

Appendix 3

Section 182 A to 182 E of the Planning and Development Act 2000.

F434[Electricity transmission lines.

182A.— (1) Where a person (hereafter referred to in this section as the ‘undertaker’) intends to carry out development comprising or for the purposes of electricity transmission, (hereafter referred to in this section and section 182B as ‘proposed development’), the undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

(2) In the case of development referred to in subsection (1) which belongs to a class of development identified for the purposes of section 176, the undertaker shall prepare, or cause to be prepared, an F435[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of the development.

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(4) Before an undertaker makes an application under subsection (1) for approval, it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

(I) it proposes to seek the approval of the Board for the proposed development,

(II) in the case of an application referred to in subsection (1)(a), an F435[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] has been prepared in respect of the proposed development, and

(III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and any F435[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

(I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and

(II) the likely F435[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, if carried out, and

(iv) specifying the types of decision the Board may make, under section 182B, in relation to the application,

F436[(v) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and (vi) stating where practical information on the review mechanism can be found.]

(b) send a copy of the application and any F435[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] to the local authority or each local authority in whose functional area the proposed development would be situate and to the prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—

- (i) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and
 - (ii) the likely F435[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, if carried out, and
- (c) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.

(5) The Board may—

- (a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to—
 - (i) the F435[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, or
 - (ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development, as the Board may specify, or
- (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the statutory undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a F435[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of it.

(6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182B.

(7) The Board shall—

- (a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to—
 - (i) the likely F435[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, and
 - (ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development, or
- (b) where the undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b), require the undertaker to do the things referred to in subsection (8).

(8) The things which an undertaker shall be required to do as aforesaid are—

- (a) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—
 - (i) further information in relation to the proposed development has been furnished to the Board, or
 - (ii) the undertaker has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or a F435[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of the development has been furnished to the Board, indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or the F435[revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] referred to in subparagraph (i) or (ii) may be inspected free

of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and

(b) to send to each prescribed authority to which a notice was given pursuant to subsection (4)(b) or (c)—

(i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and
(ii) a copy of that further information, information or statement, and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the undertaker.

(9) In this section ‘transmission’, in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of—

(a) a high voltage line where the voltage would be 110 kilovolts or more, or

(b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.]

Annotations

Amendments:

F434 Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

F435 Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 39, S.I. No. 474 of 2011.

F436 Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(e).

Editorial Notes:

E253 Power pursuant to section exercised (1.01.2014) by *Planning and Development (Amendment) (No. 2) Regulations 2013* (S.I. No. 520 of 2013).

E254 Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

E255 Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

E256 Previous affecting provision: similar amendments to those made by 2011 Act made by *Planning and Development (Amendment) Act 2010* (30/2010), s. 63, not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

F437[Section 182A: criteria for decision, certain exemptions, etc.

182B.—

(1) Before making a decision in respect of a proposed development the subject of an application under section 182A, the Board shall consider—

(a) the F438[environmental impact statement or Natura impact statement or both of those statements as the case may be] submitted pursuant to section 182A(1) or (5), any submissions or observations made in accordance with section 182A(4) or (8) and any other information furnished in accordance with section 182A(5) relating to—

(i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and

(ii) the likely F438[effects on the environment or adverse effects on the integrity of a European site as the case may be] of the proposed development, and

(b) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may, where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of a proposed development from a requirement under section 182A(2) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary

Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

- (a) F438[the effects, if any of the proposed development on the environment or adverse effects, if any, of the proposed development on the integrity of a European site] should be assessed in some other manner, and
- (b) the information arising from such an assessment should be made available to the members of the public, and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) Notice of any exemption granted under subsection (2), of the reasons for granting the exemption, and of any requirements applied under subsection (3) shall, as soon as may be—

- (a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3) to the Commission of the European Communities.

(5) The Board may, in respect of an application under section 182A for approval of proposed development—

- (a) approve the proposed development,
- (b) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (c) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (d) refuse to approve the proposed development, and may attach to an approval under paragraph (a), (b) or (c) such conditions as it considers appropriate.

F439[(5A) A decision of the Board under subsection (5) shall state—

- (a) the main reasons and considerations on which the decision is based,
- (b) where conditions are attached under subsection (5) or (6) the main reasons for attaching them,
- (c) the sum and direct the payment of the sum to be paid to the Board towards the costs incurred by the Board of—
 - (i) giving a written opinion in compliance with a request under section 182E(3) (inserted by section 4 of the Act of 2006),
 - (ii) conducting consultations under section 182E, and
 - (iii) determining the application made under section 182A (inserted by section 4 of the Act of 2006) under this section, and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which the sums the Board may, by virtue of this subsection, require to be paid).

(5B) A reference to costs in subsection (5A)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(5C) A notice of a decision given under subsection (5) shall be furnished to the applicant as soon as may be after it is given but shall not become operative until any requirement under subsection (5A)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(5D) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement under subsection (5A)(c), the Board, the planning authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.]

(6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(a), (b) or (c) a condition requiring—

- (a) the construction or the financing, in whole or in part, of the construction of a facility, or

(b) the provision or the financing, in whole or in part, of the provision of a service, in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(7) A condition attached pursuant to subsection (6) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(8) The Minister may make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications under section 182A for approval.

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(10) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

- (a) the provisions of the development plan for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) the matters referred to in section 143, and
- (f) the provisions of this Act and regulations under this Act where relevant.

(11) (a) No permission under section 34 or 37G shall be required for any development which is approved under this section.

(b) Part VIII shall apply to any case where development referred to in section 182A(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.

(12) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.]

Annotations

Amendments:

F437 Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

F438 Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 64(a) and (b), S.I. No. 405 of 2010.

F439 Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 64(c), S.I. No. 405 of 2010.

Modifications (not altering text):

C70 Application of section restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(3), commenced on enactment.

Certain development approvals under Part XI of Planning and Development Act 2000.

22.— ...

(3) No approval shall be required under— ...

(b) section 182B, or

...

in relation to development referred to in section 181A, 182A or 182C, respectively, if— ...

(ii) in the case of development referred to in section 182A, the development has been the subject of—

- (I) a grant of permission under section 34 of the Act of 2000 before the commencement of this section and that permission is in force immediately before such commencement, or
- (II) an application made, before the commencement of this section, in accordance with the Act of 2000 and regulations thereunder for the grant of such a permission and that application does not stand withdrawn before the commencement of this section,

...

Editorial Notes:

E257 Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

E258 Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

F440[Application for approval of strategic gas infrastructure development.

182C.— (1) Where a person (hereafter referred to in this section as the ‘undertaker’) intends to carry out a strategic gas infrastructure development (hereafter referred to in this section and section 182D as ‘proposed development’) F441[, and where the Board determines following consultations under section 182E that the development comes within paragraph (a), (b) or (c) of section 37A(2),] the undertaker shall prepare, or cause to be prepared—

- (a) an application for approval of the development under section 182D, and
- (b) an F442[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of the development, and shall apply to the Board for such approval accordingly, indicating in the application whether the application relates to a strategic upstream gas pipeline or a strategic downstream gas pipeline.

(2) An application under subsection (1) for approval of a proposed development shall, if it will consist of or include a pipeline, be accompanied by a certificate in relation to the pipeline provided under section 26 of the Gas Act 1976, as amended, or section 20 of the Gas (Amendment) Act 2000 by—

- (a) in the case of a strategic upstream gas pipeline, the Minister for Communications, Marine and Natural Resources, or
- (b) in the case of a strategic downstream gas pipeline, the Commission.

(3) The proposed development shall not be carried out unless the Board has approved it with or without modifications.

(4) Before an undertaker makes an application for approval under subsection (1), it shall—

(a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—

(i) stating that—

- (I) it proposes to seek the approval of the Board for the proposed development,
- (II) an F442[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] has been prepared in respect of the proposed development, and
- (III) where relevant, the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,

(ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the F442[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),

(iii) inviting the making, during such period, of submissions and observations to the Board relating to—

- (I) the implications of the proposed development for proper planning and sustainable development in the area or areas concerned, and
- (II) the likely F442[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, if carried out, and

- (iv) specifying the types of decision the Board may make, under section 182D, in relation to the application, F443[(v) stating that a person may question the validity of a decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) and
- (vi) stating where practical information on the review mechanism can be found.] and
- (b) send a copy of the application and the F442[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] to—
 - (i) the local authority or each local authority in whose functional area the proposed development would be situate,
 - (ii) any prescribed bodies,
 - (iii) where the proposed development comprises or is for the purposes of a strategic downstream gas pipeline, the Commission, and
 - (iv) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, the prescribed body of the relevant state or states, together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—
 - (I) the implications of the proposed development for proper planning and sustainable development in the area concerned, and
 - (II) the likely effects on the environment of the proposed development, if carried out.

(5) The Board may—

- (a) if it considers it necessary to do so, require an undertaker that has applied for approval for a proposed development to furnish to the Board such further information in relation to—
 - (i) the F442[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, or
 - (ii) the consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development, as the Board may specify, or
- (b) if it is provisionally of the view that it would be appropriate to approve the proposed development were certain alterations (specified in the notification referred to in this paragraph) to be made to the terms of it, notify the undertaker that it is of that view and invite the undertaker to make to the terms of the proposed development alterations specified in the notification and, if the undertaker makes those alterations, to furnish to it such information (if any) as it may specify in relation to the development, in the terms as so altered, or, where necessary, a revised F442[environmental impact statement or Natura impact statement or both of those statements, as the case may be,] in respect of it.

(6) If an undertaker makes the alterations to the terms of the proposed development specified in a notification given to it under subsection (5), the terms of the development as so altered shall be deemed to be the proposed development for the purposes of this section and section 182D.

(7) The Board shall—

- (a) where it considers that any further information received pursuant to a requirement made under subsection (5)(a) contains significant additional data relating to—
 - (i) the likely F442[effects on the environment or adverse effects on the integrity of a European site, as the case may be,] of the proposed development, and
 - (ii) the likely consequences for proper planning and sustainable development in the area or areas in which it is proposed to situate the said development of such development, or
- (b) where the undertaker has made the alterations to the terms of the proposed development specified in a notification given to it under subsection (5)(b), require the undertaker to do the things referred to in subsection (8).

(8) The things which an undertaker shall be required to do as aforesaid are—

- (a) to publish in one or more newspapers circulating in the area or areas in which the proposed development would be situate a notice stating that, as appropriate—

- (i) further information in relation to the proposed development has been furnished to the Board, or
 - (ii) the undertaker has, pursuant to an invitation of the Board, made alterations to the terms of the proposed development (and the nature of those alterations shall be indicated) and, if it be the case, that information in relation to the terms of the development as so altered or F442[a revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] in respect of the development has been furnished to the Board, indicating the times at which, the period (which shall not be less than 3 weeks) during which and the place, or places, where a copy of the information or F442[the revised environmental impact statement or revised Natura impact statement or both of those statements, as the case may be,] referred to in subparagraph (i) or (ii) may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy) and that submissions or observations in relation to that information or statement may be made to the Board before the expiration of the indicated period, and
- (b) to send to each prescribed authority to which a notice was given pursuant to subsection (4)(b)—
- (i) a notice of the furnishing to the Board of, as appropriate, the further information referred to in paragraph (a)(i) or the information or statement referred to in paragraph (a)(ii), and
 - (ii) a copy of that further information, information or statement, and to indicate to the authority that submissions or observations in relation to that further information, information or statement may be made to the Board before the expiration of a period (which shall be not less than 3 weeks) beginning on the day on which the notice is sent to the prescribed authority by the undertaker.

F444[(9) In the case of any application to the Board under this section, the Board shall request the Commission to make observations on safety or operational matters including any relevant safety advice or specific recommendations which the Commission considers appropriate within such period as may be specified (which period shall not be less than 3 weeks from the date of the request).]

F441[(9A) In considering the likely effects of a proposed development on the environment or significant effects on a European site and the consequences of the development for proper planning and sustainable development, the Board shall have particular regard to the observations that the Commission considers it appropriate to make to the Board as requested under subsection (9).

(9B) Where the Board is considering not accepting the observations of the Commission it shall give notice to and consult with the Commission, giving its reasons and the Board shall request the Commission to respond within 3 weeks of the giving of notice under this subsection.

(9C) The Board shall consider any response given by the Commission under subsection (9B) before it makes a decision under section 182D.

(9D) The Board, in giving an approval for a proposed development under section 182D(5)(a), (b) or (c) or refusing to approve a proposed development under section 182D(5)(d), where it does not follow the observations of the Commission or part thereof, shall give reasons.

(9E) In making observations on safety or operational matters including any relevant safety advice or specific recommendations which the Commission considers appropriate under this section, the Commission may, without prejudice to the generality of the entitlement to make such observations, refer to such matters as it considers appropriate, including—

- (a) a safety framework established under section 13I of the Act of 1999,
- (b) directions made by the Minister for Communications, Energy and Natural Resources under section 13J of the Act of 1999,
- (c) guidelines issued under section 13L of the Act of 1999,
- (d) a safety case as defined by section 13A(1) of the Act of 1999,
- (e) a revised safety case within the meaning of section 13N of the Act of 1999,
- (f) a safety permit issued pursuant to section 13P of the Act of 1999,
- (g) an improvement notice issued under section 13Z of the Act of 1999,

- (h) a prohibition notice issued under section 13AA of the Act of 1999,
- (i) safety standards referred to in guidelines issued under section 13L of the Act of 1999,
- (j) standards and codes of practice referred to in section 13L(3)(c), and
- (k) conditions relating to petroleum authorisations.

(9F) In subsection (9E)—

- (a) 'Act of 1999' means the Electricity Regulation Act 1999;
- (b) a term or expression used in that subsection has the same meaning as it has in Part IIA of the Electricity Regulation Act 1999.]

(10) The Minister, after consultation with the Minister for Communications, Marine and Natural Resources, may make regulations to provide for matters of procedure in relation to the making of a request of the Commission under subsection (9) and the making of observations by the Commission on foot of such a request.

(11) In this section 'Commission' means the Commission for Energy Regulation.]

Annotations

Amendments:

F440 Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

F441 Inserted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(a) and (f), S.I. No. 477 of 2010.

F442 Substituted (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 40, S.I. No. 474 of 2011.

F443 Inserted (13.07.2010) by *European Communities (Public Participation) Regulations 2010* (S.I. No. 352 of 2010), reg. 10(f).

F444 Substituted (5.10.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(e), S.I. No. 477 of 2010.

Modifications (not altering text):

C71 Application of section clarified (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(4), (5) and (6), commenced on enactment.

Certain development approvals under Part XI of Planning and Development Act 2000. 22.— ...

(4) Nothing in section 182C or any other provision of the Act of 2000 shall be read as meaning that, notwithstanding the permission granted under section 34 of the Act of 2000 in respect of that terminal before such commencement, a permission—

- (a) under section 34 or 37G of the Act of 2000, and
- (b) granted after the commencement of the amendments of that Act made by the Act of 2006, is required, either in circumstances generally or in the circumstances referred to in subsection (5), in respect of the terminal referred to in subsection (6).

(5) The circumstances mentioned in subsection (4) are that an application is made under section 182C in relation to a development which, if it is carried out, will consist of the alteration or modification of the terms of the strategic gas infrastructure development referred to in subsection (6) other than the terms of that development that comprise the terminal referred to in that subsection.

(6) The terminal mentioned in subsections (4) and (5) is a terminal comprised in a strategic gas infrastructure development (within the meaning of the Act of 2000) the pipeline comprised in which development has been the subject of a consent referred to in subsection (3)(iii)(i).

Editorial Notes:

E259 Power pursuant to section exercised (1.01.2014) by *Planning and Development (Amendment) (No. 2) Regulations 2013* (S.I. No. 520 of 2013).

E260 Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

E261 Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

E262 Previous affecting provision: section amended by *Planning and Development (Amendment) Act 2010* (30/2010), s. 65(b), (c) and (d), not commenced; repealed (21.09.2011) by *Environment (Miscellaneous Provisions) Act 2011* (20/2011), s. 42, S.I. No. 474 of 2011.

F445[Section 182C: criteria for decision, certain exemptions, etc.

182D.— (1) Before making a decision in respect of a proposed development the subject of an application under section 182C, the Board shall consider—

- (a) the F446[environmental impact statement or Natura impact statement or both of those statements as the case may be] submitted pursuant to section 182C(1) or (5), any submissions or

observations made in accordance with section 182C(4), (8) or (9) and any other information furnished in accordance with section 182C(5) relating to—

- (i) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the proposed development of such development, and
 - (ii) the likely F446[effects on the environment or adverse effects on the integrity of a European site as the case may be] of the proposed development, and
- (b) the report and any recommendations of a person conducting any oral hearing relating to the proposed development.

(2) The Board may where it is satisfied that exceptional circumstances so warrant, grant an exemption in respect of proposed development from a requirement under section 182C(1) to prepare an environmental impact statement except that no exemption may be granted in respect of proposed development where another Member State of the European Communities or a state which is a party to the Transboundary Convention has indicated that it wishes to furnish views on the effects on the environment in that Member State or state of the proposed development.

(3) The Board shall, in granting an exemption under subsection (2), consider whether—

- (a) F446[the effects, if any of the proposed development on the environment or adverse effects, if any of the proposed development on the integrity of a European site] should be assessed in some other manner, and
- (b) the information arising from such an assessment should be made available to the members of the public, and it may apply such requirements regarding these matters in relation to the application for approval as it considers necessary or appropriate.

(4) Notice of any exemption granted under subsection (2), of the reasons for granting the exemption, and of any requirements applied under subsection (3) shall, as soon as may be—

- (a) be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State, and
- (b) be given, together with a copy of the information, if any, made available to the members of the public in accordance with subsection (3), to the Commission of the European Communities.

(5) The Board may, in respect of an application under section 182C for approval of proposed development—

- (a) approve the proposed development,
- (b) make such modifications to the proposed development as it specifies in the approval and approve the proposed development as so modified,
- (c) approve, in part only, the proposed development (with or without specified modifications of it of the foregoing kind), or
- (d) refuse to approve the proposed development, and may attach to an approval under paragraph (a), (b) or (c) such conditions as it considers appropriate.

F447[(5A) A decision of the Board given under subsection (5) shall state—

- (a) the main reasons and considerations on which the decision was based,
- (b) where conditions are attached under subsection (5) or (6), the main reasons for attaching the conditions, and
- (c) the sum and direct the payment of the sum to be paid to the Board towards the costs incurred by the Board—

- (i) in complying with its obligations under sections 146B, 146C, 146D (inserted by section 30 of the Act of 2006), and 181A (inserted by section 36 of the Act of 2006),
- (ii) relating to the giving of a written opinion in compliance with a request made under section 182E(3) (inserted by section 4 of the Act of 2006),
- (iii) of conducting consultations under section 182E,
- (iv) of determining the application made under section 182C (inserted by section 4 of the Act of 2006) under this section, and, in such amount as the Board considers to be reasonable, state the sum to be paid and direct the payment of the sum to any planning authority that incurred costs during the course of consideration of that application and to any other person as a contribution to the costs incurred by that person during the course of consideration of that application (each of which the sums the Board may, by virtue of this subsection, require to be paid).

(5B) A reference to costs in subsection (5A)(c) shall be construed as a reference to such costs as the Board in its absolute discretion considers to be reasonable costs, but does not include a reference to so much of the costs there referred to as have been recovered by the Board by way of a fee charged under section 144.

(5C) A notice of a decision given under subsection (5) shall be furnished to the applicant as soon as may be after it is given but shall not become operative until any requirement under subsection (5A)(c) in relation to the payment by the applicant of a sum in respect of costs has been complied with.

(5D) Where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement under subsection (5A)(c), the Board, the planning authority or any other person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.】

(6) Without prejudice to the generality of the foregoing power to attach conditions, the Board may attach to an approval under subsection (5)(a), (b) or (c) a condition requiring—

- (a) the construction or the financing, in whole or in part, of the construction of a facility, or
- (b) the provision or the financing, in whole or in part, of the provision of a service, in the area in which the proposed development would be situated, being a facility or service that, in the opinion of the Board, would constitute a substantial gain to the community.

(7) A condition attached pursuant to subsection (6) shall not require such an amount of financial resources to be committed for the purposes of the condition being complied with as would substantially deprive the person in whose favour the approval under this section operates of the benefits likely to accrue from the grant of the approval.

(8) The Minister may, after consultation with the Minister for Communications, Marine and Natural Resources, make regulations to provide for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of applications under section 182C for approval.

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may require the Board to give information in respect of its decision regarding the proposed development for which approval is sought.

(10) In considering under subsection (1) information furnished relating to the likely consequences for proper planning and sustainable development of a proposed development in the area in which it is proposed to situate such development, the Board shall have regard to—

- (a) the provisions of the development plan for the area,
- (b) the provisions of any special amenity area order relating to the area,
- (c) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (d) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,
- (e) the matters referred to in section 143, and
- (f) the provisions of this Act and regulations under this Act where relevant.

(11) (a) No permission under section 34 or 37G shall be required for any development which is approved under this section.

- (b) Part VIII shall apply to any case where development referred to in section 182C(1) is carried out otherwise than in compliance with an approval under this section or any condition to which the approval is subject as it applies to any unauthorised development with the modification that a reference in that Part to a permission shall be construed as a reference to an approval under this section.

(12) Without prejudice to the generality of section 18(a) of the Interpretation Act 2005, a reference, however expressed, in this section to the area in which the proposed development would be situated includes, if the context admits, a reference to the 2 or more areas in which the proposed development would be situated and cognate references shall be construed accordingly.】

Annotations

Amendments:

F445 Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

F446 Substituted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 66(a) and (b), S.I. No. 405 of 2010.

F447 Inserted (19.08.2010) by *Planning and Development (Amendment) Act 2010* (30/2010), s. 66(c), S.I. No. 405 of 2010.

Modifications (not altering text):

C72 Application of section restricted (24.12.2006) by *Energy (Miscellaneous Provisions) Act 2006* (40/2006), s. 22(3), commenced on enactment.

Certain development approvals under Part XI of Planning and Development Act 2000.

22.— ...

(3) No approval shall be required under— ...

(c) section 182D, in relation to development referred to in section 181A, 182A or 182C, respectively, if— ...

(iii) in the case of development referred to in section 182C, the development has been the subject of— ...

(i) a grant of consent under section 39A or 40 of the Act of 1976 before the commencement of this section and that consent is in force immediately before such commencement, or

(ii) an application made, before the commencement of this section, in accordance with the Act of 1976 and regulations thereunder for the grant of such a consent and that application does not stand withdrawn before the commencement of this section.

...

Editorial Notes:

E263 Power pursuant to section exercised (21.09.2011) by *Planning and Development (Amendment) (No. 3) Regulations 2011* (S.I. No. 476 of 2011).

E264 Power pursuant to section exercised (21.12.2006) by *Planning and Development Regulations 2006* (S.I. No. 685 of 2006).

F448[Procedures in advance of seeking approval under section 182B or 182D.

182E.— (1) A person (a 'prospective applicant') who proposes to apply for approval under section 182B or 182D shall, before making the application, enter into consultations with the Board in relation to the proposed development.

(2) In any consultations under subsection (1), the Board may give advice to the prospective applicant regarding the proposed application and, in particular, regarding—

(a) the procedures involved in making such an application, and

(b) what considerations, related to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to the application.

(3) A prospective applicant may request the Board to give to him or her an opinion in writing prepared by the Board on what information will be required to be contained in an environmental impact statement in relation to the proposed development; on receipt of such a request the Board, after consulting the prospective applicant and such bodies as may be specified by the Minister for the purpose, shall comply with it as soon as is practicable.

(4) A prospective applicant shall, for the purposes of—

(a) consultations under subsection (1), and

(b) the Board's complying with a request under subsection (3), supply to the Board sufficient information in relation to the proposed development so as to enable the Board to assess the proposed development.

(5) Neither—

(a) the holding of consultations under subsection (1), nor

(b) the provision of an opinion under subsection (3), shall prejudice the performance by the Board of any other of its functions under this Act or regulations under this Act, or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

(6) The Board shall keep a record in writing of any consultations under this section in relation to a proposed development, including the names of those who participated in the consultations, and a copy of such record

shall be placed and kept with the documents to which any application in respect of the proposed development relates.

(7) The Board may, at its absolute discretion, consult with any person who may, in the opinion of the Board, have information which is relevant for the purposes of consultations under this section in relation to a proposed development.]

Annotations

Amendments:

F448 Inserted (31.01.2007) by *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006), s. 4, S.I. No. 684 of 2006.

Editorial Notes:

E265 Power pursuant to section exercised (3.06.2011) by *Planning and Development (Amendment) Regulations 2011* (S.I. No. 262 of 2011).