (8) (a) Where the person who made the material alteration request consents to an extension of time sought in a notice under *subsection (3)* and the planning authority fails to make a decision in relation to the material alteration request within the period specified in that notice, it shall— 20
- (i) repay to the person all fees paid to the planning authority by the person in respect of the material alteration request,
- (ii) pay to the person the additional sum in not more than 5 instalments, and
- (iii) subject to *subsection (9)*, make a decision in relation to the material alteration request as soon as may be thereafter. 25
- (b) In *paragraph (a)*, “additional sum” means the lesser of the following:
- (i) such sum as is equal to 3 multiplied by the sum of the fees paid to the planning authority by the person in respect of the material alteration request, and 30
- (ii) €10,000.
- (9) Where the person who made the material alteration request consents to an extension of time sought in a notice under *subsection (3)* and the planning authority fails to make a decision in relation to the material alteration request within the period specified in that notice, the person who made the material alteration request may notify the planning authority in writing that it does not consent to the planning authority making a decision in relation to the material alteration request after the expiration of that period. 35
- (10) Where the planning authority receives a notification under *subsection (9)*—
- (a) the material alteration request shall be deemed to have been refused by the planning authority on the date of the notification, and 40

- (b) the person who made the material alteration request may appeal that deemed refusal to the Commission under *section 100* as if it were a deemed refusal referred to in *paragraph (b) of subsection (7) of section 98* and *Chapter 3* shall apply accordingly to the appeal, subject to the modifications referred to in *subsection (8) of section 137*. 5
- (11) Where the person who made the material alteration request brings an appeal under *paragraph (b) of subsection (10)*, the planning authority shall repay to the person any fees paid by the person who made the material alteration request to the Commission in respect of that appeal.
- (12) A failure by a planning authority to make a decision under *subsection (1) of section 137* within the period or periods provided for under this section shall not invalidate the decision of the planning authority under that subsection. 10
- (13) Provision may be made by regulations for periods that shall be disregarded in reckoning any period for the purpose of *subsection (1)*.
- (14) A planning authority shall include in its annual report in accordance with *section 221 of the Act of 2001*— 15
- (a) the number of material alteration requests decided by it within the relevant period,
- (b) the number of material alteration requests made to it but not decided by it within that period, 20
- (c) the number of material alteration requests deemed refused by it pursuant to *subsection (5)*, and the number of payments made by it pursuant to *subsection (7)* and the aggregate value of all such payments,
- (d) the number of payments made by it pursuant to *subsection (8)* and the aggregate value of all such payments, and 25
- (e) the number of payments made by it pursuant to *subsection (11)* and the aggregate value of all such payments.
- (15) In this section, “relevant period”, in relation to a material alteration request, means—
- (a) where neither an appropriate assessment nor an environmental impact assessment is required— 30
- (i) 8 weeks from the date of the notice that the request is a material alteration request under *paragraph (a) of subsection (6) of section 135*,
- (ii) where the planning authority makes one or more than one request under *subsection (2) of section 138*, 4 weeks from the earlier of the following dates: 35
- (I) the date by which the request or requests under *subsection (2) of section 138*, as the case may be, is or are fully complied with;
- (II) the date by which the request or requests under *subsection (2) of section 138*, as the case may be, is or are required to be fully complied with,
- (iii) where the planning authority makes one or more than one request under *subsection (2) of section 138* and *subsection (3) of section 138* applies to the 40

request or requests concerned, 4 weeks from the date of the expiration of the prescribed period referred to in *subparagraph (iii) of paragraph (b) of subsection (3) of section 138*, or

- (iv) where more than one of the foregoing provisions of this paragraph applies, the period specified in those provisions that expires last, 5

or

- (b) where an appropriate assessment or an environmental impact assessment is required—

- (i) 12 weeks from the date by which all submissions are required to have been given to the planning authority in accordance with this Part and *Part 6* in relation to the proposed development, or 10

- (ii) where the planning authority makes one or more than one request under *subsection (2) of section 138*, *paragraph (a) of subsection (2) of section 197* or *subsection (4) or (5) of section 212* in relation to the material alteration request, 8 weeks from the earlier of the following dates: 15

- (I) the date by which the request or requests under *section 138*, *197*, or *212*, as the case may be, is or are fully complied with;

- (II) the date by which the request or requests under *section 138*, *197*, or *212*, as the case may be, is or are required to be fully complied with,

- (iii) where the planning authority makes one or more than one such request under *subsection (2) of section 138* and *subsection (3) of section 138* applies, 8 weeks from the date of the expiration of the prescribed period referred to in *subparagraph (iii) of paragraph (b) of subsection (3) of section 138*, or 20

- (iv) where more than one of the foregoing provisions of this paragraph applies, the period specified in those provisions that expires last. 25

#### **Time limits for deciding material alteration request where deciding authority is Commission**

141. (1) Where the deciding authority is the Commission, it shall make a decision under *subsection (1) of section 137* in relation to a material alteration request, before the expiration of— 30

- (a) the relevant period, or
- (b) such longer period from the date of the material alteration request as the person who made the request may consent to in accordance with *subsection (2)*.

- (2) Where, within the relevant period, the person who made the material alteration request gives to the Commission his or her consent in writing to the extension of the relevant period— 35

- (a) the period under *subsection (1)* for making the decision in relation to the material alteration request shall be extended for the period consented to by the person, and

- (b) the Commission shall publish a notice on its website stating the period as extended and the reasons for the extension of the period. 40

- (3) Provision may be made by regulations for periods that are to be disregarded in reckoning any period for the purpose of *subsection (1)*.
- (4) (a) Where the Commission fails to make a decision under *subsection (1) of section 137* on a material alteration request within the relevant period, or such further period as is consented to under *subsection (2)*, it shall— 5
- (i) determine the material alteration request notwithstanding that the period has expired,
  - (ii) notify the person who made the material alteration request of—
    - (I) the reasons why it has not made a decision within that period,
    - (II) the period within which it shall make that decision (which shall not exceed 6 weeks from the date of the expiration of the relevant period), 10
 and
  - (iii) publish a notice on its website of the reasons and period referred to in *subparagraph (ii)*.
- (b) Where the Commission fails, within the period specified in the notification under *clause (II) of subparagraph (ii) of paragraph (a)*, to make a decision under *subsection (1) of section 137*, it shall— 15
- (i) make the decision notwithstanding that the period has expired,
  - (ii) notify the person who made the material alteration request of—
    - (I) the reasons why it has not made a decision within that period, and 20
    - (II) the period within which it shall make that decision (which shall not exceed 6 weeks from the date of the expiration of the period first mentioned in this paragraph),
 and
  - (iii) publish a notice on its website of— 25
    - (I) the reasons and period referred to in *subparagraph (ii)*, and
    - (II) the sum paid to the person who made the material alteration request in accordance with *subparagraph (iv)*,
 and
  - (iv) pay to the person who made the material alteration request a sum equal to such proportion of the fees paid to the Commission as may be prescribed. 30
- (c) Where the Commission fails, within the period specified in the notification under *clause (II) of subparagraph (ii) of paragraph (b)*, to make a decision under *subsection (1) of section 137*, it shall—
- (i) make the decision notwithstanding that the period has expired, 35
  - (ii) notify the person who made the material alteration request of—
    - (I) the reasons why it has not made a decision within that period, and

- (II) the period within which it shall make that decision (which shall not exceed one week from the expiration of the period first mentioned in this paragraph),
    - (iii) publish a notice on its website of the reasons and period referred to in *subparagraph (ii)*, and 5
    - (iv) notify the Minister and the Office of the Planning Regulator that it has not made the decision within the period specified in the notification under *clause (II)* of *subparagraph (ii)* of *paragraph (b)*.
  - (d) The Minister may, upon his or her receiving a notification under *subparagraph (iv)* of *paragraph (c)*, ask the Office of the Planning Regulator to— 10
    - (i) conduct a review of the performance by the Commission of its functions under this Act, and
    - (ii) prepare, and submit to the Minister (within such period as the Minister shall specify), a report in relation to that review.
  - (5) A sum payable under *subparagraph (iv)* of *paragraph (b)* of *subsection (4)* shall be paid not later than 4 weeks after the expiration of the period for the making of the decision on the material alteration request referred to in *clause (II)* of *subparagraph (ii)* of *paragraph (a)* of that subsection. 15
  - (6) A failure by the Commission to make a decision under *subsection (1)* of *section 137* within the period or periods provided for under this section shall not invalidate the decision of the Commission under that subsection. 20
  - (7) Where the Minister considers it necessary or expedient that decisions under *subsection (1)* of *section 137*, in relation to material alteration requests of a particular class or classes, be determined as expeditiously as is consistent with objectives of maritime spatial planning and principles of proper planning and sustainable development, by reason of their being of special strategic, economic or social importance to the State, he or she may give a direction to the Commission to give priority to the making of such decisions, and the Commission shall comply with any such direction. 25
  - (8) Each annual report under *section 454* shall contain a statement of— 30
    - (a) the number of material alteration requests decided under *subsection (1)* of *section 137*,
    - (b) the number of material alteration requests decided within—
      - (i) the relevant period,
      - (ii) a period notified in accordance with *subparagraph (ii)* of *paragraph (a)* of *subsection (4)*, 35
      - (iii) a period notified in accordance with *subparagraph (ii)* of *paragraph (b)* of *subsection (4)*, and
      - (iv) a period notified in accordance with *subparagraph (ii)* of *paragraph (c)* of *subsection (4)*, 40
- during the period to which the report relates,

- (c) the number and the aggregate amount of all sums (if any) payable, and the number and the aggregate amount of all such sums paid, by the Commission in accordance with *subparagraph (iv) of paragraph (b) of subsection (4)*,
  - (d) the number of notifications under *subsection (4)*, and
  - (e) such other information as to the time taken to determine material alteration requests under this Chapter as the Minister may direct. 5
- (9) In this section, “relevant period”, in relation to a material alteration request, means—
- (a) in a case—
    - (i) where submissions are required to be given to the Commission in accordance with this Chapter or *Part 6* in relation to the proposed development, 18 weeks from the date by which all such submissions are required to be given, 10
    - (ii) where the Commission makes a request or more than one request for further information, documents or submissions under *subsection (2) of section 139, paragraph (a) of subsection (2) of section 197 or subsection (4) or (5) of section 212* in relation to the material alteration request, 6 weeks from the earlier of the following dates— 15
      - (I) the date by which the request or requests under *section 139, 197 or 212*, as the case may be, is or are fully complied with, or
      - (II) the date by which the request or requests under *section 139, 197 or 212*, as the case may be, is or are required to be fully complied with, 20
    - (iii) where the Commission makes one or more than one request for further information, documents or submissions under *subsection (2) of section 139 and subsection (5) of section 139* applies to the request or requests concerned, 6 weeks from the date of the expiration of the period prescribed under *subparagraph (ii) of paragraph (b) of subsection (5) of section 139* in relation to the request or requests concerned, or 25
    - (iv) where more than one of the foregoing subparagraphs applies, the period specified in those subparagraphs that expires last,
  - or
  - (b) in relation to a material alteration request in respect of which an oral hearing is held under *paragraph (g) of subsection (2) of section 139*, and notwithstanding *paragraph (a)*, 12 weeks from the date of the conclusion of the oral hearing. 30

**Material contravention of development plan or National Marine Planning Framework**

- 142.** (1) Subject to *subsections (2) and (12)*, a deciding authority shall refuse to alter or extend a permission under *section 136 or 137* where— 35
- (a) the development or proposed development is, or is proposed to be, situated wholly or partly on land and the development or proposed development to which the permission altered or extended would relate, would materially contravene the development plan for the functional area in which the development is, or is proposed to be, situated, or 40

- (b) the development or proposed development is, or is proposed to be, situated wholly or partly in the maritime area and the development or proposed development to which the permission altered or extended would relate would materially contravene the National Marine Planning Framework.
- (2) A planning authority may decide to make an alteration of a permission or grant an extension of the duration of a permission to which *subsection (1)* applies by resolution (in this section referred to as a “material contravention resolution”), following a proposal of the chief executive of the planning authority, in accordance with *subsections (3) to (11)*. 5
- (3) A material contravention resolution may be passed by the planning authority if— 10
- (a) it considers that the alteration or extension is necessary or justified having regard—
- (i) in the case of development or proposed development referred to in *paragraph (a) or (b) of subsection (1)*, to proper planning and sustainable development, or 15
- (ii) in the case of development or proposed development referred to in *paragraph (b) of subsection (1)*, to the objectives of maritime spatial planning,
- and
- (b) in the case of development or proposed development referred to in *paragraph (a) of subsection (1)*, the development or proposed 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. 25
- (4) A planning authority shall give notice, in such form and manner as may be prescribed, to the public and to such persons as may be prescribed of any motion for a material contravention resolution, and submissions may be made in respect of such motion in such form and manner, and within such period, as may be prescribed.
- (5) A resolution passed without prior compliance with *subsection (4)* shall be invalid. 30
- (6) Where a submission is received by the planning authority within the period prescribed for the purposes of *subsection (4)*, the planning authority shall acknowledge that submission in writing and the chief executive shall have regard to that submission when preparing his or her report in accordance with *subsection (8)*.
- (7) Where a submission is received by the planning authority after the expiration of the period prescribed for the purposes of *subsection (4)*, the planning authority shall return that submission to the person who made it and notify the person that the submission cannot be considered by the planning authority. 35
- (8) The chief executive shall, within such period as may be prescribed, prepare and submit to the members of the planning authority, a report— 40
- (a) stating the main reasons and considerations on which the motion to make the alteration or grant the extension in material contravention of the development

- plan or National Marine Planning Framework, as the case may be, is based, including the main reasons for considering that making the alteration or granting the extension may be necessary or justified having regard to the proper planning and sustainable development of the area, or the objectives of maritime spatial planning, as appropriate, 5
- (b) summarising the issues raised in any submissions validly received, and
- (c) advising the members of his or her opinion regarding the compliance, or otherwise, of the development or proposed development with National Planning Statements or any relevant policies or objectives of the Government or Minister of the Government or with any regional spatial and economic strategy, 10
- and that report shall be considered by the members before a material contravention resolution is passed.
- (9) A material contravention resolution shall record that the members are satisfied that the development or proposed development is necessary or justified having regard to the proper planning and sustainable development of the area and, where the proposed development is or includes maritime development, objectives of maritime spatial planning. 15
- (10) It shall be necessary for the passing of a material contravention resolution that the number of the members of the planning authority voting in favour of the resolution is not less than three-quarters of the total number of the members of the planning authority or where the number so obtained is not a whole number, the whole number next below the number so obtained shall be sufficient, and the requirement of this subsection is in addition to and not in substitution for any other requirement applying in relation to such a resolution. 20
- (11) Where a material contravention resolution has been passed by a planning authority, the planning authority shall— 25
- (a) send a copy of the notice under *subsection (4)* that relates to the resolution to the regional assembly for the area and the Office of the Planning Regulator,
- (b) at the same time, inform the regional assembly for the area and the Office of the Planning Regulator in writing that the resolution was passed, and 30
- (c) enter particulars of the material contravention resolution in the register.
- (12) The Commission may decide to make an alteration of a permission or grant an extension of the duration of a permission—
- (a) to which *paragraph (a) of subsection (1)* applies, where it is satisfied that—
- (i) the development or proposed development is of strategic or national importance having regard to the policy of the Government, 35
- (ii) the development plan contains objectives that conflict with one another or are ambiguous with regard to their application to the development or proposed development concerned, or
- (iii) the development or proposed 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 40

dealt with by provisions of the development plan to which the material contravention concerned applies,

and

(b) to which *paragraph (b)* of *subsection (1)* applies, where it is satisfied that—

- (i) the development or proposed development is of strategic or national importance having regard to the policy of the Government, or
- (ii) the National Marine Planning Framework contains objectives that conflict with one another or are ambiguous with regard to their application to the development or proposed development.

**Revocation or modification of permission by planning authority** 10

143. (1) If a planning authority considers that it is appropriate that a permission relating to land-based development within its functional area should be revoked or modified because the development is a development referred to in *subsection (4)*, it may serve a notice proposing to do so in accordance with *subsection (5)* on the applicant for permission, the owner and occupier of the lands where the development to which the permission relates is, or is proposed to be, situate, and on any other person who, in its opinion, will be materially affected by the revocation or modification. 15

(2) Subject to *subsection (3)*, if a planning authority considers that it is appropriate that a permission relating to maritime development within its functional area should be revoked or modified because the development is a development referred to in *subsection (4)*, it may serve a notice proposing to do so in accordance with *subsection (5)* on the applicant for permission, the owner and occupier of the maritime site where the development to which the permission relates is, or is proposed to be, situate, the holder of a maritime area consent granted for the occupation of that maritime site for the purposes of the development, and on any other person who, in its opinion, will be materially affected by the revocation or modification. 20 25

(3) A reference in *subsection (2)* to “owner” shall not include a reference to a Minister of the Government in whom the maritime site vests by virtue of section 5 of the State Property Act 1954.

(4) A planning authority may propose to revoke or modify a permission under *subsection (1)* or *(2)* where the development to which the permission relates— 30

(a) would be contrary to the requirements of proper planning and sustainable development or maritime spatial planning, as appropriate, and

(b) no longer conforms to the provisions of the development plan, or any applicable urban area plan, priority area plan or coordinated area plan, or the National Marine Planning Framework, that applies to the land or maritime site where it is proposed to carry out the development, or would frustrate the objectives of one or more than one of such plans or of the National Marine Planning Framework. 35

(5) The notice referred to in *subsections (1)* and *(2)* shall—

(a) specify the permission concerned, 40

(b) specify the reasons for the proposal, and

- (c) invite the person on whom the notice is served to make submissions to the planning authority in writing within the period specified in the notice (which shall be before the end of the period of 4 weeks from the date of the service of the notice) concerning the proposal.
- (6) A planning authority may decide to revoke or modify a permission where the development to which the permission relates is a development referred to in *subsection (4)* and, when making its decision, shall have regard to any submissions made under *paragraph (c) of subsection (5)*. 5
- (7) Where a planning authority decides to revoke or modify a permission under *subsection (6)*, it shall specify in the decision the provisions of the plan or National Marine Planning Framework referred to in *subsection (4)* to which the development no longer conforms or the objectives of the plan or National Marine Planning Framework that the development would frustrate, and the main reasons and considerations on which the decision is based. 10
- (8) A person served with a notice under *subsection (1) or (2)* may, at any time within the period of 4 weeks beginning on the date of the decision under *subsection (6)*, appeal to the Commission against the decision. 15
- (9) Where an appeal is brought under *subsection (8)* against a decision, the Commission may confirm the decision with or without modifications, or annul the decision, and it shall specify the main reasons and considerations for its determination on the appeal. 20
- (10) Any development carried out in contravention of a decision under *subsection (6)*, or where an appeal is brought under *subsection (8)*, in contravention of a decision confirmed under *subsection (9)*, shall be unauthorised development.
- (11) A notice of a proposal to revoke a permission may only be served prior to commencement of the development to which the permission relates. 25
- (12) A notice of a proposal to modify a permission may only be served prior to completion of the development to which the permission relates, and where the development has commenced, the planning authority shall not propose to modify any part of the development that has been completed in accordance with the permission.
- (13) A planning authority may, for stated reasons, by notice, withdraw a notice served under *subsection (1) or (2)* and, where a notice is withdrawn, the period between the serving of the notice and the withdrawal shall not be reckonable for the purpose of calculating the period since the granting of the permission. 30
- (14) Particulars of a notice served under *subsection (1) or (2)*, an appeal under *subsection (8)*, a determination of the Commission on appeal under *subsection (9)*, and the withdrawal of a notice under *subsection (13)* shall be entered in the register. 35

#### **Revocation or modification of permission by Minister**

- 144.** (1) The Minister may, upon the request of the Minister for Justice, the Minister for Foreign Affairs, the Minister for Defence, or the Minister for Health, and with the approval of the Government, make an order revoking or modifying (whether by extension of its duration or alteration of its terms) a permission, if the first-mentioned Minister is satisfied that— 40

- (a) the carrying out of the development to which the permission relates is likely to be harmful to—
    - (i) the security or defence of the State,
    - (ii) the State's relations with other states, or
    - (iii) public health, 5
 and
  - (b) the revocation or modification is necessary in the public interest.
- (2) The Minister may, before making an order under this section, consult with—
- (a) a planning authority in whose functional area any part of the development to which the permission relates is situated or proposed to be situated, 10
  - (b) the person to whom the permission was granted, and
  - (c) any other person who, in the opinion of the Minister, is likely to be materially affected by the making of the order,
- but shall not so consult if the Minister considers that to do so would be harmful to the security or defence of the State or to the State's relations with other states. 15
- (3) The Minister shall, as soon as practicable after making an order under this section, give a copy of it to—
- (a) the planning authority that granted the permission or, where the permission was granted by the Commission, the Commission, and
  - (b) where the permission was granted by the Commission and does not relate to development in the outer maritime area, the planning authority in whose functional area the development to which the permission relates is situated or proposed to be situated. 20
- (4) The planning authority that granted the permission to which an order under this section relates or, where the permission was granted by the Commission, the Commission, shall, within such period as may be specified in the order, serve— 25
- (a) a notice on—
    - (i) the person to whom the permission was granted, and
    - (ii) any other person specified in the order,
 informing him or her of the revocation or modification effected by the order, and 30
  - (b) a notice—
    - (i) in the case of development commenced but not completed, on any person carrying out the development to which the permission relates, or on whose behalf the development is being carried out, requiring him or her to cease the development and restore the land or maritime site on which the development is being carried out to the condition it was in before the development commenced, or 35

- (ii) in the case of development completed, on any person who carried out the development, or on whose behalf the development was carried out, requiring him or her to restore the land or maritime site on which the development was carried out to the condition it was in before the development was commenced. 5
- (5) A person on whom a notice is served under *paragraph (b) of subsection (4)* shall comply with the notice.
- (6) A permission to which an order under this section applies shall stand revoked or modified, as the case may be, upon the making of the order.
- (7) Any development carried out in contravention of an order under this section shall be unauthorised development. 10
- (8) Where the Minister makes an order revoking an order made under *subsection (1)*—
- (a) the order revoked shall, for all purposes, be deemed never to have been made, and the register shall be amended accordingly,
- (b) the period between the making of the order revoked and the revocation shall not be reckonable for the purpose of calculating the period since the granting of the permission, and 15
- (c) the Minister shall give notice of the revocation to such persons as he or she considers appropriate.
- (9) The making of an order under this section shall be entered in the register as soon as may be after it is made. 20
- (10) (a) Proceedings before a court relating to an order made under *subparagraph (i) or (ii) of paragraph (a) of subsection (1)* shall be heard in private.
- (b) A court before which proceedings relating to an order under *subparagraph (i) or (ii) of paragraph (a) of subsection (1)* are heard shall take all reasonable precautions to prevent the disclosure— 25
- (i) to the public, or
- (ii) where the court considers it appropriate, to any party to the proceedings, of any evidence given or document submitted for the purposes of the proceedings, the disclosure of which could reasonably be considered to be harmful to the security or defence of the State or to the State's relations with other states. 30
- (c) Without prejudice to the generality of *paragraph (b)*, precautions referred to in that paragraph may include—
- (i) the prohibition of the disclosure of such evidence or document as the court may determine, and 35
- (ii) the hearing, in the absence of any person, including any party to the proceedings, of any evidence or the examination of any witness or document that, in the opinion of the court, could reasonably be considered to be harmful to the security or defence of the State or to the State's relations with other states. 40